

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	
	)	
LIBERTY BANK	)	ORDER TO
SALT LAKE CITY, UTAH	)	CEASE AND DESIST
	)	
(INSURED STATE NONMEMBER BANK)	)	Docket FDIC-09-122b
	)	
_____	)	

Liberty Bank, Salt Lake City, Utah ("Bank"), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices 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 21, 2009, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices, 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 Visitation ("Visitation") dated January 26, 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 a large volume of poor quality loans;
- (d) engaging in unsatisfactory lending and collection practices;
- (e) operating in such a manner as to produce operating losses; and
- (f) operating with inadequate provisions for liquidity.

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 60 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 shall establish an appropriate overall portfolio limit on Commercial Real Estate loans, which includes construction and development loans; identify, monitor and establish specific limits for loan segments presenting elevated levels of risk, including, but not limited to: residential development loans; loans made on residences with values greater than \$400,000; construction loans made to borrowers where income was stated rather than verified; and loans obtained from mortgage brokers. The Bank's

Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

3. (a) Within 30 days from the effective date of this ORDER, the Bank shall increase and maintain Tier 1 capital in such an amount as to equal or exceed 12.0 percent of the Bank's total assets.

(b) Within 30 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to meet and thereafter maintain the minimum risk-based capital requirements as described in the FDIC's Statement of Policy on Risk-Based Capital contained in Appendix A to Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, Appendix A. The Plan shall be in a form and manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

(c) The level of Tier 1 capital to be maintained during the life of this ORDER pursuant to Subparagraph 3(a) 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.

(d) For the purposes of this ORDER, the term "Tier 1 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) and 325.2(x).

4. (a) Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets classified "Loss" in the Visitation dated January 26, 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 60 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" in the Visitation dated January 26, 2009, that have not previously been charged off to not more than 60.0 percent of capital. Further, within 120 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" in the Visitation dated January 26, 2009, that have not been previously charged off to not more than 50.0 percent of capital.

(c) The requirements of Subparagraphs 4(a), 4(b), and 4(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 4(b), 4(c), and 4(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.

(d) Within 30 days from the effective date of this ORDER, the Bank shall develop written asset disposition plans for each classified asset greater than \$250,000. The plans shall be reviewed and approved by the Bank's Board and acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

(e) Within 30 days from the effective date of this ORDER, the Bank shall adopt and implement a written plan for the reduction and collection of delinquent loans. The plan shall be acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

5. (a) Beginning with the effective 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 or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" and is uncollected. Subparagraph 5(a) of this ORDER shall not prohibit the Bank from renewing or extending the maturity of any credit in accordance with the Financial Accounting Standards Board Statement Number 15 ("FASB 15").

(b) Beginning with the effective 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 or other extension of credit from the Bank that has been classified, in whole or part, "Substandard" without the prior approval of a majority of the Bank's Board or the loan committee of the Bank.

(c) The loan committee or Bank's Board shall not approve any extension of credit, or additional credit to a borrower in Paragraph (b) above without first collecting in cash all past due interest.

6. (a) Within 30 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, which policies shall include specific guidelines for placing loans on a non-accrual basis. 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, consistent with FDIC's instructions for the preparation of Reports of Condition and Income, under which the accrual of interest income is discontinued and previously accrued interest is reversed on delinquent loans;

(ii) provisions which prohibit the capitalization of interest or loans related expense unless the Bank's Board supports in writing and records in the minutes of the corresponding Bank's Board meeting why an exception thereto is in the best interests of the Bank;

(iii) provisions which require complete loan documentation, realistic repayment terms, and current credit information adequate to support the outstanding indebtedness of the borrower. Such documentation shall include, but not be limited to, current financial information, profit and loss statements or copies of tax returns and cash flow projections;

(iv) provisions which incorporate limitations on the amount that can be loaned in relation to established collateral values;

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

(vi) provisions which establish standards for unsecured credit;

(vii) provisions which establish officer lending limits;

(viii) provisions that require extensions of credit to any of the Bank's executive officers, directors, or principal shareholders, or to any related interest of such persons, to be approved in advance by a majority of the entire Bank's Board in accordance with section 215.4(b) of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.4(b);

(ix) provisions which prohibit the issuance of standby letters of credit unless the letters of credit are fully secured by readily marketable collateral and/or are supported by current and complete financial information;

(x) provisions that directors first determine that the lending staff has the expertise necessary to properly supervise construction loans and that adequate procedures are in place to monitor any construction involved before funds are disbursed;

(xi) provisions which prohibit 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;

(xii) provisions which require the preparation of a loan "watch list" which shall include relevant information on all loans which are classified "Substandard" in the Visitation dated January 26, 2009, or classified "Substandard" and "Doubtful" by the FDIC in subsequent Reports of Examination and all other loans which 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 for review at least monthly with such review noted in the minutes; and

(xiii) 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 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) an identification of the major areas in, and means by which, the Bank's Board 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; 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.

8. Within 30 days from the effective date of this ORDER, the Bank shall develop a contingency funding plan that is responsive to changes in liquidity risk exposure. In developing a contingency funding plan, the Bank shall consider the guidance contained in the August 26, 2008, Financial Institution Letter entitled Liquidity Risk Management (FIL-84-2008). The plan will be reviewed for adequacy at subsequent examinations and/or visitations.

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

10. Within 10 days of the effective date of this ORDER, the Bank shall submit to the Regional Director a written plan for eliminating its reliance on brokered deposits. The plan should contain details as to the current composition of brokered deposits by maturity and explain the means by which such deposits will be paid or rolled over. The Regional Director shall have the right to reject the Bank's plan. Within the Progress Reports required under Provision 11 of

this ORDER, the Bank shall include a written progress report to the Regional Director detailing the level, source, and use of brokered deposits with specific reference to progress under the Bank's plan. For purposes of this ORDER, brokered deposits are defined as described in section 337.6(a)(2) of the FDIC's Rules and Regulations 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.

11. Within 30 days of the end of the first quarter, following the effective date of this ORDER, and within 30 days of the end of each quarter thereafter, 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.

12. 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 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 shall be sent to the FDIC, Accounting and Securities Section, Washington, D.C. 20429, at least 15 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.

This ORDER will become effective upon its issuance by the FDIC. 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.

Pursuant to delegated authority.

Dated at San Francisco, California, this 26<sup>th</sup> day of May, 2009.

/s/

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J. George Doerr  
Deputy Regional Director  
Division of Supervision and Consumer Protection  
San Francisco Region  
Federal Deposit Insurance Corporation