

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

and

COMMONWEALTH OF KENTUCKY

DEPARTMENT OF FINANCIAL INSTITUTIONS

_____	)	
In the Matter of	)	
	)	ORDER TO
THE BANK OF HARLAN,	)	CEASE AND DESIST
HARLAN, KENTUCKY	)	
	)	FDIC-08-164b
(Insured State Nonmember Bank)	)	
	)	
_____	)	

The Bank of Harlan, Harlan, Kentucky ("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, rule, or regulation alleged to have been committed by the Bank, and of its right to a hearing on the charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and under section 286.3-690 of the Kentucky Revised Statutes, Ky. Rev. Stat. Ann. § 286.3-690 (Michie 2006), regarding hearings before the Department of Financial Institutions for the Commonwealth of Kentucky ("KDFI"), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with representatives of the Federal Deposit Insurance Corporation ("FDIC") and KDFI, dated September 25, 2008, whereby, solely for the purpose of this proceeding and

without admitting or denying the charges of unsafe or unsound banking practices and violations of law, rule, or regulation, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and KDFI.

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

A. Engaging in hazardous lending and lax collection practices, including, but not limited to:

- The failure to obtain proper loan documentation;
- The failure to establish and enforce adequate loan repayment programs;
- The failure to obtain current and complete financial information;
- Excessive capitalization of interest; and

- The failure to recognize loss and nonaccrual status in a timely manner.

B. Violating law, rule, or regulation, including:

- The Commonwealth of Kentucky guidelines for holding other real estate as set forth in section 286.3 of the Kentucky Revised Statutes, Ky. Rev. Stat. Ann. § 286.3-100(Michie 1981);
- The underwriting procedures of section 215.4(a)(1) of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. § 215.4(a)(1);
- The prior approval requirements for loans to bank insiders as set forth in section 215.4(b) of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O") 12 C.F.R. § 215.4(b);
- The additional restrictions on loans to executive officers of section 215.5(a) of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. § 215.5(a);
- The financial statement requirements of section 215.5(d)(3) of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. § 215.5(d)(3);

- The overdraft restrictions of section 215.4(e) of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. § 215.4(e);
- The recordkeeping requirements of section 215.8 of Regulation O of the Board of Governors of the Federal Reserve System ("Regulation O"), 12 C.F.R. § 215.8;
- The substantially same terms requirement of section 23B of the Federal Reserve Act ("section 23B"), 12 U.S.C. § 371c-1(a)(1)(A);
- The good faith terms and circumstances requirement of section 23B of the Federal Reserve Act ("section 23B"), 12 U.S.C. § 371c-1(a)(1)(B);
- The appraisal requirements of Part 323 of the FDIC Rules and Regulations, 12 C.F.R. Part 323; and
- The requirements for designation of a qualified Bank Secrecy Act officer, as required by section 326.8(c)(3) of the FDIC Rules and Regulations, 12 C.F.R. § 326.8(c)(3).

C. Operating with an excessive level of adversely classified assets.

D. Operating with an inadequate allowance for loans and lease losses for the volume, kind, and quality of loans and leases held.

E. Paying excessive dividends in relation to the Bank's capital position, earnings capacity and asset quality.

F. Failing to have a written policy limiting payment of expenses of officers and directors.

G. Operating with inadequate internal routines and controls.

H. Operating with an inadequate loan policy.

I. Operating with an inadequate audit program.

J. Operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits.

K. Operating with a board of directors which has failed to provide adequate supervision over and direction to the management of the Bank to prevent unsafe or unsound banking practices and violation(s) of law, rule, or regulation.

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

#### MANAGEMENT

1. (a) Within 120 days from the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include: (i) a chief executive officer with the ability to manage a bank of comparable size and

to upgrade a low quality loan portfolio; and (ii) a new senior lending officer with an appropriate level of lending, collection, and loan supervision ability for the type and quality of the Bank's loan portfolio. Such person(s) shall be provided the necessary written authority to implement the provisions of this ORDER. 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, rules, 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.

(b) During the life of this ORDER, the Bank shall notify the Regional Director of the Chicago Regional Office of the FDIC ("Regional Director") and the Commissioner of KDFI ("Commissioner") in writing of any changes in any of the Bank's directors or senior executive officers. For purposes of this ORDER, "senior executive officer" is defined as in section 32 of the Act ("section 32"), 12 U.S.C. § 1831(i), and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. § 303.101(b) and includes any person identified by the FDIC and

KDFI, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the Bank.

(c) Prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104. Further, the Bank shall request and obtain the Commissioner's written approval prior to the addition of any individual to the board of directors and the employment of any individual as a senior executive officer.

2. (a) Within 60 days from the effective date of this ORDER, the Bank shall retain a bank consultant acceptable to the Regional Director and Commissioner. The consultant shall develop 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.

(b) The Bank shall provide the Regional Director and Commissioner with a copy of the proposed engagement letter or contract with the consultant for review before it is executed. The contract or engagement letter, at a minimum, should include:

- (i) A description of the work to be performed under the contract or engagement letter;

- (ii) The responsibilities of the consultant;
- (iii) An identification of the professional standards covering the work to be performed;
- (iv) Identification of the specific procedures to be used when carrying out the work to be performed;
- (v) The qualifications of the employee(s) who are to perform the work;
- (vi) The time frame for completion of the work;
- (vii) Any restrictions on the use of the reported findings; and
- (viii) A provision for unrestricted examiner access to workpapers.

(c) The Management Plan shall be developed within 90 days from the effective date of this ORDER. The Management Plan shall include, at a minimum:

- (i) Identification of both the type and number of officer and staff 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) Evaluation of all Bank officers to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Bank's established policies and practices, and restoration and maintenance of the Bank in a safe and sound condition; and
- (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 identified by this paragraph of this ORDER.

(d) The Management Plan shall be submitted to the Regional Director and Commissioner for review and comment upon its completion. Within 30 days from the receipt of any comments from the Regional Director and Commissioner and after the adoption of any recommended changes, the Bank shall approve the Management Plan, and record its approval in the minutes of the board of directors' meeting. Thereafter, the Bank, its directors, officers, and employees shall implement and adhere to the Management Plan and/or any subsequent modification.

PROHIBITION OF ADDITIONAL LOANS TO CLASSIFIED BORROWERS

3. (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 is already obligated in any manner to the Bank on any extensions of credit (including any portion thereof) that has been charged off the books of the Bank or classified "Loss" in the Joint Report of Examination dated April 7, 2008 ("Joint Report"), so long as such credit remains uncollected.

(b) 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 whose loan or other credit has been classified "Substandard" or is listed for Special Mention in the Joint Report, and is uncollected unless the Bank's board of directors has adopted, prior to such extension of credit, a detailed written statement giving the reasons why such extension of credit is in the best interest of the Bank. A copy of the statement shall be placed in the appropriate loan file and shall be incorporated in the minutes of the applicable board of directors' meeting.

LOSS CHARGE-OFF

4. As of 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" in the Joint

Report that have not been previously collected or charged off. Any such charged-off asset shall not be rebooked without the prior written consent of the Regional Director and Commissioner. Elimination or reduction of these assets with the proceeds of other Bank extensions of credit is not considered collection for the purpose of this paragraph.

ALLOWANCE FOR LOAN AND LEASE LOSSES

5. (a) Within 30 days from the effective date of this ORDER, the Bank shall replenish its allowance for loan and lease losses ("ALLL") by making a provision of at least \$600,000.

(b) Within 30 days from the effective date of this ORDER, the Bank shall make an additional provision for loan and lease losses which, after review and consideration by the board of directors, reflects the potential for further losses in the remaining loans or leases classified "Substandard" and all other loans and leases in its portfolio. In making this determination, the board of directors shall consider the Federal Financial Institutions Examination Council ("FFIEC") Instructions for the Reports of Condition and Income and any analysis of the Bank's ALLL provided by the FDIC or KDFI.

(c) Within 30 days from the effective date of this ORDER, Reports of Condition and Income required by the FDIC and filed by the Bank subsequent to April 7, 2008 but prior to the effective date of this ORDER, shall be amended and refiled if

they do not reflect a provision for loan and lease losses and an ALLL which are adequate considering the condition of the Bank's loan portfolio, and which, at a minimum, incorporate the adjustments required by this paragraph.

(d) Prior to submission or publication of all Reports of Condition and Income required by the FDIC after the effective date of this ORDER, the board of directors of the Bank shall review the adequacy of the Bank's ALLL, provide for an adequate ALLL, and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the findings of the review, the amount of increase in the ALLL recommended, if any, and the basis for determination of the amount of ALLL provided. In making these determinations, the board of directors shall consider the FFIEC Instructions for the Reports of Condition and Income and any analysis of the Bank's ALLL provided by the FDIC or KDFI.

#### REDUCTION OF SUBSTANDARD ASSETS

6. (a) Within 90 days from the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and Commissioner for review and comment a written plan to reduce the Bank's risk position in each asset in excess of \$100,000 which is classified "Substandard" in the Joint Report . In developing such plan, the Bank shall, at a minimum:

- (i) Review the financial position of each such borrower, including source of repayment, repayment ability, and alternative repayment sources; and
- (ii) Evaluate the available collateral for each such credit, including possible actions to improve the Bank's collateral position.

(b) Such plan shall include, but not be limited to:

- (i) Dollar levels to which the Bank shall reduce each asset within 180 days from the effective date of this ORDER; and
- (ii) Provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

(c) As used in this paragraph, "reduce" means to: (1) collect; (2) charge off; or (3) improve the quality of such assets so as to warrant removal of any adverse classification by the FDIC or KDFI.

(d) Within 30 days from the receipt of any comment from the Regional Director and Commissioner, and after the adoption of any recommended changes, the Bank shall approve the written plan, which approval shall be recorded in the minutes of the

next board of directors' meeting. Thereafter, the Bank shall implement and adhere to this written plan.

SPECIAL MENTION/TECHNICAL EXCEPTIONS

7. (a) Within 90 days from the effective date of this ORDER, the Bank shall correct all deficiencies in the loans listed on the Assets with Credit Data or Collateral Documentation Exceptions pages and the loans listed for "Special Mention" in the Joint Report.

(b) To the extent any deficiencies listed on the Assets with Credit Data or Collateral documentation Exceptions of the loans listed for "Special Mention" in the Joint Report cannot be corrected or eliminated within the indicated time frame, the Bank shall provide to the Regional Director and Commissioner a written statement indicating the identity of the borrower and giving an explanation of why the exceptions could not be corrected or eliminated.

REDUCTION OF DELINQUENCIES

8. (a) Within 90 days from the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and Commissioner for review and comment a written plan for the reduction and collection of delinquent loans. The plan shall include, but not be limited to, provisions which:

- (i) Prohibit the extension of credit for the payment of interest;

- (ii) Delineate areas of responsibility for ensuring the delinquent status of loans is properly calculated;
- (iii) Establish acceptable guidelines for the collection of delinquent credits; and
- (iv) Provide for the submission of monthly written progress reports to the Bank's board of directors for review and notation in the minutes of the meetings of the board of directors.

(b) Within 30 days from receipt of any comment from the Regional Director and Commissioner, and after the adoption of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of the next board of directors' meeting. Thereafter, the Bank shall implement and adhere to the plan.

#### LOAN COMMITTEE

9. (a) As of the effective date of this ORDER, the Bank's loan committee shall meet at least monthly, and shall be composed of a majority of independent directors.

(b) The loan committee shall, at a minimum, perform the following functions:

- (i) Evaluate, grant and/or approve loans in accordance with the Bank's loan policy as

amended to comply with this ORDER. The loan committee shall provide a thorough written explanation of any deviations from the loan policy, which explanation shall address how the exceptions are in the Bank's best interest. The written explanation shall be included in the minutes of the corresponding committee meeting and signed by each member of the Committee.

- (ii) Review and monitor the status of repayment and collection of overdue and maturing loans, as well as all loans classified "Substandard" in the Joint Report, or that are included on the Bank's internal watch list.
- (iii) Review and give prior written approval for all advances, renewals, or extensions of credit to any borrower or the borrower's related interests when the aggregate volume of credit extended to the borrower and the borrower's related interests exceeds \$100,000. For purposes of this ORDER, the term "related interest" is defined pursuant to section 215.2(n) of Regulation O of the



Board of Governors of the Federal Reserve System, 12 C.F.R. § 215.2(n).

- (iv) Review all applications for new loans and renewals of existing loans to Bank directors, executive officers, and their related interests, and prepare a written opinion as to whether the credit is in conformance with the Bank's loan policy and all applicable laws, rules, and regulations. Such applications, renewals, and written opinions shall be referred to the Bank's board of directors for consideration.
- (v) Maintain written minutes of the committee meetings, including a record of the review and status of the aforementioned loans. Such minutes shall be made available at the next Bank board of directors' meeting.

#### LOAN POLICY

10. (a) Within 60 days from the effective date of this ORDER, and annually thereafter, the board of directors of the Bank shall review the Bank's loan policy and procedures for adequacy and, based upon this review, shall make all appropriate revisions to the policy necessary to strengthen lending procedures and abate additional loan deterioration. The revised

written loan policy shall be submitted to the Regional Director and Commissioner for review and comment upon its completion.

(b) The initial revisions to the Bank's loan policy required by this paragraph, at a minimum, shall include provisions:

- (i) Establishing review and monitoring procedures for compliance with the FDIC's regulation on appraisals, 12 C.F.R. Part 323;
- (ii) Establishing review and monitoring procedures to ensure that all lending personnel are adhering to established lending procedures and that the directorate is receiving timely and fully documented reports on loan activity, including any deviations from established policy;
- (iii) Requiring formal training of lending personnel to ensure their ability to fulfill all responsibilities for their positions;
- (iv) Requiring that all extensions of credit originated or renewed by the Bank be supported by current credit information and collateral documentation, including lien

searches and the perfection of security interests; have a clearly defined and stated purpose; and have a predetermined and realistic repayment source and schedule. Credit information and collateral documentation shall include current financial information, profit and loss statements or copies of tax returns, and cash flow projections, and shall be maintained throughout the term of the loan;

- (v) Requiring the establishment and maintenance of a loan grading system and internal loan watch list;
- (vi) Prohibiting the capitalization of interest or loan-related expenses unless the board of directors provides, in writing, a detailed explanation of why said deviation is in the best interest of the Bank;
- (vii) Requiring that extensions of credit to any of the Bank's executive officers, directors, or principal shareholders, or to any related interest of such person, be thoroughly reviewed for compliance with all provisions of Regulation O;

- (viii) Requiring a nonaccrual policy in accordance with the Federal Financial Institutions Examination Council's Instructions for the Consolidated Reports of Condition and Income;
- (ix) Requiring accurate reporting of past due loans to the loan committee on at least a monthly basis;
- (x) Requiring monthly loan maturity reports for loans maturing within thirty, sixty, and ninety days from the date of the report;
- (xi) Establishing guidelines for adjusting payments on adjustable rate mortgagee to prevent negative amortization.
- (xii) Requiring that collateral appraisals be completed prior to the making of secured extensions of credit, and that periodic collateral valuations be performed for all secured loans listed on the Bank's internal watch list, criticized in any internal or outside audit report of the Bank, or criticized in any regulatory report of examination of the Bank;

- (xiii) Prohibiting the payment of any overdraft in excess of \$10,000 without the prior written approval of the Bank's loan committee; and
- (xiv) Prohibiting advancement of loan due dates except through the full collection of principal and interest when due.

(c) Within 30 days from the receipt of any comments from the Regional Director and Commissioner, and after the adoption of any recommended changes, the board of directors shall approve the written loan policy and any subsequent modification thereto, which approval shall be recorded in the minutes of the next board of directors' meeting. Thereafter, the Bank shall implement and adhere to the amended written loan policy.

#### CORRECTION OF VIOLATIONS

11. (a) Within 90 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law, rule, and regulation and contraventions of policy statements listed in the Joint Report.

(b) Within 90 days from the effective date of this ORDER, the Bank shall implement procedures to ensure future compliance with all applicable laws, rules, and regulations and statements of policy.

POLICY FOR EXPENSE REIMBURSEMENTS

12. (a) Within 60 days from the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and Commissioner for review and comment a written policy covering expense reimbursements to its directors, officers, and employees. At a minimum, the policy shall include:

- (i) Provisions which specify reasonable limitations for all categories of expenses related to customer entertainment and business development;
- (ii) Provisions which require complete documentation of all expenses related to customer entertainment and business development prior to Bank reimbursement. At a minimum, the Bank shall require the submission of original receipt(s), identification of the person(s) entertained, and the business purpose of the expense;  
and
- (iii) Provisions which prohibit the reimbursement of personal expenses of the Bank's directors, officers, and employees.

(b) While this ORDER is in effect, the Bank's board of

directors shall conduct monthly reviews of all expenses submitted for customer entertainment, business development, and/or any other expense submitted by the Bank's officers and directors, with the results of the reviews stated in the minutes of the meetings of the board of directors at which such reviews are performed. On a monthly basis, the Bank shall seek reimbursement for any expenses paid which are not in conformance with the policy established pursuant to this paragraph.

(c) Within 30 days from the receipt of any such comments from the Regional Director and Commissioner and after adoption of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of the next board of directors' meeting. Thereafter, the Bank shall implement and adhere to the plan.

#### AUDITS

13. (a) Within 120 days from the effective date of this ORDER, the Bank's board of directors shall formulate and submit to the Regional Director and Commissioner for review and comment a comprehensive written audit program, including provisions for both internal and external auditors. At a minimum, the audit program shall provide for:

- (i) A review of user access levels and file maintenance changes;
- (ii) Quarterly payroll audits;

(iii) The distribution of written monthly reports of audit findings directly to the Bank's board of directors, a prompt review of all findings by the board, and a requirement that any action taken as a result of the findings be recorded in the minutes of the meetings of the board, should the board choose not to take any action with regard to an audit finding that decision, and the reasons therefore, should also be recorded in the minutes; and

(iv) Formal training of audit and BSA personnel to ensure their ability to fulfill all responsibilities for their positions.

(b) Within 30 days from the receipt of any comments from the Regional Director and Commissioner and after adoption of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of the next board of directors' meeting. Thereafter, the Bank shall implement and adhere to the plan.

(c) The Bank shall provide the Regional Director and Commissioner with a copy of all external audit reports within 10 days of the Bank's receipt of such report(s). The Bank shall thereafter implement and adhere to an effective system of internal and external audits.



INTERNAL ROUTINES

14. (a) Within 120 days from the effective date of this ORDER, the Bank shall correct the deficiencies in internal routines and controls which are listed in the Joint Report.

(b) Within 120 days of the effective date of this ORDER, the Bank shall establish policies to prevent the recurrence of any deficiencies noted in the Joint Report, including but not limited to the following:

- (i) Completing a comprehensive review of all computer user access levels to file maintenance capabilities and adjusting levels as necessary;
- (ii) Requiring that file maintenance changes be reviewed and approved by an employee designated with that responsibility prior to implementation of the change;
- (iii) Requiring that customer approval of a transaction be obtained and documented prior to accessing customers' accounts;
- (iv) Prohibiting access to customer accounts by loan officers;
- (v) Prohibiting employees who have a financial interest in any transaction with a customer

- from involvement in the preparation of tickets relating to that transaction;
- (vi) Requiring dual control procedures for processing night deposits, as described in the Joint Report;
  - (vii) Prohibiting the use of a Bank credit card by anyone other than the named holder of the card.

INTEREST RATE RISK

15. (a) Within 90 days of the effective date of the Order, the Bank shall formulate, adopt, and submit to the Regional Director and Commissioner, a plan to regularly obtain interest rate sensitivity reports. The reports shall document all significant assumptions made, which should be tailored to the Bank's risk characteristics.

(b) Within 30 days from the receipt of any such comments from the Regional Director and Commissioner and after adoption of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of the next board of directors' meeting. Thereafter, the Bank shall implement and adhere to the plan.

(c) Within 60 days of the effective date of this Order, the Bank shall amend its Interest Rate Risk Policy to provide

for appropriate risk limits for changes in the economic value of equity.

CAPITAL

16. Within 30 days from the last day of each calendar quarter following the effective date of this ORDER the Bank shall determine from its Report of Condition and Income its level of Tier 1 capital as a percentage of its total assets ("capital ratio") for that calendar quarter. If the capital ratio is less than 8.0 percent, the Bank shall, within 60 days of the date of the required determination, increase its capital ratio to not less than 8.0 percent calculated as of the end of that preceding quarterly period. For purposes of this ORDER, Tier 1 capital and total assets shall be calculated in accordance with Part 325 of the FDIC Rules and Regulations ("Part 325"), 12 C.F.R. Part 325.

(a) Any such increase in Tier 1 capital may be accomplished by the following:

- (i) The sale of common stock and noncumulative perpetual preferred stock constituting Tier 1 capital under Part 325; or
- (ii) The collection of, or recovery on, all or part of the assets classified "Loss" in the Report without loss or liability to the

Bank, provided any such collection on a partially charged-off asset shall first be applied to that portion of the asset which was not charged off as of April 7, 2008 as provided in this ORDER; or

(iii) The collection in cash of assets previously charged off; or

(iv) The direct contribution of cash by the directors and/or the shareholder of the Bank; or

(v) Any other means acceptable to the Regional Director and the Commissioner; or

(vi) Any combination of the above means.

(b) If all or part of the increase in capital required by this paragraph is to be accomplished by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held by or controlled by them in favor of said plan to the extent approval of the plan by the shareholders of the Bank is required. Should the implementation of the plan involve public distribution of Bank securities, including a distribution limited only to the Bank's existing shareholders, the Bank shall prepare detailed 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 other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan and, in any event, not less than 20 days prior to the dissemination of such materials, the materials used in the sale of the securities shall be submitted to the FDIC Registration and Disclosure Section, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429 and to the Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, for their review. Any changes requested to be made in the materials by the FDIC or KDFI shall be made prior to their dissemination.

(c) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of Bank securities written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within 10 calendar days of the date any material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber of the Bank's original offering materials.

(d) The capital ratio analysis required by this paragraph shall not negate the responsibility of the Bank and its board of directors for maintaining throughout the year an adequate level of capital protection for the kind, quality and degree of market depreciation of assets held by the Bank.

#### DIVIDEND RESTRICTION

17. While this ORDER is in effect, the Bank shall not declare or pay any cash dividends or make any other payment to or for the benefit of its holding company without the prior written approval of the Regional Director and Commissioner.

#### DISCLOSURE TO SHAREHOLDERS

18. Following the effective date of this ORDER, the Bank shall send to its shareholders a copy or description of this ORDER: (1) in conjunction with the Bank's next shareholder communication; and (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe this ORDER in all material respects. The description and any accompanying communication, notice or statement shall be sent to the FDIC Registration and Disclosure Section 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429 and to the Kentucky Department of Financial Institutions, 1025 Capital Center Drive, Suite 200, Frankfort, Kentucky 40601, for review at least 20 days prior to dissemination to shareholders.

Any changes requested to be made by the FDIC and KDFI shall be made prior to dissemination of the description, communication, notice or statement.

#### COMPLIANCE WITH ORDER

19. (a) Within 60 days from the effective date of this ORDER, the Bank's board of directors shall have in place a program that will provide for monitoring of the Bank's compliance with this ORDER.

(b) Following the required date of compliance with subparagraph (a) of this paragraph, the Bank's board of directors shall review the Bank's compliance with this ORDER and record its review in the minutes of each regularly scheduled board of directors' meeting.

#### PROGRESS REPORTS

20. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall furnish to the Regional Director and Commissioner written progress reports signed by each member of the Bank's board of directors, detailing the actions taken to secure compliance with the ORDER and the results thereof. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and Commissioner have, in writing, released the Bank from making further reports.

The effective date of this ORDER shall be 10 calendar days after its issuance by the FDIC and KDFI.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the FDIC and KDFI.

Pursuant to delegated authority.

Dated: October 2, 2008.

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M. Anthony Lowe  
Regional Director  
Chicago Regional Office  
Federal Deposit Insurance  
Corporation

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Charles A. Vice  
Commissioner  
Department of Financial  
Institutions  
Commonwealth of Kentucky