

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of)
)
)
NUESTRO BANCO) ORDER TO CEASE AND DESIST
RALEIGH, NORTH CAROLINA)
)
(INSURED STATE NONMEMBER BANK))
_____)
)

FDIC-09-006b

NUESTRO BANCO, RALEIGH, NORTH CAROLINA ("Bank"), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and/or violations of law and/or regulation alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Legal Division for the Federal Deposit Insurance Corporation ("FDIC") and with the North Carolina Commissioner of Banks ("Commissioner") dated March 11, 2009 whereby, solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices and violations of law and/or regulation, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the Commissioner. The Commissioner may issue an order to cease and desist pursuant to N.C. Gen. Stat. § 53-107.1(2005).

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

- (a) Operating with a board of directors (“Board”) that has failed to provide adequate supervision over and direction to the management of the Bank;
- (b) Operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;
- (c) Operating with hazardous loan underwriting and administration practices;
- (d) Operating with an inadequate allowance for loan and lease losses (“ALLL”);
- (e) Operating in such a manner as to produce operating losses;
- (f) Operating with a business strategy that has resulted in unprofitable operations and poor asset quality;
- (g) Operating with excessive interest rate sensitivity risk;
- (h) Operating with an inadequate loan policy;
- (i) Operating with an inadequate audit program;
- (j) Operating with inadequate internal routine and controls to prevent potential losses; and,

- (k) Operating the bank with inadequate information systems and management reporting systems;
- (l) Violating laws and regulations, as identified on pages 17 and 18 of the FDIC Report of Examination of the Bank as of September 15, 2008 (“ROE”).

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

1. BOARD OF DIRECTORS

(a) Within 45 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. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committees. Nothing in the foregoing sentences shall preclude the Board from considering matters other than those contained in the agenda. 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 the names of any dissenting directors.

(b) Within 30 days from the effective date of this ORDER, the Board shall establish a Board committee (“Directors’ Committee”), consisting of at least four members, to oversee the Bank’s compliance with the ORDER. Three of the members

of the Directors' Committee shall not be officers of the Bank. The Directors' Committee shall receive from Bank management monthly reports detailing the Bank's actions with respect to compliance with the ORDER. The Directors' Committee shall present a report detailing the Bank's adherence to the ORDER to the Board at each regularly scheduled Board meeting. Such report shall be recorded in the appropriate minutes of the Board's meeting and shall be retained in the Bank's records. Establishment of this committee does not in any way diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

(c) Within 60 days from the effective date of this ORDER, the Bank's Board shall develop and adopt an educational program for periodic training for each member of the Board. The educational program shall include, at a minimum:

- (i) specific training in the areas of lending, operations, and compliance with laws, rules and regulations applicable to banks chartered in the state of North Carolina; and,
- (ii) specific training in the duties and responsibilities of the Board in connection with the safe and sound operation of the Bank.

Upon adoption of the educational program, it shall be submitted to the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Commissioner (collectively, "Supervisory Authorities") for review and comment. The Board shall document the training activities in the minutes of the next Board meeting following completion of the training. The Board's actions as required by this

paragraph shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations.

(d) Within 30 days from the effective date of this ORDER, the Bank shall designate a directors' loan committee to review and approve loans, with such committee being structured so that a majority of its members are persons who are not actively involved in the Bank's lending activities.

2. **MANAGEMENT**

(a) Within 30 days from the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's 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; and
 - (iii) a chief financial 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, earnings, management effectiveness, risk management, and sensitivity to market risk.
- (c) During the life of this ORDER, the Bank shall notify the Supervisory Authorities, in writing, of the resignation or termination of any of the Bank's directors or senior executive officers. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of Section 32 of the Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104.
- (d) Within 30 days from the effective date of this ORDER, the Bank shall develop and approve a written analysis and assessment of the Bank's management and staffing needs ("Management Plan") for the purpose of providing qualified management for the Bank. The Management Plan shall include, at a minimum:
- (i) identification of both the type and number of officer positions needed to properly manage and supervise 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) annual written evaluations of all Bank officers, and in particular the chief executive officer, chief lending officer, and the chief financial officer,

and staff members 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 restoration and maintenance of the Bank in a safe and sound condition;

(iv) a plan to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications to fill those officer or staff member positions consistent with the needs identified in the Management Plan; and

(v) an organizational chart.

(e) The written Management Plan shall also include the requirement that the Board, or a committee thereof consisting of not less than a majority of the individuals, who are independent with respect to the Bank, provide supervision over lending, investment and operating policies of the Bank sufficient to ensure that the Bank complies with the provisions of this ORDER.

(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 such comment, the Board shall approve the written management plan and/or any subsequent modification thereto which approval shall be recorded in the minutes of the Board. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written management plan and/or any subsequent modification.

3. WRITTEN STRATEGIC/BUSINESS PLAN

(a) Within 30 days from the effective date of this ORDER, the Bank shall prepare and submit to the Supervisory Authorities its written three year strategic/business 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. At a minimum the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

- (i) goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;
- (ii) goals for the composition of the deposit base including strategies to reduce reliance on volatile and costly deposits;
- (iii) plans for effective risk management and collection practices.

(b) Within 30 days from the receipt of any comments from the Supervisory Authorities, and after due consideration of any recommended changes, the Board shall approve and implement the business/strategic plan, which approval shall be recorded in the minutes of a Board meeting.

4. PLAN FOR EXPENSES/PROFITABILITY

(a) Within 30 days from the effective date of this ORDER, the Bank shall formulate and implement a written attainable plan to improve and/or sustain Bank

earnings. This plan, which should coincide with the Strategic/Business Plan shall be forwarded to the Supervisory Authorities for review and comment and shall address, at a minimum, the following:

- (i) goals and strategies for improving and sustaining the earnings of the Bank;
 - (ii) the major areas in, and means by which the Bank will seek to improve the Bank's operating performance;
 - (iii) realistic and comprehensive budgets for a 3 year period;
 - (iv) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections;
 - (v) the operating assumptions that form the basis for, and adequately support, major projected income and expense components; and
 - (vi) coordination of the Bank's loan, investment, and operating policies and budget and profit planning with the funds management policy.
- (b) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan required by this paragraph 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.
- (c) Thereafter, the Bank shall formulate such a plan and budget by November 30 of each subsequent year. These plans and budgets shall be submitted to the Supervisory Authorities for review and comment by December 15 of each subsequent year.

5. CHARGE-OFF

(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 or portions of assets classified "Loss" and 50 percent of those assets classified "Doubtful" in the 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 ALLL by an amount equal to 50 percent 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.

(b) Additionally, while this ORDER remains in effect, the Bank shall, within 30 days from the receipt of any official Report of Examination of the Bank from the FDIC or the Commissioner, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any asset classified "Loss" and 50 percent of the those classified "Doubtful" unless otherwise approved in writing by the Supervisory Authorities.

6. REDUCTION OF CLASSIFIED ASSETS

(a) Within 75 days from the effective date of this ORDER, the Bank shall submit to the Supervisory Authorities, for review and comment, a written plan to reduce the Bank's risk position in each asset in excess of \$8,000, which is classified "Substandard" or "Doubtful" in the Report. Within 15 days from the receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank shall approve the plan, which approval shall be

recorded in the minutes of the Board's meeting. Thereafter, the Bank shall implement and follow this plan.

(b) The plan mandated by this paragraph shall include, but not be limited to, the following:

- (i) the dollar levels to which risk in each classified asset will be reduced;
- (ii) a description of the risk reduction methodology to be followed;
- (iii) provisions for the submission of monthly written progress reports to the Board;
- (iv) provisions mandating Board review of said progress reports, and provisions for the mandated review to be recorded by notation in the minutes of the Board meetings.

7. ADDITIONAL CREDIT

(a) As of 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. 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, as of 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 in part, "Substandard" and is uncollected.

(c) Paragraph 7(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. ALLOWANCE FOR LOAN AND LEASE LOSSES

Within 30 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and establish a comprehensive policy for determining the adequacy of the ALLL. For the purpose of this determination, the adequacy of the ALLL shall be determined after the charge-off of all loans or other items classified "Loss". The policy shall provide for a review of the ALLL at least once each calendar quarter. Said review shall be completed in time to properly report the ALLL in the quarterly Reports of Condition and Income. The review shall 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 ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Reports 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.

9. CAPITAL

(a) During the life of this ORDER the Bank shall maintain a Tier 1 Risk-Based Capital Ratio of at least 8 %, a Tier 1 Leverage Capital Ratio of at least 8% and a Total Risk-Based Capital Ratio of at least 12 %.

(b) The level of Tier 1 capital and total risk based capital to be maintained during the life of this ORDER pursuant to Subparagraph 3(a) shall be in addition to a fully funded ALLL, the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) Any increase in Tier 1 capital and total risk based capital necessary to meet the requirements of Paragraph 9 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, 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 and total risk-based capital necessary to meet the requirements of Paragraph 9 of this ORDER may not be accomplished through a deduction from the Bank's ALLL.

(d) For the purposes of this ORDER, the terms "Tier 1 capital", "total risk-based capital", "total assets", and "total risk weighted assets" shall have, the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325.

10. BROKERED DEPOSITS

(a) Upon the effective date of this ORDER, the Bank shall not increase the amount of brokered deposits above the amount outstanding on that date.

(b) Within 10 days of the effective date of this ORDER, the Bank shall submit to the Supervisory Authorities a written plan for eliminating its reliance on brokered deposits. The plan should contain details as to the current composition of brokered deposits by maturity and explain the means by which such deposits will be paid or rolled over. The Supervisory Authorities shall have the right to reject the Bank's plans for utilizing brokered deposits and may request periodic progress reports on the level, source, and use of brokered deposits within the Bank's plan. For purposes of this ORDER, brokered deposits are defined as described in section 337.6 of the FDIC's Rules and Regulations, 12 C.F. R. § 337.6.

11. COMPENSATION

(a) Within 60 days from the effective date of this ORDER, the Bank shall adopt an employee compensation plan after undertaking a review of compensation paid to all of the Bank's senior executive officers, as defined at Section 303.101(b) of the

FDIC's Rules and Regulations (12 C.F.R. § 303.101(b)). At a minimum, the review shall include the following:

- (i) an 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;
 - (ii) a comparison of each officer's total compensation with compensation received by officers with similar responsibilities in similar institutions; and
 - (iii) 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.
- (b) 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. The compensation plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities.

12. AUDITS

Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a comprehensive written audit program. A copy of the audit program shall be submitted to the Supervisory Authorities upon its completion for review and comment. Within 30 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. The Bank shall thereafter implement and enforce an effective system of internal and external audits. The internal auditor shall make written monthly reports of audit findings directly to the Board. The minutes of the meetings of the Board shall reflect consideration of these reports and describe any action taken as a result thereof.

13. POLICY FOR INTERNAL ROUTINE AND CONTROL

(a) Within 30 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 controls within the Bank consistent with safe and sound banking practices. Such policy and its implementation shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies as more fully set forth on page 3 of the ROE and shall be satisfactory to the Supervisory Authorities.

(b) Within 60 days from the effective date of this ORDER, the Bank shall develop an internal audit program that establishes procedures to protect the integrity of the Bank's operational and accounting systems. The program shall be in a form and manner acceptable to the Supervisory Authorities.

14. VIOLATIONS

Within 10 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulation, which are more fully set out on pages 16 and 17 of the ROE. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

15. ETHICS

Within 90 days from the effective date of this ORDER, the Bank shall develop, adopt and implement a written ethics policy ("Ethics Policy") and program ("Ethics Program").

(a) The Ethics Policy shall state the ethical standards expected of directors, officers, employees, agents and other persons participating in the conduct of the affairs of the Bank ("Covered Individuals"), in the performance of their duties and responsibilities.

(b) The Ethics Program shall establish the definitions, instructions and format to be followed by Covered Individuals in the preparation of comprehensive conflict disclosure statements (“Statements”) to be filed for review by an Ethics Counselor and/or Ethics Committee; and require:

- (i) initial statements from all existing Covered Individuals;
- (ii) initial statements from any person who becomes a new Covered Individual;
- (iii) periodic statements from all Covered Individuals; and
- (iv) immediate reporting of new conflicts or discovery of previously unreported conflicts.

(c) At a minimum, the Ethics Program shall address the:

- (i) use of official information;
- (ii) use of Bank property;
- (iii) financial interests and obligations that appear to conflict with the individual's duties and responsibilities, including, but not limited to, participation of any sort in any transaction or loan in which the individual, his spouse, child, partner, or any organization in which the individual has a financial interest, or serves as an officer, director, trustee, or partner, is involved; and
- (iv) outside employment and other activities.

16. LENDING AND COLLECTION POLICIES

Within 60 days from the effective date of this ORDER, the Bank shall review its written lending and collection policies and procedures for areas of weakness and revise, adopt, and

implement the necessary changes to provide effective guidance and control over the Bank's lending function, which implementation shall include the resolution of those exceptions enumerated on pages 10 through 13 of the ROE. Special attention should be given to procedures, underwriting guidelines and approval requirements for the purchase of dealer generated automobile loans of acceptable credit quality. 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.

17. INFORMATION TECHNOLOGY

Within 60 days from the effective date of this ORDER, the Bank shall ensure correction by the Bank of all deficiencies in regards to Information Technology as set forth on page 6 of the ROE.

18. CASH DIVIDENDS

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

19. PROGRESS REPORTS

Within 30 days from the end of the first quarter following the effective date of this ORDER, and within 30 days of the end of each 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 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. All

progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the appropriate Board meeting.

20. DISCLOSURE

Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429 and to the State of North Carolina, Commissioner of Banks, 316 Edenton Street, Raleigh, North Carolina, 27603 to review at least twenty (20) days prior to dissemination to shareholders. Any changes requested to be made by the Supervisory Authorities shall be made prior to dissemination of the description, communication, notice, or statement.

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 12th day of March, 2009

/s/

Mark S. Schmidt
Regional Director
Division of Supervision and Consumer Protection
Atlanta Region
Federal Deposit Insurance Corporation

The North Carolina Commissioner of Banks having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of the said ORDER by the Federal Deposit Insurance Corporation shall be binding as between the Bank and the Commissioner to the same degree and legal effort that such ORDER would be binding on the Bank if the Commissioner had issued a separate ORDER that included and incorporated all of the provisions of the foregoing ORDER pursuant to the provisions of N.C. Stat. § 53-107.1(2005).

Dated this ____ day of _____, 2009.

Joseph A. Smith, Jr.
Commissioner of Banks
State of North Carolina