

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

CALIFORNIA DEPARTMENT OF FINANCIAL INSTITUTIONS

SAN FRANCISCO, CALIFORNIA

_____	)	
	)	
In the Matter of	)	
	)	
INNOVATIVE BANK	)	ORDER TO
OAKLAND, CALIFORNIA	)	CEASE AND DESIST
	)	
(INSURED STATE NONMEMBER BANK)	)	Docket FDIC-09-066b
	)	
_____	)	

Innovative Bank, Oakland, California ("Bank"), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), and Section 1912 of the California Financial Code, and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC"), and with counsel for the California Department of Financial Institutions ("CDFI"), dated March 2, 2009, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the CDFI.

The FDIC and the CDFI considered the matter and determined that they had reason to believe that the Bank had engaged in unsafe or unsound banking practices. The FDIC and the CDFI, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, pursuant to Section 8(b) of the Act and California Financial Code Section 1913, 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 revealed during the joint FDIC and CDFI examination of the Bank commenced in January 2009 (“January 2009 Examination”):

- (a) operating with incomplete and inaccurate records with respect to the Bank’s Paperless Imaging Module in Process (“PIM”) account;
  - (b) operating with an inadequate reconciliation process for the Bank’s PIM account, which resulted in approximately \$48 million of unreconciled debits and credits as of the January 2009 Examination, including an \$11,643,000 credit adjustment made to the PIM account on January 30, 2007, without any support or documentation or record of offsetting entries;
  - (c) operating with insufficient systems and controls with respect to the PIM account;
- and
- (d) operating with an inadequate audit function with respect to the PIM account.

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

1. Within one (1) week from the effective date of this ORDER, the Bank shall develop and submit to the FDIC and the CDFI for their review and approval, a plan for obtaining an independent external forensic audit to review and reconcile the activity in the PIM account

since its inception in December 2006. The plan shall identify the forensic audit scope, time frame for audit inception, time frame for audit completion, and the necessary qualifications of the forensic audit team.

(a) At a minimum, the audit scope shall address:

(i) research, reconciliation and documentation of all debit and credit transactions in the PIM account, including the disposition of specific debit and credit items included in each “batch” transaction in the PIM account;

(ii) research and reconciliation of the \$11,643,000 credit adjustment made to the PIM account on January 30, 2007;

(iii) research, reconciliation and documentation of any additional accounts impacted by the PIM account transactions;

(iv) determination as to the types of transactions flowing into and out of the PIM account;

(v) determination as to who has the authority to make entries impacting this account and an assessment as to whether those authorities are appropriate and adequately controlled;

(vi) determination as to the completeness and accuracy of the account reconciliation process management completes on the PIM account and related accounts;

(vii) an assessment of collectability of stale items in the PIM account based on ACH processing guidelines and consumer protection regulations;

(viii) determination as to whether this or related accounts have been misused to commit fraud or embezzle bank funds; and

(ix) final determination of the net loss to the bank and the total impact to Tier 1 capital.

(b) At a minimum, forensic auditor qualifications shall include:

(i) significant understanding and experience of Automated Clearing House (ACH) transactions and appropriate regulatory requirements and industry standards;

(ii) designation as a forensic auditor by industry recognition as an expert in this field based on current or prior employment or consulting work as a fraud expert; and

(iii) understanding of automated information technology systems sufficient to review system mapping and other applicable automated processes.

(c) Results and recommendations of the forensic audit shall be submitted to the FDIC and CDFI upon receipt by the Bank. Upon completion of the forensic audit, the Bank shall recognize all identified losses which have not already been recognized by the Bank. Consolidated Reports of Condition and Income for year-end 2008 shall be amended, as appropriate, within thirty (30) days after this additional loss is recognized.

This ORDER shall become effective upon its issuance by the FDIC and the CDFI. Violation of any provision of this ORDER may be deemed to be conducting business in an unsafe or unsound manner, and could subject the Bank to further regulatory enforcement action. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC and the CDFI. This ORDER does not modify, terminate, suspend or set aside the Order to Cease and Desist, dated April 25, 2007, issued by the FDIC, or the Final Order, dated April 30, 2007, issued by the CDFI.

Pursuant to delegated authority.

Dated at San Francisco, California, this 3<sup>rd</sup> day of March, 2009.

/s/

---

J. George Doerr  
Deputy Regional Director  
Division of Supervision and Consumer Protection  
San Francisco Region  
Federal Deposit Insurance Corporation

/s/

---

William S. Haraf  
Commissioner  
California Department of Financial Institutions