

{{4-30-92 p.C-1960}}

[¶10,455] **In the Matter of The Pembroke State Bank, Pembroke, Georgia, Docket No. FDIC-92-31b (2-13-92).**

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 allowance for loan and lease losses; operating with inadequate routine and controls policies; and operating in violation of applicable laws or regulations.

- [.1] Management—Qualifications—Review
- [.2] Management—Management Plan—Minimum Requirements
- [.3] Board of Directors—Election—Outside Directors Added
- [.4] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.5] Allowance for Loan and Lease Losses—Establish/Maintain
- [.6] Assets—Adversely Classified—Eliminate/Reduce
- [.7] Loans—Extensions of Credit—Existing Borrowers—Curtail
- [.8] Loans—Overdue—Accrual of Interest
- [.9] Loans—Extensions of Credit—Documentation System Required
- [.10] Budget and Earnings Plan—Preparation Required
- [.11] Violations of Law—Eliminate/Correct
- [.12] Loans—Overdue—Ratio—Reduction Required

{{4-30-92 p.C-1961}}

- [.13] Loans—Overdue—Volume—Reduction Required
- [.14] Loans—Concentrations of Credit—Reduction Plan
- [.15] Technical Exceptions—Eliminate/Correct
- [.16] Funds Management—Written Policy Required
- [.17] Investment Policy—Revision—Minimum Requirements
- [.18] Bank Operations—Internal Routine and Controls—Written Plan
- [.19] Dividends—Restricted
- [.20] Institution Affiliated Parties—Transactions—Written Agreements Required
- [.21] Audits—Internal Auditor Required
- [.22] Contingent Liabilities—Litigation Settlement—Approval Required
- [.23] Shareholders—Disclosure—Cease and Desist Order
- [.24] Compliance Reports—Frequency

In the Matter of

**THE PEMBROKE STATE BANK
PEMBROKE, GEORGIA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-92-31b**

The Pembroke State Bank, Pembroke, Georgia ("Bank"), having been advised of its right to a written Notice of Charges and of Hearing detailing unsafe or unsound banking practices and violations of applicable laws and regulations alleged to have been committed by the Bank and of 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 those rights, 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 January 28, 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, 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, non-earning assets, and overdue loans;

D. Engaging in ineffective and lax lending and collection practices, including but not limited to: (i) failing to provide an adequate loan policy for the Bank; (ii) failing to establish and/or enforce repayment programs; (iii) extending credit to borrowers who lack sufficient repayment ability; (iv) extending credit without adequate diversification of risk; (v) continuing to accrue interest on loans that are 90 days or more delinquent in principal or interest payments and which are not both well secured and in the process of collection; (vi) extending credit with deficient or inadequate supporting loan

documentation, including but not limited to current financial statements and cash flow and/or operating information; and (vii) extending credit by means of loan participations without independently obtaining and analyzing loan documentation sufficient to support such extensions of credit by the Bank;

E. 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;

F. Failing to operate with an adequate system of internal routine and controls, including, but not limited to: (i) lack of proper control of checks issued in payment of legitimate Bank expenses; (ii) failing to implement an adequate vacation policy for Bank officers and employees and/or a policy requiring regular rotation of employee duties which is designed to detect and deter fraud and embezzlement; and (iii) failing adequate to define and segregate duties of Bank personnel; and

G. Engaging in cited violations of applicable Federal and state laws and regulations, as more fully described on pages 6-a through 6-a-3 of the FDIC's Report of Examination of the Bank as of May 20, 1991.

IT IS FURTHER ORDERED that the Bank and its successors and assigns take affirmative action as follows:

[.1] 1. (a) Within 90 days from the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include a board of directors which shall be responsible for supervising and directing the policies and activities of the Bank; a chief executive officer who shall possess the necessary experience and qualifications to provide daily supervision over the Bank's affairs; and a senior lending officer who has an appropriate level of lending, collection and loan supervision experience necessary to supervise the upgrading of a low-quality loan portfolio. 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, management effectiveness, and liquidity. 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 Georgia Commissioner of Banking and Finance ("Commissioner") 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] (b) To facilitate compliance with paragraph 1(a) of this ORDER, the board of directors shall, within 90 days from the effective date of this ORDER, develop a written analysis and assessment of the Bank's management and staffing requirements ("Management Plan"), which shall include, at a minimum:

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

- (ii) a clear and concise description of the required experience and level of compensation for each management position at the Bank;
- (iii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;
- (iv) 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;
- (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 analysis, evaluation and assessment as provided in paragraphs 1(b)(i) and 1(b)(iv) of this ORDER;
- [{{4-30-92 p.C-1963}}](#) (vi) a periodic evaluation of each Bank employee's job performance; and
- (vii) requirements for periodic review and update of the Management Plan.

(c) The written Management Plan and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days from the receipt of any comment from the Regional Director and the Commissioner, 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 shall implement and follow the written Management Plan and/or any subsequent modification thereto.

[.3] 2. (a) Within 180 days from the effective date of this ORDER, the Bank's board of directors shall be comprised such that a majority of its members shall be "outside directors" of the Bank. Any new "outside directors" added to the Bank's board of directors after the effective date of this ORDER shall reside or engage in business in the Bank's normal trade area.

(b) For purposes of paragraph 2(a) of this ORDER, an individual who is an "outside director" of the Bank shall be any individual (1) who is not employed in any capacity by the Bank or any of its affiliated organizations and who does not own or control, directly or indirectly, more than twenty-five (25) percent of the outstanding voting shares of the Bank or any of its affiliated organizations, (2) who is not a member of the "immediate family" of an executive officer or director of the Bank or of any stockholder owning more than twenty-five (25) percent of the outstanding shares of the Bank or any of its affiliated organizations, (3) who does not control any company that is the related interest of any executive officer or director of the Bank, and (4) who is not indebted to the Bank or any of its affiliates, directly or indirectly (including the indebtedness of any entity in which the individual has a substantial financial interest), in an amount exceeding five (5) percent of the Bank's or the affiliate's total equity capital and allowance for loan and lease losses.

(c) For purposes of this paragraph 2 of the ORDER, the terms "company," "control of a company," "director," "executive officer," "immediate family" and "related interest," shall have the meanings ascribed to them in sections 215.2(a), (b), (c), (d), (e) and (k), respectively, of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. §§ 215.2(a), (b), (c), (d), (e) and (k).

[.4] 3. (a) Within 30 days after December 31, 1991, and within 30 days after each March 31, June 30, September 30 and December 31 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 and December 31 date. If such capital ratio is less than 6.0 percent, 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 6.0 percent as of the nearest preceding March 31, June 30, September 30 or December 31 date.

(b) In addition to the requirements of paragraph 3(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.

(c) For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in section 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 (n)).

[.5] 4. (a) Within 30 days from the effective date of this ORDER, and concurrently with compliance with the requirements of paragraph 5 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

[\[4-30-92 p.C-1964\]](#) Instructions for the Reports of Condition and Income, by charges against current operating income. In complying with the requirements of this paragraph 4(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. Such allowance shall, at a minimum, comply with the guidelines established by the Commissioner, which require state-chartered banks in Georgia to maintain an allowance for loan and lease losses at a level of at least: (i) 100 percent of all loans or portions of loans classified "Loss" at the most recent regulatory examination of the Bank, plus (ii) 50 percent of all loans or portions of loans classified "Doubtful" at such examination, plus (iii) 10 percent of all loans or portions of loans classified "Substandard" at such examination. In addition to the Commissioner's minimum guidelines, the Bank's board of directors shall consider the volume and quality of internally rated loans, the level of delinquent and nonaccrual loans, risk in loans listed for Special Mention and anticipated growth in the loan portfolio, in determining the adequacy of its allowance. The minutes of the board meeting at which review of the allowance for loan and lease losses 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 May 20, 1991, shall reflect a provision for the allowance for loan and lease losses necessary to comply with paragraph 4(a) of this ORDER. If necessary to comply with this paragraph 4(b) of the ORDER, the Bank shall file amended Reports of Condition and Income within 30 days from the effective date of this ORDER.

[.6] 5. 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 "Doubtful" by the FDIC as a result of its examination of the Bank as of May 20, 1991, which have not been previously collected or charged off, unless otherwise approved in writing by the Regional Director and the Commissioner. Reduction of these assets through use of proceeds of loans made by the Bank does not constitute collection for the purpose of this paragraph 5 of the ORDER.

6. (a) Within 180 days from the effective date of this ORDER, the Bank shall reduce the aggregate dollar volume of all remaining assets classified "Substandard" and "Doubtful" in the FDIC's Report of Examination of the Bank as of May 20, 1991, to not more than \$11,000,000; within 360 days from the effective date of this ORDER, the Bank shall reduce such aggregate total to not more than \$9,000,000; within 540 days from the effective date of this ORDER, the Bank shall reduce such aggregate total to not more than \$7,000,000; and within 720 days from the effective date of this ORDER, the Bank shall reduce such aggregate total to not more than \$5,000,000. The requirements of this paragraph 6(a) of the ORDER shall not be construed to establish a standard for future operations of the Bank.

(b) Within 90 days from the effective date of this ORDER, the Bank shall submit to the Regional Director and the Commissioner a written plan of action to reduce each line of credit which was adversely classified by the FDIC as of May 20, 1991, and which aggregate \$100,000 or more as of that date. Such plan of action shall thereafter be implemented by the Bank and monitored, and progress reports thereon shall be submitted by the Bank to the Regional Director and the Commissioner concurrently with the other reporting requirements set forth in paragraph 24 of this ORDER.

(c) As used in this paragraph 6 of the ORDER, "reduce" means to (i) collect, (ii) charge off, or (iii) improve the quality of such assets sufficiently to warrant removal of any adverse classification by the FDIC.

[.7] 7. (a) 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 of 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 [\[4-30-92 p.C-1965\]](#) 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, (ii) determines that the Bank has satisfied the requirements set out in paragraph 6(b) of this ORDER as to such borrower, and (iii) approves such advance. A written record of the board of directors' determination and approval of any advance under this paragraph 7(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 7 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 interests due at the time of such renewal or extension is collected in cash from the borrower.

[.8] 8. (a) Within 30 days from the effective date of this ORDER, and in accordance with the Instructions for the Reports of Condition and Income, the Bank shall reverse on its books all accrued and unpaid interest on any loan that is 90 days or more delinquent in principal or interest payments and is not both well secured and in the process of collection.

(b) Effective the date of this ORDER, the Bank shall not: (i) accrue interest on any loan that is, or becomes, 90 days or more delinquent in principal or interest payments unless the loan is both well secured and in the process of collection; (ii) add uncollected interest to the unpaid principal balance of any loan on which interest is due unless such addition is supported by additional tangible collateral which adequately and completely secures the loan; (iii) extend credit by means of a new note for uncollected interest due on any loan unless such new extensions of credit is supported by additional tangible collateral which adequately and completely secures the loan; or (iv) book uncollected interest by any other means in contravention of the Instructions for Reports of Condition and Income.

(c) For purposes of this paragraph 8 of the ORDER, "well secured" and "in the process of collection" shall have the same meanings as those terms have in the prevailing Instructions for the Reports of Condition and Income.

[.9] 9. Effective the date of this ORDER, the Bank shall not extend or purchase a participation in any credit, whether secured or unsecured, without first obtaining and analyzing credit information reasonably sufficient to identify the borrower's source of funds to repay the debt and support the scheduled repayment plan. In addition, effective the date of this ORDER, the Bank shall not extend, renew, or purchase a participation in, any credit without establishing specific repayment terms, and shall not extend, renew, or purchase a participation in, any secured credit until all required collateral documentation, or evidence thereof, has been obtained and reviewed by a loan officer or by the board of directors' loan committee.

[.10] 10. (a) Within 60 days after January 1, 1992, the Bank shall prepare a realistic and comprehensive budget and earnings forecast for calendar year 1992 and shall submit this budget and earnings forecast to the Regional Director and the Commissioner for review and comment.

(b) 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 subsequent to 1992 and shall submit them to the Regional Director and the Commissioner for review and comment no later than January 31 of the budget year.

(c) In preparing the budgets and earnings forecasts required by this paragraph 10 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.

(d) Progress reports comparing the Bank's actual income and expense performance with budgetary projections shall be submitted to the Regional Director and [{{4-30-92 p.C-1966}}](#) the Commissioner concurrently with the other reporting requirements set forth in paragraph 24 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.

[.11] 11. 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-a through 6-a-3 of the FDIC's Report of Examination of the Bank as of May 20, 1991. In addition, the Bank shall adopt appropriate procedures to ensure its future compliance with all applicable laws and regulations.

[.12] 12. (a) Within 90 days from the effective date of this ORDER, the Bank shall review and revise its written loan policy, and the board of directors shall approve the revised written loan policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written loan policy and/or any subsequent modification thereto.

(b) The Bank's written loan policy, as revised, shall include, but not necessarily be limited to, the following:

(i) The establishment of an effective internal loan review and grading system, which identifies those loans warranting special attention for reasons relating to their ultimate collectibility, and, at a minimum, provides for:

(A) An identification or grouping of loans that warrant the special attention of management;

(B) For each loan identified pursuant to subparagraph 12(b)(i)(A), a written statement of the reason(s) why the particular loan merits special attention; and

(C) A mechanism for reporting periodically to the board of directors on the status of each loan identified pursuant to subparagraph 12(b)(i)(A), and on the action(s) taken or planned by management to improve the quality of each such loan;

(ii) Guidelines specifying goals for loan portfolio mix and risk diversification;

(iii) Appropriate and adequate collection procedures, including, but not limited to, the action to be taken against borrowers who fail to make timely payments;

(iv) A requirements providing for written documentation of the borrower's ability to repay each extension of credit or renewal thereof and the establishment of a written repayment plan for each loan which takes into consideration the source of repayment and the purpose of the loan;

(v) Specific guidelines governing the processing, administration and disposition of "other real estate" assets;

(vi) Specific criteria and guidelines governing extensions of credit to the Bank's executive officers, directors, principal shareholders, and their related interests, and prohibiting conflicts of interest or the appearance of conflicts of interest in such extensions;

(vii) Specific policies limited concentrations of loans to any one borrower and/or real estate project;

(viii) Specific policies and guidelines concerning the purchase of participations in loans, including requirements for a thorough independent credit and cash flow analysis and appropriate loan documentation prior to the purchase of any loan participation;

(ix) A prohibition against (i) the addition of uncollected interest on the unpaid balance of any loan on which such interest is due, (ii) the acceptance of a separate note for uncollected interest due on any loan unless supported by additional tangible collateral which adequately and completely secures the loan, (iii) the continuation of accrual of interest on any loan delinquent in principal or interest payments 90 days or more, unless such loan is both well secured and in the process of collection, and (iv) any other device that essentially avoids recognition of the overdue status of loans and/or artificially inflates the loan income of the Bank;

(x) Guidelines for obtaining and reviewing required collateral documentation on all secured extensions of credit or renewals thereof; and [{{4-30-92 p.C-1967}}](#)

(xi) A well-defined real estate appraisal program which complies with the requirements of Part 323 of the FDIC's Rules and Regulations, 12 C.F.R. Part 323.

(c) The revised written loan policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. No more than 30 days after the receipt of any comment from the Regional Director and the Commissioner, the board of directors shall approve the written loan policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written loan policy and/or any subsequent modification thereto.

[.13] 13. Within 90 days from the effective date of this ORDER, the Bank's board of directors shall submit to the Regional Director and the Commissioner for review and comment a written plan of action to reduce the aggregate dollar volume of delinquent loans to no more than 4.0 percent of the Bank's total loans. Such plan of action shall, at a minimum, establish definitive procedures for monitoring and servicing part due loans, including required board review of delinquent credits in excess of \$25,000, and clearly defined collection procedures in conformance with the Bank's revised loan policy. Such plan of action shall thereafter be implemented by the Bank and monitored and a summary of each month's collection efforts and the results thereof shall be included in the minutes of the board of directors. The requirements of this paragraph 13 of the ORDER shall not be construed to establish a standard for future operations of the Bank.

[.14] 14. Within 60 days from the effective date of this ORDER, the Bank shall submit to the Regional Director and the Commissioner for review and comment a plan to reduce the loan concentration noted on page 2-b of the FDIC's Report of Examination of the Bank as of May 20, 1991, to not more than 25

percent of the Bank's Tier 1 capital. Further, such plan shall establish appropriate procedures to ensure that no future concentration of credit to one borrower and his "related interests," as such term is defined in section 215.2(k) of the Regulation O, 12 C.F.R. § 215.2(k), shall exceed 25 percent of the Bank's Tier 1 capital. Within 30 days from receipt of any comment by the Regional Director and/or the Commissioner, the board of directors shall approve the plan, which approval shall be recorded in the minutes of the applicable board of directors' meeting. Thereafter, the Bank shall implement and follow the plan.

[.15] 15. Within 60 days from the effective date of this ORDER, the Bank shall establish an effective system of loan documentation and shall correct the technical exceptions on loans noted on pages 2-d through 2-d-4 of the FDIC's Report of Examination of the Bank as of May 20, 1991. In addition, and as long as this ORDER remains in effect, the Bank shall obtain and evaluate all necessary loan documentation, or evidence thereof, before any further credit is extended by the Bank.

[.16] 16. (a) Within 90 days from the effective date of this ORDER, the Bank shall develop a written funds management policy which shall include, at a minimum:

- (i) An assessment of the Bank's liquidity needs and plans for insuring that such needs are met on an ongoing basis;
- (ii) Goals and strategies for managing and/or improving the Bank's interest rate risk exposure;
- (iii) Monitoring of the interest rate sensitivity of present investments and deposits and projections of the types of investments and deposits to improve such liquidity position; and
- (iv) Coordination of the Bank's loan, investment, operating and budget policies with the written funds management policy.

(b) The written funds management policy and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. With 30 days from the receipt of any comment from the Regional Directors and/or the Commissioner, and after consideration of such comment, the board of directors shall approve the funds management policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written funds management policy and/or any subsequent modifications thereto.

[.17] 17. Within 60 days from the effective date of this ORDER, the Bank shall develop a written investment policy consisting of goals and strategies for improving the Bank's investments, and shall submit it to the Regional Director and the Commissioner for review and comment. Such policy shall address, at a minimum, the desired liquidity, marketability, income, quality, maturity, and diversification of the Bank's investments. No more than 30 days after the receipt of any comment from the Regional Director and the Commissioner, the board of directors shall approve the written investment policy and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank shall implement and follow the written investment policy and/or any subsequent modification thereto.

[.18] 18. Within 90 days from the effective date of this ORDER, the Bank's board of directors shall prepare, submit to the Regional Director and the Commissioner for review and comment, and implement a written plan to correct all internal routine and control deficiencies cited on page 6-b of the FDIC's Report of Examination of the Bank as of May 20, 1991, and in the most recent external audit of the Bank.

[.19] 19. Effective the 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 Commissioner.

[.20] 20. Effective the date of this ORDER, the Bank shall not pay any management or service fees to any of its institution-affiliated parties, as such term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), unless a formal written agreement between the Bank and such institution-affiliated party is executed detailing the services to be received by the Bank from the institution-affiliated party and the method of determining the basis for payment of fees by the Bank. Any fees to be paid by the Bank pursuant to such written agreement shall not exceed a commercially reasonable amount which is comparable to fees charged by unaffiliated parties for substantially similar services. Any written agreement prepared pursuant to this paragraph 20 of the ORDER shall be approved by the Bank's board of directors with such approval noted in the board of directors' minutes, and shall be submitted to the Regional Director and the Commissioner for review and comment, if any, 15 days prior to its execution.

[.21] 21. Within 90 days from the effective date of this ORDER, the Bank shall retain the services of a

qualified internal auditor who shall have sufficient experience and qualifications to oversee and manage an accurate and effective internal audit program for the Bank.

[.22] 22. As long as this ORDER is in effect, the Bank shall not fund any payment in settlement of the litigation listed as a contingent liability on page 3-a of the FDIC's Report of Examination of the Bank as of May 20, 1991, unless (i) the proposal to make such payment is first submitted to the Regional Director and the Commissioner for review and comment, and (ii) no earlier than 60 days after the submission of such proposal to the Regional Director and the Commissioner for review and comment, and after consideration of any comment received, the Bank's board of directors fully considers and votes to approve such payment, with such consideration and approval recorded in the minutes of the board of directors.

[.23] 23. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER (1) in conjunction with the Bank's next shareholder communication and also (2) 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. 20429, and to the Commissioner, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the Commissioner shall be made prior to dissemination of the description, communication, notice or statement.

[.24] 24. Within 90 days from the effective date of this ORDER, and within 15 days following the end of each calendar quarter thereafter, the Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results

[\[6-30-94 p.C-1969\]](#) 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 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 meetings.

25. 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 successors and assigns, and, to the extent provided in section 8(i) of the Act, 12 U.S.C. § 1818(i), its institution-affiliated parties. 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 13th day of February, 1992.

Pursuant to delegated authority.