

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

AND

STATE OF FLORIDA

OFFICE OF FINANCIAL REGULATION

_____))
In the Matter of))
COMMERCE BANK OF SOUTHWEST FLORIDA)) ORDER TO CEASE AND DESIST
FORT MYERS, FLORIDA))
(Insured State Nonmember Bank))) FDIC-09-113b
_____)) OFR 0621-FI-03/09

Commerce Bank of Southwest Florida, Fort Myers, Florida, ("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 charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and under Chapter 120 and Section 655.033, Florida Statutes (2008), regarding hearings before the Office of Financial Regulation for the State of Florida ("OFR"), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Federal Deposit Insurance Corporation ("FDIC") and the Director ("Director") of the Division of Financial Institutions ("DFI") of the OFR, dated June 12, 2009,

whereby, solely for the purpose of this proceeding and without admitting or denying the 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 OFR.

The FDIC and OFR 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 OFR, therefore, accepted the CONSENT AGREEMENT and issued the following:

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 Section 655.005(1)(i), Florida Statutes, and its successors and assigns, cease and desist from the following unsafe or unsound banking practices:

- A. Engaging in hazardous lending and lax collection practices.
- B. Operating with an inadequate level of capital protection for the kind and quality of assets held.
- C. Operating with an excessive level of adversely classified assets, delinquent loans, and nonaccrual loans.
- D. Operating with inadequate liquidity in light of the Bank's asset and liability mix.
- E. Operating in such a manner as to generate inadequate earnings.

- F. Operating with an inadequate allowance for loan and lease losses for the volume, kind, and quality of loans and leases held.
- G. Operating with an excessive concentration of credit in commercial real estate loans.
- H. Operating with excessive interest rate risk.
- 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 or unsound banking practices and violations of law, rule, or regulation.

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

CAPITAL

1. (a) Within 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 9.0 percent and its level of qualifying total capital as a percentage of risk-weighted assets ("total risk based capital ratio") at a minimum of 11.0 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 OFR, DFI, 200 East Gaines Street, Tallahassee, Florida, 32399-0371, for their review. Any

changes requested to be made in the materials by the FDIC or the OFR 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.

DIVIDEND RESTRICTION

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

CONCENTRATION OF CREDIT

3. Within 60 days from the effective date of this ORDER, the Bank shall formulate adopt and implement a written plan to manage each of the concentrations of credit identified on pages 3 and 40 of the Report of Examination as of September 22, 2008 ("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, and a limit on concentrations commensurate with the Bank's capital position, safe and sound banking practices, and the overall risk profile of the Bank.

STRATEGIC PLAN

4. (a) Within 90 days from the effective date of this ORDER, the Bank shall formulate 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) 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.

(c) The plan and revisions thereto required by this paragraph shall be submitted to the Regional Director and Director for review and comment. Within 30 days of receipt of

any comments from the Regional Director or Director, the Bank shall incorporate any changes required by the Regional Director or Director and thereafter adopt, implement, and adhere to the plan.

(d) 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.

PROFIT PLAN AND BUDGET

5. (a) Within 60 days from the effective date of this ORDER, the Bank shall prepare a written profit plan and a realistic, comprehensive budget for all categories of income and expense for calendar years 2009 and 2010. 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) A written profit plan and budget shall be prepared for each calendar year for which this ORDER is in effect.

(d) The plans and budgets required by this paragraph shall be submitted to the Regional Director and Director for review and comment. Within 30 days of receipt of any comments from the Regional Director or Director, the Bank shall incorporate any changes required by the Regional Director or Director, and thereafter adopt, implement, and adhere to the plan and budget.

(e) Within 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.

LIQUIDITY

6. (a) Within 30 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 pages 5 and 6 of the ROE.

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

REDUCTION OF DELINQUENCIES AND CLASSIFIED ASSETS

7. (a) Within 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 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 the OFR.

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

(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.

LOSS CHARGE-OFF

8. As of the effective date of this Order the Bank shall charge off from its books and records any loan classified "Loss" in the ROE.

ALLOWANCE FOR LOAN AND LEASE LOSSES

9. Prior to submission or publication of all Reports of Condition and Income required by the FDIC and the OFR after the effective date of this ORDER, 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 OFR.

INTEREST RATE RISK

10. (a) Within 60 days of the effective date of this ORDER, the Bank shall strengthen its interest rate risk program. At a minimum, deficiencies detailed in the Report, including weak management knowledge of the Bank's interest rate risk profile and measurement tools, unrealistic model results, questionable model assumptions, shall be strengthened. The interest rate risk program shall require that an independent review be performed of the interest rate risk management process. The program and independent review shall comply with the requirements of the Joint Agency Policy Statement on Interest Rate Risk as set out in FIL-52-96.

MANAGEMENT

11. (a) Within 90 days from the effective date of this ORDER, the Bank shall retain qualified management. 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 asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

(b) During the life of this ORDER, the Bank shall provide written notice to the FDIC and OFR when it proposes to add any individual to the Bank's board of directors or employ any individual as a senior executive officer as that term is defined in Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. § 303.101, or executive officer as that term is defined and applied in Chapter 655 and Section 655.0385, Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code. The notification to the FDIC and OFR shall comply with the requirements set forth in 12 C.F.R. Part 303, Subpart F, and Rule 69U-100.03852, Florida Administrative Code. The notification should include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 60 days before such addition or employment is intended to become effective. If the Regional Director or Director issues a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. § 1831i, or Section 655.0385(2), Florida Statutes, with respect to any proposed

individual, then such individual may not be added or employed by the Bank.

BOARD PARTICIPATION

12. (a) As of the effective date of this ORDER, the board of directors shall increase its participation in the affairs of the Bank, assuming 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. This 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: reports of income and expenses; new, overdue, renewal, insider, charged off, and recovered loans; investment activity; adoption or modification of operating policies; individual committee reports; audit reports; internal control reviews including management's responses; and compliance with this ORDER. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

(b) Within 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. The Bank's board of directors shall record its review of the Bank's compliance with this ORDER in

the minutes of each regularly scheduled board of directors' meeting.

SHAREHOLDER COMMUNICATION

13. Within 30 days from the effective date of this ORDER, the Bank shall send to its shareholder a copy or description of this ORDER: (1) in conjunction with the Bank's next shareholder communication; and (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 the FDIC Registration and Disclosure Section 550 17th Street, N.W., Washington, D.C. 20429 and to OFR, DFI, 200 East Gaines Street, Tallahassee, Florida, 32399-0371, for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC and OFR shall be made prior to dissemination of the description, communication, notice or statement.

PROGRESS REPORTS

14. Within 30 days of the last day of each calendar quarter following the effective date of this ORDER, the Bank shall furnish to the Regional Director and Director 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. Such reports may be

discontinued when the corrections required by this ORDER have been accomplished and the Regional Director and Director have, in writing, released the Bank from making further reports.

The effective date of this ORDER shall be 10 calendar days after its issuance by the FDIC and OFR.

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 and OFR.

Pursuant to delegated authority.

Dated: July 9, 2009.

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

_____/s/_____
Linda B. Charity
Director, Division of
Financial Institutions
Office of Financial Regulation
By Delegated Authority for the
Commissioner, Office of
Financial Regulation

The Commissioner of the Florida Office of Financial Regulation having duly approved the foregoing ORDER, and the Bank, through its Board, having agreed that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and legal effect that such ORDER would be binding upon the Bank if the OFR had issued a separate order that included and incorporated all of the provisions of the foregoing ORDER pursuant to Sections 655.033 and 655.041, Florida Statutes (2008).

Dated this 9th day of July, 2009.

_____/s/_____

Linda B. Charity
Director, Division of Financial Institutions
Office of Financial Regulation
By Delegated Authority for the
Commissioner, Office of Financial Regulation