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[{{6-30-92 p.C-2222}}](#) [¶10,525] In the Matter of River City Bank, Sacramento, California, Docket No. FDIC-92-119b (4-27-92).

Bank to cease and desist from such unsafe or unsound practices as operating with management deficiencies; operating with inadequate capital; operating with an excessive level of poor quality loans; operating with inadequate allowance for loan and lease losses; following hazardous lending and lax collection practices; operating with inadequate liquidity; and operating without proper internal routine and controls.

- [.1] Management—Qualifications—Review
- [.2] Capital—Tier 1 Capital—Increase/Maintain—Methods
- [.3] Assets—Adversely Classified—Eliminate/Reduce
- [.4] Loans—Extensions of Credit—Existing Borrowers—Curtail
- [.5] Lending and Collection Policy—Minimum Requirements
- [.6] Loans—Concentration of Credit—Reduction Required
- [.7] Allowance for Loan and Lease Losses—Establish/Maintain
- [.8] Funds Management—Written Policy Required
- [.9] Bank Operations—Internal Routine and Controls—Written Policy Required
- [.10] Reports of Condition and Income—Amendment Required
- [.11] Institution-Affiliated Parties—Transactions With—Written Policy Required
- [.12] Dividends—Restricted
- [.13] Investment Policy—Revision—Minimum Requirements
- [.14] Strategic Plan—Preparation Required
- [.15] Shareholders—Disclosure—Cease and Desist Order
- [.16] Compliance Reports—Frequency

In the Matter of

RIVER CITY BANK
SACRAMENTO, CALIFORNIA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST
FDIC-92-119b

River City Bank, Sacramento, California ("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 April 21, 1992, 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.

[{{6-30-92 p.C-2223}}](#) 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, and any institution-affiliated party as such term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), cease and desist from the following unsafe or unsound banking practices:

- (a) operating with management deficiencies;
- (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 loan valuation reserve;

- (e) following hazardous lending and lax collection practices;
- (f) operating with inadequate provisions for liquidity and funds management; and
- (g) operating with inadequate routine and controls policies.

IT IS FURTHER ORDERED that the Bank take affirmative action as follows:

[.1] 1. During the life of this ORDER, 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 should include a chief executive officer with proven ability in managing a Bank of comparable size, and experience in upgrading loans, improving earnings, and other matters needing particular attention. Management should also include a senior lending officer with appropriate lending, collection, and loan supervision experience and experience in upgrading a low quality loan portfolio. Each member of management shall be provided appropriate written authority from the Bank's board of directors 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, and liquidity.

(c) During the life of the ORDER, the Bank shall notify the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") and the Superintendent of Banks for the State of California ("Superintendent") 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.

(d) 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) Within 60 days from the effective date of this ORDER, the Bank shall have increased adjusted Tier 1 capital by \$2,000,000 or such greater amount as to equal or exceed six and one-half (6.5) percent of the Bank's total assets. Thereafter, during the life of this ORDER, the Bank shall maintain adjusted Tier 1 capital in such an amount as to equal or exceed six and one-half (6.5) percent of the Bank's total assets.

(b) The level of adjusted 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 loan loss reserve, the adequacy of which shall be satisfactory to the Regional Director and Superintendent 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:

[{{6-30-92 p.C-2224}}](#)

- (i) the sale of common stock; or
- (ii) the sale of noncumulative perpetual preferred stock; or
- (iii) the direct contribution of cash by the board of directors, shareholders, and/or parent holding company; or
- (iv) any other means acceptable to the Regional Director and the Superintendent; or
- (v) 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 loan loss reserves.

(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, Washington, D.C. 24029, 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 non-cumulative 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 Superintendent 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(m) and 325.2(n), as amended at 56 Fed. Reg. 10154, effective April 10, 1991.

[.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 December 6, 1991, 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) By September 30, 1992, the Bank shall have reduced the assets classified "Substandard" as of December 6, 1991 that have not previously been charged off to not more than \$42,000,000.

(c) By December 31, 1992, the Bank shall have reduced the assets classified "Substandard" as of December 6, 1991 that have not previously been charged off to not more than \$40,000,000.

(d) By June 30, 1993, the Bank shall have reduced the assets classified "Substandard" as of December 6, 1991 that have not previously been charged off to not more than \$30,000,000.

(e) By December 31, 1993, the Bank shall have reduced the assets classified "Substandard" as of December 6, 1991 that have not previously been charged off to not more than \$27,000,000.

(f) By June 30, 1994, the Bank shall have reduced the assets classified "Substandard" as of December 6, 1991 that [{{6-30-92 p.C-2225}}](#) have not previously been charged off to not more than \$20,000,000.

(g) By December 30, 1994, the Bank shall have reduced the assets classified "Substandard" as of December 6, 1991 that have not previously been charged off to not more than \$12,000,000.

(h) The requirements of subparagraphs 3(a), 3(b), 3(c), 3(d), 3(e), 3(f) and 3(g) 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(d), 3(e), 3(f), 3(g) and 3(h) 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.

[.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. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash or interest due from the borrower) any credit already extended to any borrower.

(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 charged off or classified, in whole or in part, "Substandard" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash or interest due from the borrower) any credit already extended to any borrower.

(c) Subparagraphs 4(a) and 4(b) 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 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 thereby; and
- (iii) how the Bank's position would be improved. The signed certification shall be made a part of the minutes of the board of directors or designated committee, and a copy of the signed certification shall be retained in the borrower's credit file.

[.5] 5. During the life of this ORDER, the Bank shall implement its written lending and collection policy in such a manner as to provide effective guidance and control over the Bank's lending, collection, and loan administration function. Such implementation shall specifically address underwriting criteria to be used for future speculative real estate lending purposes. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio, and shall maintain specific records of all steps taken towards policy implementation. Such policy and its implementation shall be in a form and manner acceptable to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.6] 6. (a) Within 180 days from the effective date of this ORDER, the Bank shall reduce the total of all loan concentrations specified on Pages 2-b and 2-b-1 of the Report of Examination as of December 6, 1991, exclusive of the pre-sold and owner-builder loans listed on Page 2-b of the Report of Examination as of December 6, 1991, to an amount which shall be less than two hundred (200) percent of the Bank's Tier 1 capital.

(b) Within 360 days from the effective date of this ORDER, the Bank shall reduce the total of all loan concentrations specified on Pages 2-b and 2-b-1 of the Report of Examination as of December 6, 1991, exclusive of the pre-sold and owner- ~~built~~ built loans listed on Page 2-b of the Report of Examination as of December 6, 1991 to an amount which shall be less than one hundred fifty (150) percent of the Bank's Tier 1 capital.

[.7] 7. (a) Commensurate with the effective date of this ORDER, the Bank shall have increased the reserve for loan losses by not less than \$500,000, and thereafter maintain an adequate reserve for loan losses.

(b) Additionally, during the life of this ORDER, the Board of Directors shall revise, adopt and implement a policy for determining the adequacy of the reserve for loan 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 reserve 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 loss reserve 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 reserve 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 loan loss reserve consistent with the loan loss reserve policy established. Such policy and its implementation shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.8] 8. 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 specifically provide for maintenance of a ratio of rate sensitive assets to rate sensitive liabilities of 0.80 to 1.20; a maximum volatile liability dependence ratio of 10-20 percent; a minimum liquidity ratio of 20 percent; and a maximum loan-to-deposit ratio of 75 percent, as calculated by the FDIC in its Report of Examination. Such policy and its implementation shall be in a form and manner acceptable to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.9] 9. Within 60 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 on Pages 6-a and 6-a-1 of the Report of Examination of the Bank as of December 6, 1991. Such policy and its implementation

shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.10] 10. 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 State or FDIC examination of the Bank during that reporting period.

[.11] 11. Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a written policy that shall govern the relationship between the Bank, its holding company and affiliated subsidiaries, and that shall limit the payment of any management, consulting, or other fees or funds of any nature, directly or indirectly, to or for the benefit of the Bank's holding company to only those fees or funds paid in connection with services performed by the Bank's holding company or affiliates on behalf of or for the benefit of the Bank. In addition, such policy shall provide for the execution of a formal tax allocation agreement between the Bank and its holding company, and the execution of a formal agreement covering intercompany services performed and costs for those services performed. Such policy shall be approved by the board of directors and ensure that benefit is being received by the {{6-30-92 p.C-2227}}

Bank for management/consulting fees paid and that costs for inter-company services are less costly or equal to similar services which could be obtained from an independent provider. Documentation of the foregoing shall be included in the minutes of the board of directors meetings. Such policy and its implementation shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

[.12] 12. The Bank shall not pay cash dividends in any amount except as follows:

- (a) such declarations and payments are made in accordance with applicable State and Federal laws and regulations;
- (b) that after payment of such dividends, the ratio of adjusted Tier 1 capital to total assets of the Bank will be not less than six and one-half (6.5) percent and the reserve for loan losses shall be at an adequate level;
- (c) that such declaration and payment of dividends shall be approved in advance by the board of directors; and
- (d) that such declaration and payment of dividends shall be approved in advance, in writing, by the Regional Director and the Superintendent, which approval shall not be unreasonably withheld.

[.13] 13. Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt and implement a comprehensive written investment policy. Such policy shall include, at a minimum, numerical ranges or goals for investment quality, maturities, and investment mix. In addition, such policy shall include specific guidelines and established limitations for the conduct of securities trading. Such policy and its implementation shall be in a form and manner acceptable to the Regional Director and the Superintendent at subsequent examinations and/or visitations.

[.14] 14. By June 30, 1992, the Bank shall submit a revised midrange strategic plan, covering the period 1993 - 1995, that will reflect changes in the Bank's balance sheet and ongoing operations necessitated by the requirements of this document. In addition, such plan shall focus on restricting future growth to a level consistent with prudent banking standards. The plan and its implementation shall be in a form and manner acceptable to the Regional Director and the Superintendent.

[.15] 15. 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, Washington, D.C. 24029, 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.

[.16] 16. 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), to engage in real estate activities. 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.

[.17] 17. 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 Superintendent 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 Superintendent have released the Bank in writing from making further reports.

The provisions of this ORDER shall be binding upon the Bank, and any institution-affiliated party as such term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), [{{6-30-92 p.C-2228}}](#) to include, its directors, officers, employees, agents, successors, assigns, and other persons participating in the conduct of the affairs of the Bank.

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.

Dated at San Francisco, California, this 27th day of April, 1992.

Pursuant to delegated authority.