

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

In the Matter of

MODE ELEVEN BANCORP
Hulett, Wyoming

Docket No. 24-008-B-HC

Order to Cease and Desist Issued
Upon Consent Pursuant to the
Federal Deposit Insurance Act, as
Amended

WHEREAS, Mode Eleven Bancorp (f.k.a. Hulett Bancorp), Hulett, Wyoming (“Bancorp”), is a registered bank holding company that owns and controls Summit National Bank (the “Bank” and collectively with Bancorp, the “Firm”), Hulett, Wyoming, a national bank;

WHEREAS, the Board of Governors of the Federal Reserve System (the “Board of Governors”) is the appropriate federal supervisor of Bancorp;

WHEREAS, Bancorp had previously adopted a strategy focused on providing banking-related services to financial technology companies through certain nonbank subsidiaries requiring significant financial and managerial resources and support from the Firm (the “fintech business strategy”);

WHEREAS, the most recent inspection of Bancorp, dated September 18, 2023, conducted by the Federal Reserve Bank of Kansas City (the “Reserve Bank”) identified deficiencies with respect to the operations of Bancorp, including with respect to pursuit of the fintech business strategy, related to board oversight, capital, earnings, liquidity, risk management, and compliance with the rules related to affiliate transactions;

WHEREAS, Bancorp has since voluntarily ceased pursuit of the fintech business strategy and is winding down all related activities;

WHEREAS, Bancorp and the Board of Governors have the common goal that Bancorp operate in a safe and sound manner and comply with all applicable federal and state laws, rules, and regulations;

WHEREAS, Bancorp and the Board of Governors have mutually agreed to enter into this consent Cease and Desist Order (the "Order"); and

WHEREAS, the board of directors of Bancorp has authorized the undersigned to enter into this Order and consent to compliance with each and every provision of this Order by Bancorp and to waive any and all rights that Bancorp may have pursuant to section 8 of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of charges on any matters set forth in this Order; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order; (iii) judicial review of this Order; and (iv) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of the Order or any provision hereof.

NOW, THEREFORE, it is hereby ordered that, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, pursuant to section 8(b)(1) and (3) of the FDI Act (12 U.S.C. § 1818(b)(1) and 1818(b)(3)), Bancorp shall cease and desist and take affirmative action as follows:

Source of Strength

1. The board of directors of Bancorp shall take appropriate steps to fully utilize Bancorp's financial and managerial resources, pursuant to section 38A of the FDI Act (12 U.S.C. § 1831o-1) and section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)), to serve as a source of strength to the Bank, including, but not limited to, taking steps to ensure that the Bank complies with any supervisory action taken by the Bank's federal regulator.

Board Oversight

2. Within 90 days of this Order, Bancorp's board of directors shall submit a written plan to the Reserve Bank to strengthen board oversight of the management and operations of the Firm. The plan shall include the following five items:

(a) actions that the Bancorp's board of directors will take to improve Bancorp's condition and maintain effective control over, and supervision of, the Firm's major operations and activities, including but not limited to, capital, earnings, liquidity, and risk management;

(b) an assessment of the present and future senior staffing needs of the Firm that will ensure that the Firm's management has sufficiently qualified personnel;

(c) a succession plan to ensure the safe and sound operation of the Firm, including in the event of unanticipated staffing shortages;

(d) measures to ensure that the board of directors of Bancorp provides adequate resources to ensure compliance with this Order, including, but not limited to, funding to ensure sufficient staffing levels; and

(e) measures to set forth the responsibility of the Bancorp's board of directors to establish appropriate risk tolerance guidelines and risk limits related to the Firm's business strategy.

Risk Management Program

3. Within 90 days of this Order, Bancorp's senior management shall submit a written plan acceptable to the Reserve Bank to strengthen the Firm's risk management program to ensure that it is commensurate with the risks posed by the Firm's business strategy. The plan shall provide for a sustainable risk management framework that includes the following four items:

(a) written policies and procedures to identify, manage, and monitor potential risks, including compliance and fraud risks, associated with products, programs, services, business lines, or customers or program managers;

(b) measures to ensure that the individuals or groups charged with overseeing the Firm possess the appropriate subject matter expertise, stature, and authority; have clearly defined roles and responsibilities; and are allocated adequate resources and staffing;

(c) steps to enable the timely identification, measurement, and reporting of risk exposures associated with the products and services offered, including:

- (i) a common risk assessment methodology that is regularly updated to account for changes in relevant risk factors;
- (ii) the provision of sufficient information, data, and reports to senior management and the board of directors that enable proper identification and oversight of developing risks;
- (iii) enhancements to the escalation and challenge processes within the business lines and risk functions to ensure that each exercises responsibility for risk identification, measurement, and reporting; and
- (d) a requirement that Bancorp's board of directors or a committee thereof provide written approval prior to implementing, distributing, or marketing new products, programs, services, business lines, or onboarding of new customers or program managers.

Earnings Plan and Budget

4. (a) Within 90 days of this Order, Bancorp shall submit to the Reserve Bank a written business plan for 2024 to improve its earnings and overall condition. The plan, at a minimum, shall provide for or describe:

- (i) a realistic and comprehensive budget for 2024, including income statement and balance sheet projections; and
- (ii) a description of the operating assumptions that form the basis for, and adequately support, major projected income, expense, and balance sheet components.

(b) During the term of this Order, a business plan and budget for each calendar year subsequent to 2024 shall be submitted to the Reserve Bank at least 30 days prior to the beginning of that calendar year.

Liquidity and Funds Management

5. Within 90 days of this Order, Bancorp shall submit an enhanced liquidity risk management program for Bancorp that is acceptable to the Reserve Bank. The program shall include steps to diversify sources of funding and provide for the periodic independent review and evaluation of all components of Bancorp's liquidity risk management process.

6. Within 90 days of this Order, Bancorp shall submit a revised written contingency funding plan for Bancorp that is acceptable to the Reserve Bank. The plan shall comply with the Interagency Policy Statement on Funding and Liquidity Risk Management, dated March 17, 2010 (SR 10-6), and include adverse scenario planning.

Capital Plan

7. Within 90 days of this Order, Bancorp shall submit to the Reserve Bank an acceptable written plan to maintain sufficient capital at Bancorp on a consolidated basis to support its operations and serve as a financial source of strength to the Bank. The plan shall include the following five items:

(a) an assessment of the expected uses and sources of capital, a detailed description of the Firm's process for assessing capital adequacy, Bancorp's capital policy, and a discussion of any expected changes to Bancorp's business plan that are likely to have a material

impact on capital adequacy or liquidity, in a manner consistent with section 225.8(e)(2) of Regulation Y of the Board of Governors (12 C.F.R. § 225.8(e)(2));

(b) the adequacy of the Bank's capital, taking into account the volume of classified credits, its risk profile, the adequacy of the allowance for credit losses, current and projected asset growth, and projected earnings;

(c) the source and availability of additional funds necessary to fulfill the Firm's and the Bank's future capital requirements on a timely basis;

(d) supervisory requests for additional capital at the Bank or the requirements of any supervisory action imposed on the Bank by its federal regulator; and

(e) the requirements of section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)) that Bancorp serve as a source of strength to the Bank.

8. Bancorp shall notify the Reserve Bank, in writing, no more than 30 days after the end of any quarter in which any of Bancorp's capital ratios fall below the approved plan's minimum ratios. Together with the notification, Bancorp shall submit an acceptable written plan that details the steps that Bancorp will take to increase Bancorp's capital ratios to or above the approved plan's minimums.

Capital Conservation

9. (a) Effective immediately, Bancorp shall not, directly or indirectly, declare or pay dividends, engage in share repurchases, or make any other capital distribution in respect of common shares, preferred shares, or other capital instruments, including, without limitation, any

interest payments due on subordinated debentures, without the prior written approval of the Reserve Bank and the Director of Supervision and Regulation of the Board of Governors. All requests for prior approval shall be received in writing at least 30 days prior to the earlier of proposed declaration, payment, or distribution date, or required notice of deferral, and shall contain, at a minimum, current and projected information, as appropriate, on Bancorp's capital, earnings, and cash flow; the Bank's asset quality, earnings, and allowance for loan and lease losses; and identification of the source(s) of funding for the proposed payment or distribution.

(b) Effectively immediately, Bancorp shall not, directly or indirectly, incur, increase, prepay or guarantee any debt without the prior written approval of the Reserve Bank. All requests for prior approval shall be received at least 30 days prior to the proposed transaction date and contain, but not be limited to, a statement regarding the purpose of the debt, the terms of the debt, and the planned source(s) for debt repayment, and an analysis of the cash flow resources available to meet such debt repayment.

Affiliate Transactions

10. (a) Bancorp shall take all necessary action to ensure that the Bank complies with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. §§ 371c and 371c-1) and Regulation W of the Board of Governors (12 C.F.R. Part 223) in all transactions between the Bank and its affiliates, including, but not limited to, Bancorp and its nonbank subsidiaries.

(b) Bancorp shall not cause the Bank to violate any provision of sections 23A and 23B of the Federal Reserve Act or Regulation W of the Board of Governors.

Limitation on Activities

11. (a) Effective immediately, Bancorp shall not engage in any expansionary activities related to the fintech business strategy, including the establishment of any new subsidiaries, business lines, products, programs, services, customers, or program managers in connection with the fintech business strategy, without the prior written approval of the Reserve Bank. All requests for prior approval shall be submitted in writing, and shall contain, at a minimum, any proposed contract, any management, board, or board committee minutes approving the activity or relationship, a description of the applicable measures to effectively manage the risk posed by the activity or relationship, and an impact analysis on Bancorp's liquidity.

(b) Within 10 days of this Order, Bancorp will provide the complete summary of all costs and expenses incurred to exit or wind down the fintech business strategy accompanied by a plan that provides:

(i) a timeline setting forth any remaining necessary actions to be taken in connection with the exit or wind down of the fintech business strategy;

(ii) an accurate accounting of any remaining costs associated with the exit or wind down, including ongoing vendor contracts, legal expenses, and employee contracts, and an accounting of when each expense will be incurred;

(iii) procedures to provide payment to any remaining creditors in an orderly manner and an accounting of the source of funds used to make such payments; and

(iv) measures to ensure that the books and records of Bancorp are adequately maintained.

Maintenance of Ownership Records

12. Within 30 days of this Order, Bancorp shall submit to the Reserve Bank acceptable written policies and procedures to strengthen and maintain internal controls to ensure that ownership interests in Bancorp are properly identified and aggregated in compliance with the requirements of section 225.41 of Regulation Y of the Board of Governors (12 C.F.R. § 225.41). For each investor that directly acquires new shares, Bancorp must obtain, and maintain as part of its books and records, the following information, at a minimum:

- (a) whether the investor owns or controls, directly or indirectly, 5 percent or more of any class of voting securities, or of the total committed capital, of Bancorp including:
 - (i) the identification and aggregation of shareholders that are acting in concert or commonly controlled;
 - (ii) the identification of any business or family relationships, as defined in section 225.41(b)(3) of Regulation Y of the Board of Governors (12 C.F.R. § 225.41(b)(3)), that directly or indirectly owns, controls, or holds the power to vote Bancorp's voting securities;
 - (iii) the identification of any person that serves as a general partner, manager, managing member, or investment adviser, or acts in a similar capacity to any of the foregoing, of any legal entity presumed to exercise control over Bancorp; and
 - (iv) the contact information and corporate registration information for non-U.S. legal entities;
- (b) the source of funds for each shareholder's purchase of Bancorp stock; and

(c) any agreement, whether a formal or informal agreement of understanding, between an investor in Bancorp or any other Bancorp shareholder relating to the investor's purchase of Bancorp shares.

Compliance with Laws and Regulations

13. (a) In appointing any new director or senior executive officer, or changing the responsibilities of any senior executive officer so that the officer would assume a different senior executive officer position, Bancorp shall comply with the notice provisions of section 32 of the FDI Act (12 U.S.C. § 1831i) and Subpart H of Regulation Y of the Board of Governors (12 C.F.R. §§ 225.71 *et seq.*).

(b) Bancorp shall comply with the restrictions on indemnification and severance payments of section 18(k) of the FDI Act (12 U.S.C. § 1828(k)) and Part 359 of the Federal Deposit Insurance Corporation's regulations (12 C.F.R. § 359).

Progress Reports

14. Within 30 days after the end of each calendar quarter following the date of this Order, the board of directors of Bancorp shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with this Order and the results thereof.

Approval and Implementation of Plans and Programs

15. (a) Bancorp shall submit the written plans, programs, policies, and procedures that are acceptable to the Reserve Bank as set forth in paragraphs 2, 3, 4(a), 5, 6, 7, and 12 of this Order. Each plan, program, policy, and procedure shall contain a timeline for

full implementation of the plan, program, policy, or procedure with specific deadlines for completion of each component of the plan, program, policy, or procedure.

(b) Within 10 days of approval by the Reserve Bank, Bancorp shall adopt the approved plans, programs, policies, and procedures. Upon adoption, Bancorp shall promptly implement the approved plans, programs, policies, and procedures, and thereafter fully comply with them.

(c) During the term of this Order, the approved plans, programs, policies, and procedures shall not be amended or rescinded without the prior written approval of the Reserve Bank.

Notices

16. All communications regarding this Order shall be sent to:

- (a) Richard M. Ashton
Deputy General Counsel
Jason Gonzalez
Deputy Associate General Counsel
Board of Governors of the Federal Reserve System
20th & C Street, N.W.
Washington, D.C. 20551
- (b) Ryan L. Harwell
Vice President
Federal Reserve Bank of Kansas City
1 Memorial Drive
Kansas City, Missouri 64198
- (c) John Miller
Chief Executive Officer
Mode Eleven Bancorp
133 Main Street
P.O. Box 98
Hulett, Wyoming 52720

Miscellaneous

17. Notwithstanding any provision of this Order to the contrary, the Reserve Bank may, in its discretion, grant written extensions of time to Bancorp to comply with this Order. Bancorp must submit a written request to the Reserve Bank for any extension of time.

18. The provisions of this Order shall be binding upon Bancorp and each of its institution-affiliated parties, as defined in sections 3(u) and 8(b)(4) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(4)), in their capacities as such, and their successors and assigns.

19. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended in writing by the Reserve Bank.

20. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any other action affecting Bancorp, any subsidiary thereof, or any of their current or former institution-affiliated parties and their successors and assigns.

21. Nothing in this Order, express or implied, shall give to any person or entity, other than the parties hereto and their successors hereunder, any legal or equitable right, remedy or claim under this Order.

By Order of the Board of Governors of the Federal Reserve System effective this 28th day of March, 2024.

MODE ELEVEN BANCORP

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: /s/ John Miller

By: /s/ Ann Misback

John Miller
Chief Executive Officer

Ann Misback
Secretary of the Board