

{{02-02-05 p.C-6001}}

[¶12,159] **In the Matter of Bank of Lake Village, Lake Village, Arkansas,**
Docket No. 04-012b (3-3-04).

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent was engaged in unsafe and unsound practices.
(*This order was terminated by order of the FDIC dated 2-2-05; see ¶16,447.*)

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

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

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

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

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

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

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

[.8] **Loan Review and Grading System—Establishment of Required**

[.9] **Loans—Specific Categories of Loans, Review or Reduction Required—
Catfish Farms**

[.10] **Funds Management and Liquidity—Preparation or Revision of Funds
Management Policy Required**

[.11] **Information Technology Plan—Minimum Requirements**

[.12] **Board of Directors—Committee to Review Board's Committee Structure**

[.13] **Audit—Program Required**

[.14] **Audit—Internal Audit—Minimum Procedures Specified**

[.15] **Dividends—Dividends Restricted**

[.16] **Brokered Deposits—Notification Required**

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

[.18] **Progress Report—Written Report Required**

**In the Matter of
BANK OF LAKE VILLAGE
LAKE VILLAGE, ARKANSAS
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-04-012b

Bank of Lake Village, Lake Village, Arkansas ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and violations of regulation alleged to have been committed by the Bank

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"), dated February 25, 2004, 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 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 or unsound banking practices and had committed violations of law and/or 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 directors, officers, employees, agents, and other 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:

- (a) engaging in hazardous lending and lax collection practices;
- (b) operating with marginal capital in relation to the kind and quality of assets held by the Bank;
- (c) operating with a large volume of poor quality assets;
- (d) operating with an inadequate loan valuation reserve;
- (e) operating with inadequate provisions for liquidity;
- (f) operating with inadequate internal routine and controls policies;
- (g) operating in such a manner as to produce operating losses;
- (h) operating in contravention of Appendix A and Appendix B of Part 364 of the FDIC Rules and Regulations, 12 C.F.R. Part 364 Appendix A and Appendix B;
- (i) operating with inadequate controls over the Bank's information technology systems;
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- (j) operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits; and
- (k) operating with a board of directors which has failed to provide adequate supervision over and direction to the active management of the Bank.

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

[.1] 1. (a) During the life of this ORDER, the Bank shall have management qualified to restore the Bank to a sound condition. Such management shall include a chief executive officer and an experienced senior lending officer responsible for supervising the Bank's overall lending function. The chief executive officer and the senior lending official may be the same individual.

(b) Present management shall be assessed on its ability to:

- (i) Comply with the requirements of this ORDER;

(ii) Improve and thereafter maintain the Bank in a safe and sound condition, including asset quality, capital adequacy, liquidity adequacy, earnings adequacy, and sensitivity to interest rates;

(iii) Comply with all applicable State and Federal 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, liquidity, and interest rate sensitivity.

(c) (i) During the life of this ORDER, the Bank shall notify the Regional Director of the Dallas Region—Memphis Area Office ("Regional Director") and the Bank Commissioner for the State of Arkansas ("Commissioner") in writing of any resignations and/or terminations of any members of its board of directors and/or any of its senior executive officer(s) within 15 days of the event.

(ii) The Bank shall comply with section 32 of the Act, 12 U.S.C. § 1831i.

(d) Within 30 days from the effective date of this ORDER, the board of directors shall establish a committee of the board of directors with the responsibility to ensure that the Bank complies with the provisions of this ORDER. At least two-thirds of the members of such committee shall be independent, outside directors as defined herein. The committee shall report monthly to the entire board of directors, and a copy of the report and any discussion relating to the report or the ORDER shall be included in the minutes of the board of directors. Nothing contained herein shall diminish the responsibility of the entire board of directors to ensure compliance with the provisions of this ORDER.

(e) For the purposes of this ORDER, an "outside director" shall be an individual:

(i) Who shall not be employed, in any capacity, by the Bank or its affiliates other than as a director of the Bank or an affiliate;

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

(iii) Who shall not be indebted to the Bank or any of its affiliates in an amount greater than 5 percent of the Bank's equity capital and reserves;

(iv) Who shall not be related to any directors, principal shareholders of the Bank or affiliates of the Bank; and

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

[.2] 2. (a) During the life of this ORDER, the Bank shall maintain Tier I capital at least equal to eight (8%) percent of the Bank's Part 325 total assets.

(b) Any increase in Tier I capital necessary to meet the ratio required by Paragraph 2(a) of this ORDER may be accomplished by the following:

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

(ii) The direct contribution of cash by the directors, shareholders, or parent Bank holding company of the Bank; or

(iii) Any other method acceptable to the FDIC.

(c) If all or part of the increase in Tier I capital required by Paragraph 2(a) of this ORDER is 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 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 the Federal 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, Accounting & Securities Unit, 550 17th Street, N.W., Room F-6043, 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 Regional Director and Commissioner allow any part of the increase in Tier I capital to be 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 the interest rate and any convertability factor, shall be presented to the Regional Director and Commissioner for prior approval.

(d) In complying with the provisions of Paragraph 2 of this ORDER, 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 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 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.

(e) For purposes of this ORDER the terms "Tier I capital", and "Part 325 total assets" shall have the meaning ascribed to them in Part 325 of the FDIC's Rules and Regulations, respectively subsections 325.2(v), and 325.2(x), 12 C.F.R. §§ 325.2(v) and (x). The "Capital Calculations" schedule on page 61 of the Report of Examination provides the method for determining the ratio of Tier I capital to Part 325 total assets as required by this ORDER.

(f) The Bank shall not lend funds directly or indirectly, whether secured or unsecured, to any purchaser of Bank stock or to any investor by any other means for any portion or any increase in Tier I capital required herein.

[.3] 3. (a) Within 30 days from the effective date of this ORDER, the Bank shall establish and shall thereafter maintain, through charges to current operating income, an adequate valuation reserve for loan and lease losses. In determining the adequacy of the valuation reserve for loan and lease losses, the board of directors of the Bank shall at a minimum consider the following:

(i) Prevailing instructions contained in the Federal Financial Institutions Examination Council booklet entitled "Instructions—Consolidated Reports of Condition and Income";

(ii) The volume and mix of the existing loan portfolio, including the volume and severity of nonperforming loans and adversely classified credits, as well as an analysis of net charge-offs experienced on previously adversely classified loans;

(iii) The extent to which loan renewals and extensions are used to maintain loans on a current basis and the degree or risk associated with such loans;

(iv) The trend in loan growth, including any rapid increase in loan volume within a relatively short time period;

(v) General and local economic conditions affecting the collectibility of the Bank's loans;

(vi) Previous loan loss experience by loan type, including the trend of net charge-offs as a percent of average loans over the past several years;

(vii) Off balance sheet credit risks;

(viii) The overall risk associated with each concentration of credit together with the degree of risk associated with each related individual borrower; and

(ix) Any other factors appropriate in determining future valuation reserves.

(b) Prior to the submission of any Report of Condition or Report of Income, the board of directors of the Bank shall review the adequacy of the Bank's valuation reserve for loan and lease losses. The minutes of the board meetings at which each review is under taken shall indicate the results of the review, the amount of any increase to the reserve, and the basis for the amount of the
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valuation reserve. The criteria for the review shall be as set forth in Paragraph 3(a).

(c) Notwithstanding the provisions of paragraph 3(a) and 3(b) above, the Bank shall achieve, within 30 days of the effective date of this ORDER, a valuation reserve for loan and lease losses, after charge off of loans classified "Loss" in the Report of Examination as of September 22, 2003, of not less than \$2,350,000, and shall thereafter maintain through charges to current income, an adequate valuation reserve for loan and lease losses.

(d) In the event that the Regional Director and/or the Commissioner determine, at subsequent examinations and/or visitations, that the Bank's valuation reserve for loan and lease losses is inadequate, the Bank shall amend its Consolidated Reports of Condition and Income.

[.4] 4. (a) Within 60 days from the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the board of directors shall develop a written profit plan consisting of goals and strategies for improving the earnings of the Bank for each calendar year. The written profit plan shall include, at a minimum:

(i) Identification of the major areas in, and means by, which the board of directors will seek to improve the Bank's operating performance;

(ii) Realistic and comprehensive budgets;

(iii) A budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections on not less than a quarterly basis; and

(iv) A description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(b) Such written profit 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 after the receipt of any comment from the Regional Director and Commissioner, the board of directors shall approve the written profit plan which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank, its directors, officers, and employees shall follow the written profit plan and/or any subsequent modification.

[.5] 5. (a) Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-offs or collection, all assets classified "Loss" as of September 22, 2003, that have not been previously collected or charged off. Reduction of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph.

(b) Within 60 days from the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and the Commissioner for review and approval a written plan of action directed at lessening the Bank's risk position in each line of credit or other asset which were classified "Substandard" as of September 22, 2003 and which aggregated \$500,000 or more. Such plan shall include but not be limited to, the following:

(i) Target dollar levels to which the Bank will reduce each line of credit or other asset within three months, six months, and twelve months from the effective date of this ORDER; and

(ii) Provisions for the submission of monthly written progress reports under this Paragraph 5 to the Bank's board of directors for review and recordation in the board minutes.

(c) In formulating this overall plan of action, the Bank's board of directors, at a minimum, should prepare an individual plan for each classified borrower including:

(i) Review of the financial position of each classified borrower, including source of repayment, repayment ability, credit score, and alternative repayment sources;

(ii) Determination of whether each classified asset comports with the Bank's written underwriting standards, and if not, how the asset deviates from those standards;

(iii) Verification of the Bank's lien position in all collateral and the perfection of any unperfected liens;

(iv) Evaluation of all collateral for each such credit, including possible actions to improve the Bank's collateral position by foreclosure or otherwise;

(v) Procedures for obtaining current appraisals for any collateral and updated financial statements for each borrower; and

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(vi) Analysis of the loan-to-value ratio of each classified asset, based upon both the current appraisal and the contract sales price of the collateral securing the asset.

(d) As used in Paragraph 5 the word "reduce" means (1) to collect, (2) to charge off, or (3) to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the FDIC.

[.6] 6. (a) Beginning with the effective date of this ORDER, the Bank shall not make any further extension of credit to any borrower whose loans are charged off, in whole or in part, or are adversely classified "Loss" or "Doubtful" as of September 22, 2003 and remain uncollected.

(b) Paragraph 6(a) shall not apply if the Bank's failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank. Prior to the extending of any additional credit pursuant to this paragraph, either in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by a majority of the Bank's board of directors, or a designated committee thereof, who shall certify, in writing:

(i) Why the failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;

(ii) That the Bank's position would be improved by the credit's extension; and

(iii) How the Bank's position would be improved by the credit's extension.

The signed certification shall be made a part of the minutes of the Bank's board or designated committee, a copy of the certification shall be retained in the borrower's credit file and a copy shall be sent to the Regional Director and the Commissioner.

(c) Beginning with the effective date of this ORDER, the Bank shall not make any further extension of credit to any borrower thereof whose loans in the aggregate exceed \$50,000 and are adversely classified "Substandard" as of September 22, 2003 unless such extension has been approved by a majority of the Bank's board of directors in advance and the Bank's board of directors has detailed in the written minutes of the meeting how it has affirmatively determined all of the following:

(i) That the extension of credit is in full compliance with the Bank's loan policy;

(ii) That it is necessary to protect the Bank's interest or that the extension of credit is adequately secured;

(iii) That based upon credit analysis the customer is deemed to be creditworthy; and

(iv) That all necessary loan documentation is on file, including current financial and cash flow information and satisfactory appraisal, title, and lien documents.

The minutes shall also include the following information about the extension of credit:

(i) The amount adversely classified as of September 22, 2003;

(ii) The current balance;

(iii) The amount of credit requested;

(iv) A description of the collateral and its value securing the credit; and

(v) A full description of the documentation presented to the board of directors including the date of the borrower's most recent financial information and the borrower's current income or cash flow data.

(d) Beginning with the effective date of this ORDER, the Bank shall not renew any loan without the full collection of interest due. The issuance of separate notes to the borrowing customer or a third party, the proceeds of which pay interest due, or an advancement of funds under a line of credit, used to pay interest, shall not satisfy the requirements of this paragraph unless these separate notes receive prior board approval in the same manner as outlined in Paragraph 6(b).

(e) As used in this paragraph, the term "further extension of credit" shall include renewals, extensions, and a further advancement of funds.

[.7] 7. (a) Within 60 days from the effective date of this ORDER, the Bank shall review its written loan policy and make whatever changes may be necessary to provide for the safe and sound administration of all aspects of the lending function. Loan documentation, repayment programs, collection and charge-off procedures and internal loan review shall also be included as a part of the review. The Bank shall adopt changes it considers necessary and appropriate and management shall implement the policy, as amended. Evidence of management's reaffirmation shall be reduced to writing. The policy and its implementation shall be in a form and manner acceptable to the Regional Director and Commissioner as determined at subsequent examinations and/or visitations.

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(b) In all future operations, the Bank shall ascertain that all documents required by the Bank's loan policy, or evidence thereof, properly completed, are obtained before credit is extended.

[.8] 8. (a) Within 30 days of the effective date of this ORDER, the board shall revise and implement its internal loan review and grading system ("System") to periodically review the Bank's loan portfolio and identify and categorize problem credits. At a minimum the System shall provide for:

- (i) The drafting and implementation of standard loan grading categories and definitions for each grading category;
- (ii) The identification of the overall quality of the loan portfolio;
- (iii) The identification and amount of each delinquent loan;
- (iv) An identification or grouping of loans that warrant the special attention of management;
- (v) For each loan identified, a statement of the amount and an indication of the degree of risk that the loan will not be fully repaid according to its terms and the reason(s) why the particular loan merits special attention;
- (vi) An identification of credit and collateral documentation exceptions;
- (vii) The identification and status of each violation of law, rule or regulation;
- (viii) An identification of loans not in conformance with the Bank's lending policy, and exceptions to the Bank's lending policy;
- (ix) An identification of insider loan transactions; and
- (x) A mechanism for reporting periodically, no less than quarterly, to the board of directors on the status of each loan identified and the action(s) taken by management.

(b) A copy of the reports submitted to the board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be kept with the minutes of the board of directors.

(c) Within 60 days from the effective date of this ORDER the Bank's board of directors shall establish and appoint a loan committee, or appoint the Bank's current loan committee, to review and approve in advance all extensions of credit, and/or renewals that when aggregated with all other extensions of credit to that borrower, either, directly or indirectly, exceed or would exceed \$500,000. The review should include financial, income, and cash flow information, collateral values and lien information, repayment terms, past performance by the borrower, the purpose of the extension, and whether the extension complies with the Bank's loan policy and applicable laws, rules and regulations. The loan committee shall meet at least twice monthly and shall maintain written minutes which detail the information reviewed by the loan committee, its conclusions, approvals, denials, recommendations, and reasons for the approval of any credit which does not fully comply with the review requirements set forth in this paragraph. At least monthly, the loan committee shall submit its written minutes to the board of directors. At least two-thirds of the members of the loan committee shall be independent, outside directors as defined in Paragraph 1(e) of this ORDER, unless the loan committee is comprised of all the members of the Bank's board of directors.

[.9] 9. Within 90 days from the effective date of this ORDER, the bank shall submit a written proposal, for review and comment, to the Regional Director and the Commissioner for reducing and monitoring the Bank's concentration in catfish farms loans (the "concentration plan") as of September 22, 2003. In addition, the concentration plan will provide procedures for monitoring the Bank's compliance with

the plan and provide for written reports to the board of directors regarding such compliance at least quarterly, and copies of such reports shall be made part of the minutes of the board of directors. No more than 30 days after the receipt of any comment from the Regional Director and/or the Commissioner, the board of directors shall approve the concentration plan, which approval shall be recorded in the minutes of the board of directors. Thereafter, the Bank, its directors, officers, and employees shall follow the plan and/or any subsequent modifications.

[.10] 10. Within 60 days from the effective date of this ORDER, the Bank shall review, revise as appropriate, and adopt a written liquidity and funds management policy. Such policy shall include the establishment of acceptable ranges of ratios in the [{{5-31-04 p.C-6008}}](#)

following areas: volatile liability dependence, total loans to total assets and temporary investments to volatile liabilities. In addition, the liquidity policy shall incorporate a funds management program which designates acceptable levels for: volatile liabilities, including borrowings; asset mix, including temporary funds and investments, long-term investment securities and classes of obligors; and loans to assets; and rate-sensitive assets as a percent of rate-sensitive liabilities. The written liquidity and funds management policy shall be submitted to the Regional Director and the Commissioner for review and comment.

[.11] 11. Within 90 days from the effective date of this ORDER, the Board shall analyze and assess Information Systems (IS) management and staffing needs, incorporating its findings into a written Information Systems Plan. A copy of the Information Systems Plan shall be submitted to the Regional Director and Commissioner for review and comment. At a minimum, the Management Plan shall:

- (a) Identify the type and number of officer positions needed to manage and supervise the Bank's information systems, detailing any vacancies or additional staff needs.
- (b) Provide and maintain adequate information systems management and staffing levels to ensure proper segregation of duties.
- (c) Evaluate whether the current officers and employees are qualified to perform the present and anticipated information systems' duties, especially in the area of network administration.
- (d) Establish a plan to recruit and hire qualified personnel as consistent with the Information Systems Plan.

[.12] 12. Within 30 days from the effective date of this ORDER, the Board shall review its committees and ensure that they are charged with duties that maintain proper information systems oversight. These duties shall be documented in the appropriate policies. These committees will maintain written meeting agendas and meeting minutes which shall be maintained and submitted to the board of directors for review.

[.13] 13. Within 30 days from the effective date of this ORDER, the Board shall implement and subsequently maintain a written program to track resolution of current or future audit and examination exceptions. This program, at a minimum, should consist of the following:

- (a) Written responses to the findings with procedures to ensure that corrective action;
- (b) Timely resolution of deficiencies;
- (c) Delegation of responsibilities for corrective action;
- (d) Prioritize corrective actions in accordance with the Bank's risk exposure;

and

(e) Procedures for monitoring and periodically reporting outstanding exceptions to the Board and/or Audit Committee.

[.14] 14. Within 30 days from the effective date of this Order, the Board shall designate an Internal Audit Manager that is independent from management and possess duties consistent with FIL 21-2003 "Interagency Policy Statement on the Internal Audit Function and its Outsourcing." Internal Audit Manager duties shall also consist of overseeing the program noted in item 13 above.

[.15] 15. While this ORDER is in effect, the Bank shall not declare or pay any cash dividends on its capital stock without the prior written approval of the Regional Director and the Commissioner.

[.16] 16. While this ORDER is in effect, the Bank shall give 30 days prior notice to the Regional Director and Commissioner at such time as the Bank intends to make use of brokered deposits. The notification should indicate how the brokered deposits are to be utilized with specific reference to credit quality of investments/loans and the effect on the Bank's funds position and asset/liability matching. The Regional Director and Commissioner shall have the right to reject the Bank's plans for utilizing brokered deposits. For purposes of this ORDER, brokered deposits are defined to include any deposits funded by third party agents or nominees for depositors, including deposits managed by a trustee or custodian when each individual beneficial interest is entitled to or asserts a right to federal deposit insurance.

[.17] 17. Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER, (i) in conjunction with the Bank's next shareholder communication, and also (ii) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall

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fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Accounting & Securities Unit, 550 17th Street, N.W., Room F-6043, Washington, D.C. 20429 for review at least 20 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.

[.18] 18. On the fifteenth day of the second month following the effective date of this ORDER, and on the fifteenth day of every third month 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 thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has released the Bank in writing from making further reports.

This Order shall become effective ten (10) days after the date of issuance.

Dated: March 3, 2004.