

{{2-29-04 p.C-5333}}

¶11,893] **In the Matter of First State Bank, Talhequah, Oklahoma**, Docket No. 01-166b (2-1-02).

(This order was terminated by order of the FDIC dated 12-23-03; see ¶16,363.)

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.

[.1] **Management—Management Plan Required**

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

[.3] **Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits**

[.4] **Capital—Maintain Tier 1 Capital**

[.5] **Dividends—Dividends Restricted**

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

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

[.8] **Loan Review Committee—Establish**

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

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

[.11] **Board of Directors—Budget—Preparation of Required**

[.12] **Strategic Plan—Preparation of Required**

[.13] **Board of Directors—Outside Directors Added to Board**

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

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

**In the Matter of
FIRST STATE BANKT
ALHEQUAH, OKLAHOMA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-01-166b
OSBD-01-C&D-1

The First State Bank, Talhequah, Oklahoma ("Bank"), through its board of directors, having been advised of its right to the issuance and service of a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices, and violations of law and/or regulations, alleged to have been committed by the Bank, and of its right to a hearing on the alleged charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §1818(b) and section 204(B) of the Oklahoma Banking Code (the "Code"), Okla. Stat. tit. 6, §204(B), and the provisions of the Oklahoma Administrative Procedures Act (Okla. Stat. tit. 75, §250 *et seq.*), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC") and the Banking Commissioner of the State of Oklahoma ("Commissioner") dated February 1, 2002, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe

or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the Commissioner.

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

ORDER TO CEASE AND DESIST

IT IS ORDERED, that the Bank and institution-affiliated parties of the Bank cease and desist from the following unsafe or unsound banking practices, violations of laws, and/or regulations:
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- (a) Operating the Bank without adequate supervision and direction by the Bank's board of directors over the management of the Bank;
- (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 without adequate written loan policies and procedures;
- (d) Operating the Bank in contravention of written loan policies and procedures;
- (e) Engaging in hazardous lending and ineffective and lax collection practices;
- (f) Operating the bank with an excessive level of adversely classified assets;
- (g) Renewing or extending credit which is inadequately secured;
- (h) Refinancing credits to borrowers in weak financial positions without improving collateral margins or establishing structured repayment programs;
- (i) Renewing or extending the due dates of loans without collection in cash of interest due or obtaining adequate additional collateral to secure credit advanced for the purpose of paying interest;
- (j) Reviewing or extending credit without adequate and appropriate supporting documentation;
- (k) Failing to provide an adequate allowance for loan and lease losses;
- (l) Failing to accurately reflect the condition of the Bank in published statements and Consolidated Reports of Condition and Income;
- (m) Operating the Bank with inadequate earnings to fund growth, support dividend payments and augment capital;
- (n) Operating the Bank without adequate loan review policies or procedures;
- (o) Operating the Bank with uncontrolled growth without regard to capital protection; and
- (p) Operating the Bank in violation of applicable Federal and State laws and regulations as more fully set forth on pages 27-30 of the Report of Examination of the Bank as of July 16, 2001.

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

[.1]1. Within 60 days after the effective date of this ORDER, the Bank shall develop a plan to improve Bank management. The plan may be developed by an independent committee of the Bank's board of directors or an outside consultant reporting to the Bank's board of directors. If the committee is composed of members of the Bank's board of directors, a majority of the committee shall consist of directors that are not officers at the Bank or family members of Bank officers. At a minimum, the plan shall include the following:

- (i) A comprehensive review of the current and past performance of Bank management and all lending officials;

(ii) An analysis of current key position descriptions at the Bank; and

(iii) An analysis of the overall staffing requirements of the Bank, particularly in regards to the lending and collection functions.

The plan may include the addition, dismissal, or reassignment of Bank officers and staff. If appropriate, the plan shall provide for management succession, thus ensuring the continuity of a satisfactory management team at the Bank.

A copy of the plan shall be provided to the Regional Director and the Commissioner. Upon written notice from the Regional Director or the Commissioner that the submitted plan is not acceptable, the Bank shall, within 30 days after receipt of such notice, submit amendments to the plan to the Regional Director and the Commissioner, including any modifications or amendments requested by the Regional Director or Commissioner. Upon written notice that the plan is accepted, it shall be adopted by the Bank's board of directors. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

[.2]2. (a) Within 30 days after the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss by the FDIC as a result of its examination of the Bank as of July 16, 2001. Reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to the Regional Director and the
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Commissioner to reduce the remaining assets classified Substandard as of July 16, 2001, At a minimum, the plan shall include the following:

(i) A schedule providing quarterly goals to reduce the remaining adversely classified assets as of July 16, 2001, to levels representing not more than a specified percentage of Tier 1 capital plus the allowance for loan and lease losses as reported each quarter by the Bank in its Consolidated Reports of Condition and Income, and shall include no less than six consecutive quarterly target dates;

(ii) An explanation showing the complete rationale used by the Bank in constructing the reduction schedule; and

(iii) A provision requiring, at a minimum, quarterly reviews by the Bank's board of directors whereby the extent of the Bank's compliance with the plan is expressly addressed, with the results of each review to be recorded in the corporate minutes of the Bank's board of directors.

(c) Upon written notice from the Regional Director or the Commissioner that the submitted plan is not acceptable, the Bank shall, within 30 days after receipt of such notice, submit amendments to the plan to the Regional Director and the Commissioner, including any modifications or amendments requested by the Regional Director or Commissioner. Upon written notice that the plan is accepted, it shall be adopted by the Bank's board of directors. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of the level of adversely classified assets as of July 16, 2001, to a specified percentage of Tier 1 capital plus the allowance for loan and lease losses may be accomplished by:

(i) Charge-off;

(ii) Collection;

(iii) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC; or

(iv) Increase of Tier 1 capital.

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

[.3]3. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower who has an extension of credit with the Bank that has been classified Loss, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

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

(i) The Bank's board of directors has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable Bank's board of directors' meeting; and

(ii) All accrued and unpaid interest has been collected in full.

(c) While this ORDER is in effect, the Bank shall not renew, defer or extend any loans or loan payments unless accrued interest is collected in cash and the Bank's board of directors has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable Bank's board of directors' meeting.

[.4]4. (a) Within 30 days after the effective date of this ORDER, and for so long thereafter as this ORDER is outstanding, the Bank shall achieve and maintain Tier 1 capital equal to or greater than 8 percent of its adjusted average total assets after establishing an adequate allowance for loan and lease losses as required herein.

(b) If such ratio is less than 8 percent as determined at an examination by the FDIC
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or the Oklahoma State Banking Department ("OSBD"), the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director of the FDIC's Dallas Regional Office ("Regional Director") or the Banking Commissioner for the State of Oklahoma ("Commissioner"), present to the Regional Director and the Commissioner a plan to increase the Tier 1 capital of the Bank or to take other measures to bring the ratio to 8 percent. After the Regional Director and Commissioner respond to the plan, the board of directors of the Bank shall adopt the plan, including any modifications or amendments requested by the Regional Director and Commissioner.

Thereafter, to the extent such measures have not previously been initiated, the Bank shall immediately initiate measures detailed in the plan, to increase its Tier 1 capital by an amount sufficient to bring the ratio to 8 percent within 30 days after the Regional Director and Commissioner respond to the plan. Such increase in Tier 1 capital and any increase in Tier 1 capital necessary to meet the ratio required by this ORDER may be accomplished by:

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

(ii) The direct contribution of cash subsequent to July 16, 2001, by the directors and/or shareholders of the Bank or by the Bank's holding company; or

(iii) Receipt of an income tax refund or the capitalization subsequent to July 16, 2001, of a bona fide tax refund certified as being accurate by a certified public accounting firm; or

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

(c) If all or part of the increase in Tier 1 capital required by this ORDER is to be accomplished by the sale of new securities, the Bank's board of directors shall adopt and implement a plan for the sale of such

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

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

(e) In addition to the requirements of subparagraphs 1(a) and (b), the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, App. A.

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

[.5]5. While this ORDER is in effect, the Bank shall neither declare nor pay, directly or indirectly, any cash dividend to shareholders without prior written consent of the Regional Director and the Commissioner.

[.6]6. (a) Within 30 days after the effective date of this ORDER, the Bank shall establish and thereafter maintain an adequate allowance for loan and lease losses. Such allowance shall be funded by charges to current operating income. Prior to the end
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of each calendar quarter, the Bank's board of directors shall review the adequacy of the Bank's allowance for loan and lease losses. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and non-accrual loans and prevailing and prospective economic conditions. The minutes of the Bank's board of directors' meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the allowance for loan and lease losses.

(b) Within 30 days after the effective date of this ORDER, the Bank shall review Consolidated Reports of Condition and Income filed with the FDIC on or after December 31, 2000, and amend said reports if necessary to properly reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain an adequate allowance for loan and lease losses. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

[.7]7. Within 60 days after the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policies and procedures to provide effective guidance and control over the Bank's lending function. Such policies and their implementation shall be in a form and manner acceptable to the Regional Director and the Commissioner, as determined at subsequent examinations, and shall include, at a minimum, the following:

(a) Standards for extending credit to out-of-territory borrowers;

(b) Standards for extending credit to Bank directors, officers, shareholders and their related

interests which take into account applicable Federal and State laws governing such extensions of credit;

(c) A provision that deviations from the written lending policies and procedures require prior approval of the Bank's board of directors;

(d) A requirement that extensions of credit shall not be refinanced, reworked, or renewed unless all accrued interest is collected in cash, and current financial information and documentation have been obtained;

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

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

(g) Scope and frequency of loan review;

(h) Guidelines under which loans are renewed or have their due dates extended;

(i) Without full collection of interest thereon;

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

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

(i) Limitations on the amount advanced in relation to the value of the collateral securing the credit and the documentation required by the Bank for each type of secured credit;

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

(k) Guidelines for determining the rate of interest, terms, and limits on all secured and unsecured loans;

(l) A provision outlining the documentation required on all loans;

(m) Board of directors responsibilities; and

(n) Criteria for reappraisals.

[.8]8. (a) Within 60 days after the effective date of this ORDER, the Bank's board of directors shall establish a loan review committee or retain a consultant to periodically review the Bank's loan portfolio and identify and categorize problem credits. The committee or consultant shall file a report with the Bank's board of directors at each board meeting. This report shall include the following information:

(i) The overall quality of the loan portfolio;

(ii) The identification, by type and amount, of each problem or delinquent loan;

(iii) The identification of all loans not in conformance with the Bank's lending policy; and

(iv) The identification of all loans to officers, directors, principal shareholders or their related interests.

(b) Should a loan committee be established, at least 50 percent of the members of the loan review committee shall be directors

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not employed in any capacity by the Bank other than as a director.

[.9]9. Within 30 days after the effective date of this ORDER, the Bank, consistent with sound banking practices, shall eliminate and/or correct all violations of laws and/or regulations existing in the Bank as of July 16, 2001, as more fully set forth on pages 27-30 of the July 16, 2001, Report of Examination. In addition, the Bank shall ensure its future compliance with all applicable laws and regulations.

[.10]10. Within 90 days after the effective date of this ORDER, the Bank shall eliminate and/or correct,

to the extent possible, all technical exceptions with regard to loan documentation existing in the Bank as of July 16, 2001, as more fully set out on pages 49-59 of the July 16, 2001, Report of Examination.

[.11]11. Within 60 days after the effective date of this ORDER, the Bank's board of directors shall develop a projected budget for the Bank encompassing at least six consecutive quarters. The Bank's board of directors shall periodically review all general ledger items to determine methods for expense reduction and/or income enhancement. The Bank's board of directors' consideration of these areas shall be recorded in the official minutes of the Bank's board of directors meetings. A copy of the budget shall be provided to the Regional Director and the Commissioner for their review and comment.

[.12]12. Within 90 days after the effective date of this ORDER, the Bank's board of directors shall do the following:

(a) Develop, adopt, and implement a written strategic business plan outlining the Bank's future scope of operations and direction that shall include, at a minimum:

(i) Short-term goals to comply with the terms of this ORDER and correct all regulatory criticisms;

(ii) An operating plan for the next 12 months in order to accomplish short-term goals; and

(iii) Long-term goals for growth, capital maintenance, profitability, and service to the community.

(b) Submit the plan to the Regional Director and Commissioner for their review and comment.

(c) Within 30 days after the Regional Director and Commissioner have issued their comments to the plan, the Bank shall adopt the plan including any modifications requested by the Regional Director and Commissioner. Thereafter, the Bank shall initiate the measures detailed in the plan to the extent such measures have not been previously initiated.

[.13]13. While this ORDER is in effect, the Bank shall formulate a plan and document efforts to obtain additional "outside directors" to sit on the Bank's board of directors. For the purposes of this ORDER, an "outside director" shall be an individual:

(a) Who shall not be employed by the Bank other than as a director of the Bank;

(b) Who shall not own or control more than 5 percent of the voting stock of the Bank or its holding company;

(c) Who shall not be indebted to the Bank in an amount greater than \$100,000.

(d) Who shall not be related to any director or principal shareholder of the Bank; and

(e) Who shall be a resident of, or engage in business in, the Bank's trade area.

[.14]14. Within 60 days after the effective date of this ORDER, the Bank's board of directors shall establish a subcommittee of the board of directors of the Bank charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. At least 50 percent of the members of such subcommittee shall be directors not employed in any capacity by the Bank other than as a director. The committee shall report monthly to the full board of directors of the Bank and a copy of the report and any discussion relating to the report or the ORDER shall be noted in the minutes of the Bank's board of directors' meetings. The establishment of this subcommittee shall not diminish the responsibility or liability of the entire board of directors of the Bank to ensure compliance with the provisions of this ORDER.

[.15]15. After 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 the ORDER in all material respects. The description and any accompanying communication, statement, or notice

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shall be sent to the FDIC Registration, Disclosure, and Securities Operation Unit, Washington, D.C. 20429 and to the State, for review at least 20 days prior to dissemination of the description,

communication, notice, or statements.

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

17. The effective date of this ORDER shall be 10 days after the date of its issuance. This ORDER shall be binding upon the Bank and all institution-affiliated parties of the Bank. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC, and the OSBD.

Pursuant to authority delegated to the Regional Director and the authority of the Bank Commissioner of the Oklahoma State Banking Department.

Dated this 1st day of February, 2002.