

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of)	
)	
CAPITAL COMMUNITY BANK)	ORDER TO
PROVO, UTAH)	CEASE AND DESIST
)	
(INSURED STATE NONMEMBER BANK))	Docket FDIC-09-236b
)	
_____)	

Capital Community Bank, Provo, Utah ("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 law 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 May 18, 2009, 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.

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

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following unsafe and unsound banking practices, as more fully set forth in the FDIC's Report of Examination ("ROE") dated January 12, 2009:

- (a) operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;
- (b) operating with a board of directors which has failed to provide adequate supervision over and direction to the active management of the Bank;
- (c) operating with inadequate capital in relation to the kind and quality of assets held by the Bank;
- (d) operating with an inadequate loan valuation reserve;
- (e) operating with a large volume of poor quality loans;
- (f) operating in such a manner as to produce operating losses; and
- (g) operating with inadequate provisions for liquidity;
- (h) operating in violation of the following laws and regulations:
 - (i) Part 323 of the FDIC's Rules and Regulations, 12 C.F.R. Part 323, as more fully described in the ROE dated January 12, 2009;
 - (ii) Section 23A of the Federal Reserve Act, 12 U.S.C. § 371c-1, made applicable to state nonmember insured institutions by section 18(j)(1) of the Act, 12 U.S.C. § 1828(j)(1), as more fully described in the ROE dated January 12, 2009; and
 - (i) operating in contravention of the Interagency Appraisal and Evaluation Guidelines dated October 27, 1994 as more fully described in the ROE dated January 12, 2009.

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

1. The Bank shall have and retain qualified management.

(a) Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER.

(b) The qualifications of management shall be assessed on its ability to:

(i) comply with the requirements of this ORDER;

(ii) operate the Bank in a safe and sound manner;

(iii) comply with applicable laws and regulations; and

(iv) restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, liquidity, and sensitivity to market risk.

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

2. Within 30 days from the effective date of this ORDER, the Bank's Board shall increase its participation in the affairs of the Bank, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent

with the role and expertise commonly expected for directors of banks of comparable size. This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; new, overdue, renewal, insider, charged-off, and recovered loans; investment activity; operating policies; and individual committee actions. The Bank's Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

3. (a) During the life of this ORDER, the Bank shall:

(i) maintain Tier 1 capital in such an amount as to equal or exceed 10 percent of the Bank's total assets;

(ii) maintain Tier 1 risk-based capital in such an amount as to equal or exceed 12 percent of the Bank's total assets; and

(iii) maintain total capital in such an amount as to equal or exceed 13 percent of the Bank's total assets.

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

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

(i) the sale of common stock; or

(ii) the sale of noncumulative perpetual preferred stock; or

(iii) the direct contribution of cash by the Bank's Board,

shareholders, and/or parent holding company; or

- (iv) any other means acceptable to the Regional Director; or
- (v) any combination of the above means.

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

(d) If all or part of the increase in Tier 1 capital required by Paragraph 3 of this ORDER is accomplished by the sale of new securities, the Bank's Board shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing 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 15 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Registration and Disclosure Unit, Washington, D.C. 20429, for review. Any changes requested to be made in the plan or materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Regional Director for prior approval.

(e) In complying with the provisions of Paragraph 3 of this ORDER, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities, a written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within 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.

(f) For the purposes of this ORDER, the terms "Tier 1 capital", "Tier 1 risk-based capital" and "total assets" shall have, the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 325.2(v), 325.2(w) and 325.2(x).

4. (a) Within 10 days from the effective date of this ORDER, the Bank shall increase its allowance for loan and lease losses by \$1,200,000 and thereafter maintain an adequate allowance for loan lease losses.

(b) Additionally, within 30 days from the effective date of this ORDER, the Bank's Board shall develop or revise, adopt and implement a comprehensive policy for determining the adequacy of the allowance for loan and lease losses. For the purpose of this determination, the adequacy of the reserve shall be determined after the charge-off of all loans or other items classified "Loss." The policy shall provide for a review of the allowance at least once each calendar quarter. Said review should be completed at least 10 days prior to the end of each quarter, in order that the findings of the Bank's Board with respect to the loan and lease loss allowance may be properly reported in the quarterly Reports of Condition and Income. The review should focus on the results of the Bank's internal loan review, loan loss experience,

trends of delinquent and non-accrual loans, an estimate of potential loss exposure of significant credits, concentrations of credit, and present and prospective economic conditions. A deficiency in the allowance shall be remedied in the calendar quarter it is discovered, prior to submitting the Report of Condition, by a charge to current operating earnings. The minutes of the Bank's Board meeting at which such review is undertaken shall indicate the results of the review. Upon completion of the review, the Bank shall increase and maintain its allowance for loan and lease losses consistent with the allowance for loan and lease loss policy established. Such policy and its implementation shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

5. (a) Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets classified "Loss" and one-half of the assets classified "Doubtful" in the ROE dated January 12, 2009, that have not been previously collected or charged off. Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph.

(b) Within 365 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" in the ROE dated January 12, 2009, that have not previously been charged off to not more than \$17,000,000 or 100 percent of total capital.

(c) Within 545 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" in the ROE dated January 12, 2009, that have not previously been charged off to not more than \$9,000,000 or 50 percent of total capital.

(d) The requirements of Subparagraphs 5(a), 5(b), and 5(c) of this ORDER are not to be construed as standards for future operations and, in addition to the foregoing, the Bank shall eventually reduce the total of all adversely classified assets. Reduction of these assets

through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph. As used in Subparagraphs 5(b),5(c), and 5(d) the word "reduce" means:

- (i) to collect;
- (ii) to charge-off; or
- (iii) to sufficiently improve the quality of assets adversely classified

to warrant removing any adverse classification, as determined by the FDIC.

(e) Within 30 days from the effective date of this ORDER, the Bank shall develop written asset disposition plans for each classified asset greater than \$50,000. The plans shall be reviewed and approved by the Bank's Board and acceptable to the Regional Director as determined at subsequent examinations.

6. (a) Within 45 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policies to provide effective guidance and control over the Bank's lending function. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policies and their implementation shall be in a form and manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

(b) The initial revisions to the Bank's loan policy and practices, required by this paragraph, at a minimum, shall include the following:

(i) provisions requiring complete loan documentation, realistic repayment terms, and current credit information adequate to support the outstanding indebtedness of the borrower. Such documentation shall include current financial information, profit and loss statements or copies of tax returns and cash flow projections;

(ii) provisions that establish limits relative to the Bank's total capital on the aggregate concentration of credit that may be granted to any single industry segment or collateral type;

(iii) provisions incorporating limitations on the amount that can be loaned in relation to established collateral values;

(iv) provisions specifying the circumstances and conditions under which real estate appraisals must be conducted by an independent third party;

(v) provisions specifying the circumstances and conditions under which the maturity date of loans may be extended;

(vi) provisions prohibiting concentrations of credit in excess of 25 percent of the Bank's total equity capital and reserves to any borrower and that borrower's related interests;

(vii) provisions requiring the preparation of a loan "watch list" which shall include relevant information on all loans in excess of \$50,000 classified "Substandard" in the ROE dated January 12, 2009, or by the FDIC or Utah Department of Financial Institutions ("UDFI") in subsequent Reports of Examination and all other loans that may warrant individual review and consideration by the Bank's Board as determined by the loan committee or active management. The loan "watch list" shall be presented to the Bank's Board of Directors for review at least monthly with such review noted in the minutes; and

(viii) the Bank's Board shall adopt procedures whereby officer compliance with the revised loan policy is monitored and responsibility for exceptions thereto assigned. The procedures adopted shall be reflected in minutes of a Bank's Board meeting at which all members are present and the vote of each is noted.

7. Within 60 days from the effective date of this ORDER, the Bank shall develop a written plan, approved by its Board and acceptable to the Regional Director for systematically reducing the amount of loans or other extensions of credit advanced, directly or indirectly, to or for the benefit of, any borrowers in the "Commercial Real Estate Loan" concentrations, as more fully set forth in the ROE dated January 12, 2009. Furthermore, the Bank shall comply with the joint regulatory *Guidance on Concentrations in Commercial Real Estate Lending* (FIL-104-2006). No new loans or other extensions of credit shall be granted to or for the benefit of, any borrower in the "Commercial Real Estate Loan" concentrations with the exception of loans or extensions of credit to individuals which are for first lien single family residential real estate financing or for household, family, or other consumer expenditures and which have received the prior written approval of the Bank's Board as reflected in its recorded minutes and are otherwise in conformance with all laws and regulations.

8. Within 45 days from the effective date of this ORDER, the Bank shall formulate and implement a written profit plan. This plan shall be forwarded to the Regional Director for review and comment and shall address, at a minimum, the following:

(a) goals and strategies for improving and sustaining the earnings of the Bank, including:

- (i) identification of the major areas in, and means by which, the Bank's Board will seek to improve the Bank's operating performance;
- (ii) a realistic and comprehensive budget;
- (iii) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections; and

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

(b) coordination of the Bank's loan, investment, and operating policies, and budget and profit planning, with the funds management policy.

9. Within 30 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and contraventions of Interagency Guidelines, as more fully set forth in the ROE dated January 12, 2009. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

10. Within 60 days from the effective date of this ORDER, the Bank shall develop or revise, adopt, and implement a written liquidity and funds management policy. Such policy and its implementation shall be in a form and manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

11. The Bank shall not pay cash dividends without the prior written consent of the Regional Director.

12. Within 45 days after the end of each calendar quarter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Report of Condition and the Bank's Report of Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has released the Bank in writing from making further reports.

13. Following the effective date of this ORDER, the Bank shall send to its shareholder(s) or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement

