

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	
	)	CONSENT ORDER
PROFICIO BANK	)	
SALT LAKE CITY, UTAH	)	FDIC-10-449b
	)	
(INSURED STATE NONMEMBER BANK)	)	
	)	
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Proficio Bank, Salt Lake City, Utah (“Bank”) 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 July 27, 2010, that is accepted by the FDIC. With the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices relating to management, capital, asset quality and earnings, and any charges of violations of law and/or regulation, to the issuance of this Consent Order (“Order”) by the FDIC pursuant to Section 8(b)(1) of the FDI Act.

Having determined that the requirements for issuance of an order under Section 8(b) of the FDI Act, 12 U.S.C. § 1818(b) have been satisfied, the FDIC hereby order that:

1. As of the effective date of this Order, the Board 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; liquidity and funds managements activities; operating policies; and individual committee actions. The Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

2. (a) Within 90 days from the effective date of this Order, the Bank shall increase and thereafter maintain its Tier 1 capital in such an amount to ensure that the Bank's leverage ratio equals or exceeds 12.0 percent.

(b) Within 60 days from the effective date of this Order, the Bank shall develop and adopt a plan to meet and maintain the capital requirements of this Order and to comply with the FDIC's Statement of Policy on Risk-Based Capital contained in Appendix A to Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, Appendix A. Such plan and its implementation shall be in a form and manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

(c) The level of capital to be maintained during the life of this Order shall be in addition to a fully funded allowance for loan and lease losses ("ALLL"), the adequacy of which shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations. Any increase in Tier 1 capital necessary to meet the requirements of this paragraph may not be accomplished through a deduction from the Bank's ALLL.

(d) If all or part of the increase in capital required by this Order is accomplished by the sale of new securities, the Board shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public

distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare 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 any other material disclosures necessary to comply with the 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 plan and any materials used in the sale of the securities shall be submitted to the FDIC, Registration, Disclosure and Securities Unit, 550 17<sup>th</sup> St. N.W., Washington, D.C. 20429, for review. Any changes requested by the FDIC shall be made prior to dissemination. If the increase in capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Regional Director for prior approval.

(e) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities, a 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 days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(f) For the purposes of this Order, the terms "leverage ratio" and "Tier 1 capital" shall have the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 325.2(m) and 325.2(v).

3. The Bank shall not pay cash dividends or make any other payments to its shareholders without the prior written consent of the Regional Director.

4. (a) Within 10 days from the effective date of this Order, the Bank shall eliminate from its books, by charge-off or collection, all assets classified "Loss" in the Report of Examination dated March 15, 2010 ("ROE") that have not been previously collected or charged off. Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph.

(b) Within 90 days from the effective date of this Order, the Bank shall have reduced the assets classified "Substandard" in the ROE, that have not previously been charged off to not more than 95 percent of the Bank's Tier 1 capital and ALLL.

(c) Within 180 days from the effective date of this Order, the Bank shall have reduced the assets classified "Substandard" in the ROE, that have not previously been charged off to not more than 80 percent of the Bank's Tier 1 capital and ALLL.

(d) Within 270 days from the effective date of this Order, the Bank shall have reduced the assets classified "Substandard" in the ROE, that have not previously been charged off to not more than 65 percent of the Bank's Tier 1 capital and ALLL.

(e) Within 360 days from the effective date of this Order, the Bank shall have reduced the assets classified "Substandard" in the ROE, that have not previously been charged off to not more than 50 percent of the Bank's Tier 1 capital and ALLL.

(f) The requirements of this paragraph are not to be construed as standards for future operations and, in addition to the foregoing, the Bank shall eventually reduce the total of all adversely classified assets. Reduction of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph. As used in this paragraph the word "reduce" means:

- (i) to collect;
- (ii) to charge-off; or
- (iii) to sufficiently improve the quality of assets adversely classified to

warrant removing any adverse classification, as determined by the FDIC.

5. Within 60 days from the effective date of this Order, the Board shall review the appropriateness of the Bank's ALLL and establish a comprehensive policy for determining an appropriate level of the ALLL, including documenting its analysis according to the standards set forth in the July 25, 2001 Interagency Policy Statement on Allowance for Loan and Lease Losses Methodologies and Documentation for Banks and Savings Associations. For the purpose of this determination, an appropriate ALLL shall be determined after the charge-off of all loans or other items classified "Loss." The policy shall provide for a review of the ALLL at least once each calendar quarter. Said review shall be completed in order that the findings of the Board with respect to the ALLL are properly reported in the quarterly Reports of Condition and Income. The review shall focus on the accounting standards set forth in the Financial Accounting Standards Board Accounting Standards Codification ("ASC") 450 (formerly known as FAS 5) and ASC 310-40 (formerly known as FAS 114), the results of the Bank's internal loan review, loan and lease loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure of significant credits, concentrations of credit, and present and prospective economic conditions. A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Report of Condition, by a charge to current operating earnings. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the Bank's ALLL and its implementation shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

6. Within 120 days from the effective date of this Order, the Bank shall develop or revise, adopt, and implement a written three-year strategic plan, which shall include a plan addressing retention of profits, reducing overhead expenses, and setting forth a comprehensive operating budget. Such strategic plan shall be submitted to the Regional Director and shall include specific goals for the diversification of earning assets and sources of funding, the dollar volume of total loans, total investment securities, and total deposits as of year-end 2011, 2012 and 2013. In addition, the plan shall contain formal goals, strategies and benchmarks which are consistent with sound banking practices to improve the Bank's net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings of the Bank. It shall also contain a thorough description of the operating assumptions that form the basis for, and adequately support, each major component of the strategic plan. For each time frame, the plan will also specify:

- (a) the anticipated average maturity and average yield on loans and securities;
- (b) the average maturity and average cost of deposits;
- (c) the level of earning assets as a percentage of total assets; and
- (d) the ratio of net interest income to average earning assets.

Such plan and its implementation shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations. Furthermore, following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan and shall record 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.

7. (a) During the life of this Order, the Bank shall comply with the provisions of section 337.6 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.6.

(b) During the life of this Order, the brokered deposits held by the Bank shall not exceed the level held by the Bank as of the effective date of this Order. For purposes of this Order, the term “brokered deposits” shall have the meaning ascribed to it in section 337.6(a)(2) of the FDIC’s Rules and Regulations, 12 C.F.R. § 337.6(a)(2).

8. Within 60 days from the effective date of this Order, the Bank shall eliminate and/or correct all violations of law, as more fully set forth in the ROE. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

9. Within 30 days of the end of the first quarter following the effective date of this Order, and within 30 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any actions taken to secure compliance with this Order and the results thereof. Such reports may be discontinued when the corrections required by this Order have been accomplished and the Regional Director has released the Bank in writing from making further reports.

10. Following the effective date of this Order, the Bank shall either provide a copy of the Order to its shareholder NHB Holdings, Inc. or otherwise furnish a description of the Order in conjunction with the next board meeting of NHB Holdings, Inc., in which case 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 17<sup>th</sup> Street, N.W., Washington, D.C. 20429, 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.

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 other action against the Bank or any of the Bank's current or former institution-affiliated parties, as that term is defined in Section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

This Order will become effective upon its issuance by the FDIC.

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 at San Francisco, California, this 5<sup>th</sup> day of August, 2010.

/s/

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J. George Doerr  
Deputy Regional Director  
Risk Management  
Division of Supervision and Consumer Protection  
San Francisco Region  
Federal Deposit Insurance Corporation