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[¶11,883] **In the Matter of Elkhorn Valley Bank & Trust, Norfolk, Nebraska**, Docket No. 01-171b (1-2-02).

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 11-8-02; see ¶16,321.*)

[.1] **Management—Qualifications Specified**

[.2] **Capital—Increase Required**

[.3] **Dividends—Dividends Restricted**

[.4] **Loan Loss Reserve—Establishment of or Increase Required**

[.5] **Assets—Charge-off or Collection**

[.6] **Loans—Risk Position—Written Plan Required**

[.7] **Loan Policy—Preparation or Revision of Policy Required**

[.8] **Technical Exceptions—Correction of Technical Exceptions Required**

[.9] **Profit Plan—Preparation of Plan Required**

[.10] **Violations of Law—Correction of Violations Required**

[.11] **Shareholders—Disclosure of Cease and Desist Order Required**

[.12] **Board of Directors—Program to Review Compliance with Cease and Desist Order Required**

**In the Matter of
ELKHORN VALLEY BANK & TRUST,
NORFOLK, NEBRASKA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-01-171b

Elkhorn Valley Bank & Trust, Norfolk, Nebraska ("Bank"), having been advised of its rights to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and violations of law and regulation alleged to have been committed by the Bank, as well as of its rights to a hearing on the charges under section 8(b) of the Federal Deposit Insurance Act ("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") dated December 18, 2001, with counsel for the Federal Deposit Insurance Corporation ("FDIC"), whereby, solely for the purpose of this proceeding and without admitting or denying the charges of unsafe or unsound banking practices and violations of law and regulation, 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 and unsound banking practices and violations of law and regulation. 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 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 or unsound banking practices and violations of law and regulation:

A. Operating with a board of directors which has failed to provide adequate supervision over and direction to the management of the Bank to prevent unsafe or unsound banking practices and violations of law and regulation.

B. Operating with an inadequate level of capital protection for the kind and quality of assets held.

C. Operating with an inadequate allowance for loans and lease losses for the volume, kind and quality of loans and leases held, and/or failing to make provision for an adequate reserve for possible loan and lease losses.

D. Engaging in hazardous lending and lax collection practices, including, but not limited to:
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1. the failure to obtain proper loan documentation;
2. the failure to obtain adequate collateral;
3. the failure to establish and enforce adequate loan repayment programs;
4. the failure to obtain current and complete financial information;
5. extending credit with inadequate diversification of risk; and
6. other poor credit administration practices.

E. Operating with an excessive level of adversely classified loans or assets.

F. Operating with an inadequate loan policy.

G. Operating with inadequate earnings.

H. Violating the minimum capital requirements of section 325.3 of the FDIC Rules and Regulations, 12 C.F.R. §325.3.

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

[.1]1. QUALIFIED MANAGEMENT

For purposes of this Order, the qualifications of management shall be assessed on its ability to comply with the requirements of this ORDER, operate the Bank in a safe and sound manner, comply with applicable laws and regulations and restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, liquidity, and sensitivity to market risk. Furthermore, "senior executive officer" shall be defined as in section 32 of the Act, 12 U.S.C. §1831(i), and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. §303.101(b).

a. Each member of Bank management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank.

i. During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC and the Nebraska Director of Banking and Finance ("State Director") in writing of any changes in any of the Bank's directors or senior executive officers.

ii. 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, supra, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104.

b. During the life of this ORDER, the Bank shall retain qualified management.

[.2]2 CAPITAL ADEQUACY

For purposes of this ORDER, "capital ratio" means the level of Tier 1 capital as a percentage of total assets. Tier 1 capital and total assets shall be calculated in accordance with Part 325 of the FDIC Rules and Regulations ("Part 325"), 12 C.F.R. Part 325.

- a. Within THIRTY days from the effective date of this ORDER, the Bank shall develop a plan to increase its capital ratio to no less than 6 percent.
- b. Any increases in Tier 1 capital may be accomplished by the following:
 - i. the sale of common stock and non-cumulative perpetual preferred stock;
 - ii. the elimination of all or part of the assets classified "Loss" as of August 23, 2001, without loss or liability to the Bank, provided any such collection on a partially charged-off asset shall first be applied to that portion of the asset which was not charged off pursuant to this ORDER;
 - iii. the collection in cash of assets previously charged off;
 - iv. the direct contribution of cash by the directors and/or the shareholders of the Bank;
 - v. any other means acceptable to the Regional Director and the State Director; and
 - vi. any combination of the above.
- c. If all or part of the increase in capital required by this paragraph is to be accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned, or proxies held by or controlled by them in favor of said plan. Should the implementation of the plan involve public distribution of Bank securities, including a distribution limited only 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 the circumstances giving rise to the [{{3-31-02 p.C-5315}}](#) offering, and other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan and, in any event, not less than TWENTY 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, 550 17th Street, Room F-6043, N.W., Washington, D.C. 20429, for its review. Any changes to be made in the materials requested by the FDIC shall be made prior to their dissemination. If the Regional Director allows any part of the increase in Tier 1 capital to be provided by the sale of non-cumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to, those terms and conditions relative to the interest rate and any convertibility factor, shall be presented to the Regional Director for prior approval.
- d. In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of Bank securities written notice of any planned or existing development or of 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 calendar days of the date any material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of the Bank's original offering materials.
- e. The capital ratio analysis required by this paragraph shall not negate the responsibility of the Bank and its board of directors for maintaining throughout the year an adequate level of capital protection for the kind, quality and degree of market depreciation of assets held by the Bank.

[.3]3. RESTRICTION ON DIVIDENDS

As of the effective date of this ORDER, the Bank shall not declare or pay any cash dividend without the prior written consent of the Regional Director and the State Director.

[.4]4. ALLOWANCE FOR LOAN AND LEASE LOSSES

For purposes of this ORDER and in making the determinations mandated by this paragraph, the board of directors of the Bank shall consider the Federal Financial Institutions Examination Council's Instructions for the Reports of Condition and Income and any analysis of the Bank's allowance for loan and lease losses ("ALLL") provided by the FDIC.

a. Within THIRTY days from the effective date of this ORDER, the Bank shall replenish its ALLL by a provision to the account in an amount equal to those loans required to be charged off by this ORDER.

b. Within THIRTY days from the effective date of this ORDER, the Bank shall make an additional provision for loan and lease losses which, after review and consideration by the board of directors, reflects the potential for further losses in the remaining loans or leases classified "Substandard" and all other loans and leases in its portfolio.

c. Prior to the submission or publication of all Reports of Condition and Income required by the FDIC after the effective date of this ORDER, the board of directors of the Bank shall review the adequacy of the Bank's ALLL, provide for adequate ALLL, and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the findings of the review, the amount of increase in the reserve recommended, if any, and the basis for determination of the amount of reserve provided.

d. While this ORDER is in effect, the Bank shall submit to the Regional Director and the State Director the analysis supporting the determination of the adequacy of its ALLL. These submissions may be made at such times as the Bank files the progress reports otherwise required by this ORDER.

e. ALLL entries required by this paragraph shall be made prior to any Tier 1 capital determinations required by this ORDER.

[.5]5. LOAN CHARGE-OFF

As of the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" as of August 23, 2001, that have not been previously collected or charged off. Elimination or reduction of these assets with the proceeds of [{{3-31-02 p.C-5316}}](#)

other Bank extensions of credit is not considered collection for the purpose of this paragraph.

[.6]6. REDUCTION OF SUBSTANDARD ASSETS

For purposes of this ORDER and as used in this paragraph, "reduce" means to collect, charge off, or improve the quality of substandard assets so as to warrant removal of any adverse classification by the FDIC. Furthermore, in developing the plan mandated by this paragraph, the Bank shall, at a minimum, review the financial position of each such borrower, including source of repayment, repayment ability, and alternative repayment sources and evaluate the available collateral for each such credit, including possible actions to improve the Bank's collateral position.

a. Within SIXTY days from the effective date of this ORDER, the Bank shall adopt and implement a written plan to reduce the Bank's risk position in each asset in excess of \$100,000 which is classified "Substandard" in the FDIC's Report of Examination as of August 23, 2001. Thereafter, the Bank shall implement and follow this plan. A copy of the plan shall be submitted to the Regional Director and State Director upon its completion.

b. The plan mandated by this paragraph shall include, but not be limited to, the following:

i. dollar levels to which the Bank shall reduce each asset within SIX and TWELVE months from the effective date of this ORDER; and

ii. provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

[.7]7. LOAN POLICY

- a. Within NINETY days from the effective date of this ORDER, and annually thereafter, the board of directors of the Bank shall review the Bank's loan policy and procedures for adequacy and, based upon this review, shall make all appropriate revisions to the policy necessary to strengthen lending procedures and abate additional loan deterioration.
- b. The initial revisions to the Bank's loan policy required by this paragraph, at a minimum, shall include provisions:
- i. establishing review and monitoring procedures to ensure that all lending personnel are adhering to established lending procedures and that the directorate is receiving timely and fully documented reports on loan activity, including any deviations from established policy;
 - ii. requiring that all extensions of credit originated or renewed by the Bank:
 - a) be supported by current credit information and collateral documentation, including lien searches and the perfection of security interests;
 - b) have current financial information, profit and loss statements or copies of tax returns, and cash flow projections, which information and shall be maintained throughout the term of the loan; and
 - c) have a clearly defined and stated purpose and a predetermined and realistic repayment source and schedule;
 - iii. incorporating limitations on the amount that can be loaned in relation to established collateral values, including the requirement that the source of the valuations be identified and that such collateral valuations be completed prior to the disbursement of loan proceeds and be performed on a periodic basis over the term of the loan;
 - iv. requiring the establishment and maintenance of a loan grading system and internal loan watch list;
 - v. requiring loan committee review and monitoring of the status of repayment and collection of loans classified "Substandard" in the FDIC Report of Examination as of August 23, 2001, or by the FDIC or State Authority in a subsequent Report of Examination;
 - vi. requiring a written plan to lessen the risk position in each line of credit identified as a problem credit on the Bank' internal loan watch list;
 - vii. prohibiting the extension of a maturity date, advancement of additional credit or renewal of a loan to a borrower whose obligations to the Bank were classified "Substandard," or "Loss," whether in whole or in part, as of August 23, 2001, or by the FDIC or State authority in a subsequent Report of Examination, without the full collection in cash of accrued and unpaid interest, unless the loans are well secured and/or are adequately supported by current [{{1-31-03 p.C-5317}}](#) and complete financial information, and the renewal or extension has first been approved in writing by a majority of the Bank's board of directors;
 - viii. addressing concentrations of credit and diversification of risk, including goals for portfolio mix, establishment of limits within loan and other asset categories, and development of a tracking and monitoring system for the economic and financial condition of specific geographic locations, industries, and groups of borrowers; and
 - ix. requiring that collateral appraisals be completed prior to the making of secured extensions of credit, and that periodic collateral valuations be performed for all secured "problem loans".
- c. The revised written loan policy shall be submitted to the Regional Director and the State Director for review and comment before its completion. Within THIRTY days from the receipt of any comments from the Regional Director and the State Director, and after due consideration of any comments from the Regional Director and the State Director, the board of directors shall approve the written loan policy and any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors' meeting.

d. The Bank shall inform the Regional Director and the State Director, in writing, how it intends to ensure compliance. Thereafter, the Bank shall implement and follow the amended written loan policy.

[.8]8. TECHNICAL EXCEPTIONS

Within SIXTY days from the effective date of this ORDER, the Bank shall correct the technical exceptions listed in the FDIC Report of Examination as of August 23, 2001. The Bank shall initiate and implement a program to ensure its credit files contain complete, adequate and current documentation.

[.9]9. PROFIT PLAN AND BUDGET

The plan and budget required by this paragraph shall contain formal goals and strategies, consistent with sound banking practices, to reduce discretionary expenses and to improve the Bank's overall earnings, as well as a description of the operating assumptions that form the basis for major projected income and expense components.

a. Within SIXTY days from the effective date of this ORDER, the Bank shall adopt and implement a written profit plan and a realistic/comprehensive budget for all categories of income and expense for calendar years 2002, 2003, and 2004. A copy of the plan and budget shall be submitted to the Regional Director and State Director upon their completion. Thereafter, the Bank shall implement and follow the plan and budget.

b. Within THIRTY days from the end of each calendar quarter following completion of the profit plan and budget required by this paragraph, the Bank's board of directors shall evaluate the Bank's actual performance against them, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the board of directors' meeting at which such evaluation is undertaken.

[.10]10. VIOLATIONS OF LAW AND REGULATION

Within NINETY days from the effective date of this ORDER, the Bank shall implement procedures to ensure future compliance with all applicable laws and regulations.

[.11]11. DISCLOSURE TO SHAREHOLDERS

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 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, notice or statement shall be sent to the FDIC Registration and Disclosure Section, 550 17th Street, N.W., Room F-6043, Washington, D.C. 20429, for review at least TWENTY days prior to dissemination to shareholders. Any requests for changes made by the FDIC shall be made prior to dissemination of the description, communication, notice or statement.

[.12]12. COMPLIANCE WITH ORDER

Within THIRTY days from the effective date of this ORDER, the Bank's board of directors shall have in place a program that will provide for monitoring of the Bank's

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compliance with this ORDER. Following the adoption of said program, the Bank's board of directors shall review the Bank's compliance with this ORDER and record its review in the minutes of each regularly scheduled board of directors' meeting.

13. PROGRESS REPORTS

Within FIFTEEN days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall furnish the Regional Director and the State Director with written progress reports, signed by each member of the Bank's board of directors, detailing the form and manner of any actions taken to secure compliance with this ORDER. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and State Director have, in writing, released the Bank from making further reports.

The effective date of this ORDER shall be TEN days after its issuance by the FDIC.

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

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

Issued Pursuant to Delegated Authority

Dated: January 2, 2002.

Last Updated 6/6/2003

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