

{{6-30-98 p.C-4498}}

[11,487] **In the Matter of Clovis Community Bank, Clovis, California, Docket No. 98-22b (4-8-98)**

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. *(This order was terminated by order of the FDIC dated 2-10-99; see ¶16,212)*

- [.1] **Management—Qualifications Specified**
 - [.2] **Capital—Increase Required**
 - [.3] **Assets—Adversely Classified Assets—Reduction Required**
 - [.4] **Loans—Extension of Credit—Curtail to Existing Borrowers**
 - [.5] **Loan Policy—Preparation or Revision of Policy Required**
 - [.6] **Loans—Internal Review Procedure**
 - [.7] **Profit Plan—Preparation of Plan Required**
 - [.8] **Strategic Plan—Preparation of Required**
 - [.9] **Violations of Law—Correction of Violations Required**
 - [.10] **Audit—Internal Audit**
 - [.11] **Year 2000 Plan—Preparation of Required**
 - [.12] **Reports of Condition and Income—Amendment Required**
- {{6-30-98 p.C-4499}}
- [.13] **Shareholders—Disclosure of Cease and Desist Order Required**

In the Matter of

**CLOVIS COMMUNITY BANK
CLOVIS, CALIFORNIA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-98-22b**

Clovis Community Bank, Clovis, California ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing the unsafe or unsound banking practices and violation of regulations 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 March 26, 1998, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violation of 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 and had committed violation of 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 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 and violation of regulations:

- (a) operating with inadequate management;
- (b) operating with inadequate equity capital and reserves in relation to the volume and quality of assets held by the Bank;
- (c) operating with a large volume of poor quality loans;
- (d) operating with an inadequate allowance for loan and lease losses;
- (e) following hazardous lending and lax collection practices;
- (f) operating with inadequate provisions for liquidity and funds management;
- (g) operating with inadequate routine and controls policies;
- (h) operating in such a manner as to produce operating losses;

- (i) operating in such a manner as to produce low earnings;
- (j) operating a real estate investment subsidiary without adequate controls and supervision; and
- (k) operating in violation of the following regulations:
 - (i) Section 353.3(a)(3) of the FDIC's Rules and Regulations, 12 C.F.R. § 353.3 (a)(3), as more fully described on Page 36 of the Report of Examination as of October 20, 1997;
 - (ii) Section 323.3(a)(1) of the FDIC's Rules and Regulations, 12 C.F.R. § 323.3 (a)(1), as more fully described on Page 35 of the Report of Examination as of October 20, 1997; and
 - (iii) Section 326.8(c)(2) of the FDIC's Rules and Regulations, 12 C.F.R. § 326.8 (c)(2), as more fully described on Page 36 of the Report of Examination as of October 20, 1997.

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

[.1] 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. Management shall include the following individuals:

(i) a chief executive officer with proven ability in managing a Bank of comparable size, and experience in upgrading a low quality loan portfolio, improving earnings, and other matters needing particular attention;

(ii) a chief financial officer with appropriate experience in investments, liquidity and funds management;

(iii) a senior lending officer with significant appropriate lending, collection, and loan supervision experience and experience in upgrading a low quality loan portfolio.

(b) Each member of management shall be provided appropriate written authority from the Bank's board of directors to implement the provisions of this ORDER.

(c) 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, and liquidity.

(d) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") and Conrad W. Hewitt, Commissioner of Financial Institutions ("Commissioner") in writing when it proposes to add any individual to the Bank's Board of Directors 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.

(e) The Bank may not add any individual to its Board of Directors or employ any individual as a senior executive officer if the Regional Director issues a notice of disapproval pursuant to Section 32 of the Act, 12 U.S.C. § 1831i.

[.2] 2. (a) From the effective date of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal or exceed seven and one-half percent (7.5%) of the Bank's total assets. Thereafter, during the life of this ORDER, the Bank shall maintain Tier 1 capital in such an amount as to equal or exceed seven and one-half percent (7.5%) of the Bank's total assets. The aforementioned capital requirements are to be implemented by the Bank in addition to the capital requirements set forth in the Section 24 Order issued by the FDIC to the Bank on January 23, 1996.

(b) The level of Tier 1 capital to be maintained during the life of this ORDER pursuant to Subparagraph 2(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 and Commissioner as determined at subsequent examinations and/or visitations.

(c) Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 2 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) any other means acceptable to the Regional Director or Commissioner; or

(iv) any combination of the above means. Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 2 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 2 of this ORDER is accomplished by the sale of new securities, the Board of Directors 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 fifteen (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 Section, 550 - 17th Street, N.W., 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 [6-30-98 p.C-4501](#) 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 and the Commissioner for prior approval.

(e) 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, 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 ten (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" and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. §§ 325.2(t) and 325.2(v).

[.3] 3. (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" as of October 20, 1997, 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) Additionally, while this ORDER remains in effect, the Bank shall, within 30 days of the receipt of any official Report of Examination of the Bank from the FDIC or the Department of Financial Institutions, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any assets classified "Loss" unless otherwise approved in writing by the Regional Director and the Commissioner.

(c) By June 30, 1998, the Bank shall have reduced the loans classified "Substandard" as of October 20, 1997 that have not previously been charged off to not more than \$9,500,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$5,000,000.

(d) By September 30, 1998, the Bank shall have reduced the loans classified "Substandard" as of October 20, 1997 that have not previously been charged off to not more than \$8,600,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$4,700,000.

(e) By December 31, 1998, the Bank shall have reduced the loans classified "Substandard" as of October 20, 1997 that have not previously been charged off to not more than \$7,900,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$4,200,000.

(f) By March 31, 1999, the Bank shall have reduced the loans classified "Substandard" that have not previously been charged off to not more than \$7,000,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$3,800,000.

(g) By June 30, 1999, the Bank shall have reduced the loans classified "Substandard" as of October 20, 1997 that have not previously been charged off to not more than \$6,300,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$3,600,000.

(h) By September 30, 1999, the Bank shall have reduced the loans classified "Substandard" as of October 20, 1997 that have not previously been charged off to not more than \$5,500,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$3,500,000.

(i) By December 31, 1999, the Bank shall have reduced the loans classified "Substandard" as of October 20, 1997 that have not previously been charged off to not more than \$4,900,000 and shall have reduced its real estate investments classified "Substandard" to not more than \$3,000,000.

(j) The requirements of Subparagraphs 3(a), 3(b), 3(c), 3(d), 3(e), 3(f), 3(g), 3(h), and 3(i) 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 3(b), 3(c), 3(e), 3(f), 3(g), 3(h), and 3(i) the word "reduce" means:

- (i) to collect;
{{6-30-98 p.C-4502}}
- (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.

[.4] 4. (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 4(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" or "Doubtful" as of October 20, 1997, without the prior written approval of a majority of the Board of Directors or the loan committee of the Bank. Subparagraph 4(b) of this ORDER shall not prohibit the Bank from renewing or extending the maturity of any credit in accordance with FASB 15, providing that such renewal or extension shall be made only with the prior written approval of a majority of the Board of Directors or the loan committee of the Bank.

(c) In connection with Subparagraph 4(a) and 4(b) of this ORDER, the Bank shall not:

- (i) continue the accrual of interest on any loan which is delinquent in principal or interest payments ninety (90) days or more unless the asset is both well secured and in the process of collection; or
- (ii) engage in any practice or device which essentially avoids recognition of overdue loans and/or artificially inflates the income of the Bank. For any loans restructured in accordance with FASB 15, consideration should be given to the reasonableness of the modified terms of the loan, since loans should not be restructured in an attempt to conceal credit losses or delay their recognition.

(d) For the purpose of Subparagraph 4(c) of this ORDER, debt is "well secured" if it is secured by:

- (i) collateral in the form of liens on or pledges of real or realizable value sufficient to discharge the debt (including accrued interest) in full; or
- (ii) the guaranty of a financially responsible party.

A debt is "in the process of collection" if collection of the debt is proceeding in due course either through legal action, including judgement enforcement procedures, or, in appropriate circumstances, through collection efforts not involving legal action which are reasonably expected to result in repayment of the debt or in its restoration to a current status.

[.5] 5. Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement a written lending and collection policy to provide effective guidance and control over the Bank's lending function, which policy shall include specific guidelines for placing loans on a nonaccrual basis. In addition, the Bank shall obtain adequate and current documentation, analysis, and source of repayment for all loans in the Bank's loan portfolio. Further, the Bank will obtain adequate appraisals for real estate loans. Such policy and its implementation shall be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.6] 6. (a) During the life of this ORDER, the Bank shall maintain an adequate allowance for loan and lease losses.

(b) Additionally, during the life of this ORDER, the Board of Directors shall fully implement its policy for determining the adequacy of the allowance for loan and lease losses. For the purpose of this determination, the adequacy of the allowance 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 shall be completed at least ten (10) days prior to the end of each quarter, in order that the findings of the Board of Directors 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 and lease 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 Board of Directors 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 and the Commissioner as determined at subsequent examination and/or visitations.

[.7] 7. Within 150 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 and to the Commissioner 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 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; 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] 8. Within 150 days from the effective date of this ORDER, the Bank shall prepare and submit to the Regional Director a written business/strategic plan covering the overall operation of the Bank. The plan shall be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.9] 9. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct to the extent possible all violations of regulations which are more fully set forth on Pages 35-36 of the Report of Examination of the Bank as of October 20, 1997. In addition, the Bank shall take all necessary steps to cause future compliance with all applicable laws and regulations.

[.10] 10. (a) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a policy for the operation of the Bank in such a manner as to provide adequate internal routine and control policies consistent with safe and sound banking practices. Such policy shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies as more fully set forth in the Report of Examination of the Bank as of October 20, 1997 and the Bank will take all necessary steps to cause future compliance with all applicable laws and regulations. Such policy and its implementation shall be satisfactory to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

(b) Within 90 days from the effective date of this ORDER, the Bank shall develop an internal audit program that establishes procedures to protect the integrity of the Bank's operational and accounting systems. The program shall be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.11] 11. Within 60 days from the effective date of this ORDER, the Bank shall develop and adopt a plan ("Year 2000 Plan") which shall be satisfactory to the Regional Director and the Commissioner, for ascertaining that all electronic information systems that are utilized by the Bank, or upon which the Bank depends for the conduct of its business, are able to perform correctly all automated processing operations involving dates later than December 31, 1999 and are tested to demonstrate such capability. Prior to the adoption of the Bank's Year 2000 Plan, such Plan shall be reviewed and approved by the Bank's Board of Directors, and such review and approval shall be recorded in the minutes of the Bank's Board of Directors. Thereafter, the Bank shall implement the Year 2000 Plan. Immediately following the adoption of the Bank's Year 2000 Plan, the Bank shall submit a copy of the plan to the Regional Director and to the Commissioner.

[.12] 12. Within 10 days after eliminating ~~6-30-98 p.C-4504~~ from its books any asset in compliance with Paragraph 3 of this ORDER, the Bank shall file with the FDIC amended Consolidated Reports of Condition and Income which shall accurately reflect the financial condition of the Bank as of December 31, 1997. Thereafter, during the life of this ORDER, the Bank shall file with the FDIC Consolidated Reports of Condition and Income which accurately reflect the financial condition of the Bank as of the end of the period for which the Reports are filed, including any adjustment in the Bank's books made necessary or appropriate as a consequence of any Department of Financial Institutions or FDIC examination of the Bank during that reporting period.

13. The Bank shall not pay cash dividends without the prior written approval of the Regional Director and the Commissioner.

[.13] 14. Following the effective date of this ORDER, the Bank shall send to its shareholders 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, Registration and Disclosure Section, 550 - 17th Street, N.W., Washington, D.C. 20429, at least fifteen (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.

15. During the life of this ORDER, the Bank shall furnish to the Regional Director a copy of any application to the Superintendent filed pursuant to Section 751.3 of the California Financial Code, Cal. Fin. Code § 751.3 (West 1989). This copy of such application shall be furnished to the Regional Director on or before the date of its filing with the Superintendent. In no event shall the Bank engage in real estate activities which are the subject of any such application filed pursuant to Section 751.3 of the California Financial Code without the prior written consent of the Regional Director.

Within 30 days from the effective date of this ORDER, the Bank shall provide to the Regional Director and the Commissioner documentation that it is in compliance with all of the provisions of the January 23, 1996, Order in which the Bank received consent to continue to indirectly engage as principal through Clovis Corporation, a wholly owned subsidiary, in activities that may not be permissible for a subsidiary of a National Bank.

16. Within 30 days of the end of the first quarter following the effective date of this ORDER, and within thirty (30) days of the end of each quarter 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 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 and the Commissioner have released the Bank in writing from making further reports.

This ORDER shall become effective ten (10) days from the date of its issuance.

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 8th day of April, 1998.

In the Matter of

**CLOVIS COMMUNITY BANK
CLOVIS, CALIFORNIA
(Insured State Nonmember Bank)
STIPULATION AND CONSENT
TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST
FDIC-98-22b**

Subject to the acceptance of this STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") by the Federal Deposit Insurance Corporation ("FDIC"), it is hereby stipulated and agreed by and between a representative of the Legal Division of FDIC and Clovis Community Bank, Clovis, California ("Bank"), as follows:

1. The Bank has been advised of its right to receive a Notice of Charges and of Hear- [{{7-31-98 p.C-4505}}](#)ing detailing the unsafe or unsound banking practices and violation of laws alleged to have been committed by the Bank and of its right to a public 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 has waived those rights.

2. The Bank, solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices and any violation of laws, hereby consents and agrees to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC. The Bank further stipulates and agrees that such ORDER will be deemed to be an order which has become final under the Act, and that said ORDER shall become effective ten (10) days after its issuance by the FDIC and fully enforceable by the FDIC pursuant to the provisions of the Act.

3. In the event the FDIC accepts the CONSENT AGREEMENT and issues the ORDER, it is agreed that no action to enforce said ORDER in the United States District Court will be taken by the FDIC unless the Bank or any institution-affiliated party, as such term is defined in Section 3(u) of the Act, 12 U.S.C. § 1813(u), has violated or is about to violate any provisions of the ORDER.

4. The Bank hereby waives:

- (a) The receipt of a Notice of Charges and of Hearing;
- (b) All defenses in this proceeding;
- (c) A hearing for the purpose of taking evidence on such alleged charges;
- (d) The filing of Proposed Findings of Fact and Conclusions of Law;
- (e) A recommended decision of an Administrative Law Judge; and
- (f) Exceptions and briefs with respect to such recommended decision.

DATED: March 26, 1998.