

{{10-31-93 p.C-1982}}

[¶10,458] **In the Matter of The North Jackson Bank, Inc., Stevenson, Alabama, Docket No. FDIC-91-367b (2-20-92).**

Bank to cease and desist from such unsafe or unsound practices as failing to provide adequate supervision over the Bank's affairs; operating with management whose policies are detrimental to the Bank; operating with excessive volumes of adversely classified assets; following hazardous lending and lax collection practices; operating with inadequate capital; engaging in practices which produce inadequate operating income; operating with inadequate allowance for loan and lease losses; and operating in violation of applicable laws or regulations. *(This order was terminated by order of the FDIC dated 8-25-93; see ¶ 15,720.)*

{{4-30-92 p.C-1983}} [1] **Management—Qualifications—Review**

[2] **Capital—Tier 1 Capital—Increase/Maintain—Methods**

[3] **Allowance for Loan and Lease Losses—Establish/Maintain**

[4] **Assets—Adversely Classified—Eliminate/Reduce**

[5] **Loans—Extensions of Credit—Existing Borrowers—Curtail**

[6] **Budget and Earnings Forecast—Preparation Required**

[7] **Loans—Special Mention—Correct Deficiencies**

[8] **Dividends—Restricted**

[9] **Violations of Law—Eliminate/Correct**

[10] **Technical Exceptions—Eliminate/Correct**

[11] **Loans—Internal Review Procedures**

[12] **Shareholders—Disclosure—Cease and Desist Order**

[13] **Compliance Reports—Frequency**

**In the Matter of
THE NORTH JACKSON BANK, INC.
STEVENSON, ALABAMA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-91-367b**

The North Jackson Bank, Inc., Stevenson, Alabama ("Bank"), having received a written Notice of Charges and of Hearing ("NOTICE") on November 20, 1991, detailing unsafe or unsound banking practices and violations of applicable laws and regulations alleged to have been committed by the Bank and its right to a hearing regarding such alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), and having waived that right, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Legal Division of the Federal Deposit Insurance Corporation ("FDIC"), dated February 7, 1992, whereby solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices and violations of applicable laws and regulations contained in the NOTICE, 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 committed violations of applicable laws and regulations.

The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as such 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 or unsound banking practices and violations of laws and regulations:

A. Failing to provide adequate supervision and direction over the affairs of the Bank by the board of directors of the Bank to prevent unsafe or unsound practices and violations of laws and regulations;

B. Operating the Bank with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

C. Operating the Bank with an excessive volume of adversely classified assets;

D. Engaging in hazardous lending and lax collection practices, including but not limited to: (i) extending credit with inadequate diversification of risk; (ii) extending credit with inadequate documentation; and (iii) failure to identify problem loans;

E. Operating the Bank with equity capital that is inadequate for the kind and quality of assets held by the Bank;

F. Engaging in practices which produce [{{4-30-92 p.C-1984}}](#) inadequate operating income and excessive loan losses; G. Failing to provide and maintain an adequate allowance for loan and lease losses for the volume, kind and quality of loans held by the Bank; and

H. Engaging in violations of applicable Federal and state laws and regulations, as more fully described on pages 6-b through 6-b-5 of the joint FDIC and State of Alabama Banking Department ("State") Report of Examination of the Bank as of March 11, 1991.

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, and its successors and assigns take affirmative action as follows:

[.1]1. After the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include a chief executive officer with proven ability in managing a bank of comparable size and a qualified senior loan officer. Such persons shall be provided the necessary written authority to implement the provisions of this ORDER. The qualifications of management shall be assessed on its ability to (i) comply with the requirements of this ORDER, (ii) operate the Bank in a safe and sound manner, (iii) comply with applicable laws and regulations, and (iv) restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, and management effectiveness. As long as this ORDER remains in effect, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Alabama Superintendent of Banks ("Superintendent") in writing of any changes in management. Such notification shall be in addition to any application and prior approval requirements established by section 32 of the Act, 12 U.S.C. § 1831i, and implementing regulations; must include the names and qualifications of any replacement personnel; and must be provided at least 30 days prior to the individual assuming the new position.

[.2] 2. (a) No later than June 30, 1992, the Bank shall increase its Tier 1 capital by not less than \$350,000. Such increase in Tier 1 capital may be accomplished by any one or more of the following:

(i) The sale of new securities in the form of common stock or noncumulative perpetual preferred stock; or

(ii) The collection in cash of all or part of the assets other than loans classified "Loss" or "Doubtful" as of March 11, 1991 and charged off in accordance with paragraph 4 of this ORDER; or

(iii) The direct contribution of cash by the directors and/or shareholders of the Bank; or

(iv) The collection in cash of assets other than loans previously charged off;
or

(v) The collection in cash of all or part of loans and leases previously charged off, provided that any such collections shall first be credited to the Bank's allowance for loan and lease losses ("allowance") and, if the board of directors' review of the adequacy of the allowance required by paragraph 3 of this ORDER indicates that such allowance has a balance in excess of that required for adequacy, any such excess may thereafter be transferred to equity capital through a negative provision for loan and lease losses; or

(vi) Any other means acceptable to the Regional Director and the Superintendent.

(b) (i) If all or part of the increase in the Bank's Tier 1 capital required under paragraph 2(a) of this ORDER involves a public distribution of the Bank's securities (including a distribution limited to the Bank's existing shareholders), the Bank shall prepare detailed offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and of this ORDER as well as the circumstances giving rise to the offering, and any other material disclosures necessary to comply with applicable Federal securities laws. Prior to the sale of such securities, and, in any event, not less than twenty (20) days prior to the dissemination of such materials, the materials used in the sale of the securities shall be submitted to the FDIC, Registration and Disclosure Section, Washington, D.C. 20429, and to the Superintendent for review. Any changes in such offering materials requested by the FDIC or the Superintendent shall be made prior to their dissemination. (ii) In complying with the provisions of paragraph 2(b)(i) of this ORDER, [{{4-30-92 p.C-1985}}](#) the Bank shall provide to any subscriber and/or purchaser of Bank 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 Bank securities. The written notice required by this paragraph 2(b)(ii) of the ORDER shall be furnished within ten (10) calendar days from the date that such material development of change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of Bank stock who received or was tendered the information contained in the Bank's original offering materials.

(c) Within 30 days of June 30, 1992, and within 30 days after each calendar quarter thereafter while this ORDER remains in effect, the Bank's board of directors shall calculate the Bank's Tier 1 capital as a percentage of its total assets ("capital ratio") as of the nearest preceding March 31, June 30, September 30 or December 31 date. If such capital ratio is less than 4.5 percent as of June 30 or September 30, 1992, or if it is less than 6.0 percent thereafter while this ORDER is in effect, the Bank shall, within 90 days from the date of such calculation, increase its Tier 1 capital by an amount sufficient to raise its capital ratio to not less than 4.5 percent as of June 30 or September 30, 1992, or not less than 6.0 percent as of the nearest preceding March 31, June 30, September, 30 or December 31 date thereafter, as applicable.

(d) In addition to the requirements of paragraph 2(a) of this ORDER, for as long as this ORDER remains in effect, the Bank shall meet the minimum ratio requirements established for "risk-based capital" by the deadlines set out in Appendix A of Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, which Appendix A is entitled "Statement of Policy on Risk-Based Capital," and/or any subsequent amendments or modifications thereto.

(e) For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in sections 325.2(m) and 325.2(n), respectively, of the FDIC's Rules and Regulations, 56 Fed. Reg. 10161 (March 11, 1991) (to be codified at 12 C.F.R. §§ 325.2(m) and 325.2(n)), effective April 10, 1991.

[.3] 3. (a) Within 30 days from the effective date of this ORDER, and concurrently with compliance with the requirements of paragraph 4 of this ORDER, the Bank shall establish and thereafter continually maintain an adequate allowance for loan and lease losses in accordance with the prevailing requirements of the Instructions for the Reports of Condition and Income, by charges against current operating income. In complying with the requirements of this paragraph 3(a) of the ORDER, the Bank's board of directors shall, at a minimum, review the adequacy of the Bank's allowance for loan and lease losses prior to the end of each calendar quarter. The minutes of the board meeting at which such review is undertaken shall indicate the results of the review, the amount of any recommended increases in the allowance, and the basis for determining the amount of allowance provided.

(b) Reports of Condition and Income required to be filed by the Bank prior to the effective date of this ORDER and subsequent to March 11, 1991, shall reflect a provision for the allowance for loan and lease losses necessary to comply with paragraph 3(a) of this ORDER. If necessary to comply with this paragraph 3(b) of the ORDER, the Bank shall file amended Reports of Condition and Income within 30 days from the effective date of this ORDER.

[.4] 4. Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books, by collection, charge-off or other proper entries, all assets or portions of assets classified "Loss" and one-half of all assets or portions of assets classified "Doubtful" by the FDIC and the State as a result of their examination of the Bank as of March 11, 1991, which have not been previously collected or charged off, unless otherwise approved in writing by the Regional Director and the Superintendent. 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 of the ORDER.

[.5] 5. (a) Effective the date of this ORDER, the Bank shall not extend, directly [{{4-30-92 p.C-1986}}](#) or indirectly, any additional credit to or for the benefit of any borrower who has a loan or other extension of credit with the Bank that has been charged off or classified, in whole or in part, "Loss" or "Doubtful", and is uncollected.

(b) Effective the date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has a loan or other extension of credit with the Bank that has been classified, in whole or in part, "Substandard", and is uncollected, unless a majority of the Bank's board of directors first: (i) determines that such advance is in the best interest of the Bank, and (ii) approves such advance. A written record of the board of directors' determination and approval of any advance under this paragraph 5(b) of the ORDER shall be maintained in the credit file(s) of the affected borrower(s) as well as the minutes of the board of directors.

(c) The requirements of this paragraph 5 of the ORDER shall not prohibit the Bank from renewing or extending the maturity of any credit already extended to the borrower, provided such

action is in accordance with both Federal and state laws, rules and regulations, and further provided all interest due at the time of such renewal or extension is collected in cash from the borrower.

[.6] 6. (a) As long as this ORDER remains in effect, the Bank shall prepare realistic and comprehensive calendar year budgets and earnings forecasts on a consolidated basis as of January 1 of each year beginning in 1992 and shall submit them to the Regional Director and the Superintendent for review and comment no later than March 1, 1992, and January 31 of each subsequent budget year.

(b) In preparing the budgets and earnings forecasts required by this paragraph 6 of the ORDER, the Bank shall, at a minimum:

- (i) Identify the major areas in, and means by, which the board of directors will seek to improve the Bank's operating performance; and
- (ii) Describe the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(c) Progress reports comparing the Bank's actual income and expense performance with budgetary projections shall be submitted to the Regional Director and the Superintendent concurrently with the other reporting requirements set forth in paragraph 13 of this ORDER. The Bank's board of directors shall review such progress reports, which review shall be recorded in the minutes of the board of directors.

[.7] 7. Within 90 days from the effective date of this ORDER, the Bank shall correct the cited deficiencies in the assets listed for "Special Mention" on pages 2-d through 2-d-2 of the joint FDIC and State Report of Examination of the Bank as of March 11, 1991. Thereafter, the Bank shall service these loans in accordance with its written loan policy.

[.8] 8. As of the effective date of this ORDER, the Bank shall not pay any cash or property dividends without the prior written consent of the Regional Director and the Superintendent.

[.9] 9. Within 30 days from the effective date of this ORDER, the Bank shall take all necessary steps, consistent with sound banking practices, to eliminate and/or correct all violations of law and regulations committed by the Bank, as described on pages 6-b through 6-b-5 of the joint FDIC and State Report of Examination of the Bank as of March 11, 1991. In addition, the Bank shall adopt appropriate procedures to ensure its future compliance with all applicable laws and regulations. For purposes of this paragraph 9 of the ORDER, the Bank's compliance with paragraph 2 of this ORDER shall be considered correction of the violation of section 325.3 of the FDIC's Rules and Regulations described on page 6-b-4 of the joint FDIC and State Report and Examination of the Bank as of March 11, 1991.

[.10] 10. Within 30 days from the effective date of this ORDER, the Bank shall take steps to correct the technical exceptions on loans listed on page 2-f of the joint FDIC and State Report of Examination of the Bank as of March 11, 1991. Additionally, effective the date of this ORDER, the Bank shall not extend any credit, whether secured or unsecured, without first obtaining and analyzing credit information sufficient to identify the borrower's source of funds to repay the debt and support the scheduled repayment plan.

[.11] 11. Within 30 days from the effective date of this ORDER, the Bank's board {{4-30-95 p.C-1987}} of directors, or a committee thereof, shall review and analyze the internal loan review function of the Bank to insure that all loans requiring special attention are identified. A written record of such review and analysis shall be reflected in the minutes of the board of directors or committee thereof.

[.12] 12. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication and, also, in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe this ORDER in all material respects. The description and any accompanying communication, statement or notice shall be sent to the FDIC, Registration and Disclosure Section, Washington, D.C. 24029, and to the Superintendent, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the Superintendent shall be made prior to dissemination of the description, communication, notice or statement.

[.13] 13. Within 90 days from the effective date of this ORDER, and within 30 days after the end of each calendar quarter thereafter while this ORDER remains in effect, the Bank shall furnish written progress reports to the Regional Director and the Superintendent detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. The progress reports required by this paragraph 13 of the ORDER shall be in lieu of reports previously required by the Resolution adopted

by the Bank's board of directors on December 11, 1989. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the Superintendent have released the Bank in writing from making further reports. 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 appropriate board meeting.

14. The provisions of this ORDER shall become effective ten (10) days from the date of its issuance and shall be binding upon the Bank, its institution-affiliated parties, and its successors and assigns. Further, 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 at Atlanta, Georgia, this 20th day of February, 1992.

Pursuant to delegated authority.