

{{7-31-93 p.C-1925}}

[¶10,446] In the Matter of Premier Bank, Maplewood, Minnesota, Docket No. FDIC-92-32b (2-3-92).

Bank to cease and desist from such unsafe or unsound practices as following hazardous lending and lax collection practices; operating in violation of applicable laws or regulations; operating with management policies detrimental to the Bank; engaging in practices which produce inadequate operating income; failing to provide adequate supervision over the Bank's affairs; operating with inadequate allowance for loan and lease losses; and failing to submit Reports of Condition and Income in accordance with instructions. (*This order was terminated by order of the FDIC dated 5-25-93; see ¶ 15,676.*)

- [.1] Management—Qualifications—Review
- [.2] Management—Management Plan—Minimum Requirements
- [.3] Assets—Adversely Classified—Eliminate/Reduce
- [.4] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.5] Allowance for Loan and Lease Losses—Establish/Maintain
- [.6] Loan Policy—Written Revision—Minimum Requirements
- [.7] Profit Plan—Minimum Requirements
- [.8] Strategic Plan—Preparation Required
- [.9] Compensation—Contractor—Review Required
- [.10] Violation of Law—Eliminate/Correct
- [.11] Loans—Special Mention—Correct Deficiencies
- [.12] Bank Operations—Internal Controls—Correct Weaknesses
- [.13] Dividends—Restricted
- [.14] Compliance Reports—Frequency
- [.15] Shareholders—Disclosure—Cease and Desist Order

In the Matter of

**PREMIER BANK
MAPLEWOOD, MINNESOTA
(Insured State Nonmember Bank)
ORDER TO CEASE
AND DESIST
FDIC-92-32b**

Premier Bank, Maplewood, Minnesota ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on such alleged charges under section 8(b) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(b), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC"), dated January 30, 1992, whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices or violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices and had violated laws and/or regulations. The FDIC, therefore, ac- {{7-31-93 p.C-1926}}cepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as that term is defined in Section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns cease and desist from the following unsafe and unsound banking practices and violations of law and/or regulations:

- A. engaging in hazardous lending and lax collection practices, including advancing nominee loans for the benefit of its institution-affiliated parties;
- B. engaging in violations of applicable laws and regulations;
- C. operating with management policies and practices which are detrimental to the Bank;

- D. engaging in practices which produce inadequate operating income;
 - E. failing to provide adequate supervision and direction over the affairs of the Bank to prevent unsafe or unsound practices and violations of law and/or regulations;
 - F. failing to have and maintain an adequate allowance for loan and lease losses in accordance with the requirements of the Instructions for Preparation of Reports of Condition and Income ("Instructions");
 - G. operating with an inadequate allowance for loan and lease losses for the volume, kind and quality of loans held; and
 - H. failing to submit Reports of Condition and Income in accordance with prevailing Instructions.
- IT IS FURTHER ORDERED, that the Bank, its institution-affiliated parties, and its successors and assigns, take affirmative action as follows:

[.1] 1. (a) (i) No more than 90 days from the effective date of this ORDER, the Bank shall have and thereafter retain qualified management. Such management shall include a qualified chief executive officer who shall be given stated written authority by the Bank's board of directors, including responsibility for implementing and maintaining the lending and other policies of the Bank. The chief executive officer shall have an appropriate level of experience to perform the duties assigned to that individual by the Bank's board of directors. The Bank shall promptly notify the Regional Director of the FDIC's Kansas City Regional Office ("Regional Director") of the identity of said chief executive officer. Prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and section 303.14 of the FDIC's Rules and Regulations, 12 C.F.R. § 303.14.

(ii) For purposes of this ORDER, the assessment of whether the Bank has "qualified management" shall be based upon management's conduct, both individual and joint, with respect to the Bank in: (A) complying with the requirements of this ORDER; (B) complying with applicable laws and regulations; and (C) not engaging in any unsafe or unsound banking practice which has an adverse effect on the Bank's asset quality, capital adequacy, earnings, or liquidity. Nothing in this paragraph 1(a) shall require the Bank to remove any particular officer.

[.2] (b) No more than 90 days from the effective date of this ORDER, the board of directors shall develop a written analysis and assessment of the Bank's management and staffing needs ("management plan"), which shall include, at a minimum:

(i) identification of both the type and number of officer positions needed to manage and supervise properly the affairs of the Bank;

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;

(iii) evaluation of each Bank officer, and in particular the chief executive officer, and staff member to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Bank's established policies and practices, and maintenance of the Bank in a safe and sound condition. Nothing in this ORDER shall preclude the board of directors from considering matters other than those described in this paragraph 1(b)(iii) in evaluating any officer or staff member; [{{4-30-92 p.C-1927}}](#)

(iv) specific and detailed review of the total compensation paid or provided during 1991 and scheduled for 1992, including all salary, benefits, and other compensation in whatever form, to those individuals holding the positions of chairman and vice chairman as of August 16, 1991, including a review of the reasonableness of such compensation in relation to other banks in the Bank's trade area and peer groups, giving due consideration to written job descriptions and duties actually performed; and

(v) a plan of action to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications, which the board of directors determines are necessary to fill Bank officer or staff member positions consistent with the board's analysis, evaluation and assessment as provided in paragraphs 1(b)(i) and 1(b)(iii) of this ORDER.

(c) The written management plan and any subsequent modification thereto shall be submitted to the Regional Director for review and comment. No more than 30 days from the receipt of any comment from the Regional Director, and after consideration of such comment, the board of directors shall approve the written management plan and/or any subsequent modification thereto which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written management plan and/or any subsequent modification.

(d) Within 180 days from the effective date of this ORDER, the Bank shall take all steps necessary to

increase the number of board of directors members who are independent with respect to the Bank. For purposes of this ORDER, an individual who is independent with respect to the Bank shall be any individual (1) who is not an officer of the Bank or any of its affiliated organizations, and who does not own more than 5 percent of the outstanding shares of the Bank or any of its affiliated organizations, (2) who is not related by blood, marriage, or common financial interest to an officer or director of the Bank, or any of its affiliated organizations or to any stockholder owning more than 5 percent of the outstanding shares of the Bank or any of its affiliated organizations, and (3) who is not indebted to the Bank, directly or indirectly (including the indebtedness of any entity in which the individual has a substantial financial interest) in an amount exceeding 5 percent of the Bank's total equity capital and allowance for loan and lease losses.

(e) Effective the date of this ORDER, the Bank's board of directors shall meet at least monthly. The board shall prepare in advance and shall follow a detailed written agenda at each meeting, which shall include consideration of actions of any committees. Nothing in the foregoing sentence shall preclude the board from considering matters other than those contained in the agenda. Detailed written minutes of all board meetings shall be maintained and recorded on a timely basis.

[.3] 2. No more than 10 days from the effective date of this ORDER, the Bank: (a) shall eliminate from its books, by charge-off, collection, or other proper entries, all assets or portions of assets classified "Loss" as of August 16, 1991; and (b) shall either (i) eliminate from its books by charge-off, collection, or other proper entries, or (ii) if the asset is an extension of credit or lease, increase its allowance for loan and lease losses by an amount equal to 50 percent of those assets or portions of assets classified "Doubtful" as of August 16, 1991, which have not been previously collected, charge off, or otherwise eliminated by other proper entries. Reduction of these assets through use of proceeds of loans made by the Bank does not constitute collection for the purpose of this paragraph.

[.4] 3. (a) The Bank shall maintain Tier 1 capital at or in excess of 6 percent of the Bank's total assets ("Tier 1 capital ratio"). From and after March 31, 1992, for purposes of calculating Tier 1 capital ratio, Tier 1 capital shall be the dollar amount reported in the Bank's most recent Report of Condition and Income.

(b) During the period this ORDER is in effect, if the Tier 1 capital ratio declines below 6 percent, the Bank shall, within 30 days after the date on which the said ratio so declined, submit a written plan to the Regional Director for approval describing the means and timing by which [{{4-30-92 p.C-1928}}](#) the Bank shall increase such ratio up to or in excess of 6 percent. Upon receiving written notification of the approval of the plan, the Bank shall increase its Tier 1 capital ratio to equal or exceed 6 percent in accordance with the approved plan and shall thereafter maintain its Tier 1 capital ratio at or in excess of such level while this ORDER is in effect.

(c) As used in this ORDER:

(i) "Tier 1 capital" means the same as the term in section 325.2(m) of the FDIC's Rules and Regulations, 56 Fed. Reg. 10,154, 10,161 (1991) (to be codified at 12 C.F.R. § 325.2(m)); and

(ii) "Total assets" means the same as the term in section 325.2(n) of the FDIC's Rules and Regulations, 56 Fed. Reg. 10,154, 10,161 (1991) (to be codified at 12 C.F.R. § 325.2(n)).

[.5] 4. (a) As used in this ORDER, "allowance for loan and lease losses" ("allowance") means the same as the term in section 325.2(a) of the FDIC's Rules and Regulations, 56 Fed. Reg. 10,154, 10,160 (1991) (to be codified at 12 C.F.R. § 325.2(a)), and in the Instructions.

(b) The Bank shall have and maintain as adequate allowance in accordance with the requirements of the Instructions.

(c) Prior to the submission of any Report of Condition and Income required to be filed by the Bank after the effective date of this ORDER, the board of directors of the Bank shall: (i) review the adequacy of the Bank's allowance, (ii) provide for an adequate allowance, and (iii) accurately report the allowance in any such Report of Condition and Income. The minutes of the board meeting at which such review is undertaken shall indicate the result of the review, including any increases in the allowance, and the basis for determining the amount of allowance provided.

[.6] 5. No more than 90 days from the effective date of this ORDER, the Bank shall revise its written loan policies. The revised written loan policies and any subsequent modification thereto shall be submitted to the Regional Director for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written loan policies and/or any subsequent modification thereto, which approval, including the board of directors' response to any comment by the Regional Director, shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall follow the written loan policies and/or subsequent

modification thereto.

[.7] 6. (a) No more than 30 days from the effective date of this ORDER or March 31, 1992, whichever date is later, the Bank shall develop a written profit plan for its fiscal year 1992 consisting of goals and strategies for improving the earnings of the Bank, which written profit plan shall include, at a minimum:

- (i) identification of the major areas in, and means by, which the board of directors will seek to improve the Bank's operating performance;
- (ii) realistic and comprehensive budgets;
- (iii) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections; and
- (iv) a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(b) The written profit plan and any subsequent modification thereto shall be submitted to the Regional Director for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written profit plan and any subsequent modification thereto, which approval, including the board of directors' response to any comment by the Regional Director, shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written profit plan and/or any subsequent modification thereto.

[.8] 7. (a) No more than 90 days from the effective date of this ORDER, the Bank shall develop a written strategic plan which shall, at a minimum:

- (i) provide for the monitoring and forecasting of economic conditions which affect the Bank and its market;
- (ii) based on current and anticipated economic conditions, establish intermediate and long term goals for (A) the size of the Bank in total assets; (B) market development, including an assess- [{{7-31-93 p.C-1929}}](#)ment of the Bank's current and projected geographic market, customer profile, and financial products and services; and (C) earnings performance;
- (iii) identify strategies for achieving the goals set in the strategic plan, giving due consideration to current and anticipated economic conditions;
- (iv) require the maintenance of adequate capital to support the goals and strategies of the strategic plan;
- (v) provide for recruitment and hiring of management and support staff with the ability and experience to implement the strategic plan in a safe and sound manner;
- (vi) require the preparation, on a annual basis, of a capital plan, profit plan, operating budget, and management and staffing plan;
- (vii) provide periodic follow-up by the board of directors and senior management to monitor progress and adherence to the strategic plan; and
- (viii) provide for annual review and reassessment of the strategic plan.

(b) The written strategic plan and any subsequent modification thereto shall be coordinated with the Bank's loan, investment, funds management, operating, and budget and profit planning policies and with the Bank's management, capital, and profit plans.

(c) Immediately upon development in accordance with paragraph 7(a) of this ORDER, the written strategic plan and any subsequent modification thereto shall be submitted to the Regional Director for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, the board of directors shall approve the written strategic plan and/or any subsequent modification thereto, which approval, including the board of directors' response to any comment by the Regional Director, shall be recorded in the minutes of the board of directors. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written strategic plan and/or any subsequent modification thereto.

[.9] 8. (a) No more than 90 days from the effective date of this ORDER, the board of directors shall review and prepare a written report of the circumstances of the Bank's employment of the general contractor/construction manager for the White Bear Lake facility, including without limitation, the qualifications of the individual employed with due regard for the duties and responsibilities imposed on such individual, the performance of the individual, and the compensation paid to the individual by the Bank.

(b) The written report shall be submitted to the Regional Director for review and comment no more than 90 days from the effective date of this ORDER.

(c) The Bank shall forthwith demand and diligently pursue reimbursement of any unauthorized, unearned, or unjustified compensation paid or provided by the Bank to the individual employed as general contractor/construction manager for the White Bear Lake facility.

[.10] 9. No more than 90 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulations allegedly committed by the Bank as described on pages 6-1 through 6-1-j of the FDIC's Report of Examination of the Bank as of August 16, 1991.

[.11] 10. No more than 90 days from the effective date of this ORDER, the Bank shall use its best efforts to correct the cited deficiencies in the loans listed for "Special Mention" on pages 2-d through 2-d-7 of the FDIC's Report of Examination of the Bank as of August 16, 1991. For any such deficiency with respect to which correction is not accomplished due to the conduct and/or condition of the borrower outside the reasonable control of the Bank, the Bank shall promptly correct the deficiency when such conduct or condition no longer exists. For any such deficiency for which correction is not accomplished, the Bank's board of directors shall maintain in its minutes, and include in the appropriate borrower credit file, a written record of all action taken by the Bank to correct such deficiency. The Bank shall not extend any additional credit to or renew any existing credit of any borrower whose existing loan is listed for "Special Mention" until and unless the cited deficiencies in such loan are corrected.

[.12] 11. No more than 30 days from the effective date of this ORDER, the Bank shall correct all weaknesses in internal controls described on page 6-a of the FDIC's Report [{{7-31-93 p.C-1930}}](#) of Examination of the Bank as of August 16, 1991.

[.13] 12. The Bank shall not pay or declare any cash dividends without the prior written consent of the Regional Director, which consent will not be unreasonably withheld or delayed.

[.14] 13. The Bank shall furnish written progress reports to the Regional Director and the Commissioner of Commerce of the State of Minnesota ("Commissioner") detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof every 90 days, beginning on or before April 30, 1992. In addition, the Bank shall furnish such reports on request of either the Regional Director or the Commissioner. All progress reports and other written responses to this ORDER shall be reviewed by the board of directors of the Bank and made a part of the minutes of the board meeting.

[.15] 14. Following the effective date of this ORDER, the Bank shall send to its shareholders a description of this ORDER, (a) in conjunction with the Bank's next shareholder communication, and also (b) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

This ORDER shall become effective 10 days from the date of its issuance.

The provisions of this ORDER shall be binding upon the Bank and its institution-affiliated parties, successors and assigns.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Dated this 3rd day of February, 1992.

Pursuant to delegated authority.