

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	ORDER TO
CAPMARK BANK	)	CEASE AND DESIST
MIDVALE, UTAH	)	
	)	FDIC-09-213b
(INSURED STATE NONMEMBER BANK)	)	
_____	)	

CAPMARK BANK, MIDVALE, UTAH ("Insured Institution"), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices which may arise at the Insured Institution by reason of the financial deterioration of Capmark Financial Group Inc., Horsham, Pennsylvania, the parent company of the Insured Institution ("Parent Company"), 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 October 1, 2009, whereby solely for the purpose of this proceeding, the Insured Institution consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC, having considered the matter and determined that it had reason to believe that the Insured Institution may engage in unsafe or unsound banking practices by reason of the financial deterioration of the Parent Company, accepted the CONSENT AGREEMENT and issued the following:

**ORDER TO CEASE AND DESIST**

IT IS HEREBY ORDERED that the Insured Institution, 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 engaging in any unsafe or unsound banking practices which may arise due to the financial deterioration of the Parent Company and shall take affirmative action as follows:

1. Within 30 days of the effective date of this ORDER, the Insured Institution shall provide to the Regional Director of the FDIC's New York Regional Office ("Regional Director") a contingency plan that ensures the continuous, appropriate and satisfactory servicing of all loans held by the Insured Institution that is acceptable to the Regional Director in his sole discretion.

2. (a) Immediately upon the effective date of this ORDER, the Insured Institution shall take any and all steps necessary to ensure that it does not, without the prior written consent of the Regional Director, either directly or indirectly enter into, participate in, or otherwise engage in or allow any "extension of credit" to the Parent Company or to any other "affiliate" of the Insured Institution and/or directly or indirectly enter into, participate in, or otherwise engage in or allow any "covered transaction" or "transaction covered" with the Parent Company or with any "affiliate" of the Insured Institution regardless of whether such "extension of credit", "covered transaction" or "transaction covered" would be prohibited, limited, restricted or otherwise regulated by sections 23A or 23B of the Federal Reserve Act ("Sections 23A and 23B"), 12 U.S.C. §§ 371c and 371c-1.

(b) For purposes of this ORDER, the term "extension of credit" shall be defined as set forth at 12 C.F.R. § 215.3 and the terms "affiliate", "covered transaction" and "transaction covered" shall have the meanings set forth in Sections 23A and 23B; provided, however, that the terms "covered transaction" and "transaction covered" shall not include the continued provision of and payments for operational services provided to the Insured Institution by affiliates

under pre-existing contracts in the normal course of business, including the provision of technology platforms and dual employees. Additionally, for purposes of this ORDER, any transaction by the Insured Institution with any person or entity shall be deemed to be a transaction with an "affiliate" of the Insured Institution if any of the proceeds of the transaction are used for the benefit of, or transferred to such "affiliate".

3. (a) While this ORDER is in effect, the Insured Institution shall have a ratio of Tier 1 capital to total assets ("Tier 1 leverage ratio") of not less than 8 percent and a ratio of qualifying total capital to risk-weighted assets ("Total Risk-Based Capital ratio") of not less than 10 percent.

(b) Within 45 days of the effective date of this ORDER, the Insured Institution shall submit a written capital plan acceptable to the Regional Director. Such capital plan should address both internal and external sources of capital augmentation, including capital infusions, retention of earnings, asset sales, and restrictions of asset growth and shall detail the steps that the Insured Institution shall take to achieve and maintain the capital requirements set forth in subparagraph 3(a) above.

(c) In addition, the capital plan shall include a contingency plan in the event that the Insured Institution has

(i) failed to maintain the minimum capital ratios required by subparagraph 3(a); or (ii) failed to implement or adhere to a capital plan to which the Regional Director has taken no written objection. Said contingency plan shall include a plan to recommend to the Parent Company to sell or merge the Insured Institution with another federally insured institution or holding company thereof or entity acceptable to the FDIC.

(d) The Insured Institution shall review and update the capital plan on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Regional Director.

(e) In addition, 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 purposes of this ORDER, all terms relating to capital shall have the meanings ascribed to them and shall be calculated according to the methodology set forth in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325.

4. Immediately upon the effective date of this ORDER, the Insured Institution shall take any and all steps necessary to ensure that it does not, without the prior written consent of the Regional Director, either declare or pay dividends or

make any other form of payment representing a reduction in capital.

5. During the life of this ORDER, the Insured Institution shall not, without the prior written consent of the Regional Director, permit the amount of "Brokered Deposits," (as such term is defined by 12 C.F.R. § 337.6) held by the Insured Institution to exceed the amount held as of the effective date of this ORDER and shall take any and all steps necessary to comply with section 337.6 of the FDIC Rules and Regulations, 12 C.F.R. § 337.6.

6. All requests for prior written approval of the Regional Director required under this ORDER shall be received by the Regional Director at least 15 days prior to the proposed date of the action for which approval is requested and shall, at a minimum, include an analysis of the impact such proposed action would have on the Insured Institution. The Regional Director may require any additional information related to the request that he, in his sole discretion, deems necessary or appropriate.

7. Within 60 days of the effective date of this ORDER, the Insured Institution shall send to its Parent Company the ORDER or otherwise furnish a description of the ORDER. The description shall fully describe the ORDER in all material respects.

8. The effective date of this ORDER shall be the date of issuance.

9. The provisions of this ORDER shall be binding upon the Insured Institution, its directors, officers, employees, agents, successors, assigns and other institution-affiliated parties of the Insured Institution.

10. 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 have been modified, terminated, suspended, or set aside in writing by the FDIC.

11. It is expressly and clearly understood that if, at any time, the Regional Director shall deem it appropriate in fulfilling the responsibilities placed upon him under applicable law to undertake any further action affecting the Insured Institution, nothing in this ORDER shall in any way inhibit, estop, bar or otherwise prevent him from doing so.

Pursuant to delegated authority.

Dated: October 2, 2009.

\_\_\_\_\_/s/\_\_\_\_\_  
John M. Lane  
Acting Regional Director  
New York Region  
Federal Deposit Insurance Corporation