

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

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In the Matter of )  
DE WITT STATE BANK )  
DE WITT, NEBRASKA )  
(Insured State Nonmember Bank) )

CONSENT ORDER  
FDIC-09-442b

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The Federal Deposit Insurance Corporation ("FDIC") is the appropriate Federal banking agency for De Witt State Bank, De Witt, Nebraska, under Section 3(q) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1813(q)(3).

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a "Stipulation to the Issuance of a Consent Order" (Stipulation), dated November 3, 2009, that is accepted by the FDIC. Through the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law and/or regulation, to the issuance of this Consent Order ("Order") by the FDIC.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) have been satisfied, the FDIC hereby orders the following:

1. **Maintain Qualified Management.**

(a) Within 60 days from the effective date of this ORDER, the Bank shall have qualified management, including an appropriate number and type of senior officers with 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, and 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 of directors to implement the provisions of this ORDER.

(b) Within 60 days and at least annually thereafter during the life of this ORDER, the board of directors shall assess management's 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, and sensitivity to market risks.

(c) The board shall report its assessments under this provision in the minutes of the board of directors' meetings.

## **2. Add Independent Directors.**

(a) Within 180 days from the effective date of this ORDER, the Bank shall take action to add at least two (2) directors to the Bank's board of directors who are independent with respect to the Bank and its affiliates. Such action, to the extent permissible by state statute and the Bank's bylaws, may include calling for a special meeting of the Bank's shareholders. If necessary, the Bank shall cause its articles of incorporation, bylaws, and/or other governing corporate instrument to be amended to allow the action required by this paragraph.

(b) The board of directors shall prepare and forward to each shareholder of the Bank, a list of potential candidates for nomination to the Bank's board of directors prior to the next meeting of shareholders of the Bank at which directors are to be elected. The actions taken in identifying potential independent candidates, including any communication with such individuals, shall be documented and made part of the minutes of the meeting of the board of directors.

(c) At the next meeting of the shareholders of the Bank, and at each succeeding meeting of the shareholders at which Bank directors are to be elected, the members of the board of directors who are also shareholders shall nominate and support the election of candidates to the board of directors who are independent with respect to the Bank and its affiliates in such number, if available, as are necessary to cause at least two (2) members of the board of directors to be and to remain independent with respect to the Bank.

(d) For purposes of this ORDER, an individual who is "independent with respect to the Bank" shall be any individual who:

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

(ii) does not own or control more than 10 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 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 ownership interests in 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 1 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.

(e) Notwithstanding subparagraph (d)(i)-(v) above, an individual may otherwise be deemed to be an independent director for purposes of this ORDER by prior written approval of the Regional Director of the FDIC and the Director of the Nebraska Department of Banking and Finance (collectively, the "Supervisory Authorities").

### **3. Maintain Capital.**

(a) While this ORDER is in effect, the Bank shall have and maintain the following minimum capital levels (as defined in Part 325 of the FDIC's Rules and Regulations), after establishing an appropriate allowance for loan and lease losses:

(i) Tier 1 capital at least equal to 8 percent of total assets; and

(ii) Total risk-based capital at least equal to 12 percent of total risk-weighted assets.

(b) In the event any ratio is or becomes less than the minimum required by subparagraph (a) above, the Bank shall immediately notify the Supervisory Authorities and within 30 days shall: (1) increase capital in an amount sufficient to comply with subparagraph (a); or (2) submit a written plan to the Supervisory Authorities, describing the primary means and timing by which the Bank shall increase its capital ratios up to or in excess of the minimum requirements set forth above, as well as a contingency plan in the event the primary sources of capital are not available. The Bank shall approve the written plan, which approval shall be recorded in the minutes of the board of directors' meeting. Thereafter, the Bank shall implement and fully comply with the written plan.

(c) Any increase in Tier 1 capital necessary to meet the requirements of subparagraph (a) above may not be accomplished through a deduction from the allowance for loan and lease losses.

**4. Restrict Dividends and Management Fees.**

While this ORDER is in effect, the Bank shall not declare or pay any cash dividends or management fees without the prior written approval of the Supervisory Authorities.

**5. Reduce Adversely Classified Assets.**

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate written plans to reduce the Bank's risk exposure in each asset in excess of \$50,000 adversely classified as "Substandard" in the June 22, 2009 Report of Examination by the Supervisory Authorities ("Report of Examination"). 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 Supervisory Authorities. In developing the plans mandated by this paragraph, 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 sources of repayment and repayment ability, 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) Upon completion of the plans, the Bank shall approve the plans, which approval shall be recorded in the minutes of the board of directors' meeting. Thereafter, the Bank shall implement and fully comply with the plans.

**6. Restrict Advances to Adversely Classified Borrowers.**

(a) While this ORDER is in effect, 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 adversely classified "Substandard" or "Doubtful," either internally or by either of the Supervisory Authorities in a Report of Examination in the last 18 months and is uncollected, or is classified "Substandard" or "Doubtful" in any future Reports of Examination from either of the Supervisory Authorities and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing, after collecting in cash all interest and fees due from a borrower, any credit already extended to the borrower.

(b) Subparagraph (a) of this provision shall not apply if the Bank's failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank. Prior to extending additional credit pursuant to this subparagraph (b), whether in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by the Bank's board of directors, who shall conclude:

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



(ii) that the extension of such credit would improve the Bank's position, with an explanatory statement of why the Bank's position would improve; and

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

(b) The board of directors' conclusions and approval shall be made a part of the minutes of the board, or designated committee, with a copy retained in the borrower's credit file.

**7. Revise Loan Policy.**

(a) 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.

(b) Upon completion of the review and revisions, 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.

(c) In the event the Bank makes a loan that would not conform to 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 borrower's credit file.

**8. Maintain Allowance for Loan and Lease Losses.**

(a) Within 10 days from the effective date of this ORDER, the board of directors shall make a provision which will replenish the allowance for loan and lease losses ("ALLL") for the loans charged off as a result of the most recent internal loan review or in the most recent regulatory Report of Examination and reflect the potential for further losses in the remaining loans or leases classified "Substandard" and "Doubtful" as well as all other loans and leases in its portfolio.

(b) Within 30 days from the effective date of this ORDER, the board shall establish a comprehensive written policy and methodology for determining the ALLL. That written policy shall provide for a review of the ALLL at least once each calendar quarter in order that the findings of the board may be properly reported in the Bank's Call Reports. Such reviews shall, at a minimum, be made in accordance with the Call Report Instructions, the Interagency Statement of Policy on the Allowance for Loan and Lease Losses, other applicable regulatory guidance that addresses the appropriateness of the Bank's ALLL,

and any analysis of the Bank's ALLL provided by either of the Supervisory Authorities.

(c) A deficiency in the Bank's ALLL 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 Call Report. The board of directors shall thereafter maintain an appropriate ALLL.

**9. Reduce Concentrations of Credit.**

(a) Within 60 days from the effective date of this ORDER, the Bank shall develop a written plan to reduce the loan concentrations listed on the "Concentrations" pages of the Report of Examination, to an amount that is commensurate with the Bank's business strategy, management expertise, size, and location ("Concentration Plan"). At a minimum, the Concentration Plan shall include:

(i) dollar levels and percent of capital to which the Bank shall reduce each concentration;

(ii) timeframes for achieving the reduction in dollar levels identified in response to (i) above; and

(iii) provisions for the submission of monthly written progress reports to the Bank's board of directors for review and notation in minutes of the board of directors' meetings.

(b) Upon completion of the Concentration Plan, the Bank shall approve the plan, which approval shall be recorded in the minutes of the board of directors' meeting. Thereafter, the Bank shall implement and fully comply with the Concentration Plan.

**10. Correct Technical Exceptions.**

(a) Within 90 days from the effective date of this ORDER, the Bank shall correct the exceptions listed on the "Assets with Credit Data or Collateral Documentation Exceptions" pages of the Report of Examination.

(b) For any exception that cannot be corrected, the Bank shall document the reasons for such failure in the borrowers' credit file, and the board of directors shall review and include the documentation in the board minutes.

(c) The Bank shall ensure that all necessary supporting documentation is obtained and evaluated before any credit or loan is extended.

**11. Implement Business/Strategic Plan and Profit and Budget Plan.**

(a) Within 90 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 profit and budget plan shall include a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.

(c) The Bank shall approve the business/strategic plan and the profit and budget plan, and any subsequent modification thereto, which approval shall be recorded in the minutes of the board of directors' meeting. Thereafter, the Bank shall implement and fully comply with the plans.

**12. Eliminate or Correct Violations.**

(a) Within 90 days after the effective date of this ORDER, the Bank, consistent with safe and sound banking practices, shall eliminate and/or correct all violations of law and/or regulation cited in the Report of Examination. In addition,

within 90 days from the effective date of this ORDER, the Bank shall adopt and implement appropriate procedures to ensure future compliance with all applicable laws and regulations.

(b) The Bank shall document each violation 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 shall be recorded in the board meeting minutes.

**13. Disclose Order to Shareholders.**

Following the effective date of this ORDER, the Bank shall provide a copy or otherwise furnish a description of this ORDER to its shareholders, (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 to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

**14. Submit Progress Reports Detailing Compliance with ORDER.**

Within 30 days after the end of each calendar quarter, the Bank shall furnish a written progress report to the Supervisory Authorities detailing the form, manner, and results of any actions taken to secure compliance with this ORDER. Upon written request by either of the Supervisory Authorities, the Bank shall furnish additional written progress reports to the Supervisory Authorities detailing the form, manner, and results of any actions taken to secure compliance with this ORDER.

The provisions of this ORDER shall not bar, estop or otherwise prevent the FDIC, or any other federal or state agency or department from taking any action against any of the Bank or any of the Bank's current or former institution-affiliated parties.

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 the 10<sup>th</sup> day of November, 2009.

By:

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Mark S. Moylan  
Deputy Regional Director  
Kansas City Regional Office