

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

and

COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

In the Matter of:)
BUTLER BANK) ORDER TO CEASE AND DESIST
LOWELL, MASSACHUSETTS)
(INSURED STATE NONMEMBER BANK)) FDIC-09-148b
)

Butler Bank, Lowell, Massachusetts (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 and/or regulations alleged to have been committed by the Bank, and of its right to a hearing on such alleged charges under section 8(b) of the Federal Deposit Insurance Act (Act), 12 U.S.C. § 1818(b), and having waived those rights, and having waived any rights that the Bank has or may have under the Massachusetts General Laws, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST (CONSENT AGREEMENT) with a representative of the Legal Division of the Federal Deposit Insurance Corporation (FDIC), and with the Commissioner of Banks of the Commonwealth of Massachusetts

(Commissioner), dated April 16, 2009, whereby solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices or violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST (ORDER) by the FDIC and the Commonwealth of Massachusetts Division of Banks (Division).

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

- a. Operating with an inadequate level of capital for the kind and quality of assets held;
- b. Operating with an excessive volume of criticized assets;
- c. Operating with inadequate management, policies and practices;
- d. Failing to provide for an effective system to identify problem assets and prevent deterioration; and

e. Operating with deficient earnings.

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

1. (a) The Bank shall achieve and maintain the following minimum capital levels (as defined in Part 325 of the FDIC Rules and Regulations), after establishing an adequate Allowance for Loan and Lease Losses (Allowance):

(i) Tier 1 capital of not less than six percent (6.0%) of total assets;

(ii) Tier 1 risk-based capital of not less than six percent (6.0%) of total risk-weighted assets; and

(iii) Total risk-based capital of not less than ten percent (10%) of total risk-weighted assets.

(b) In addition, the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, App. A.

(c) In the event any of the foregoing ratios falls below the established minimum, the Bank shall notify the Area Director of the Boston Area Office of the FDIC (Area Director) and the Commissioner and shall increase capital in an amount sufficient to comply with this provision within sixty (60) days.

(d) The Bank shall not initiate a plan to increase

total assets by more than two and one-half percent (2.5%) during any consecutive three-month period, or more than eight percent (8.0%) during any twelve-month period.

2. (a) Within thirty (30) days of the effective date of this ORDER, the Bank's board of directors (Board) shall develop a capital plan (Capital Plan) that shall be submitted to the Area Director and the Commissioner for review and comment. Within fifteen (15) days of receipt of all such comments from the Area Director and the Commissioner, and after incorporation and adoption of all such comments, the Bank shall approve the revised Capital Plan, which approval shall be recorded in the minutes of the meetings of the Board. Thereafter, the Bank shall implement and fully comply with the Capital Plan. The Board shall review the Bank's adherence to the Capital Plan, at minimum, on a monthly basis. Copies of the reviews and updates shall be submitted to the Area Director and the Commissioner as part of the progress reports required under paragraph 9(c) of this ORDER, and in any event no later than ten (10) days after completion. At a minimum, the Capital Plan shall include:

(i) specific plans to achieve the capital levels required under this ORDER;

(ii) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of the provisions of this ORDER;

(iii) projections for asset growth and capital requirements, and such projections shall be based upon a detailed analysis of the Bank's current and projected assets, liabilities, earnings, fixed assets, and off-balance sheet activities, each of which shall be consistent with the Bank's strategic business plan;

(iv) projections for the amount and timing of the capital necessary to meet the Bank's current and future needs;

(v) the primary source(s) from which the Bank will strengthen its capital to meet the Bank's needs;

(vi) contingency plans that identify alternative sources of capital should the primary source(s) under (v) above not be available; and

(vii) a dividend policy that permits the declaration of a dividend only:

A) when the Bank is in compliance with its approved Capital Plan;

B) when the Bank is in compliance with applicable State and Federal laws and regulations;

C) when, after payment of such dividends, the Bank remains in compliance with the above minimum capital ratios;

D) when such declaration and payment of dividends has been approved in advance by the Board; and

E) when such declaration and payment of dividends has been approved in advance, in writing, by the Area Director and the Commissioner.

(b) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to the Capital Plan.

3. Within thirty (30) days after the receipt of any Report of Examination of the Bank from the FDIC and/or the Division, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" in any Report of Examination that have not been previously collected or charged off.

4. (a) Within thirty (30) days from the effective date of this ORDER, the Bank shall formulate a written plan to reduce the Bank's risk exposure in each asset relationship in excess of \$750,000 classified as "Substandard" (Risk Exposure Plan). For purposes of this provision, "reduce" means to collect, charge off, or improve the quality of an asset so as to warrant its removal from adverse classification by the FDIC and/or the Division. In developing the Risk Exposure Plan, the Bank shall, at a minimum, and with respect to each adversely classified loan or lease, 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) In addition, the Risk Exposure Plan shall also include, at minimum, the following:

(i) a schedule for reducing the outstanding dollar amount of each adversely classified asset, including timeframes for achieving the reduced dollar amounts (at a minimum, the schedule for each adversely classified asset must show its expected dollar balance on a quarterly basis);

(ii) specific action plans intended to reduce the Bank's risk exposure in each classified asset;

(iii) a schedule showing, on a quarterly basis, the expected consolidated balance of all adversely classified assets, and the ratio of the consolidated balance to the Bank's projected Tier 1 capital plus the Allowance;

(iv) a provision for the Bank's submission of monthly written progress reports to its Board; and

(v) a provision mandating Board review of the progress reports, with a notation of the review recorded in the minutes of the meeting of the Board.

(c) The Bank shall submit the plan to the Area Director and the Commissioner for review and comment. Within fifteen (15) days from receipt of any comment from the Area

Director or the Commissioner, and after incorporation and adoption of any required changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank shall implement and fully comply with the plan.

5. (a) Within sixty (60) days from the effective date of this ORDER, the Bank shall have an appropriate number and type of qualified senior officers, with the requisite knowledge, skills, ability, and experience, giving consideration to the size and complexity of the Bank, to restore the Bank to a satisfactory financial condition, including, but not limited to, capital adequacy, asset quality, management effectiveness, earnings, liquidity, and sensitivity to market risk. Each member of management shall be provided appropriate written authority from the Board to implement the provisions of this ORDER.

(b) The Bank shall notify the Area Director and the Commissioner in writing when it proposes to add any individual to the Board or employ any individual as a senior executive officer. Such notification must be received at least thirty (30) days before such addition or employment is intended to become effective. The Bank shall not add any individual to the Board or employ any individual as a senior executive officer if the Area Director or Commissioner, in response to the notification required by this subparagraph, objects to such addition or employment.

6. (a) Within thirty (30) days of the effective date of this ORDER, the Board shall develop a program of independent loan review (Loan Review Program) 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 Loan Review Program shall provide for:

(i) prompt 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) action plans to reduce the Bank's risk exposure from each identified relationship;

(iii) prompt identification of all outstanding balances and commitments attributable to each obligor identified under the requirements of subparagraph (i), including outstanding balances and commitments attributable to related interests of such obligors, including the obligor of record, relationship to the primary obligor identified under subparagraph (i), and an assessment of the risk exposure from the aggregate relationship;

(iv) identification of trends affecting the quality of the loan portfolio, potential problem areas, and

action plans to reduce the Bank's risk exposure;

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

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

(vii) 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;

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

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

(x) an assessment of the ability of individual members of the lending staff to operate within the framework of the Bank's loan policy and applicable laws, rules, and regulations, and an action plan to address the identified deficiencies; and

(xi) a mechanism for reporting periodically, but in no event less than monthly, the information developed in paragraphs (i) through (x) above to the Board. The report should also describe the action(s) taken by management with respect to problem credits.

(b) The Bank shall submit the Loan Review Program to the Area Director and the Commissioner for review and comment. Within fifteen (15) days from receipt of any comment from the Area Director or the Commissioner, and after due consideration of any required changes, the Bank shall approve the program, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the program.

(c) Upon implementation, a copy of each periodic report required by the Loan Review Program shall be submitted to the Board, 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.

7. (a) Within thirty (30) days from the effective date of this ORDER, the Board shall establish a comprehensive policy and methodology for determining the adequacy of the Allowance (ALLL Policy). The ALLL Policy shall provide for a review of the Allowance at least once each calendar quarter and be completed in sufficient time such that the results of the review conducted by the Board may be properly reported in the quarterly

Consolidated Reports of Condition and Income. Such reviews shall, at a minimum, include the following:

- (i) the Federal Financial Institutions

Examination Council's Instructions for the Consolidated Reports of Condition and Income, the Interagency Statement of Policy on the Allowance, other applicable regulatory guidance that addresses the adequacy of the Bank's Allowance, and any analysis of the Bank's Allowance provided by the FDIC and/or the Division;

- (ii) the volume and mix of the overall loan portfolio, including trends in the portfolio mix by loan type and geography, trends in the severity of nonperforming or delinquent loans, trends in the severity of weaknesses in extensions of credit identified as "Special Mention" and adversely classified in the latest Report of Examination;

- (iii) previous loan loss experience by loan type, including the level, trends, and severity of overdrafts, trend of net charge-offs as a percent of average loans over the past several years, as well as an analysis of net charge-offs experienced on previously adversely classified loans;

- (iv) the degree of risk associated with renewed and extended loans;

- (v) the volume, trend, rate and duration of loan growth;

(vi) the results of internal loan reviews;

(vii) concentrations of credit and significant individual credits;

(viii) present and prospective economic conditions, generally and locally;

(ix) off-balance sheet credit risks; and

(x) any other factors appropriate in determining future Allowances, including changes in the Bank's strategic plan, and loan products and markets.

(b) 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 Consolidated Report of Condition and Income. The Board shall thereafter maintain an appropriate Allowance.

(c) The Bank shall submit the ALLL Policy to the Area Director and the Commissioner for review and comment. Within fifteen (15) days from receipt of any comment from the Area Director or the Commissioner, and after incorporation and adoption of any required changes, the Bank shall approve the policy, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the ALLL Policy.

(d) The Bank shall submit to the Area Director and

the Commissioner the analysis supporting the determination of the adequacy of the Allowance. These submissions may be made at such times as the Bank files the progress reports required by this ORDER or sooner upon the written request of the Area Director or the Commissioner. The Bank's ALLL Policy and methodology for determining the adequacy of the Bank's Allowance and its implementation shall remain subject to the approval of the Area Director and the Commissioner. In the event that the Area Director or the Commissioner determines that the Bank's Allowance is inadequate, the Bank shall increase the Allowance and amend its Consolidated Reports of Condition and Income accordingly.

8. Within thirty (30) days from the date of this ORDER, the Bank shall develop and fully implement a written strategic plan (Strategic Plan) supported by an operating budget and consisting of 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. The Strategic Plan and any subsequent modification thereto shall be submitted to the Area Director and the Commissioner for review and comment. Within fifteen (15) days of receipt of all such comments from the Area Director or the Commissioner, and after incorporation and adoption of any required changes, the Bank shall approve the revised Strategic

Plan, which approval shall be recorded in the minutes of the meetings of the Board. Thereafter, the Bank shall implement and fully comply with the Strategic Plan. The written Strategic Plan shall include, at a minimum:

- (a) identification of the major areas in and means by which the Bank will seek to improve operating performance;
- (b) specific goals to improve the net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings, as well as maintain appropriate provisions to the Allowance;
- (c) realistic and comprehensive budgets for all categories of income and expense items;
- (d) a description of the operating assumptions that form the basis for, and adequately support, material projected revenue and expense components;
- (e) coordination of the Bank's loan, investment, funds management, and operating policies, strategic plan, and Allowance methodology with the profit and budget planning;
- (f) a budget review process to monitor the revenue and expenses of the Bank whereby actual performance is compared against budgetary projections not less than quarterly, recording the results of the evaluation and any actions taken by the Bank in the minutes of the Board meeting at which such evaluation is undertaken; and,

(g) identification of personnel responsible for implementing each of the goals and strategies of the Profit Plan.

9. (a) Within fifteen (15) days from the effective date of this ORDER, the Board shall adopt and implement a program that will provide for monitoring of the Bank's compliance with this ORDER (Monitoring Program). The Bank shall submit the Monitoring Program, and any future modifications, to the Area Director and the Commissioner for review and comment. Within fifteen (15) days of receipt of all such comments from the Area Director or the Commissioner, and after incorporation and adoption of any required changes, the Bank shall approve the revised program, which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank shall implement and fully comply with the Monitoring Program. Following the adoption of the program, the Board shall review the Bank's compliance with this ORDER and record its review in the minutes of the meeting of the Board. At a minimum, the Monitoring Program will incorporate the provisions of subparagraphs (b) and (c) below.

(b) The Board shall be responsible for ensuring compliance with the ORDER and overseeing corrective measures with respect to the ORDER. The Board shall monitor compliance with this ORDER and any discussion or report relating to such

compliance shall be incorporated into the minutes of the meeting of the Board.

(c) Within thirty (30) days of the effective date of this ORDER, and monthly thereafter, the Bank shall furnish written progress reports to the Area Director and the Commissioner detailing the form, manner, and results of any actions taken to secure compliance with this ORDER. In addition, the Bank shall furnish such other reports as requested by the Area Director or the Commissioner. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the Board meeting.

10. This ORDER shall not bar, estop, or otherwise prevent the FDIC, the Division, or any other federal or state agency or department from taking any action against the Bank, the Bank's current or former institution-affiliated parties, and/or any of their respective directors, officers, employees, and agents.

11. Nothing herein shall prevent the FDIC or the Division from conducting on-site reviews and/or examinations of the Bank, its affiliates, agents, service providers or other institution-affiliated parties at any time to monitor compliance with this ORDER.

12. This ORDER shall become effective upon issuance by the FDIC and the Division and shall be fully enforceable by the FDIC pursuant to the provisions of section 8(i)(1) of the Act, 12

U.S.C. § 1818(i)(1), and by the Division pursuant to the provisions of Massachusetts General Laws Chapters 167 through 172 and other applicable statutes.

13. The provisions of this ORDER shall be binding upon the Bank, its successors and assigns, any of their respective directors, officers, employees, and agents, and any of the Bank's institution-affiliated parties.

14. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, suspended, or terminated in writing by the FDIC and by the Division.

Pursuant to delegated authority.

Dated at Braintree, Massachusetts, this 17th day of April,
2009.

Federal Deposit Insurance Corporation

By /s/
Mary A. Barry
Acting Area Director

Commonwealth of Massachusetts
Division of Banks

By /s/
Hon. Steven L. Antonakes
Commissioner