

**FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.**

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<b>In the Matter of</b>	)	
	)	<b>ORDER TO CEASE AND DESIST</b>
<b>FIRST STATE BANK</b>	)	
<b>WILMOT, SOUTH DAKOTA</b>	)	<b>FDIC-09-023b</b>
	)	
<b>(Insured State Nonmember Bank)</b>	)	
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First State Bank, Wilmot, South Dakota ("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 its right to a hearing on those 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") dated February 25, 2009, with counsel for the Federal Deposit Insurance Corporation ("FDIC"), whereby, solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices, the Bank consented to the issuance of the following ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

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

The FDIC, 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 and regulation:

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

B. Operating with a board of directors that has failed to provide adequate supervision over and direction to the management of the Bank.

C. Operating with an inadequate level of capital protection for the kind and quality of assets held and/or appropriate to the risk inherent in the activities engaged in by the Bank.

D. Operating with an inadequate allowance for loans and lease losses for the volume, kind, and quality of loans and leases held, and failing to make provision for an adequate allowance for possible loan and lease losses.

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

1. the failure to obtain adequate collateral;

2. the failure to obtain current and complete financial and collateral information;

3. the extension of credit with inadequate diversification of risk;

4. the failure to properly underwrite and administer its loan portfolio; and

5. other poor credit administration practices.

F. Operating with excessive loan losses and with excessive levels of adversely classified items and delinquent and/or nonaccrual loans.

G. Operating with an inadequate loan policy.

H. Operating with inadequate liquidity in light of the Bank's asset and liability mix.

I. Operating with an inadequate risk rating and loan review system.

J. Operating with an inadequate asset/liability and/or funds management policy.

K. Operating with inadequate earnings.

L. Violating law(s) or regulation(s), including:

1. The legal lending limit restrictions of the State of South Dakota.

2. The preferential deposit restrictions of the State of South Dakota.

3. The application requirements of section 18(d)(1) of the Act, 12 U.S.C. § 1828(d)(1), and South Dakota Codified Laws, section 51 A-2-16.

4. The real estate appraisal requirements of Part 323 of the FDIC Rules and Regulations, 12 C.F.R. Part 323.

5. FDIC Part 364 Safety and Soundness Guidelines, 12 C.F.R. Part 364.

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

**1. Qualified Management.**

(a) From the effective date of this ORDER, the Bank shall take action to have qualified management. Each member of management shall have the requisite knowledge, skills, ability and experience, giving consideration to the size and complexity of the Bank, to operate the Bank in a safe and sound manner and in compliance with applicable laws and regulations, as well as to restore the Bank to a satisfactory financial condition. Each member of management shall be provided appropriate written authority from the board of directors to implement the provisions of this ORDER.

(b) Immediately, and periodically during the life of this ORDER, but no less frequently than annually, the board of directors shall assess management on its ability to:

(i) comply with the requirements of this ORDER, all applicable State and Federal laws and regulations, FDIC and Federal Financial Institutions Examination Council policy statements, and the Bank's approved policies and procedures; and

(ii) restore and thereafter maintain the Bank in a safe and sound condition, including, but not limited to, capital adequacy, asset quality, earnings, management effectiveness, liquidity, sensitivity to market risks, information technology, and Bank Secrecy Act/Anti-Money Laundering compliance.

**2. Assessment of Qualified Management.**

(a) The board of directors shall engage an independent third party acceptable to the Regional Director of the Kansas City Regional Office of the FDIC ("Regional Director") and the Director, South Dakota State Division of Banking ("Director") (collectively, "Supervisory Authorities") and that possesses appropriate expertise and qualifications to analyze and assess the Bank's management and staffing performance and needs. Specifically, the assessment shall provide an evaluation of the current and past performance of all existing Bank executive officers, indicating whether the individuals are competent and qualified to perform present and anticipated duties, adhere to the Bank's established policies and practices, and operate the Bank in a safe and sound manner. The engagement shall require that the analysis and assessment be summarized in a written

report to the board of directors ("Management Report") within 120 days from the effective date of this ORDER. Within 10 days of receipt of the Management Report, the board will conduct a full and complete review of the Management Report, which review shall be recorded in the minutes of the meeting of the board of directors.

(b) The Bank shall provide the Supervisory Authorities with a copy of the proposed engagement letter or contract with the third party for review.

(c) Within 30 days of receipt of the Management Report, the board of directors will develop a written Management Plan that addresses the findings of the report, a plan of action in response to each recommendation contained in the Management Report, and a time frame for completing each action. A copy of the Management Report and Management Plan and any subsequent modification thereto shall be immediately submitted to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director, and after consideration of such comment, the board of directors shall approve the Management Plan which approval shall be recorded in the minutes of the meeting of the board.

Thereafter, the Bank and its directors, officers and employees shall implement and follow the Management Plan and any modifications thereto. It shall remain the responsibility of the board to fully implement the plan within the specified time

frames. In the event the plan, or any portion thereof, is not implemented, the board shall immediately advise the Supervisory Authorities, in writing, of specific reasons for deviating from the Management Plan.

**3. The Bank's Board of Directors and Senior Officers.**

(a) From the effective date of this ORDER, the Bank shall take action to have and maintain at least 5 directors to comprise its board of directors, with at least one of those directors being "independent." An independent director shall be any individual who:

(i) is not employed in any capacity by the Bank, any subsidiary, or any of its affiliated organizations, other than as a director;

(ii) does not own or control more than 5 percent of the outstanding shares of the Bank or its parent company;

(iii) is not related by blood or marriage to an officer or director of the Bank or its affiliates, or to any shareholder owning more than 5 percent of the outstanding shares of the Bank or its parent company, and who does not otherwise share a common financial interest with such officer, director or shareholder other than possible ownership of publicly traded securities;

(iv) is not indebted, directly or indirectly, to the Bank or any of its affiliates, 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; and

(v) is a resident of, or engaged in business in, the Bank's trade area; or

(vi) is otherwise deemed to be an independent director for purposes of this ORDER by the Regional Director.

(b) In the event the Bank does not have an independent director, it shall make and continue in its efforts to recruit such a director and shall document those efforts through at least written correspondence with any approached individuals. Such documentation shall be presented to the board of directors on a monthly basis for review, and shall be made part of the minutes of the board's meetings.

(c) The Bank shall notify the Supervisory Authorities in writing of any resignations and/or terminations of any members of its board of directors and/or any of its senior officer(s) within 15 days of the event. The Bank shall also establish procedures to ensure compliance with section 32 of the FDI Act, 12 U.S.C. § 1831i and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 303.100 through 303.103. In addition, the Bank shall notify the Supervisory Authorities in writing when it proposes to add any individual to the Bank's board of directors or employ any individual as a senior executive officer. The notification must be received at least

30 days before such addition or employment is intended to become effective and should include a description of the background and experience of the individual(s) to be added or employed.

**4. Minimum Capital Requirements.**

(a) Within 90 days of the effective date of this ORDER, the Bank shall achieve and maintain the following minimum capital levels (as defined in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325), after establishing an appropriate allowance for loan and lease losses:

(i) Tier 1 capital at least equal to nine (9.0) percent of total assets; and

(ii) total risk-based capital at least equal to twelve (12.0) percent of risk-weighted assets ("capital ratios").

(b) Within 30 days of the last day of each calendar quarter, the Bank shall determine, from its Reports of Condition and Income, its capital ratios for that calendar quarter. If either capital ratio falls below the established minimum, within 30 days of such required determination, the Bank shall submit a written plan to the Supervisory Authorities, describing the means and timing by which the Bank shall increase such ratio(s) up to or in excess of the established minimum(s). Within 30 days of receipt of any comment from the Regional Director, and after due consideration of any recommended changes, the board of

directors shall approve the written plan, which approval shall be recorded in the board meeting minutes. Thereafter, the Bank shall implement and full comply with the written plan.

(c) For purposes of this ORDER, all terms relating to capital shall be calculated according to the methodology set forth in Part 325 of the FDIC's Rules and Regulations.

**5. Restrictions on Dividends.**

The Bank shall not declare or pay any cash dividend or capital distribution without the prior written approval of the Supervisory Authorities.

**6. Charge-off of Adversely Classified Assets.**

(a) Within 30 days 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 FDIC's October 21, 2008, Report of Examination ("Report of Examination") that have not been previously collected or charged off.

(b) Elimination or reduction of assets through the proceeds of other loans or extensions of credit made by the Bank is not considered collection for purposes of this ORDER.

7. **Reduction of Adversely Classified Loans.**

(a) Within 60 days of the effective date of this ORDER, the Bank shall develop a written plan to reduce the Bank's risk exposure in each loan in excess of \$200,000 classified "Substandard" in the Report of Examination. For purposes of this ORDER, "reduce" means to collect, charge off, or improve the quality of a loan so as to warrant its removal from adverse classification by the Supervisory Authorities. In developing the plan required by this provision, the Bank shall, at a minimum, review, analyze, and document the financial position of the borrower, including source of repayment, repayment ability, and alternative repayment sources, as well as the value and accessibility of any pledged or assigned collateral, and any possible actions to improve the Bank's collateral position.

(b) The plan required by this provision shall also include, but not be limited to, the following:

(i) specific action plan intended to reduce the Bank's risk exposure in each classified loan;

(ii) a requirement that monthly oral progress reports and quarterly written progress reports be submitted to the board of directors; and

(iii) a requirement that the board of directors review the monthly progress reports and record a notation of the review in the minutes of the board.

(c) The Bank shall submit the plan to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director, and after due consideration of any recommended changes, the board of directors shall approve the plan, and record the approval in the board meeting minutes. Thereafter, the Bank shall implement and fully comply with the plan.

**8. Restrictions on Advances to Adversely Classified Borrowers.**

(a) 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 or obligation with the Bank that has been, in whole or in part, charged off or classified "Substandard" in the Report of Examination and is uncollected. The Bank shall not be prohibited from renewing, after collecting in cash all interest and fees due from a borrower, any credit already extended to the borrower.

(b) The Bank shall not be prohibited from extending additional credit to any borrower if the Bank's failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank. The Bank shall not extend further credit to any such borrower, whether in the form of a renewal, extension, or further advance of funds, unless additional credit shall have been approved in advance by

the Bank's board of directors, or a designated committee thereof, who, after thorough review, shall have concluded and fully documented in its minutes that:

(i) the failure to extend such credit would be detrimental to the best interests of the Bank, with an explanation of why it would be detrimental;

(ii) the extension of such credit would improve the Bank's position, including an explanatory statement of how the Bank's position would be improved; and

(iii) an appropriate workout plan has been developed and will be implemented in conjunction with the additional credit to be extended.

A copy of the board's or committee's conclusions and approval shall be retained in the borrower's credit file and be made part of the board meeting minutes.

**9. Concentrations of Credit.**

(a) Within 90 days of the effective date of this ORDER, the Bank shall develop a written plan ("Concentration Plan") intended to systematically reduce and monitor the Bank's concentrations listed in the Report of Examination to an amount which is commensurate with the Bank's business strategy, management expertise, and financial condition. The Concentration Plan shall establish an appropriate concentration

risk limit for the purchased loan participation portfolio, as well as concentration risk limits for each segment of the portfolio with common risk characteristics or sensitivities to economic, financial, or business developments. Concentration risk limits will be expressed as a percentage of Total Capital.

(b) The board of directors shall review, on a quarterly basis, the level and trend of concentrations, actual levels compared to levels targeted in the Concentration Plan, and reports that describe the state of and changes in commercial real estate market conditions in the geographic areas in which the Bank lends.

(c) Immediately after development, the Concentration Plan shall be submitted to the Supervisory Authorities for review and comment. Within 30 days of receipt of any comment from the Regional Director, and after consideration of any recommended changes, the board of directors shall approve the Concentration Plan, which approval shall be recorded in the minutes of the board. Thereafter, the Bank and its institution-affiliated parties shall fully implement the Concentration Plan. The Concentration Plan shall be reviewed at least annually and amended as appropriate to manage the risk in the commercial real estate portfolio.

**10. Implementation of Loan Policy.**

Within 60 days from the effective date of this ORDER, the board of directors of the Bank shall review and revise the Bank's written loan policies and procedures to address the comments and criticisms in the Report of Examination. The Bank's revised loan policies and procedures shall be provided to the Supervisory Authorities for review and comment. Within 30 days of receipt of any comment from the Regional Director, and after consideration of any recommended changes the Bank shall approve the loan policies and procedures, which approval shall be recorded in the minutes of the board of directors meeting. Thereafter, the Bank shall implement and fully comply with the revised loan policies. In the event the Bank considers making a loan that would not conform with the Bank's loan policies, the loan shall receive prior review and approval by the Bank's board of directors. The reason for non-conformance and the board's prior review and approval shall be documented in the board's minutes and in the loan file for that loan.

**11. Implementation of Independent Loan Review Program.**

(a) Within 30 days of the effective date of this ORDER, the board shall develop a program of independent loan review that will provide for a periodic review of the Bank's loan portfolio and the identification and categorization of problem credits. At a minimum, the system shall provide for:

(i) identification of loans with credit weaknesses that warrant the special attention of management, including the name of the borrower, amount of the loan, reason why the loan warrants special attention, and assessment of the degree of risk that the loan will not be fully repaid according to its terms;

(ii) identification of trends affecting the quality of the loan portfolio, potential problem areas, and action plans to reduce the Bank's risk exposure;

(iii) assessment of the overall quality of the loan portfolio;

(iv) identification of credit and collateral documentation exceptions and an action plan to address the identified deficiencies;

(v) identification and status of violations of laws, rules, or regulations with respect to the lending function and an action plan to address the identified violations;

(vi) identification of loans that are not in conformance with the Bank's lending policy and an action plan to address the identified deficiencies;

(vii) identification of loans to directors, officers, principal shareholders, and their related interests; and

(viii) a mechanism for reporting periodically, but in no event less than quarterly, the information developed in (i) through (vii) above to the board of directors. The report shall

also describe the action(s) taken by management with respect to problem credits.

(b) The Bank shall submit the program to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director, and after due consideration of any recommended changes, the Bank shall approve the program, which approval shall be recorded in the minutes of the board of directors meeting. Thereafter, the Bank shall implement and fully comply with the program.

(c) Upon implementation, a copy of each report shall be submitted to the board of directors, as well as documentation of the actions taken by the Bank or recommendations to the board that address identified deficiencies in specific loan relationships or the Bank's policies, procedures, strategies, or other elements of the Bank's lending activities. Such reports and recommendations, as well as any resulting determinations, shall be recorded and retained in the minutes of the meeting of the board of directors.

**12. Maintenance of Allowance for Loan and Lease Losses.**

(a) Within 30 days from the date of this ORDER, the board of directors shall make a provision which will replenish the allowance for loan and lease losses ("allowance") for the loans charged off as a result of the most recent examination and reflect the potential for further losses in the remaining loans

or leases classified "Substandard" in the Report of Examination as well as all other loans and leases in its portfolio.

(b) Within 90 days from the effective date of this ORDER, the board shall establish a comprehensive policy and methodology for determining the appropriateness of the allowance. The policy shall provide for a review of the allowance at least once each calendar quarter in order that the results of the review conducted by the board may be properly reported in the quarterly Reports of Condition and Income. Such reviews shall, at a minimum, be made in accordance with the Federal Financial Institutions Examination Council's Instructions for the Reports of Condition and Income, the Interagency Statement of Policy on the Allowance for Loan and Lease Losses, other applicable regulatory guidance that addresses the adequacy of the Bank's allowance, and any analysis of the Bank's allowance provided by the Supervisory Authorities;

(c) A deficiency in the allowance shall be remedied in the calendar quarter in which it is discovered by a charge to current operating earnings prior to any Tier 1 capital determinations required by this ORDER and prior to the Bank's submission of its Report of Condition and Income. The board of directors shall thereafter maintain an adequate allowance.

(d) The Bank shall submit the policy to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director, and after due

consideration of any recommended changes, the Bank shall approve the policy, which approval shall be recorded in the minutes of the board of directors meeting. Thereafter, the Bank shall implement and fully comply with the policy.

**13. Business/Strategic Plan and Profit and Budget Plan.**

(a) Within 120 days from the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the board of directors shall develop and fully implement a written three-year business/strategic plan and one-year profit and budget plan covering the overall operation of the Bank and its goals and strategies, consistent with sound banking practices, and taking into account the Bank's other written plans, policies, or other actions as required by this ORDER.

(b) The business/strategic plan shall provide specific objectives for asset growth, loan portfolio mix, market focus, earnings projections, capital needs, and liquidity position. The profit and budget plan shall include goals and strategies for improving the earnings of the Bank. The budget shall include a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(c) The business/strategic plan and the profit and budget plan, and any subsequent modification thereto, shall be

submitted to the Supervisory Authorities for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, and after due consideration of any recommended changes, the board of directors shall approve the business/strategic plan and the profit and budget plan, which approval shall be recorded in the board meeting minutes. Thereafter, the Bank shall implement and fully comply with the plans.

**14. Funds Management Policies and Plans.**

(a) Within 60 days from the effective date of this ORDER, the Bank shall review its written funds management policies and plans, and amend each as necessary.

(b) Within 60 days from the effective date of this ORDER, the board of directors of the Bank shall develop a written contingency funding plan ("plan"). The plan shall be updated on a regular basis and should, at a minimum, help management to monitor liquidity risk, ensure that an appropriate amount of liquid assets is maintained, measure and project funding requirements during various scenarios, and manage access to funding sources. Specifically, the plan should address the tightening of access to, or the imposition of additional requirements on, established credit lines as a result of the deteriorating asset quality.

(c) The Bank shall submit the policies and plans required by this paragraph 14, and any future modifications, to the Supervisory Authorities for review and comment. Within 30 days of the receipt of any comments from the Regional Director, and after consideration of all such comments, the board shall approve the plans and policies, which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Bank shall implement and follow the plans and policies.

**15. Brokered Deposits.**

Upon the issuance of this ORDER and so long as this ORDER is in effect, the Bank shall not accept, increase, renew, or rollover its brokered deposits without the prior written approval of the Supervisory Authorities. Within 60 days of the effective date of this ORDER, the Bank shall submit a written plan for reducing its reliance on brokered deposits ("brokered deposit plan") to the Supervisory Authorities. The brokered deposit plan shall detail the current composition of the Bank's brokered deposits by maturity and explain the means by which such deposits will be paid. The Bank shall submit the brokered deposit plan to the Supervisory Authorities for review and comment. For purposes of this ORDER, brokered deposits are defined in section 337.6(a)(2) of the FDIC Rules and Regulations to include any deposits funded by third-party agents or nominees

for depositors, including deposits managed by a trustee or custodian when each individual beneficial interest is entitled to or asserts a right to federal deposit insurance. Within 10 days of receipt of all such comments from the Regional Director, and after consideration of all such comments, the Bank shall approve the brokered deposit plan, which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Bank shall implement and fully comply with the brokered deposit plan.

**16. Elimination and/or Correction of Violations of Laws, Rules, and Regulations.**

(a) Within 60 days after the effective date of this ORDER, the Bank, consistent with sound banking practices, shall eliminate and/or correct all violations of laws, rules and regulations, and all contraventions of guidelines and policy statements, cited by the FDIC in the Report of Examination. In addition, within 60 days from the effective date of this ORDER, the Bank shall adopt and implement appropriate procedures to ensure future compliance with all applicable laws, rules, regulations, guidelines, and policy statements.

(b) The Bank shall document each violation or policy contravention that cannot be eliminated or corrected, and why, for review by the board of directors at its next monthly meeting. The board's review, discussion and any action upon the

uncorrected violation or policy contravention shall be recorded in its minutes.

**17. Disclosure.**

The Bank shall send, or otherwise furnish, to its shareholders a description of this ORDER (i) in conjunction with the Bank's next shareholder communication, and (ii) 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 for review at least 20 days prior to dissemination to shareholders. Any changes requested by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

**18. Program for Monitoring Bank's Compliance with Order.**

Within 60 days of the effective date of this ORDER, the board of directors shall adopt and implement a program for monitoring the Bank's compliance with this ORDER.

**19. Progress Reports.**

On or before May 15, 2009, the Bank shall furnish a written progress report to the Supervisory Authorities, using financial data as of March 31, 2009, detailing the form, manner, and results of any actions taken to secure compliance with this ORDER. Thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities within 45 days after the end of each calendar quarter. The written progress reports shall provide cumulative detail of the Bank's progress toward achieving compliance with each provision of the ORDER.

This ORDER shall be effective on the date of issuance.

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.

Issued Pursuant to Delegated Authority.

Dated: March 3, 2009

By:

/s/Stephen P. Gaddie  
 Mark S. Moylan  
 Deputy Regional Director  
 Kansas City Regional Office