

{{2-29-04 p.C-5246}}

[¶11,860] **In the Matter of Community Spirit Bank, Red Bay, Alabama**, Docket No. 01-122b (10-26-01).

(This order was terminated by order of the FDIC dated 12-29-03; see ¶16,366.)

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.

[.1] **Management—Qualifications Specified**

[.2] **Management—Management Plan Required**

[.3] **Board of Directors—Meetings—Frequency of Meetings Specified**

[.4] **Education Program—Minimum Requirements**

[.5] **Capital—Maintain Tier 1 Capital**

[.6] **Assets—Charge-off or Collection**

[.7] **Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits**

[.8] **Loans—Internal Review Procedure**

[.9] **Loan Policy—Preparation or Revision of Policy Required**

[.10] **Loan Loss Reserve—Establishment of or Increase Required**

[.11] **Budget Plan—Preparation Required**

[.12] **Strategic Plan—Preparation of Required**

[.13] **Asset/Liability Management—Preparation or Revision of Asset/Liability Management Policy Required**

[.14] **Dividends—Dividends Restricted**

**In the Matter of
COMMUNITY SPIRIT BANK
RED BAY, ALABAMA
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-01-122b

Community Spirit Bank, Red Bay, Alabama ("Bank"), having been advised of its right to a Notice of Charges and of Hearing detailing 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 §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 19, 2001.

The Superintendent of the Alabama State Banking Department ("Alabama Banking Department") may issue an order to cease and desist pursuant to the Alabama Banking Code, Ala. Code Section 5-2A-12.

Whereby solely for the purpose of this proceeding and without admitting or denying any of the charges of unsafe or unsound banking practices, the Bank has consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the Alabama Banking Department. The FDIC and the Alabama Banking Department considered the matter and determined that they had reason to believe that the Bank had engaged in unsafe or unsound banking practices. The FDIC and the Alabama Banking Department, 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 §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:

- (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;
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- (e) following hazardous lending and lax collection practices; and
- (f) operating in such a manner as to produce operating losses.

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

1. MANAGEMENT

Within 120 days of the effective date of this ORDER, the Bank shall have and retain qualified management.

[.1] (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 of directors ("Board") to implement the provisions of this ORDER. At a minimum, management shall include the following:

- (i) a chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices;
- (ii) a senior lending officer with a significant amount of appropriate lending, collection, and loan supervision experience, and experience in upgrading a low quality loan portfolio;
- (iii) a chief operations officer with a significant amount of appropriate experience in managing the operations of a bank of similar size and complexity in accordance with sound banking practices.

(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 but not limited to, asset quality, capital adequacy, earnings, management effectiveness, risk management and liquidity.

(c) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Superintendent of Banks, Alabama Banking Department ("Superintendent") (collectively, "Supervisory Authorities") in writing when it proposes to add any individual to the 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.

(d) The Bank may not add any individual to its Board or employ any individual as a senior executive officer unless the Alabama Banking Department provides written approval of such individual and the Regional Director does not issue a notice of disapproval of such individual pursuant to §32 of the Act, 12 U.S.C. §1831i.

[.2] (e) To facilitate having and retaining qualified management, the Board shall, in no more than 90 days from the effective date of this ORDER, develop and approve a written analysis and assessment of the Bank's management and staffing needs ("Management Plan"), which shall include, at a minimum the following:

(i) identification of both the type and number of officer positions needed to manage and supervise properly the affairs of the Bank;

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;

(iii) evaluation of each Bank officer, and in particular the chief executive officer, chief lending officer, and chief operating officer to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including but not limited to adherence to the Bank's established policies and practices, and maintenance of the Bank in a safe and sound condition;

(iv) a plan of action to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications the Board determines are necessary to fill Bank officer or staff member positions consistent with the Management Plan as provided in this paragraph and other parts of this ORDER; AND

(v) an organizational chart.

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(f) The written Management Plan and any subsequent modification thereto shall be submitted to the Supervisory Authorities for review and comment. No more than 30 days from the receipt of any comment from the Supervisory Authorities, and after consideration of any such comment, the Board shall approve the written Management Plan and/or any subsequent modification, which approval shall be recorded in the minutes of the Board. Such Management Plan and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations.

2. BOARD OF DIRECTORS

[.3] (a) Within 30 days from the effective date of this ORDER, the 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. Board minutes shall document these reviews and approvals, including but not limited to, the names of any dissenting directors.

[.4] (b) The Board shall develop and adopt an education program for each of its members ("Education Program"). The Education Program shall include, at a minimum, the following:

- (i) specific training in the areas of lending, operations, and compliance with laws, rules and regulations applicable to banks chartered in the State of Alabama;

- (ii) specific training in the duties and responsibilities of the Board in connection with the safe and sound operation of the Bank; and

- (iii) a provision for periodic training.

(c) The Education Program shall be submitted to the Supervisory Authorities for review within 90 days from the effective date of this ORDER. The Board's actions as required by this paragraph shall be satisfactory to the Supervisory Authorities at their initial review and as determined at subsequent examinations and/or visitations. The Board shall document training activities in the minutes of the next Board meeting following completion of any training.

3. CAPITAL

[.5] (a) By December 31, 2001, the Bank shall have Tier 1 capital in such an amount as to equal or exceed seven percent (7%) 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 percent (7%) of the Bank's total assets.

(g) Within 60 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to meet the minimum risk-based capital requirements as described in the FDIC Statement of Policy on Risk-Based Capital contained in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, Appendix A. This plan shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations.

(h) The level of Tier1 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 load and lease losses, the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

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

- (i) sale of common stock; or

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

- (iii) direct contribution of cash by the Board, shareholders, and/or parent holding company; or

- (iv) any other means acceptable to the Supervisory Authorities; or

- (v) any combination of the above means.

Any increase in Tier 1 capital necessary to meet the requirement of Paragraph 4 of this ORDER may not be accomplished through a deduction from the Bank's allowance for loan and lease losses.

(j) If all or part of any necessary increase in Tier 1 capital required by this Paragraph 3 is accomplished by the sale of new securities, the Board shall forthwith take all necessary
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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 any applicable 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 Section, 550 17th Street, N.W., Washington, D.C. 20429, and the Alabama Banking Department, 401 Adams Avenue, Suite 680, Montgomery, AL 36130, for review. Any changes requested to be made in the plan or materials shall be made prior to their dissemination.

(k) 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.

(l) For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have the meanings as described to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. §§ 325.2(t) and 325.2(v).

[.6] 4. CHARGE-OFF

Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" and 50 percent (50%) of those assets classified "Doubtful" in the June 18, 2001 Joint Report of Examination ("Report") that have not been previously collected or charged-off. (If an asset classified "Doubtful" is a loan or lease, the Bank may, in the alternative, increase its allowance for loan and lease losses by an amount equal to 50 percent (50%) of the loan or lease classified "Doubtful".) Elimination of any of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this Paragraph.

5. REDUCTION OF CLASSIFIED ASSETS

(a) By March 31, 2002, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" in the Report that have not previously been charged off to not more than \$4,700,000.

(b) By September 30, 2002, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" in the Report that have not previously been charged off to not more than \$3,500,00.

(c) By March 31, 2003, the Bank shall have reduced the assets classified, "Substandard" and those assets classified "Doubtful" in the report that have not been

previously been charged off to not more than \$2,500,000.

(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(a), 5(b), and 5(c) 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 Supervisory Authorities.

[.7] 6. ADDITIONAL CREDIT

(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,

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

(b) Additionally, during the life 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" and is uncollected.

(c) Paragraph 6(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 or a designated committee thereof, who shall certify in writing as follows:

(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 or its designated committee and a copy of the signed certification shall be retained in the borrower's credit file.

[.8] 7. INTERNAL LOAN REVIEW

(a) Within 90 days from the effective date of this ORDER, the Bank shall adopt an effective internal loan review and grading system to provide for the periodic review of the Bank's loan portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality. The Bank shall also within 90 days from the effective date of this ORDER, submit the written internal loan review and grading system to the

Supervisory Authorities for review. Such system and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations. At a minimum, the grading system shall provide for the following:

- (i) specification of standards and criteria for assessing the credit quality of the Bank's loans;
- (ii) application of loan grading standards and criteria to the Bank's loan portfolio;
- (iii) categorization of the Bank's loans into groupings based on the varying degrees of credit and other risks which may be presented under the applicable grading standards and criteria, but in no case, will a loan be assigned a rating higher than that assigned by examiners at the last examination of the Bank;
- (iv) assessment of the likelihood that each loan exhibiting credit and other risks will not be repaid according to its terms and conditions;
- (v) identification of any loan that is not in conformance with the Bank's loan policy;
- (vi) identification of any loan which presents any unsafe or unsound banking practice or condition or is otherwise in violation of any applicable State or Federal law, regulation, or statement of policy; and
- (vii) requirement of a written report to be made to the Board and Audit Committee, not less than quarterly after the effective date of this ORDER. The report shall identify the status of those loans that exhibit credit and other risks under the applicable grading standards/criteria and the prospects for full collection and/or strengthening of the quality of any such loans.

(b) The Bank shall also hire, appoint, or contract with a qualified individual to administer the loan review system. The Bank shall evaluate the following qualities of the proposed loan review officer: training in loan review/examination procedure, knowledge of loan documentation requirements, loan review/examination experience, ability to comply with the requirements of this ORDER and the Bank's written loan and loan review policies, and knowledge of applicable laws and regulations and sound lending/banking procedures.

[.9] 8. LENDING AND COLLECTION POLICIES

Within 90 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, at a minimum, revisions to address all items of criticism enumerated on pages 21 and 22 of the Report.

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In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

[.10] 9. ALLOWANCE FOR LOAN AND LEASE LOSSES

By December 31, 2001, the Board shall review the adequacy of the allowance for loan and lease losses ("Allowance") and establish a comprehensive policy for determining the adequacy of the Allowance. 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 should be completed at least 10 days prior to the end of each quarter, in order that the findings of the Board with respect to the 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 and Income, by a charge to current operating earnings. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the Allowance and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

[.11] 10. BUDGET

(a) By December 31, 2001, the Bank shall formulate and fully implement a written plan and a comprehensive budget for all categories of income and expense for the calendar year ending December 31, 2002. The plan and budget required by this Paragraph shall include formal goals and strategies, consistent with sound banking practices and taking into account the Bank's other written policies, to improve the Bank's net interest margin, increase interest income, reduce discretionary expenses, improve and sustain earnings of the Bank. The plan shall include a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components. Thereafter, the Bank shall formulate such a plan and budget by November 30 of each subsequent year.

(b) The plan and budget required by subparagraph 10(a) of this ORDER shall be acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan and budget required by subparagraph 10(a) of this ORDER and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting at which such evaluation is undertaken.

[.12] 11. STRATEGIC PLAN

By December 31, 2001, the Bank shall prepare and submit to the Supervisory Authorities its written strategic plan consisting of long-term goals designed to improve the condition of the Bank and its viability and strategies for achieving those goals. The plan shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

[.13] 12. ASSET AND LIABILITY MANAGEMENT

By December 31, 2001, the Bank shall revise, adopt, and implement a written asset/liability management policy to provide effective guidance and control over the Bank's funds management activities, which policy shall include, at a minimum,

revisions to address all items of criticism enumerated on pages 18 and 19 of the Report. Such policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

[.14] 13. *CASH DIVIDENDS*

The Bank shall not pay cash dividends without the prior written consent of the Supervisory Authorities.

14. *PROGRESS REPORTS*

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
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quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities 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 Supervisory Authorities have released the Bank in writing from making further reports.

This ORDER shall become effective 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 in writing by the Supervisory Authorities.

Pursuant to delegated authority.

Dated this 26th day of October, 2001

Last
Updated legal@fdic.gov
4/14/2005