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[¶11,964] **In the Matter of First Enterprise Bank, Oklahoma City, Oklahoma**, Docket No. 02-053b (8-29-02).

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent had engaged in unsafe and unsound practices. (This order was terminated by order of the FDIC dated 8-20-04; see ¶16,391.)

- [.1] **Capital—Maintain Tier 1 Capital**
- [.2] **Dividends—Dividends Restricted**
- [.3] **Assets—Charge-off or Collection**
- [.4] **Loan Loss Reserve—Establishment of or Increase Required**
- [.5] **Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits**
- [.6] **Loan Policy—Preparation or Revision of Policy Required**
- [.7] **Technical Exceptions—Correction of Technical Exceptions Required**
- [.8] **Asset Liability Management—Improve Balance Between Investments and Funding Sources**
- [.9] **Loans—Concentration of Credit—Reduction Required**
- [.10] **Budget Plan—Preparation Required**
- [.11] **Board of Directors—Committee to Review Compliance with Cease and Desist Order Required**
- [.12] **Shareholders—Disclosure of Cease and Desist Order Required**

**In the Matter of
FIRST ENTERPRISE BANK
OKLAHOMA CITY, OKLAHOMA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-02-053b

OSBD-02-C&D-2

The First Enterprise Bank, Oklahoma City, Oklahoma ("Bank"), through its board of directors, having been advised of its right to the issuance and service of 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 the alleged charges

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under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §1818(b) and section 204(B) of the Oklahoma Banking Code (the "Code"), Okla. Stat. tit. 6, §204(B), and the provisions of the Oklahoma Administrative Procedures Act (Okla. Stat. tit. 75, §250 *et seq.*), 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") and a representative of the Oklahoma State Banking Department (the "State") dated August 29, 2002 whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the State.

The FDIC and the State considered the matter and determined that they had reason to believe that the Bank had engaged in unsafe or unsound banking practices. The FDIC and the State, therefore, accepted the CONSENT AGREEMENT and issued the following.

ORDER TO CEASE AND DESIST

IT IS ORDERED, that the Bank and institution-affiliated parties of the Bank cease and desist from the following unsafe or unsound banking practices:

(a) Operating the Bank with an inadequate level of capital protection for the kind and quality of assets held by the Bank;

(b) Operating the Bank with an excessive level of adversely classified assets;

(c) Refinancing credits to borrowers in weak financial positions without improving collateral margins or establishing structured repayment programs;

(d) Renewing or extending the due dates of loans without collection in cash of interest due or obtaining adequate additional collateral to secure credit advanced for the purpose of paying interest;

(e) Engaging in lax collection practices;

(f) Renewing or extending credit without adequate and appropriate supporting documentation;

(g) Operating the Bank with a heavy reliance on short-term potentially volatile deposits as a source for funding longer-term investments;

(h) Operating the Bank without adequate liquidity or proper regard for funds management;

(i) Creating concentrations of credit as more fully set forth on page 37 of the Report of Examination of the Bank as of September 30, 2001; and,

(j) Operating the Bank with inadequate earnings to fund growth, support dividend payments and augment capital.

IT IS FURTHER ORDERED, that the Bank shall take affirmative action as follows:

[.1]1. (a) Within 90 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Banking Commissioner to achieve by no later than June 30, 2003, and to maintain thereafter, Tier 1 capital equal to or greater than 8 percent of the Bank's adjusted average total assets after establishing an adequate allowance for loan and lease losses as required herein ("Plan"). After the Regional Director and Commissioner respond to the Plan, the Bank's board of directors shall adopt the Plan including any modification or amendments not inconsistent with the terms of this Order requested by the Regional Director and the Commissioner. To the extent measures detailed in the Plan have not previously been initiated to effect compliance with the Plan, thereafter the Bank shall immediately initiate such measures.

(b) Should the Bank's Tier 1 capital ratio fall below 8 percent at any time after June 30, 2003, and while this ORDER is in effect, the Bank shall notify the Regional Director and the Commissioner within 30 days. The Bank will also present to the Regional Director and the Commissioner a plan to increase the Tier 1 capital of the Bank or to take other measures to bring the ratio to 8 percent ("Supplemental Plan"). After the Regional Director and Commissioner respond to the Supplemental Plan, the board of directors of the Bank shall adopt the Supplemental Plan, including any modifications or amendments requested by the Regional Director and Commissioner.

Thereafter, to the extent such measures have not previously been initiated, the Bank shall immediately initiate measures detailed in the Supplemental Plan, to increase its Tier 1 capital by an amount sufficient to bring the ratio to 8 percent within 30 days after the Regional Director and Commissioner respond to the Supplemental Plan. Such increase in Tier 1 capital

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and any increase in Tier 1 capital necessary to meet the ratio required by this ORDER may be accomplished by:

(i) The sale of securities in the form of common stock; or

(ii) The direct contribution of cash subsequent to September 30, 2001, by the directors and/or shareholders of the Bank or by the Bank's holding company; or

(iii) Receipt of an income tax refund or the capitalization subsequent to September 30, 2001 of a bona fide tax refund certified as being accurate by a certified public accounting firm; or

(iv) Any other method approved by the Regional Director and the Commissioner.

(c) If all or part of the increase in Tier 1 capital required by this ORDER is to be accomplished by the sale of new securities, the Bank's board of directors shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan, and in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Registration, Disclosure and Securities Operation Unit, Washington, D.C. 20429, and the State for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is to be provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director and the State for prior approval.

(d) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(e) Until such time as the Bank achieves compliance with the Plan, the Bank shall by September 30, 2002, achieve and thereafter maintain Tier one capital equal to or greater than 7 percent of the Bank's adjusted average total assets after establishing an adequate allowance for loan and lease losses as required herein. Thereafter, should the Bank's Tier 1 capital ratio fall below 7 percent as of the date of any examination or as reported on any Consolidated Report of Condition and Income, the Bank shall follow the procedures outlined in Section 1, subparts (b) through (d) above to promptly achieve and maintain Tier 1 capital equal to or greater than 7 percent.

(f) In addition to the requirements of subparagraphs (a) and (e), the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, App. A.

(g) For the purposes of this ORDER, all terms relating to Tier 1 capital shall be calculated according to the methodology set forth in the report of examination.

[.2]2. While this ORDER is in effect, the Bank shall neither declare nor pay, directly or indirectly, any cash dividend to shareholders without the prior written consent of the Regional Director and the Commissioner, which consent shall not be unreasonably withheld.

[.3]3. (a) Within 30 days after the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss by the FDIC as a result of its examination of the Bank as of September 30, 2001. Reduction of these assets through proceeds of loans made by the Bank shall
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not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Commissioner to reduce the remaining assets classified Substandard as of September 30, 2001. The plan shall address each asset and related borrowers so classified with a balance of \$300,000 or greater and provide the following:

- (i) The name under which the asset is carried on the books of the Bank;
- (ii) Type of asset;
- (iii) Actions to be taken in order to reduce the classified asset; and
- (iv) Timeframes for accomplishing the proposed actions.

The plan shall be formulated to facilitate quarterly reductions in the volume of the adversely classified assets reflected in the September 30, 2001 Report of Examination, so that by June 30, 2003, the level of such volume of adversely classified assets shall not exceed 100 percent of Tier 1 capital plus the allowance for loan and lease losses.

(c) Within 30 days after the Regional Director and Commissioner respond to the plan, the Bank shall resubmit the plan, if necessary, to include any modifications or amendments requested by the Regional Director and Commissioner. Within 30 days after receiving written notice from the Regional Director and the Commissioner that the plan is acceptable, the Bank's board of directors shall adopt it. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of the level of adversely classified assets as of September 30, 2001, to a specified percentage of Tier 1 capital plus the allowance for loan and lease losses may be accomplished by:

- (i) Charge-off;
- (ii) Collection;
- (iii) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC or the State; or
- (iv) Increase of Tier 1 capital.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any future examination conducted by the FDIC or the State.

[.4]4. (a) While this ORDER is in effect, the Bank shall maintain an adequate allowance for loan and lease losses. Such allowance shall be funded by charges to current operating income. Prior to the end of each calendar quarter, the Bank's board of directors shall review the adequacy of the Bank's allowance for loan and lease losses. Such reviews shall include, at a minimum, the results of the Bank's internal loan review, loan loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure on significant credits, concentrations of credit, and present and prospective economic conditions. The minutes of the Bank's board of directors' meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the allowance for loan and lease losses.

(b) Within 30 days after the effective date of this ORDER, the Bank shall review Consolidated Reports of Condition and Income filed with the FDIC on or after December 31, 2001, and amend said reports if necessary to properly reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain an adequate allowance for loan and lease losses. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

[.5]5. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has an extension of credit with the Bank that has been classified Loss, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Doubtful and/or Substandard,

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either in whole or in part, and is uncollected, unless:

(i) All accrued and unpaid interest has been collected in full;

(ii) The Bank's board of directors has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank; and

(iii) The statement has been placed in the appropriate loan file and included in the minutes of the applicable Bank's board of directors' meeting.

[.6]6. Within 30 days after the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policies and procedures to provide effective guidance and control over the Bank's lending function. Such policies and their implementation shall be in a form and manner acceptable to the Regional Director and the Commissioner, as determined at subsequent examinations, and shall include, at a minimum, the following:

(a) Standards for extending credit to Bank directors, officers, shareholders and their related interests which take into account applicable Federal and State laws governing such extensions of credit;

(b) A provision that deviations from the written lending policies and procedures require prior approval of the Bank's board of directors or a designated committee thereof;

(c) A requirement that extensions of credit shall not be refinanced, reworked or renewed unless current financial information and documentation have been obtained;

(d) Standards setting forth appropriate limitations on concentrations of credit;

(e) A requirement that all loans shall have written repayment understandings;

(f) Standards under which unsecured loans may be granted;

(g) Guidelines under which loans are renewed or have their due dates extended:

(i) Without full collection of interest thereon;

(ii) By acceptance of separate notes in payment of interest;

(iii) By capitalization of interest to the balance of the note;

(h) A provision specifically outlining the collection procedures to be taken by the Bank when borrowers fail to make timely payments;

(i) A provision outlining the documentation required on all secured loans; and

(j) Guidelines addressing minimum standards for real estate evaluations.

[.7]7. Within 90 days after the effective date of this ORDER, the Bank shall eliminate and/or correct to the best of its ability and using reasonable efforts all technical exceptions with regard to loan documentation existing in the Bank as of September 30, 2001, as more fully set out on pages 34 and 35 of the September 30, 2001 Report of Examination.

[.8]8. Within 90 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the Commissioner for their review to reduce the dependence upon short-term funding sources to fund longer-term assets and to reduce the volume of loans in relation to deposits. The plan shall include, at a minimum, the following:

(a) Quarterly goals; and

(b) The logic to support the quarterly goals.

[.9]9. Within 60 days after the effective date of this ORDER, the Bank shall submit a plan to the Regional Director and the Commissioner to reduce the concentrations of credit as reported on pages 37 of the Report of Examination dated September 30, 2001.

[.10]10. Within 60 days after the effective date of this ORDER, the Bank's board of directors shall develop a projected budget for the Bank encompassing at least twelve consecutive quarters and submit a copy of the

budget to the Regional Director and the Commissioner for their review and comment. The Bank's board of directors shall periodically review all general ledger items to determine methods for expense reduction and/or income enhancement. The Bank's board of directors' consideration of these areas shall be recorded in the official minutes of the Bank's board of directors meetings.

[.11]11. Within 30 days after the effective date of this ORDER, the Bank's board of directors shall establish or assign to an existing subcommittee of the board of directors which shall be charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. The subcommittee shall report monthly to the entire board of directors of the Bank and a copy of [{{11-30-02 p.C-5574}}](#)

the report and any discussion related to the report or the ORDER shall be included in the minutes of the Bank's board of directors' meeting. Nothing contained herein shall diminish the responsibility of the entire board of directors of the Bank to ensure compliance with the provisions of this ORDER.

[.12]12. After the effective date of this ORDER, but no later than December 1, 2002, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER or in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting if this occurs before December 1, 2002. 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, Disclosure and Securities Operations Unit, Washington, D.C. 20429 and the Commissioner of the Oklahoma State Banking Department, 4545 N. Lincoln Blvd., Suite 164, Oklahoma City, Oklahoma 73105 for review at least 20 days prior to dissemination to shareholders. Any changes requested by the FDIC or the State shall be made prior to dissemination of the description, communication, notice, or statement.

13. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and the Oklahoma Bank Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the Commissioner have released the Bank in writing from making additional reports.

The effective date of this ORDER shall be 10 days after the date of its joint issuance. This ORDER shall be binding upon the Bank and all institution-affiliated parties of the Bank. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC and the Commissioner, pursuant to authority delegated to the Regional Director and the authority of the Commissioner under the Oklahoma Banking Code.

Dated this 29th day of August, 2002.