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¶12,059] **In the Matter of Capital Community Bank, Inc. Orem, Utah**, Docket No. 03-080b (6-11-03).

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. *(This order was terminated by order of the FDIC dated 8-3-05; see ¶16,431.)*

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

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

[\[.3\]](#) **Capital—Maintain Tier 1 Capital**

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

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

[\[.6\]](#) **Loans—Extensions of Credit—To Borrowers with Existing Adversely Classified Credits**
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[\[.7\]](#) **Loan Policy—Preparation or Revision of Policy Required**

[\[.8\]](#) **Strategic Plan—Preparation of Required**

[\[.9\]](#) **Violations of Law—Correction of Violations Required**

[\[.10\]](#) **Funds Management and Liquidity—Preparation or Revision of Funds Management Policy Required**

[\[.11\]](#) **Bank Operations—Internal Review and Control Procedures—Establish**

[\[.12\]](#) **Audit—Internal Audit—Minimum Procedures Specified**

[\[.13\]](#) **Dividends—Dividends Restricted**

[\[.14\]](#) **Progress Report—Written Report Required**

**In the Matter of
 CAPITAL COMMUNITY BANK, INC.
 OREM, UTAH
 (Insured State Nonmember Bank)
 ORDER TO CEASE AND DESIST**

FDIC-03-080b

Capital Community Bank, Inc., Orem, 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 June 5, 2003, and with counsel for the Department of Financial Institutions for the State of Utah ("Department"), dated June 5, 2003, 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 it 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 AGREEMENTS 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) engaging in hazardous lending and collection practices;
- (d) operating with inadequate capital in relation to the kind and quality of assets held by the Bank;
- (e) operating with a large volume of poor quality loans;
- (f) operating with an inadequate loan valuation reserve;
- (g) operating with inadequate provisions for liquidity;
- (h) operating with inadequate internal routine and controls policies;
- (i) operating with inadequate loan policies; and
- (j) operating in such a manner as to produce low earnings.

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

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[.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, and liquidity.

(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, in accordance with section 32 of the Federal Deposit Insurance Act, 12 U.S.C. §1831(i)(a). 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. 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. 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; internal routines and controls; uncollected funds and overdraft activity; investment activity; individual committee actions, with review and approval of all bank policies at least annually. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

[.3]3. (a) Within 120 days from the effective date of this ORDER, the Bank shall attain Tier 1 capital in such an amount as to equal or exceed eight (8.0) percent 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 eight (8.0) percent of the Bank's total assets.

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

(c) The level of Tier 1 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 loan and lease losses, the adequacy of which shall be satisfactory to the Regional Director and as determined at subsequent examinations and/or visitations.

(d) Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 3 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) the direct contribution of cash by the board of directors and/or shareholders of the Bank; or
- (iv) any other means acceptable to the Regional Director and the Bank; or
- (v) any combination of the above means.

Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 3 of this

ORDER may not be accomplished through a deduction from the Bank's allowance for loan and lease losses.

(e) If all or part of the increase in Tier 1 capital required by Paragraph 3 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, Accounting and Securities Section, 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 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.

(f) 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 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.

(g) 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).

[.4]4. Within 60 days from the effective date of this ORDER, the Bank shall establish and thereafter maintain an adequate allowance for loan and lease losses.

Additionally, within 60 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 within fifteen (15) days following the end of each quarter. 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 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. 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 Bank as determined at subsequent examinations and/or visitations.

[.5]5. (a) Within 30 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 FDIC's and the Department's Joint Report of Examination dated January 13, 2003, 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 120 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard"
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and those assets classified "Doubtful" in the FDIC's and the Department's Joint Report of Examination dated January 13, 2003, that have not previously been charged off to not more than \$5,000,000.

(c) Within 180 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" in the FDIC's and the Department's Joint Report of Examination dated January 13, 2003, that have not previously been charged off to not more than \$4,000,000.

(d) Within 365 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" in the FDIC's and the Department's Joint Report of Examination dated January 13, 2003, that have not previously been charged off to not more than \$2,000,000.

(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 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), and 5(d) 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.

[.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" 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 that has been classified, in whole or part, "Substandard" or "Doubtful" without the prior approval of a majority of the board of directors or the loan committee of the Bank.

[.7]7. (a) Within 60 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, and strict controls will be placed on the extensions of credit via overdrafts. 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 loans maybe extended or renewed;

(vi) provisions which establish standards for unsecured credit; including granting of immediate credit on uncollected funds and use of overdrafts; [{{8-31-03 p.C-5781}}](#)

(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 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;

(x) provisions which require the preparation of a loan "watch list" which shall include relevant information on all loans in excess of \$50,000 which are classified "Substandard" and "Doubtful" in the FDIC's and the Department's Joint Report of Examination dated January 13, 2003, or by the FDIC or the Department in subsequent Reports of Examination and all other loans in excess of \$50,000 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

(xi) 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 reviewed at least annually and reflected in minutes of a board of directors meeting at which all members are present and the vote of each is noted.

[.8]8. 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. 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. 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 120 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 page 16 in the FDIC's and the Department's Joint Report of Examination dated January 13, 2003. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

[.10]10. 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 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 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.

[.12]12. Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement an internal audit policy. The policy shall ensure that all high risk areas of the Bank are routinely audited by individuals unassociated with daily work in those areas. Findings shall be presented directly to a committee of outside directors who will ensure that all noted internal audit deficiencies are corrected in a timely manner.

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

[.14]14. 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

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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 11th day of June, 2003.

Last
Updated legal@fdic.gov
11/14/2005