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{{03-31-05 p.C-12349.1}}

[¶12,349] **In the Matter of WebBank, Salt Lake City, Utah**, Docket No. 04-281b (1-31-05).

A cease and desist order was issued, based on findings by the FDIC that it had reason to believe that respondent was engaged in unsafe and unsound practices.

[\[.1\]](#) **Management—Qualifications Specified**

[\[.2\]](#) **Board of Directors—Increased Participation in Bank Affairs Required**

[\[.3\]](#) **Capital Plan—Minimum Requirements Specified**

[\[.4\]](#) **Loan Loss Reserve—Establishment of or Increase in Required**

[\[.5\]](#) **Assets—Charge-off or Collection**

[\[.6\]](#) **Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits**

[\[.7\]](#) **Accounts Receivable—Cease Purchases of Factored Accounts**

[\[.8\]](#) **Loan Policy—Preparation or Revision of Policy Required**

[\[.9\]](#) **Strategic Plan—Preparation of Required**

[\[.10\]](#) **Profit Plan—Preparation of Plan Required**

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[\[.11\]](#) **Budget Plan—Preparation Required**

[\[.12\]](#) **Violations of Law—Corrections of Violations Required**

[\[.13\]](#) **Bank Operations—Maintain List of Affiliates**

[\[.14\]](#) **Funds Management and Liquidity—Preparation or Revision of Funds Management Policy Required**

[\[.15\]](#) **Bank Operations—Internal Review and Control Procedures—Establish**

[\[.16\]](#) **Bank Operations—Policy Review and Revision Required**

[\[.17\]](#) **Dividends—Dividends Restricted**

[\[.18\]](#) **Bank Operations—Employee Compensation Program**

[\[.19\]](#) **Brokered Deposits—Acceptance of Limited**

[\[.20\]](#) **Shareholders—Disclosure of Cease and Desist Order Required**

[\[.21\]](#) **Progress Report—Written Report Required**

**In the Matter of
WEBBANK
SALT LAKE CITY, UTAH
(Insured State Nonmember Bank)
ORDER TO CEASE AND DESIST**

FDIC-04-281b

WebBank, 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 and violations of law and/or 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 Utah Code Ann. §7-1-307, 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 January 26, 2005, and with counsel for the Department of Financial Institutions for the State of Utah ("Department"), dated January 26, 2005, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the Department.

The FDIC and the Department considered the matter and determined that they had reason to believe that the Bank had engaged in unsafe or unsound banking practices and had committed violations of law and/or regulations. The FDIC and the 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 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 violations of law and/or regulation:

- (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 inadequate capital in relation to the kind and quality of assets held by the Bank;
- (d) operating with an inadequate loan valuation reserve;
- (e) operating with a large volume of poor quality loans and other adversely classified assets;
- (f) engaging in unsatisfactory lending and collection practices;
- (g) operating in such a manner as to produce poor earnings insufficient to support operations, maintain capital levels, and fund the loan valuation reserve;
- (h) operating in violation of sections 23A

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and 23B of the Federal Reserve Act, 12 U.S.C. §§371c & 371c-1, made applicable to state nonmember insured institutions by section 18(j)(1) of the Act, 12 U.S.C. §1828(j)(1), as more fully described on pages 25 and 26 of the Joint Report of Examination as of August 30, 2004;

- (i) operating with inadequate provisions for liquidity; and
- (j) operating with inadequate internal routine and controls policies.

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 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. Management shall also include a senior lending officer with significant 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, 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") and the Commissioner, Department of Financial Institutions for the State of Utah ("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.

[.2] 2. (a) Within 30 days from the effective date of this ORDER, the board of directors 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, with a majority of directors attending in person, and at which, at a minimum, the following areas shall be reviewed and approved: sufficient information, required of management, so as to be fully informed of all lending programs and the manner in which each lending line of business is conducted and controlled; 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 the names of any dissenting directors.

(b) Within 90 days of the date of this ORDER, the Bank shall increase its board of directors by the addition of directors such that there are no fewer than five directors, a majority of whom must be independent directors. Thereafter, independent directors shall comprise a majority of the Bank's board of directors.

(c) The addition of any new Bank directors required by this paragraph may be accomplished, to the extent permissible by state statute or the Bank's by-laws, by means of appointment or election at a regular or special meeting of the Bank's shareholders. For purposes of this ORDER, an independent director shall be any individual who is not an officer of the Bank, any subsidiary, or any of its affiliated organizations; who does not own more than 10 percent of the outstanding shares of the Bank; who is not related by blood or marriage to an officer or director of the Bank or to any shareholder owning more than 10 percent of the Bank's outstanding shares

and does not otherwise have a common financial interest with such
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officer, director or shareholder; who is not indebted to the Bank director or indirectly, including the indebtedness of any entity in which the individual has a substantial financial interest, in an amount exceeding 10 percent of the Bank's total Tier 1 capital and allowance for loan and lease losses; or who is deemed to be an independent director for purposes of this ORDER by the Regional Director and the Commissioner.

[.3] 3. (a) Within 120 days from the effective date of this ORDER, the Bank shall develop and adopt a capital plan designed to maintain an adequate level of capital protection for the kind and quality of assets held by the Bank. The Plan shall address both internal and external sources of capital augmentation, including capital infusions and retention of earnings.

(b) Within 120 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 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. The Plan shall be in a form and manner acceptable to the Regional Director and Commissioner as determined at subsequent examinations.

[.4] 4. Within 30 days from the effective date of this ORDER, the Bank shall have and maintain an adequate allowance for loan and lease losses.

Additionally, within 120 days from the effective date of this ORDER, the board of directors shall develop or revise, adopt and implement a comprehensive policy for determining the adequacy of the allowance for loan and lease 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 allowance at least once each calendar quarter. Said review should be completed no later than ten (10) days following the end of each calendar 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 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 examinations and/or visitations.

[.5] 5. (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" and one-half of the assets classified "Doubtful" in the Joint Report of Examination as of August 30, 2004 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 90 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and "Doubtful" in the Joint Report of Examination as of August 30, 2004, that have not previously been charged off to not more than \$1,600,000.

(c) Within 180 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and "Doubtful" in the Joint Report of

Examination as of August 30, 2004, that have not been previously charged off to not more than \$1,200,000.

(d) Within 360 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and "Doubtful" in the Joint Report of Examination as of August 30, 2004, that have not previously been charged off to not more than \$800,000.

(e) The requirements of subparagraphs 5(a), 5(b), 5(c), and 5(d) 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
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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(b), 5(c), 5(d), and 5(e) 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 and the Department at onsite examinations or visitations.

(f) Within 60 days from the effective date of this ORDER, the Bank shall develop written asset disposition plans for each classified asset greater than \$100,000. The plans shall be reviewed and approved by the Bank's board of directors and acceptable to the Regional Director and the Commissioner as determined at subsequent examinations.

(g) Within 120 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 and the Commissioner as determined at subsequent examinations.

[.6] 6. (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" or "Doubtful" and is uncollected. Subparagraph 6(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 in excess of \$100,000 that has been classified, in whole or part, "Substandard" without the prior approval of a majority of the board of directors or the loan committee of the Bank.

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

[.7] 7. Upon the effective date of this Order, the Bank shall cease any and all purchases of factored accounts receivable until the Bank has established and implemented policies and procedures to properly monitor, control, and provide proper oversight for this program, as described in the Joint Report of Examination as of August 30, 2004.

[.8] 8. (a) Within 120 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 and the Commissioner 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 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 board of directors supports in writing and records in the minutes of the corresponding board of directors meeting why an exception thereto is in the best interests of the Bank;

(iii) provisions which require complete loans documentation, realistic repayment terms and current credit information adequate to support the outstanding indebtedness of the borrower. Such documentation shall include 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;

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(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 board of directors 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 in excess of \$10,000 which are classified "Substandard" and "Doubtful" in the Joint Report of Examination as of August 30, 2004, or by the FDIC or the Department in subsequent Reports of Examination and all other loans in excess of \$10,000, which warrant individual review and consideration by the board of directors as determined

by the loan committee or active management. The loan "watch list" shall be presented to the board of directors for review at least monthly with such review noted in the minutes; and

(xiii) the board of directors 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 board of directors meeting at which all members are present and the vote of each is noted.

[.9] 9. Within 120 days of the effective date of this ORDER, the Bank shall develop and submit to the Regional Director and the Commissioner a written three-year strategic plan. Such plan shall include specific goals for the dollar volume of total loans, total investment securities, and total deposits as of December 31, 2005, and December 31, 2006. For each time frame, the plan will also specify the anticipated average maturity and average yield on loans and securities; the average maturity and average cost of deposits; the level of earning assets as a percentage of total assets; and the ratio of net interest income to average earning assets.

[.10] 10. Within 120 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to control overhead and other expenses and restore the Bank's profitability. 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.

[.11] 11. (a) Within 120 days from the effective date of this ORDER, the Bank shall formulate and fully implement a written plan and a comprehensive budget for all categories of income and expense. The plan and budget required by this paragraph shall include formal goals and strategies, consistent with sound banking practices, to improve the Bank's net interest margin, increase interest income, reduce discretionary expenses, and 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 11(a) of this ORDER, upon completion, shall be submitted to the Regional Director and the Commissioner for their review and opportunity for comment.

(c) Following the end of each calendar quarter, the board of directors shall evaluate the Bank's actual performance in relation to the plan and budget required by subparagraph 11(a) of this ORDER and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the
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board of directors meeting at which such evaluation is undertaken.

[.12] 12. Within 90 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law which are more fully set out on pages 25 and 26 of the Joint Report of Examination as of August 30, 2004. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

[.13] 13. Within 60 days from the effective date of this ORDER, the Bank shall develop and maintain a list which thoroughly and accurately describes all affiliates of the Bank, as such term is defined in sections 23A and 23B of the Federal Reserve Act, 12 U.S.C. §§ 371c & 371c-1. In addition, the Bank's senior management shall develop a clear understanding of the ownership structure of the Bank and the affiliate relationships arising therefrom, and shall maintain any and all documentation necessary to support the Bank's determination of its affiliate relationships. All information and documentation required by this paragraph shall be in a form and

manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.14] 14. Within 120 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 be in a form and manner acceptable to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.15] 15. Within 120 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 and its implementation shall be satisfactory to the Regional Director and the Commissioner as determined at subsequent examinations and/or visitations.

[.16] 16. Within 90 days from the effective date this ORDER, the Bank shall develop, adopt, and implement a written policy satisfactory to the Regional Director and the Commissioner, which policy shall govern the relationship between the Bank and its parent companies and affiliates, and 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 parent companies and affiliates to only those fees or funds paid in connection with services performed by the Bank's holding company on behalf of or for the benefit of the Bank.

[.17] 17. The Bank shall not pay cash dividends without the prior written consent of the Regional Director and the Commissioner.

[.18] 18. Within 120 days from the effective date of this ORDER, the Bank shall adopt an employee compensation plan after undertaking a review of compensation paid to any of the Bank's executive officers and directors. At a minimum, the review shall include the following:

- (a) a critical analysis of each individual's background, experience, duties and responsibilities, and an appraisal of each individual's performance compared to the present level of compensation;
- (b) a comparison of each officer's total compensation with compensation received by officers with similar responsibilities in similar institutions; and
- (c) a determination of whether present executive officers are capable of implementing board directives and policies, operating within the constraints of laws and regulations, and operating the Bank in a prudent manner.

For the purposes of this paragraph, "compensation" refers to any and all salaries, bonuses, and other benefits of every kind and nature whatsoever, whether paid directly or indirectly.

[.19] 19. Upon the effective date of this ORDER, the Bank shall not increase the amount of brokered deposits above the amount outstanding on that date.

Within 120 days of the effective date of this ORDER, the Bank shall submit to the Regional Director and the Commissioner a written plan addressing the Bank's funding strategy, including the use of brokered deposits. The Regional Director and the Commissioner shall have the right to reject the Bank's plan. For purposes of this ORDER, brokered deposits are defined as described in section 337.6(a)(2) of FDIC Rules and Regulations to include any deposits funded by third party agents or nominees for depositors, including deposits managed by a
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trustee or custodian when each individual beneficial interest is entitled to or asserts a right to federal deposit insurance.

[.20] 20. Following the effective date of this ORDER, the Bank shall provide a copy of this ORDER to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication. If a description of this ORDER is provided, the description shall fully describe the ORDER in all material respects, and 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 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.

[.21] 21. 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 and the Department.

Pursuant to delegated authority.

Dated at San Francisco, California, this 31st day of January, 2005.

Last
Updated legal@fdic.gov
5/28/2005