

{{6-30-01 p.C-4876}} ¶11,693] In the Matter of Finance Factors, LTD., Honolulu, Hawaii, Docket No. 00-001b (1-26-00)

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 4-13-01; see ¶16,279.*)

- [.1] Management—Qualifications Specified
 - [.2] Board of Directors—Outside Directors Added to Board
 - [.3] Assets—Tier 1 Capital
 - [.4] Assets—Adversely Classified Assets—Reduction Required
 - [.5] Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits
 - [.6] Loan Loss Reserve—Establishment of or Increase Required
 - [.7] Loans—Internal Grading System Required
 - [.8] Violations of Law—Correction of Violations Required
 - [.9] Audit—Program Required
 - [.10] Strategic Plan—Preparation of Required
- {{3-31-00 p.C-4877}}
- [.11] Bank Holding Company—Fees Paid to Bank Holding Companies, Limitations Imposed On
 - [.12] Dividends—Dividends Restricted
 - [.13] Reports of Condition and Income—Amendment Required
 - [.14] Shareholders—Disclosure of Cease and Desist Order Required

In the Matter of

**FINANCE FACTORS, LTD.
HONOLULU, HAWAII
(Insured State Nonmember Bank)
ORDER TO
CEASE AND DESIST
FDIC-00-001b**

Finance Factors, Ltd., Honolulu, Hawaii ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and violation of laws and/or regulations alleged to have been committed by the Bank as of the June 8, 1999 examination of the Bank, utilizing financial information as of March 31, 1999 ("1999 Examination"), and of its right to a hearing on the alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), 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 the Commissioner of Financial Institutions, Division of Financial Institutions, Department of Commerce and Consumer Affairs, State of Hawaii ("Commissioner"), dated January 19, 2000, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the Commissioner.

The FDIC and the Commissioner considered the matter and determined that it had reason to believe that as of the 1999 Examination, the Bank had engaged in unsafe or unsound banking practices and had committed violation of laws and/or regulations. The FDIC and the Commissioner, pursuant to Hawaii Revised Statutes, §§ 412:2-301 and 412:2-305, 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 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 violation of laws and/or regulations:

- (a) operating without sufficient management, including the lack of a chief financial officer and a senior loan officer;
- (b) operating without sufficient equity capital and reserves in relation to the volume and quality of

loans held by the Bank;

- (c) operating with a large volume of poor quality loans;
- (d) operating with an inadequate allowance for loan and lease losses;
- (e) following lax lending and credit administration practices;
- (f) operating in such a manner as to produce low earnings; and
- (g) operating in violation of the following laws and/or regulations:

- (i) in two instances, Section 23A of the Federal Reserve Act, 12 U.S.C. § 371c, made applicable to state nonmember insured institutions by section 18(j)(1) of the Act, 12 U.S.C. § 1828(j)(1), as more fully described in the Report of Examination dated June 8, 1999;

- (ii) in four instances, Section 23B of the Federal Reserve Act, 12 U.S.C. § 371c-1, made applicable to state nonmember insured institutions by section 18(j)(1) of the Act, 12 U.S.C. § 1828(j)(1), as more fully described in the Report of Examination dated June 8, 1999;

- (iii) in one instance, Part 362 of the FDIC's Rules and Regulations, 12 C.F.R. Part 362, as more fully described in the Report of Examination dated June 8, 1999;

- (iv) in one instance, Section 325.5 of the FDIC's Rules and Regulations, 12 C.F.R. § 325.5, as more fully described in

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the Report of Examination dated June 8, 1999; and

- (v) in one instance, Section 326.4 of the FDIC's Rules and Regulations, 12 C.F.R. § 326.4, as more fully described in the Report of Examination dated June 8, 1999.

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

[.1] 1. The Bank shall have and retain qualified management.

- (a) Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Management shall include the following:

- (i) a senior lending officer with significant appropriate lending, collection, and loan supervision experience and experience in upgrading a low quality loan portfolio; and

- (ii) a chief financial officer with experience in maintaining a bank's books and records in accordance with GAAP principles and Call Report instructions.

Management shall also continue to include a chief executive officer with proven ability in managing a bank of comparable size, and experience in upgrading a low quality loan portfolio, improving earnings, and other matters needing particular attention. Each member of management shall be provided appropriate written authority from the Bank's board of directors to implement the provisions of this ORDER.

- (b) 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) enhance all aspects of the Bank and maintain the Bank in a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

- (c) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") and the Commissioner in writing when it proposes to add any individual to the Bank's board of directors or employ any individual as a senior executive officer. The notification must be received at least 30 days before such addition or employment is intended to become effective and should include a description of the background and experience of the individual or individuals to be added or employed.

- (d) The Bank may not add any individual to its board of directors or employ any individual as a senior executive officer if the Regional Director issues a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. § 1831i.

[.2] 2. (a) Within 180 days from the effective date of this ORDER, the Bank shall add to its board of directors at least two new directors who, unless otherwise approved by the Regional Director and the Commissioner, shall not be related to any directors of the Bank and who are not directors, officers or employees of the Bank or any of its affiliates. As used in this subsection, the term "related" to a person means that person's spouse, father, mother, children, brothers and sisters, or the father, mother, brothers

and sisters of the person's spouse.

(b) Any additional directors shall have the previously demonstrated skill and experience to provide meaningful and independent guidance to group deliberation.

(c) The name and a statement of qualifications of any new board member shall be submitted to the Regional Director and the Commissioner within 30 days prior to the service of the individual as a director.

(d) Within thirty (30) days from the effective date of this ORDER, the Bank shall submit a plan on how the board of directors will comply with the provisions of paragraph 2 of this ORDER to the Regional Director and the Commissioner.

[.3] 3. (a) Within 30 days from the effective date of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal or exceed nine percent (9.0%) of the Bank's total assets.

(b) Within 120 days from the effective date of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal or exceed 9.5 percent of the Bank's total assets.

(c) Within 210 days from the effective date of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal [{{3-31-00 p.C-4879}}](#) or exceed 9.75 percent of the Bank's total assets.

(d) Within 240 days from the effective date of this ORDER, and thereafter, during the life of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal ten percent (10.0%) of the Bank's total assets.

(e) The level of Tier 1 capital to be maintained during the life of this ORDER pursuant to Subparagraphs 3(a), 3(b), 3(c), and 3(d) shall be in addition to a fully funded allowance for loan and lease losses, the adequacy of which shall be satisfactory to the Regional Director and Commissioner as determined at subsequent examinations and/or visitations.

(f) Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 3 of this ORDER may be accomplished by the following:

- (i) the sale of common stock; or
- (ii) the sale of noncumulative perpetual preferred stock; or
- (iii) the direct contribution of cash by the board of directors and/or parent holding company; or
- (iv) any other means acceptable to the Regional Director and the Commissioner; or
- (v) any combination of the above means.

Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 3 of this ORDER may not be accomplished through a deduction from the Bank's allowance for loan and lease losses.

(g) If all or part of the increase in Tier 1 capital required by Paragraph 3 of this ORDER is accomplished by the sale of new securities, the board of directors shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held 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 shareholder), 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 the Federal securities laws. Prior to the implementation of the plan and, in any event, not less than fifteen (15) 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 and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429, for review. Any changes requested to be made in the plan or materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Regional Director and the Commissioner for prior approval.

(h) In complying with the provisions of Paragraph 3 of this ORDER, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities, a written notice of any planned or existing development or other changes which are 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 shall be furnished within ten (10) days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(i) For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. §§ 325.2(t) and 325.2(v).

[.4] 4. (a) Within 90 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of the 1999 Examination that have not previously been reduced to not more than \$40,000,000.

(b) Within 180 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of the 1999 Examination that have not previously been reduced to not more than \$33,000,000.

(c) Within 270 days from the effective [{{3-31-00 p.C-4880}}](#) date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of the 1999 Examination that have not previously been reduced to not more than \$30,000,000.

(d) Within 365 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" as of the 1999 Examination that have not previously been reduced to not more than \$25,000,000.

(e) The requirements of subparagraphs 4(a), 4(b), 4(c), and 4(d) of this ORDER are not to be construed as standards for future operations and, in addition to the foregoing, the Bank shall eventually reduce the total of all adversely classified assets. Reduction of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph. As used in subparagraphs 4(a), 4(b), 4(c), and 4(d) the word "reduce" means:

- (i) to collect;
- (ii) to charge-off; or
- (iii) to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the FDIC.

[.5] 5. (a) Beginning with the effective 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 from the Bank that has been charged off or classified, in whole or in part, "Loss" and is uncollected. Subparagraph 5(a) of this ORDER shall not prohibit the Bank from renewing or extending the maturity of any credit in accordance with the Financial Accounting Standards Board Statement Number 15 ("FASB 15").

(b) Beginning with the effective 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 from the Bank that has been classified, in whole or part, "Substandard" or "Doubtful" without the prior written approval of a majority of the board of directors or the loan committee of the Bank. Subparagraph 5(b) of this ORDER shall not prohibit the Bank from renewing or extending the maturity of any credit in accordance with FASB 15, providing that such renewal or extension shall be made only with the prior written approval of a majority of the board of directors or the loan committee of the Bank.

(c) In connection with subparagraph 5(a) and 5(b) of this ORDER, the Bank shall not:

- (i) continue the accrual of interest on any loan which is delinquent in principal or interest payments ninety (90) days or more unless the asset is both well secured and in the process of collection; or
- (ii) engage in any practice or device which essentially avoids recognition of overdue loans and/or artificially inflates the income of the Bank. For any loans restructured in accordance with FASB 15, consideration should be given to the reasonableness of the modified terms of the loan, since loans should not be restructured in an attempt to conceal credit losses or delay their recognition.

(d) For the purpose of subparagraph 5(c) of this ORDER, debt is "well secured" if it is secured by:

- (i) collateral in the form of liens on or pledges of real or realizable value sufficient to discharge the debt (including accrued interest) in full; or
- (ii) the guaranty of a financially responsible party.

A debt is "in the process of collection" if collection of the debt is proceeding in due course either through legal action, including judgment enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status.

[.6] 6. During the life of this ORDER, the Bank shall maintain an adequate allowance for loan and lease losses. Such allowance shall be established by charges to current operating income, together with collection of assets previously charged off. In complying with the provisions of this paragraph, the board of directors shall review the adequacy of the Bank's allowance for loan and lease losses prior to the end

of each quarter. The minutes of the board of directors meeting at which such review is undertaken shall indicate the results of the review, the amount of any increase in the allowance, and the basis for determination of the amount of the allowance provided.

[.7] 7. During the life of this ORDER, the [{{3-31-01 p.C-4881}}](#) Bank shall enhance and maintain an effective internal loan grading system, which shall, at a minimum, address the issues raised in the Report of Examination dated June 8, 1999. Such system and its implementation shall be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.8] 8. Within 60 days from the effective date of this ORDER, the Bank shall submit to the Regional Director and the Commissioner its plan for the elimination and/or correction of all violation of laws which are more fully set out in the Report of Examination of the Bank dated June 8, 1999, and which have not, heretofore, been corrected. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

[.9] 9. Within 60 days from the effective date of this ORDER, the Bank shall implement an audit program which, at a minimum, addresses the issues raised in the Report of Examination dated June 8, 1999. Such program and its implementation shall be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.10] 10. Within 60 days from the effective date of this ORDER, the Bank shall prepare and submit to the Regional Director and the Commissioner a written business/ strategic plan covering the overall operation of the Bank, which shall include a plan to control overhead and other expenses and restore the Bank's profitability. The plan shall be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.11] 11. During the life of this ORDER, the Bank shall not pay, nor agree to pay, any management or consultant fees to its holding company or any of its affiliates, which have not previously been approved by the Regional Director and the Commissioner, without:

- (a) providing a minimum of thirty (30) days advance written notice to the Regional Director and the Commissioner;
- (b) originating and executing a written contract designed to clearly define services to be rendered that cannot be provided by the Bank's existing staff; and
- (c) outlining appropriate documentation needed for the payment of services rendered, including a cost analysis of actual services provided.

[.12] 12. The Bank shall not pay dividends of cash, stock or property in any amount except as follows:

- (a) such declarations and payments are made in accordance with applicable State and Federal laws and regulations;
- (b) that after payment of such dividends, the ratio of Tier 1 capital to total assets of the Bank will be not less than ten (10.0%) percent and the allowance for loan and lease losses shall be at an adequate level;
- (c) that such declaration and payment of dividends shall be approved in advance by the board of directors; and
- (d) that such declaration and payment of dividends shall be approved in advance, in writing, by the Regional Director and the Commissioner, which approval shall not be unreasonably withheld.

[.13] 13. The Bank shall file with the FDIC and the Commissioner Consolidated Reports of Condition and Income which accurately reflect the financial condition of the Bank as of the end of the period for which the Reports are filed, including any adjustment in the Bank's books made necessary or appropriate as a consequence of any examinations and/or visitations of the Bank.

[.14] 14. 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 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, at least fifteen (15) 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.

15. Within 30 days of the end of the first quarter following the effective date of this ORDER, and within thirty (30) days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Regional Director and the Commissioner detail- [{{3-31-01 p.C-4882}}](#) ing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Report of Condition and the Bank's Report of Income. 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 further reports.

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

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 and the Commissioner.

Pursuant to delegated authority and the authority of the Commissioner under Chapter 412, Code of Financial Institutions, Hawaii Revised Statutes.

Dated at San Francisco, California, this 26th day of January, 2000.