

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

AND

STATE OF MICHIGAN

OFFICE OF FINANCIAL AND INSURANCE REGULATION

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IN THE MATTER OF	)	ORDER TO CEASE AND DESIST
	)	
UNIVERSITY BANK,	)	FDIC-08-194b
ANN ARBOR, MICHIGAN	)	
	)	
(Insured State Nonmember Bank)	)	
(Michigan Chartered	)	

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University Bank, Ann Arbor, Michigan (the "**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, including those related to the Bank Secrecy Act, 31 U.S.C. §§ 5311-5330, and regulations implementing the Bank Secrecy Act, including 12 C.F.R. Part 326, Subpart B, and 31 C.F.R. Part 103 (hereinafter collectively, the "**Bank Secrecy Act**" or "**BSA**"), and of its right to a hearing on the charges under section 8(b) of the Federal Deposit Insurance Act (the "**Act**"), 12 U.S.C. § 1818(b), and under section 2304 of the Banking Code of 1999, Mich. Comp. Laws §487.12304, regarding hearings before the Office of Financial and Insurance Regulation for the State of

Michigan ("**OFIR**"), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("**STIPULATION**") with representatives of the Federal Deposit Insurance Corporation (the "**FDIC**") and the OFIR, dated February 6, 2009, 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 the OFIR.

The FDIC and the OFIR considered the matter and determined that there was reason to believe that the Bank had engaged in unsafe or unsound banking practices and had violated laws, rules, or regulations. The FDIC and the OFIR, therefore, accepted the STIPULATION 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. Operating the Bank with a Bank board of directors ("**Board**") which has failed to provide adequate supervision over and direction to the executive management of the Bank to prevent unsafe or unsound

banking practices and violations of law, rule and regulations.

- B. Operating the Bank with an ineffective system of internal controls, including ensuring ongoing compliance with the BSA and information technology ("**IT**") requirements.
- C. Operating the Bank without an effective BSA/anti-money laundering program.
- D. Operating in violation of section 326.8, of the FDIC's Rules and Regulations, 12. C.F.R. § 326.8, and the Treasury Department's Financial Recordkeeping Regulations, 31 C.F.R Part 103.
- E. Operating the Bank with management whose practices have resulted in numerous violations of laws and regulations and contraventions of policy.
- F. Directly conducting any and all types of activities associated with or in any way using the Society for Worldwide Interbank Financial Telecommunication ("**SWIFT**") messaging system, or any other similar system used to facilitate international trade.
- G. Conducting any and all types of activities associated with shell banking organizations.
- H. Operating with a high level of adversely criticized assets.

- I. Operating with inadequate earnings.
- J. Operating with an unacceptable level of interest rate risk.
- K. Operating with inadequate liquidity in light of the Bank's asset and liability composition.
- L. Operating with an inadequate level of capital protection for the kind and quality of assets held.
- M. Operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits.
- N. Operating with an inadequate internal audit program.
- O. Operating with an inadequate investment policy.
- P. Operating with an inadequate asset/liability and funds management policy.

IT IS FURTHER 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, take affirmative action as follows:

MANAGEMENT STUDY

1. Within thirty (30) days from the effective date of this ORDER, the Bank shall retain a bank consultant acceptable to the Regional Director and OFIR. The consultant shall develop a written analysis and assessment of the Bank's management ("**Management Study**") for the purpose of providing qualified

management for the Bank.

(a) The Bank shall provide the Regional Director and OFIR with a copy of the proposed engagement letter or contract with the consultant for review. 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.

(b) The Management Study 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) Evaluation of all Bank officers and management positions 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.

(c) Within ninety (90) days of the effective date of this Order the Bank shall formulate a plan to implement the

recommendations of the Management Study. The plan required by this subparagraph shall be acceptable to the Regional Director and OFIR as determined at subsequent examinations.

QUALIFIED MANAGEMENT

2. Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall have and retain qualified management. Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities at the Bank.

(a) At a minimum, such management shall include: (i) a BSA Compliance Officer qualified to oversee all aspects of the Bank's BSA Compliance Program and to assure compliance with all applicable laws and regulations related thereto; (ii) a Chairman of the Board who shall be an independent, outside director; and (iii) an experienced IT Administrator.

(b) Each member of management with responsibilities relating to section 326.8 of the FDIC Rules and Regulations, 12 C.F.R. § 326.8, or the Treasury Department's Financial Recordkeeping Regulations, 31 C.F.R. Part 103, shall have the qualifications and experience commensurate with his or her duties and responsibilities under those regulations.

(c) All management personnel 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 BSA, asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

WRITTEN BSA COMPLIANCE PROGRAM

3. Within forty-five (45) days of the effective date of this ORDER, the Bank shall develop, adopt, and implement a revised written BSA compliance program, which fully meets all applicable requirements of section 326.8 of the FDIC's Rules and Regulations ("**FDIC Rules**"), 12 C.F.R. § 326.8, and which is designed to, among other things, assure and maintain full compliance by the Bank with the BSA and the rules and regulations issued pursuant thereto.

(a) Within sixty (60) days of the effective date of this Order, the Bank shall provide the Regional Director of the Chicago Regional Office of the FDIC ("**Regional Director**") and the OFIR with a copy of the revised written BSA compliance

program for review. Thereafter, the revised program and its implementation shall be implemented in a manner acceptable to the OFIR and the Regional Director, as determined at subsequent examinations and/or visitations of the Bank. At a minimum, the program shall:

- (i) Require the Bank to develop, adopt and implement a revised, effective written policy designed to assure full compliance with all provisions of the BSA.
- (ii) Require the Bank to develop a system of internal controls to assure full compliance with the Bank Secrecy Act and the rules and regulations issued pursuant thereto, including policies and procedures related to SWIFT, shell banks, foreign banks, and customers with high-risk activities. This shall include board-approved policies expressly prohibiting any activity with or through SWIFT or any shell banking organizations.
- (iii) Provide for comprehensive independent testing of compliance of an improved scope with all applicable rules and regulations related to the BSA, and shall

assure that compliance audits are performed at least annually, are fully documented, require a comprehensive scope, and are conducted with the appropriate segregation of duties by a qualified and independent third party. Written findings of each audit shall be presented to the Board and noted in the minutes of the Board's meeting at which received.

- (iv) Designate a senior bank official to be responsible for overall BSA compliance. This designated senior official shall be in a position, and have the authority, to make and enforce policies with respect to BSA compliance, and to assure that full and complete corrective action is taken regarding previously identified violations and deficiencies. This senior bank official shall have the necessary knowledge and expertise to effectively oversee the Bank's BSA program commensurate with the level of risk in the Bank's operations.

- (v) Provide for accurate and comprehensive risk assessments for BSA and Office of Foreign Assets Control ("OFAC") compliance which fully take into account the nature of the Bank's operations.
- (vi) Establish due diligence practices and written guidelines for all customers that are commensurate with the level of BSA and money laundering risk posed by each customer.
- (vii) Provide for and document improved and effective training of all appropriate personnel, including, without limitation, tellers, customer service representatives, lending officers, private and personal banking officers, and all other customer contact personnel. The training shall be conducted by qualified staff and/or independent contractors, and the training requirement shall apply to all individuals involved in Bank operations, and shall include training in all aspects of regulatory and internal policies and procedures related

to the BSA, with a specific emphasis on Customer Due Diligence, and on accurate recordkeeping, form completion and the detection and reporting of known and/or suspected criminal activity. The training curriculum shall be updated on a regular basis, not less frequent than annually, to assure that all personnel are provided with the most current and up to date information. Additionally, appropriate staff members shall be properly trained with regards to BSA prior to the bank entering into any operations of new products, services, or activities.

#### PROHIBITION OF USE OF SWIFT

4. Effective immediately, the Bank shall cease conducting any and all types of activities associated with or in any way using the SWIFT messaging system, or any other similar system used to facilitate international trade, including the Clearing House Interbank Payments Systems ("**CHIPS**"), other than normal Automated Clearing House ("**ACH**") and wire transfer activity, including international wires, consistent with safe and sound banking practices.

NEW BUSINESS LINES, PRODUCTS, AND SERVICES

5. During the life of this ORDER, the Bank shall not enter any new business lines, or offer any new products or services without first having prepared a detailed, written proposal that at a minimum addresses the following: (a) a cost-benefit analysis; (b) an explanation of how the proposal is consistent with the Board-approved Strategic Plan; (c) a thorough BSA Risk Assessment conducted by a qualified, independent third party consultant; and (d) assurance that adequate policies and procedures are established, appropriate staff are adequately trained, and adequate controls are in place to mitigate the associated risks. A written copy of the Proposal, including the BSA Risk Assessment, shall be submitted to the Board for review and approval. Once approved by the Board, it shall be provided to the Regional Director and OFIR for review and approval at least 30 days prior to entering therein. The approval of any Proposal shall not be interpreted to allow the bank to perform any activity expressly prohibited by this Order.

BSA STAFF

6. Within thirty (30) days from the effective date of this ORDER, the Bank shall analyze and assess the Bank's staffing needs in order to provide for an adequate number of qualified staff for the Bank's BSA Department, including provision for succession of BSA responsibilities. The BSA

Department staff shall be evaluated to determine whether these individuals possess the ability, experience, training and other necessary qualifications required to perform present and anticipated duties, including adherence to the Bank's BSA Compliance Program, the requirements of the BSA regulations, and the provisions of this ORDER.

DIRECTORS' BSA COMMITTEE

7. Within thirty (30) days from the effective date of this ORDER, the Board shall establish a Directors' BSA Committee ("**BSA Committee**") to oversee the Bank's compliance with BSA regulations and the Bank's BSA Compliance Program Policies and Procedures. A majority of the members of the BSA Committee shall be independent, outside directors. The BSA Committee shall receive comprehensive monthly reports from the BSA Compliance Officer, appointed pursuant to paragraph 3(a)(iv) above, regarding the Bank's compliance with BSA regulations and the Bank's BSA Compliance Program described in paragraph 3 above. The BSA Committee shall present a report to the Board, at each regularly scheduled board meeting, regarding the Bank's compliance with BSA regulations and the Bank's BSA Compliance Program, which shall be recorded in the appropriate minutes of the board meeting and retained in the Bank's records.

INDEPENDENT TESTING

8. Within one hundred twenty (120) days of the effective

date of this ORDER, the Bank shall assure that an effective and comprehensive independent test of compliance with the BSA and 31 C.F.R. Part 103 is completed. The independent testing should thereafter be conducted on an annual basis.

(a) The Bank shall provide to the Regional Director and OFIR a copy of the written reports documenting the scope of testing procedures performed, the findings and results made, and any recommendations for improvement based on those findings. At a minimum, the independent testing shall include, and the contract or engagement letter entered into with any third party performing the testing shall provide for, the following:

- (i) Testing of the Bank's internal procedures for monitoring BSA compliance;
- (ii) Testing to ensure all reportable transactions have been identified and Currency Transaction Reports ("**CTRs**") have been filed within the prescribed time frames;
- (iii) Testing to ensure the Bank is reviewing all applicable reports;
- (iv) Testing to ensure the Bank has implemented an effective Customer Due Diligence program;
- (v) Testing to ensure Bank personnel are

reviewing and monitoring reports for unusual activities and, if applicable, that appropriate Suspicious Activity Reports ("**SARs**") are filed in a timely manner with the appropriate law enforcement agencies;

- (vi) Sampling of large currency transactions followed by a review of the CTR filings;
- (vii) Testing of the validity and reasonableness of the customer exemptions granted by the Bank;
- (viii) Testing of the Bank's customer identification program;
- (ix) Testing of the Bank's recordkeeping system for compliance with the BSA;
- (x) Testing to ensure that the Bank is in compliance with rules and regulations related to:
  - Foreign banks;
  - Identifying and reporting suspicious activities;
  - Funds transfer operations;
  - On-going training of appropriate personnel;

- OFAC restrictions and requirements;
- High-risk activities related to customers and other areas of the Bank;
- Compliance with information sharing requirements;
- Testing of the accuracy and validity of the automated large transaction identification system;
- Confirming the integrity and accuracy of management information reports used in the anti-money laundering compliance program; and
- Retention of required records.

(xi) Allowing unrestricted examiner access to auditor workpapers if testing is conducted by an outside third party.

LOOK BACK REVIEW

9. Within thirty (30) days of the effective date of this ORDER, the Bank shall develop a written plan detailing how it will conduct, through an independent and qualified third party consultant, a review of deposit account and transaction activity for the time period beginning March 1, 2007 for all transactions and messages utilizing the SWIFT messaging system, and beginning

January 1, 2008 for all other transactions, through the effective date of this ORDER, to determine whether suspicious activity involving any accounts of, or transactions through, the Bank, including any transactions or messages which flowed through the Bank utilizing the SWIFT system, were properly identified and reported in accordance with the applicable suspicious activity reporting requirements ("**Look Back Review**").

(a) The plan for the Look Back Review, and the subsequent contract or engagement letter entered into with the auditor performing the Review, shall include, at a minimum:

- (i) The scope of the review, which shall specify the types of accounts and transactions to be reviewed, which shall include (1) all SWIFT activity, (2) foreign correspondent accounts, (3) shell bank organizations, (4) cash intensive customers whether businesses or individuals, (5) MSB customers, (6) customers with international wire transactions, (7) non-governmental organizations(NGOs) and charitable organizations (8) all customers identified by the Bank as high risk, (9) customers on whom the bank has ever filed a suspicious

activity report, and all customers related to any of these types of customers;

- (ii) The methodology for conducting the Look Back Review, including any sampling procedures to be followed;
- (iii) The resources and expertise to be dedicated to the Look Back Review;
- (iv) The anticipated date of completion of the Look Back Review;
- (v) A provision for unrestricted examiner access to auditor workpapers; and
- (vi) A provision that the audit firm will present its findings from the Look Back Review directly to the Bank's Board.

(b) The plan for the Look Back Review, and any subsequent modifications thereof, shall be prepared and implemented in a manner acceptable to the Regional Director and OFIR. For this purpose, the draft plan shall be submitted to the Regional Director and the OFIR for review and comment prior to implementation. After consideration of all such comments, and adoption of any recommended changes, the Board shall approve the plan, which approval shall be recorded in the minutes of the Board's meeting at which approved.

(c) Within ten (10) days of receipt of written notice

from the Regional Director and the OFIR indicating acceptability of the plan, the Bank shall implement the plan and commence the Look Back Review.

(d) By the tenth (10<sup>th</sup>) day of each month while the Look Back Review is being conducted, the Bank shall provide to Regional Director and the OFIR a written report detailing the actions taken under the Look Back Review and the results obtained since the prior monthly report.

(e) Within one hundred, twenty (120) days from the effective date of this ORDER, the Look Back Review shall be completed and the consultant shall be required to provide a copy of its report detailing its findings to the Regional Director and OFIR, at the same time the report is provided to the Board.

(f) Within thirty (30) days of completion of the Look Back Review, the Bank shall provide a list to the Regional Director and the OFIR, specifying all outstanding matters or transactions identified by the Look Back Review which have yet to be reported, and detailing how and when these matters will be reported in accordance with applicable law and regulation.

(g) Within sixty (60) days of its receipt of the Look Back Review, the Bank shall ensure that all matters or transactions required to be reported, that have not previously been reported, are reported in accordance with applicable laws and regulations and submit copies of any additional SARs filed

to the Regional Director and OFIR.

DUE DILIGENCE PROGRAM

10. Within sixty (60) days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a written Customer Due Diligence ("**CDD**") Program. The CDD Program and its implementation shall be prepared and conducted in a manner acceptable to the Regional Director and OFIR as determined at subsequent examinations and/or visitations of the Bank.

(a) At a minimum, the CDD Program shall provide for a risk focused assessment of the customer base of the Bank to determine the appropriate level of ongoing monitoring required to assure that the Bank can reasonably detect suspicious activity, and determine which customers require Enhanced Due Diligence ("**EDD**") necessary for those categories of customers that pose a heightened risk of illicit activity.

(b) At a minimum, the CDD Program shall provide for:

- (i) Risk rating of the Bank's customers, based on the potential risk for money laundering or other unlawful activity posed by the customer's activities, with consideration given to the purpose of the account, the anticipated type and volume of account activity, types of products and services offered, and locations and

- markets served by the customer;
- (ii) Obtaining, analyzing, and maintaining sufficient customer information necessary to allow effective suspicious activity monitoring, including, but not limited to, documentation of normal and expected transactions of the customer;
  - (iii) Guidance for documenting the analysis conducted under the CDD process, including guidance for resolving issues when insufficient or inaccurate information is obtained;
  - (iv) Monitoring procedures required for each customer category under the BSA/AML risk ratings;
  - (v) Guidelines to reasonably assure the identification and timely, accurate reporting of known or suspected criminal activity, as required by the suspicious activity reporting provisions of Part 353 of the FDIC Rules, 12 C.F.R. § 353; and
  - (vi) Periodic, risk-based monitoring of customer relationships to determine whether the original risk profile remains

accurate.

(c) These procedures shall include General and EDD procedures as applicable and required by 31 C.F.R. 103.176 regarding foreign correspondent accounts.

#### ACCOUNT MONITORING

11. Within sixty (60) days from the effective date of this ORDER, the Bank shall adopt and implement appropriate policies and procedures for identifying and verifying the type and dollar volume of transactions in each deposit account that exceed expected levels of customer cash or wire transfer activity.

(a) The policies and procedures adopted by the Bank shall be prepared and implemented in a manner acceptable to the Regional Director and the OFIR as determined at subsequent examinations or visitations of the Bank.

#### INTERNAL AUDIT PROGRAMS

12. Within sixty (60) days from the effective date of this ORDER, the Board shall formulate and submit to the Regional Director and OFIR for review and comment a comprehensive written internal audit program, which includes independent third party review, addressing compliance with all audit requirements pertaining to BSA, IT, and risk management. At a minimum, the internal audit program shall provide for the following:

(a) BSA reviews of all of the Bank's high-risk and international customers, with any exceptions to be reported

directly to the Board.

(b) An IT audit program which includes:

- (i) audit staff that is adequate in number and is technically competent to accomplish its mission;
- (ii) an audit risk analysis methodology to prioritize the allocation of audit resources and formulate the IT audit schedule;
- (iii) audit plans to provide appropriate coverage of IT risks;
- (iv) oversight and support of the IT audit function by the board of directors, or the audit committee thereof; and
- (v) timely and formal follow-up and reporting on management's resolution of identified IT problems or weaknesses.

(c) That internal auditors make written monthly reports of audit findings directly to the Audit Committee, which findings and any action taken as a result of the findings shall be recorded in the minutes of the meetings of the Audit Committee;

(d) That there shall be timely and formal follow-up and reporting on management's resolution of identified problems

or weaknesses;

(e) That the Bank shall provide the Regional Director and OFIR with a copy of all independent third party audit reports within 10 days of the Bank's receipt of such report(s); and

(f) Within thirty (30) days of receipt of any comments from the Regional Director or OFIR, and after adoption of any required changes, the Bank shall approve, implement, and enforce the internal audit programs in a manner acceptable to the Regional Director and the OFIR as determined at subsequent examinations or visitations of the Bank.

#### SUSPICIOUS ACTIVITY MONITORING AND REPORTING

13. Within sixty (60) days of the effective date of this ORDER, the Bank shall develop, adopt, and implement a revised written program for monitoring and reporting suspicious activity, which fully meets all applicable requirements of section 353 of the FDIC's Rules and Regulations ("**FDIC Rules**"), 12 C.F.R. § 353, and which is designed to, among other things, assure and maintain full compliance by the Bank with the rules and regulations issued pursuant thereto for monitoring and reporting suspicious activity. The bank shall review for accuracy and thoroughness, and amend as necessary, all SARs previously filed since July 2, 2007.

OFAC

14. Within sixty (60) days of the effective date of this ORDER, the Bank shall develop, adopt and implement a revised, effective written program to assure full compliance with all OFAC rules and regulations. Said program shall, among other things, be designed to assure that the Bank adequately monitors and screens transactions appropriately based on the level of risk associated with such transactions.

(a) The program adopted by the Bank shall be prepared and implemented in a manner acceptable to the Regional Director and OFIR as determined at subsequent examinations or visitations of the Bank.

#### CORRECTION OF VIOLATIONS

15. Within ninety (90) days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law or regulation and contraventions of policy detailed in the Joint Report of Examination dated June 9, 2008 ("**Joint Report**"), or provide a written explanation acceptable to the Regional Director and OFIR as to why they cannot be corrected and/or eliminated.

#### BOARD OF DIRECTORS

16. Within ninety (90) days from the effective date of this ORDER, the Bank shall add to its board of directors at least two new members who are independent outside directors. If the Bank is unable to add two new directors within this time frame,

the Bank shall provide a written explanation, acceptable to the Regional Director and OFIR, detailing precisely what actions have been taken to date to locate new directors and indicating how much additional time the Bank believes is needed to fully comply with this requirement. The Regional Director and OFIR will then advise of what additional time may be granted for the Bank to comply. For purposes of this ORDER, a person who is an independent director shall be any individual: (a) who is not an officer of the Bank or any subsidiary of the Bank or any of its affiliated organizations; (b) who does not own more than five (5) percent of the outstanding shares of the Bank; (c) who is not related by blood or marriage to an officer or director of the Bank or to any shareholder owning more than five (5) percent of the Bank's outstanding shares, and who does not otherwise share a common financial interest with such officer, director or shareholder; and (d) who is not indebted to the Bank directly or indirectly by blood, marriage or common financial interest, including the indebtedness of any entity in which the individual has a substantial financial interest in an amount exceeding 5 percent of the Bank's total Tier 1 capital and allowance for loan and lease losses; or (e) who is deemed to be an independent director for purposes of this ORDER by the Regional Director and OFIR. The addition of any new Bank directors required by this paragraph may be accomplished, to the extent permissible by state

statute or the Bank's bylaws, by means of appointment or election at a regular or special meeting of the Bank's shareholders.

DIVIDEND RESTRICTION

17. As of the effective date of this ORDER, the Bank shall not declare or pay any dividend without the prior written consent of the Regional Director and OFIR.

REDUCTION OF CLASSIFIED ASSETS

18. Within thirty (30) days from the effective date of this ORDER, the Bank shall formulate, adopt, and implement a written plan to reduce the Bank's risk position in each asset in excess of \$200,000 which is classified "Substandard" in the Report as of June 9, 2008. 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.
- (a) Such plan shall include, but not be limited to:
- (i) Dollar levels to which the Bank shall reduce each asset within six and twelve

months from the effective date of this ORDER; and

- (ii) Provisions for the submission of monthly written progress reports to the Board for review and notation in minutes of the meetings of the board of directors.

(b) As used in this ORDER, "reduce" means to: (1) collect; (2) charge off; (3) sell; or (4) improve the quality of such assets so as to warrant removal of any adverse classification by the FDIC and OFIR.

#### SPECIAL MENTION

19. Within sixty (60) days from the effective date of this ORDER, the Bank shall correct all deficiencies in those loans listed for "Special Mention" in the Report.

#### BUDGET AND PROFIT PLAN

20. Within ninety (90) days from the effective date of this ORDER, the Bank shall adopt and implement a written Profit Plan and a realistic, comprehensive budget for all categories of income and expense for calendar year(s) 2009 and 2010, both of which shall be acceptable to the Regional Director and the OFIR. The plan(s) required by this paragraph shall contain formal goals and strategies, consistent with sound banking practices, to reduce discretionary expenses and to improve the Bank's overall earnings, and shall contain a description of the

operating assumptions that form the basis for major projected income and expense components.

(a) The draft Profit Plan(s) and budget(s) shall be submitted by the Bank to the Regional Director and OFIR for review and comment. After consideration of all such comments, and adoption of any recommended changes, the Bank shall approve and implement the Profit Plan(s) and budget(s), which approval shall be recorded in the minutes of the Board meeting at which approved.

(b) Within thirty (30) days from the end of each calendar quarter following implementation of the Profit Plan(s) and budget(s) required by this paragraph, the Board shall evaluate the Bank's actual performance in relation to the plan and budget, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the Board meeting at which such evaluation is undertaken.

(c) Any subsequent modification of the Profit Plan(s) and budget(s) required by this ORDER, shall be prepared and implemented in a manner acceptable to the Regional Director and OFIR as determined at subsequent examinations or visitations of the Bank.

#### ALLOWANCE FOR LOAN AND LEASE LOSSES

21. 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 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 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 OFIR.

#### CAPITAL

22. Not later than March 31, 2009, the Bank shall increase its Tier I capital as a percentage of its Total Assets ("**Tier I Capital Ratio**") to no less than 8.00%, and no later than June 30, 2009, shall increase and maintain for the life of this Order the Tier I Capital Ratio at no less than 8.25%. Additionally, the Bank shall have and maintain its (Qualifying) Total Capital as a percentage of its Risk-Weighted Assets ("**Total Risk-based Capital Ratio**") at not less than 13%. For purposes of this ORDER, Tier 1 Capital, (Qualifying) Total Capital, Risk-Weighted Assets, and Total Assets shall be calculated in accordance with Part 325 of the FDIC Rules ("**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 June 9, 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 shareholders of the Bank; or
- (v) Any other means acceptable to the Regional Director and OFIR; 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 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 Commissioner, Office of Financial and Insurance Regulation for the State of Michigan, 611 W. Ottawa Street, Lansing, Michigan 48933, for their review. Any changes requested to be made in the materials by the FDIC or OFIR 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 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.

#### INVESTMENT POLICY

23. Within sixty (60) days from the effective date of this ORDER, and annually thereafter, the Board of the Bank shall review the Bank's investment policy for adequacy and shall make the necessary revisions to address the actual and contemplated composition of the investment portfolio and any trading account. The revised policy shall, at a minimum, address the exceptions noted in the Report and shall be consistent with the Federal Financial Institutions Examination Council's Instructions for Consolidated Reports of Condition and Income, generally accepted accounting principles, and the Bank's loan, liquidity and

asset/liability management policies. The procedures for managing the Bank's sensitivity to interest rate risk shall comply with the Joint Agency Statement of Policy on Interest Rate Risk (June 26, 1996), and the Joint Supervisory Statement on Investment Securities and End-user Derivative Activities (April 23, 1998). A copy of the revised policy shall be submitted to the Regional Director and OFIR upon its adoption.

#### ASSET/LIABILITY MANAGEMENT POLICY

24. Within sixty (60) days from the effective date of this ORDER, and annually thereafter during the life of this ORDER, the Bank shall review the asset/liability management policy for adequacy and, based upon such review, shall make appropriate revisions to the plan that are necessary to strengthen funds management procedures and maintain adequate provisions to meet the Bank's liquidity needs. The revised policy shall, at a minimum, address the examiner recommendations noted in the Report. A copy of the policy and each revision thereof shall also be submitted to the Regional Director and OFIR upon completion.

#### STRATEGIC PLAN

25. Within ninety (90) days from the effective date of this ORDER, the Bank shall formulate and adopt a realistic, comprehensive strategic plan, inclusive of IT activities and operating assumptions and strategies for all Bank subsidiaries.

The plan required by this paragraph shall contain an assessment of the Bank's current financial condition and market area, and a description of the operating assumptions that form the basis for major projected income and expense components.

(a) The written strategic plan shall address, at a minimum:

- (i) Strategies for pricing policies and asset/liability management;
- (ii) Financial goals, including pro forma statements for asset growth, capital adequacy, and earnings; and
- (iii) Incorporate any contemplated new lines of business or bank services.

(b) The Bank will submit the strategic plan to the Regional Director and OFIR for review and comment. After consideration all such comments and adoption of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of a board of directors' meeting.

(c) Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Board shall evaluate the Bank's actual performance in relation to the strategic plan required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the

minutes of the board of directors' meeting at which such evaluation is undertaken.

(d) The strategic plan required by this ORDER shall be revised and submitted to the Regional Director and OFIR for review and comment thirty (30) days prior to the end of each calendar year for which this ORDER is in effect. Within thirty (30) days of receipt of all such comments from the Regional Director and OFIR, and after consideration of all such comments and adoption of any recommended changes, the Bank shall approve the revised plan, which approval shall be recorded in the minutes of a board of directors' meeting. Thereafter, the Bank shall implement the revised plan.

#### INFORMATION TECHNOLOGY

26. Within ninety (90) days from the effective date of this ORDER, the Bank shall prepare a written assessment of its IT activities. This assessment shall address the findings of the Report with respect to information technology and shall include the Bank's proposed corrective measures.

(a) Within thirty (30) days from the completion of the written assessment, the Board shall review, approve, and submit its written assessment to the Regional Director and OFIR for review and comment.

(b) Within thirty (30) days from receipt of the Regional Director's and OFIR's comments on the written

assessment, and after adoption of any recommended changes, the Bank shall adopt and implement all corrective measures detailed in the assessment.

#### DISCLOSURE TO SHAREHOLDERS

27. 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; or (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 Ken Ross, Commissioner, Office of Financial and Insurance Regulation, 611 W. Ottawa Street, Lansing, Michigan, 48933, and to the FDIC's Registration and Disclosure Section, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the OFIR or the FDIC shall be made prior to dissemination of the description, communication, notice or statement.

#### PROGRESS REPORTS

28. Within thirty (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 the OFIR written progress reports signed by each member of the Board, detailing

the actions taken to secure compliance with the ORDER and the results thereof. Along with each progress report, the Bank shall also provide reports on the Look Back Review, detailing the findings and actions taken as required under this ORDER. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and the OFIR have, in writing, released the Bank from making further reports.

#### CLOSING PARAGRAPHS

The effective date of this ORDER shall be the day of its issuance by the OFIR and the FDIC.

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 OFIR and the FDIC.

Pursuant to delegated authority.

Dated: February 12, 2009.

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Stephen R. Hilker  
Chief Deputy Commissioner  
Office of Financial and  
Insurance Regulation  
State of Michigan

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