

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

STATE OF FLORIDA  
OFFICE OF FINANCIAL REGULATION

TALLAHASSEE, FLORIDA

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In the Matter of	)	
	)	
PROFESSIONAL BANK	)	CONSENT ORDER
CORAL GABLES, FLORIDA	)	
	)	FDIC-10-803b
	)	OFR 0801-FI-11/10
(Insured State Nonmember Bank)	)	

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The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Professional Bank, Coral Gables, Florida (“Bank”), under 12 U.S.C. § 1813(q).

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 December 15, 2010, that is accepted by the FDIC and the Florida Office of Financial Regulation (“OFR”). With this STIPULATION, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to weaknesses in management, earnings, and sensitivity to market risk, to the issuance of this Consent Order (“ORDER”) by the FDIC and the OFR. The OFR may issue an ORDER pursuant to Chapter 120 and Section 655.033, Florida Statutes (2010).

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and under Chapter 120 and Section 655.033, Florida Statutes, have been satisfied, the FDIC and the OFR hereby order that:

**1. BOARD OF DIRECTORS**

(a) Immediately upon issuance 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. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committees. Nothing in the foregoing sentences shall preclude the Board from considering matters other than those contained in the agenda. 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; operating policies; and individual committee actions. 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 Board shall establish a Board committee (“Directors’ Committee”), consisting of at least three members, to oversee the Bank’s compliance with the ORDER. A majority of the members of the Directors’ Committee shall not be officers of the Bank. The

**2. MANAGEMENT**

(a) Within 90 days from the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

(i) a chief executive officer with proven ability in managing a bank of comparable size and complexity and in effectively implementing lending, investment and operating policies in accordance with sound banking practices;

(ii) a senior lending officer with a significant amount of appropriate lending, collection, and loan supervision experience, and experience in upgrading a low quality loan portfolio; and

- (iii) a chief financial officer with a significant amount of appropriate experience in managing the financial aspects and official reporting of a bank's operations of comparable size and complexity in accordance with sound banking practices.
- (b) 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 and regulations; and
  - (iv) restore all aspects of the Bank to a safe and sound condition, including, but not limited to, asset quality, capital adequacy, earnings, management effectiveness, risk management, liquidity and sensitivity to market risk.
- (c) To facilitate retention of qualified management, the Board shall, in no more than 60 days from the effective date of this ORDER, commission a written, independent, third party analysis, and assessment of the Bank's corporate governance and management and staffing needs ("Management Plan"), which shall include, at a minimum:
  - (i) identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Bank;
  - (ii) a written evaluation of each senior executive officer as defined in paragraph 2(f), and other staff members to determine whether those individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including, but not

- (iii) the identification of present and future management and staffing needs for each area of the Bank and a plan to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications to fill those officer or staff member positions consistent with the needs identified in the Management Plan;
  - (iv) an assessment of the current structure and composition of the Board and its committees, and a determination of the structure and composition needed to adequately supervise the affairs of the Bank; and
  - (v) an organizational chart.
- (d) The written Management Plan shall also include the requirement that the Board, or one or more committees thereof consisting of not less than a majority of the individuals who are independent with respect to the Bank, provide supervision over lending, investment and operating policies of the Bank sufficient to ensure that the Bank complies with the provisions of this ORDER.
- (e) Such Management Plan and its implementation shall be satisfactory to the Regional Director of the FDIC's Atlanta Regional Office (“Regional Director”) and the OFR (collectively, “Supervisory Authorities”) as determined in subsequent examinations and/or visitations.
- (f) During the life of this ORDER, the Bank shall notify the Supervisory Authorities in writing and within ten business days, of the resignation or termination of any of the Bank’s directors or senior executive officers and provide

the reason for the resignation or termination of the individual. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer or executive officer, as those terms are defined in Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. § 303.101 and in Section 655.005, Florida Statutes, the Bank shall comply with the requirements of section 32 of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104, and Section 655.0385, Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code. The notification shall 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 OFR 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.

**3. RESOLUTION OF SPECIAL MENTION ASSETS**

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate a written plan to resolve the criticisms identified for Special Mention in the Report of Examination dated as of August 30, 2010 (“Report”).

(b) The plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

**4. WRITTEN STRATEGIC/BUSINESS PLAN**

(a) Within 90 days from the effective date of this ORDER, the Bank shall prepare and submit to the Supervisory Authorities for review and comment a written three year business/strategic plan covering the overall operation of the Bank. At a minimum, the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

- (i) goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;
- (ii) goals for the composition of the deposit base including strategies to reduce reliance on volatile and costly deposits; and
- (iii) plans for effective risk management and collection practices.

(b) Within 15 days from the receipt of any comments from the Supervisory Authorities, and after due consideration of any recommended changes, the Board shall approve the business/strategic plan, which approval shall be recorded in the minutes of a Board meeting.

(c) The Bank shall not implement material changes to the strategic/business plan without the prior written approval of the Supervisory Authorities.

5. **PLAN FOR EXPENSES AND PROFITABILITY**

(a) Within 90 days from the effective date of this ORDER, the Bank shall formulate and implement a written plan to improve and/or sustain Bank earnings for 2011. This plan shall be forwarded to the Supervisory Authorities for review and comment and shall address, at a minimum, the following:

- (i) goals and strategies for improving and sustaining the earnings of the Bank;
- (ii) the major areas in, and means by which the Bank will seek to improve the Bank's operating performance;
- (iii) realistic and comprehensive budgets;
- (iv) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections;
- (v) the operating assumptions that form the basis for, and adequately support, major projected income and expense components; and
- (vi) coordination of the Bank's loan, investment, and operating policies and budget and profit planning with the funds management policy.

(b) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan required by this paragraph 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.

(c) Thereafter, the Bank shall formulate such a plan and budget by November 30 of each year. These plans and budgets shall be submitted to the Supervisory Authorities for review and comment by December 15 of each year.

**6. LENDING AND COLLECTION POLICIES**

Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement written lending and collection policies to provide effective guidance and control over the Bank's lending function. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policies and their implementation shall be in a form and manner acceptable to the Supervisory Authorities.

**7. ALLOWANCE FOR LOAN AND LEASE LOSSES**

Within 60 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and establish a comprehensive policy for determining the adequacy of the ALLL. For the purpose of this determination, the adequacy of the 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 time to properly report the ALLL in the quarterly Reports of Condition and Income. The review should focus on 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. The policy shall adhere to the guidance set forth in FIL-105-2006, dated December 13, 2006, *Interagency Policy Statement on the Allowance for Loan and Lease Losses*. A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Reports of Condition and Income, 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 ALLL and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations.

**8. INTERNAL ROUTINE AND CONTROLS**

(a) Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a policy for the operation of the Bank in such a manner as to provide adequate internal routine and controls within the Bank consistent with safe and sound banking practices and which addresses the criticisms cited in the Report. Such policy and its implementation shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies identified in the Report and shall be satisfactory to the Supervisory Authorities.

(b) Within 60 days from the effective date of this ORDER, the Bank shall develop an internal audit program that establishes procedures to protect the integrity of the Bank's operational and accounting systems. The program shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

**9. INTEREST RATE RISK MANAGEMENT**

Within 60 days from the effective date of this ORDER, the Bank shall develop and implement a written policy for managing interest rate risk in a manner that is appropriate to the size of the Bank and the complexity of its assets. The policy shall comply with the *Joint Agency Policy Statement on Interest Rate Risk*, FIL-52-96, dated July 12, 1996, and the *FFIEC Advisory on Interest Rate Management*, FIL-2-2010, dated January 20, 2010, shall be consistent with the comments and recommendations detailed

in the Report and shall include, at a minimum, the means by which the interest rate risk position will be monitored, the establishment of risk parameters, and provision for periodic reporting to management and the Board regarding interest rate risk with adequate information provided to assess the level of risk. Such policy and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

**10. VIOLATIONS OF LAW, REGULATION, AND POLICY**

Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct the violations of law, regulation, and/or statement of policy which are more fully set out in the Report. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws, regulations, and statements of policy.

**11. RESTRICTIONS ON CERTAIN PAYMENTS**

(a) While this ORDER is in effect, the Bank shall not declare or pay dividends, bonuses, or any other form of payment resulting in a reduction of capital without the prior written approval of the Supervisory Authorities. All requests for prior approval shall be received at least 30 days prior to the proposed payment declaration date (at least 5 days with respect to any request filed within the first 30 days after the date of this ORDER) and shall contain, but not be limited to, an analysis demonstrating that the proposed payment meets the criteria set forth in Section 658.37, Florida Statutes, and detailing the impact such payment would have on the Bank's capital position, cash flow, concentrations of credit, asset quality and ALLL needs. The Supervisory Authorities will not approve a payment representing a reduction of capital unless the Supervisory

Authorities determine that such payment will not have an adverse or unacceptable impact on the Bank's capital position, cash flow, concentrations of credit, asset quality, and ALLL needs.

(b) During the term of this ORDER, the Bank shall not issue or make any distributions of interest, principal or other sums on subordinated debentures, if any, without the prior written approval of the Regional Director.

## **12. ETHICS**

Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a written ethics policy ("Ethics Policy") and program ("Ethics Program").

(a) The Ethics Policy shall state the ethical standards expected of directors, officers, employees, agents and other persons participating in the conduct of the affairs of the Bank ("Covered Individuals"), in the performance of their duties and responsibilities.

(b) The Ethics Program shall establish the definitions, instructions and format to be followed by Covered Individuals in the preparation of comprehensive conflict disclosure statements ("Statements") to be filed for review by an Ethics Counselor and/or Ethics Committee; and require:

- (i) initial statements from all existing Covered Individuals;
- (ii) initial statements from any person who becomes a new Covered Individual;
- (iii) periodic statements from all Covered Individuals; and
- (iv) immediate reporting of new conflicts or discovery of previously unreported conflicts.

- (c) At a minimum, the Ethics Program shall address the:
  - (i) acceptance of gifts, entertainment, favors and loans;
  - (ii) use of official information;
  - (iii) employment of relatives;
  - (iv) use of Bank property;
  - (v) reimbursement of travel expenses;
  - (vi) indebtedness to the Bank or any other financial institution;
  - (vii) financial interests and obligations that appear to conflict with the individual's duties and responsibilities, including, but not limited to, participation of any sort in any transaction or loan in which the individual, his spouse, child, partner, or any organization in which the individual has a financial interest, or serves as an officer, director, trustee, or partner, is involved;
  - (viii) purchase of Bank property;
  - (ix) provision of goods or services to the Bank; and
  - (x) outside employment and other activities.

**13. NO MATERIAL GROWTH WITHOUT NOTICE**

While this ORDER is in effect, the Bank shall notify the Supervisory Authorities at least 60 days prior to undertaking asset growth to ten percent (10 %) or more per annum or initiating material changes in asset or liability composition. In no event shall asset growth result in noncompliance with paragraph 4 of this ORDER unless the Bank receives prior written approval from the Supervisory Authorities.

**14. PROGRESS REPORTS**

Within 45 days from the end of the first quarter following the effective date of this ORDER, and within 45 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Reports of Condition and Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports. 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 appropriate Board meeting.

**15. DISCLOSURE**

Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication and also 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 Compliance, Accounting and Securities Disclosure Section, 550 17<sup>th</sup> Street, N.W., Room F-6066, Washington, D.C. 20429, and to the OFR, Division of Financial Institutions, 200 East Gaines Street, Suite 624, Tallahassee, FL 32399-0371, at least fifteen (15) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the

OFR 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, the OFR, 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.

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 provisions of this ORDER shall have been modified, terminated, suspended, or set aside in writing.

Issued Pursuant to Delegated Authority.

Dated this 21st day of December, 2010.

/s/

By:

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Thomas J. Dujenski  
Regional Director  
Division of Supervision and Consumer  
Protection  
Atlanta Region  
Federal Deposit Insurance Corporation

The Commissioner of the OFR, having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and to the same legal effect that such ORDER would be binding if the OFR had issued a separate ORDER that included and incorporated all of the provisions of the foregoing ORDER, pursuant to Chapters 120, 655, and 658, Florida Statutes (2010), including specifically Sections 655.033 and 655.041, Florida Statutes.

Dated this 17th day of December, 2010.

/s/

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