

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

AND

STATE OF MICHIGAN

OFFICE OF FINANCIAL AND INSURANCE REGULATION

| | |
|---------------------------|---------------------------|
| _____) | |
| IN THE MATTER OF) | |
|) | |
| NEW LIBERTY BANK,) | ORDER TO CEASE AND DESIST |
| PLYMOUTH, MICHIGAN) | |
|) | |
| (State Chartered) | FDIC-09-193b |
| Insured Nonmember Bank)) | |
| _____) | |

New Liberty Bank, Plymouth, 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, 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 ("**Consent Agreement**") with

representatives of the Federal Deposit Insurance Corporation (the "**FDIC**") and the OFIR, dated June 8, 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 Consent Agreement and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following unsafe or unsound banking practices and violations of law, rule, or regulation, in which findings the Bank Board of Directors ("Board") has not concurred:

- A. Operating with an inadequate level of capital protection for the kind and quality of assets held.
- B. Operating in a manner which has resulted in inadequate

earnings and loss to the institution.

- C. Engaging in hazardous lending and lax collection practices.
- D. Operating with an excessive level of adversely classified assets, delinquent loans, and nonaccrual loans.
- E. Operating with inadequate liquidity in light of the Bank's asset and liability mix.
- F. Operating with an inadequate Allowance for Loan and Lease Losses ("**ALL**").
- G. Operating with an inadequate funds management policy.
- H. Violating laws, rules or regulations.
- I. Operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits.
- J. Operating with a board of directors which has failed to provide adequate supervision over and direction to the management of the Bank to prevent unsafe and unsound banking practices.

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

MANAGEMENT

1. (a) Upon the effective date of this ORDER, the

Bank shall have and retain qualified management. Management 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 capital adequacy, asset quality, management effectiveness, earnings, liquidity, and sensitivity to interest rate risk.

(b) During the life of this ORDER, prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer, the Bank shall request and obtain OFIR's written approval. For purposes of this ORDER, "senior executive officer" is defined as in section 32 of the Act ("**section 32**"), 12 U.S.C. § 1831(i), and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. § 303.101(b).

BOARD PARTICIPATION

2. (a) As of the effective date of this ORDER, the board of directors shall assume full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. The Board's participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: the credit grading system and accurate identification of risk in the loan portfolio; the methodology for accurately assessing appropriate levels of the ALLL and ensuring adequate funding thereof; the monitoring of levels of adversely classified assets, delinquent and non-accrual loans, portfolio concentrations, and the establishment of appropriate policies and guidelines to limit or reduce them; reports of income and expenses; investment activity; adoption or modification of operating policies; individual committee reports; audit reports; internal control reviews including managements responses; and compliance with this ORDER. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

(b) Within thirty (30) days from the effective date of this ORDER, the Bank's board of directors shall have in place a program that will provide for monitoring of the Bank's compliance with this ORDER.

CAPITAL

3. (a) Within ninety (90) days from the effective date of this ORDER, the Bank shall have and maintain its level of Tier 1 capital as a percentage of its total assets ("**capital ratio**") at a minimum of eight (8%)percent and its level of qualifying total capital as a percentage of risk-weighted assets ("**total risk based capital ratio**") to a minimum of twelve (12%)percent. For purposes of this ORDER, Tier 1 capital, qualifying total capital, total assets, and risk-weighted assets shall be calculated in accordance with Part 325 of the FDIC Rules and Regulations ("**Part 325**"), 12 C.F.R. Part 325.

(b) If, while this ORDER is in effect, the Bank increases capital by the sale of new securities, the board of directors of the Bank shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held by or controlled by them in favor of said plan. 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 17th Street, N.W., Washington, D.C. 20429 and to the Commissioner, Office of Financial and Insurance Regulation for the State of Michigan, 611 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.

REDUCTION OF DELINQUENCIES AND CLASSIFIED ASSETS

4. (a) Within sixty (60) days from the effective date of this ORDER, the Bank shall adopt, implement, and adhere to a written plan to reduce the Bank's risk position in each asset in excess of \$300,000 which is delinquent or classified "Substandard" or "Doubtful" in the January 26, 2009 joint Report of Examination ("ROE"). The plan shall include, but not be limited to, provisions which:

- (i) Prohibit an extension of credit for the payment of interest, unless the Board provides, in writing, a detailed explanation of why the extension is in the best interest of the Bank;
- (ii) Provide for review of the current financial condition of each delinquent or classified borrower, including a review of borrower cash flow and collateral value;
- (iii) Delineate areas of responsibility for loan officers;

- (iv) Establish dollar levels to which the Bank shall reduce delinquencies and classified assets within 6 and 12 months from the effective date of this ORDER; and
- (v) Provide for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the meetings of the board of directors.

(b) As used in this paragraph, "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.

(c) A copy of the plan required by this paragraph shall be submitted to the Regional Director of the Chicago Regional Office of the FDIC ("**Regional Director**") and OFIR.

(d) While this ORDER remains in effect, the plan shall be revised to include assets which become delinquent after the effective date of this ORDER or are adversely classified at any subsequent examinations.

LENDING AND COLLECTION POLICIES

5. (a) Within thirty (30) days from the effective

date of this ORDER, the Bank shall revise its written lending and collection policies to provide effective guidance and control over the Bank's lending function, which policies shall include an accurate credit grading system and specific guidelines for placing loans on a non-accrual basis. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio.

(b) The revisions to the Bank's loan policy and practices required by this paragraph, at a minimum, shall incorporate the items discussed on pages 18 through 22 of the ROE.

(c) The policies and revisions thereto required by this paragraph shall be submitted to the Regional Director and OFIR for review and comment. Within thirty (30) days of receipt of any comments from the Regional Director or OFIR the Bank shall incorporate any changes required by the Regional Director or OFIR and thereafter adopt, implement, and adhere to the policies.

ALLOWANCE FOR LOAN AND LEASE LOSSES

6. (a) Upon the effective date of this ORDER, and prior to the submission of all Reports of Condition and Income required by the FDIC, the board of directors of the Bank shall review the adequacy of the Bank's ALLL, provide

for an adequate ALLL, and accurately report the same. The minutes of the board meeting at which such review is undertaken shall indicate the findings of the review, the amount of increase in the ALLL recommended, if any, and the basis for determination of the amount of ALLL provided. In making these determinations, the board of directors shall consider the FFIEC Instructions for the Reports of Condition and Income and any analysis of the Bank's ALLL provided by the FDIC or OFIR.

(b) ALLL entries required by this paragraph shall be made prior to any capital determinations required by this ORDER.

CONCENTRATION OF CREDIT

7. Within 30 days from the effective date of this ORDER, the Bank shall formulate adopt and implement a written plan to reduce and manage each of the portfolio concentrations of credit identified in the ROE in a safe and sound manner. At a minimum the plan must provide for written procedures for the ongoing measurement and monitoring of the concentrations of credit, establish policy guidelines for portfolio mix, and set limits on concentrations commensurate with the Bank's capital position, safe and sound banking practices, and the overall risk profile of the Bank. The plan required by this

paragraph shall be acceptable to the Regional Director and OFIR as determined at subsequent examinations or visitations of the Bank.

PROFIT PLAN AND BUDGET

8. (a) Within ninety (90) days from the effective date of this ORDER, the Bank shall adopt, implement, and adhere to a written profit plan and a realistic, comprehensive budget for all categories of income and expense for calendar year 2009. The plans 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.

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

- (i) Realistic and comprehensive budgets;
- (ii) A budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections;

- (iii) Identification of major areas in, and means by which, earnings will be improved; and
- (iv) A description of the operating assumptions that form the basis for and adequately support major projected income and expense components.

(c) Within thirty (30) days from the end of each calendar quarter following completion of the profit plans and budgets required by this paragraph, the Bank's board of directors 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 of directors' meeting at which such evaluation is undertaken.

(d) A written profit plan and budget shall be prepared for each calendar year for which this ORDER is in effect.

(e) Copies of the plans and budgets required by this paragraph shall be submitted to the Regional Director and OFIR.

STRATEGIC PLAN

9. (a) Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall formulate

adopt, and implement a realistic, comprehensive strategic plan. 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. The written strategic plan shall address, at a minimum:

- (i) Strategies for pricing policies and asset/liability management; and
- (ii) Financial goals, including pro forma statements for asset growth, capital adequacy, and earnings.

(b) Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank's board of directors 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.

(c) The strategic plan required by this ORDER shall be revised 30 days prior to the end of each calendar year during which this ORDER is in effect. Thereafter the Bank shall approve the revised plan, which approval shall

be recorded in the minutes of a board of directors' meeting, and the Bank shall implement and adhere to the revised plan.

(d) Copies of the plan and revisions thereto required by this paragraph shall be submitted to the Regional Director and OFIR.

LIQUIDITY PLAN

10. (a) Within sixty (60) days of the effective date of this ORDER, the Bank shall adopt a written contingency funding plan ("**Liquidity Plan**"). The Liquidity Plan shall identify sources of liquid assets to meet the Bank's contingency funding needs over time horizons of one month, two months, and three months. At a minimum, the Liquidity Plan shall be prepared in conformance with the Liquidity Risk Management Guidance found at FIL-84-2008 and include provisions to address the issues identified on page 22 of the ROE.

(b) On each Friday the Bank is open for business during the life of this ORDER the Bank shall submit to the Regional Director and OFIR a liquidity analysis report, in a format that is acceptable to the Regional Director and the OFIR.

(c) A copy of the plan required by this paragraph shall be submitted to the Regional Director and

OFIR.

CORRECTION OF VIOLATIONS

11. Within thirty (30)days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law, rule, and regulations and contraventions of policy listed on pages 25-26 of the ROE.

NOTIFICATION TO SHAREHOLDER

12. Following the effective date of this ORDER, the Bank shall send to its shareholder a copy 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.

PROGRESS REPORTS

13. 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 OFIR written progress reports signed by each member of the Bank's board of directors, detailing the actions taken to secure compliance with the ORDER and the results thereof.

CLOSING PARAGRAPHS

The effective date of this ORDER shall be ten (10) calendar days after its issuance by the FDIC and the OFIR.

