

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

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In the Matter of	)	
	)	CONSENT ORDER
NOVA BANK	)	
BERWYN, PENNSYLVANIA	)	FDIC-10-210b
	)	
(INSURED STATE NONMEMBER BANK)	)	
	)	

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The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for NOVA Bank (“Bank”), Berwyn, Pennsylvania 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” (“CONSENT AGREEMENT”), dated May 6, 2010, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices 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 that:

**MANAGEMENT**

1. (a) The Bank shall have and retain qualified management. At a minimum, such management shall include: a senior lending officer with an appropriate level of lending, collection, and loan supervision experience for the type and quality of the Bank's loan portfolio. The Board shall provide the necessary written authority to management 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 and liquidity.

(b) The Bank shall notify the Regional Director in writing of any additions, resignations or terminations of any of its “senior executive officers” (as that term is defined in section 303.101(b) of the FDIC’s Rules and Regulations, 12 C.F.R. § 303.101(b)) within 10 days of the event. Any notification required by this subparagraph shall include a description of the background(s) and experience of any proposed additional or replacement personnel and must be received at least 30 days prior to the individual(s) assuming the new position(s). The Bank shall also establish procedures to ensure compliance with section 32 of the Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC’s Rules and Regulations, 12 C.F.R. Part 303.

### **CAPITAL**

2. (a) Within 180 days from the effective date of this ORDER, the Bank shall meet and maintain the following minimum capital levels (as defined in Part 325 of the FDIC’s Rules and Regulations, 12 C.F.R. Part 325), after establishing an appropriate allowance for loan and lease losses (“ALLL”):

(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) For purposes of this ORDER, all terms relating to capital shall be calculated in accordance with Part 325 of the FDIC’s Rules and Regulations, 12 C.F.R. Part 325 and the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC’s Rules and Regulations, 12 C.F.R. Part 325, App. A.

(c) In the event any capital ratio is or falls below the minimum required by this ORDER, the Bank shall immediately notify the Regional Director of the FDIC's New York Regional office ("Regional Director"); and

(i) within 30 days shall increase capital in an amount sufficient to comply with this ORDER, or

(ii) within 30 days shall develop a written plan ("Capital Plan") 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 in this ORDER, as well as a contingency plan ("Contingency Plan") for the sale, merger, or liquidation of the Bank in the event the primary sources of capital are not available within 30 days. The Capital Plan and Contingency Plan shall be submitted for review as described in subparagraph (e).

(d) At a minimum, the Capital Plan shall include:

(i) specific plans to achieve the capital levels required under this ORDER;

(ii) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of the provisions of this ORDER;

(iii) projections for asset growth and capital requirements, and such projections shall be based upon a detailed analysis of the Bank's current and projected assets, liabilities, earnings, fixed assets, and off-balance sheet activities, each of which shall be consistent with the Bank's strategic business plan;

(iv) projections for the amount and timing of the capital necessary to meet the Bank's current and future needs;

(v) the primary source(s) from which the Bank will strengthen its capital to meet the Bank's needs;

(vi) contingency plans that identify alternative sources of capital should the primary source(s) under (v) above not be available; and

(vii) a dividend policy that permits the declaration of a dividend only:

a. when the Bank is in compliance with its approved Capital Plan;

b. when the Bank is in compliance with applicable State and Federal laws and regulations;

c. when, after payment of such dividends, the Bank remains in compliance with the above minimum capital ratios;

d. when such declaration and payment of dividends has been approved in advance by the Board; and

e. when such declaration and payment of dividends has been approved in advance, in writing, by the Regional Director.

(e) The Capital Plan and the Contingency Plan shall be submitted to the Regional Director for non-objection or comment. Within 30 days from receipt of non-objection or any comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the Capital Plan and the Contingency Plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the Capital Plan and the Contingency Plan.

(f) The Board shall review the Bank's adherence to the Capital Plan, at minimum, on a monthly basis. Copies of the reviews and updates shall be submitted to the Regional Director as part of the progress reports required by this ORDER, and in any event no later than 10 days after completion.

**PROFIT AND BUDGET PLAN**

3. (a) Within 60 days from the effective date of this ORDER, and within the first 60 days of each calendar year thereafter, the Bank shall formulate and submit for review as described in subparagraph (c) a written profit and budget plan (“Profit Plan”) consisting of 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 Profit Plan shall include, at a minimum:

(i) a description of the operating assumptions that form the basis for, and adequately support, material projected revenue and expense components;

(ii) specific goals to maintain appropriate provisions to the ALLL;

(iii) realistic and comprehensive budgets for all categories of income and expense;

(iv) an executive compensation plan, addressing any and all salaries, bonuses and other benefits of every kind or nature whatsoever, both current and deferred, whether paid directly or indirectly, which plan incorporates qualitative as well as profitability performance standards for the Bank’s senior executive officers;

(v) a budget review process to monitor the revenue and expenses of the Bank whereby actual performance is compared against budgetary projections not less than quarterly; and

(vi) recording the results of the budget review and any actions taken by the Bank as a result of the budget review in the Board minutes.

(c) The Profit Plan shall be submitted to the Regional Director for non-objection or comment. Within 30 days from receipt of non-objection or any comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the

Profit Plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the Profit Plan.

(d) Within 30 days following the end of each calendar quarter following completion of the Profit Plan required by this paragraph, the Board shall evaluate the Bank's actual performance in relation to the Profit Plan, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the Boards' meeting at which such evaluation is undertaken.

#### **LOAN REVIEW PROGRAM**

4. (a) Within 60 days from the effective date of this ORDER, the Board shall establish a program of independent loan review that will provide for a periodic review of the Bank's loan portfolio and the identification and categorization of problem credits ("Loan Review Program").

(b) At a minimum, the Loan Review Program shall provide for:

(i) prompt identification of loans with credit weaknesses that warrant the special attention of management, including the name of the borrower, amount of the loan, reason why the loan warrants special attention; and assessment of the degree of risk that the loan will not be fully repaid according to its terms;

(ii) prompt identification of all outstanding balances and commitments attributable to each obligor identified under the requirements of subparagraph (i), including outstanding balances and commitments attributable to related interests of such obligors, including the obligor of record, relationship to the primary obligor identified under subparagraph (i), and an assessment of the risk exposure from the aggregate relationship;

(iii) identification of trends affecting the quality of the loan portfolio and potential problem areas;

(iv) assessment of the overall quality of the loan portfolio;

- (v) identification of credit and collateral documentation exceptions;
- (vi) identification and status of violations of laws, rules, or regulations with respect to the lending function;
- (vii) identification of loans that are not in conformance with the Bank's lending policy;
- (viii) identification of loans to directors, officers, principal shareholders, and their related interests; and
- (ix) a mechanism for reporting periodically, but in no event less than quarterly, the information developed in (i) through (viii) above to the Board.

(c) The Loan Review Program shall be submitted to the Regional Director for non-objection or comment. Within 30 days from receipt of non-objection or any comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the Loan Review Program, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the Loan Review Program.

#### **CONCENTRATION OF CREDIT – COMMERCIAL REAL ESTATE**

5. (a) Within 60 days from the effective date of this ORDER, the Bank shall develop and submit for review as described in subparagraph (c) a written plan for systematically reducing and monitoring the Bank's commercial real estate ("CRE") loan concentration of credit to an amount which is commensurate with the Bank's business strategy, management expertise, size, and location ("CRE Concentration Reduction Plan"). Such plan shall prohibit any advances that would increase the concentration unless the advance is pursuant to an existing loan agreement and is otherwise permissible pursuant to this ORDER.

(b) The CRE Concentration Reduction Plan shall include, but not be limited to:

- (i) dollar levels and percent of total capital to which the Bank shall reduce the concentration;
  - (ii) timeframes for achieving the reduction in dollar levels in response to (i) above;
  - (iii) provisions requiring compliance with the Interagency Guidance on Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices (FIL-104-2006, issued December 12, 2006) and Managing Commercial Real Estate Concentrations in a Challenging Environment (FIL-22-2008, issued March 17, 2008);
  - (iv) provisions for controlling and monitoring of CRE, including plans to address the rationale for CRE levels as they relate to growth and capital targets, segmentation and testing of the CRE portfolio to detect and limit concentrations with similar risk characteristics; and
  - (v) provisions for the submission of monthly written progress reports to the Board for review and notation in minutes of the Board meetings.
- (c) The CRE Concentration Reduction Plan shall be submitted to the Regional Director for non-objection or comment. Within 30 days from receipt of non-objection or any comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the CRE Concentration Reduction Plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the CRE Concentration Reduction Plan.

#### **LOSS CHARGE-OFF**

6. The Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" in the Commonwealth of Pennsylvania Department of Banking ("Department") report of examination dated October 5, 2009 ("Report of Examination") that

have not been previously collected or charged off. Elimination or reduction of such assets with the proceeds of other Bank extensions of credit shall not be considered “collection” for purposes of this paragraph. Thereafter, within 30 days after the receipt of any report of examination of the Bank from the FDIC or the Department, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified “Loss” in any report of examination that have not been previously collected or charged off.

### **CLASSIFIED ASSETS REDUCTION**

7. (a) Within 60 days from the effective date of this ORDER, the Bank shall formulate and submit for review as described in subparagraph (c) a written plan (“Classified Asset Plan”) to reduce the Bank’s risk position in each asset in excess of \$500,000 which is classified “Substandard”, in the 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 Regional Director.

(b) In developing the Classified Asset Plan, the Bank shall include, at a minimum, the following:

- (i) a specific action plan to reduce delinquencies and classified assets;
- (ii) an action plan to review, analyze and document the current financial condition of each classified borrower including source of repayment, repayment ability, and alternative repayment sources, as well as the value and accessibility of any pledged or assigned collateral, and any possible actions to improve the Bank’s collateral position;
- (iii) a schedule for reducing the outstanding dollar amount of each adversely classified asset, including timeframes for achieving the reduced dollar amounts (at a minimum, the schedule for each adversely classified asset must show its dollar balance on a quarterly basis);

(iv) specific action plans intended to reduce the Bank's risk exposure in each classified asset;

(v) specific action plans intended to collect loan delinquencies;

(vi) delineate areas of responsibility for loan officers; and

(vii) provide for the submission of monthly written progress reports to the Board for review and notation in minutes of the Board meetings.

(c) The Classified Asset Plan shall be submitted to the Regional Director and the State Supervisory Authority for non-objection or comment. Within 30 days from receipt of non-objection or any comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the Classified Asset Plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the Classified Asset Plan.

(d) The Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who is already obligated in any manner to the Bank on any extensions of credit (including any portion thereof) that has been charged off the books of the Bank or classified "Loss" in the Report of Examination or any future report of examination, so long as such credit remains uncollected.

(e) The Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower whose loan or other credit has been classified "Substandard", "Doubtful", or is listed for "Special Mention" in the Report of Examination or any future report of examination, and is uncollected, unless the Board provides, in writing, a detailed explanation of why the extension is in the best interest of the Bank. Prior to extending additional credit pursuant to this paragraph, whether in the form of a renewal, extension, or further advance of

funds, such additional credit shall be approved by the Board, or a designated committee thereof, who shall determine that:

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

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

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

The Board's determinations and approval shall be recorded in the minutes of the Board meeting, or designated committee, and copies shall be submitted to the Regional Director and the State Supervisory Authority at such times as the Bank submits the progress reports required by this ORDER or sooner upon the written request of the Regional Director or the State Supervisory Authority.

### **BROKERED DEPOSITS**

8. (a) The Bank shall not accept, renew, or rollover any brokered deposit, as defined by section 337.6(a)(2) of the FDIC's Rules and Regulations, 12 C.F.R. § 337.6(a)(2), unless it is in compliance with the requirements of 12 C.F.R. § 337.6(b), governing solicitation and acceptance of brokered deposits by insured depository institutions.

(b) The Bank shall comply with the restrictions on the effective yields on deposits described in section 337.6 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.6.

(c) Within 30 days from the effective date of this ORDER, the Bank shall formulate and submit for review as described in subparagraph (d) a written plan for reducing the Bank's reliance on brokered deposits ("Brokered Deposit Plan"). The Brokered Deposit Plan shall detail

the current composition of the Bank's brokered deposits by maturity and explain the means by which such deposits will be paid.

(d) The Brokered Deposit Plan shall be submitted to the Regional Director for non-objection or comment. Within 30 days from receipt of non-objection or any comment from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the Brokered Deposit Plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the Brokered Deposit Plan.

### **LIQUIDITY AND FUNDS MANAGEMENT**

9. (a) Within 30 days from the effective date of this ORDER, the Bank shall revise its liquidity and funds management policy to strengthen the Bank's funds management procedures and maintain adequate provisions to meet the Bank's liquidity needs ("Liquidity and Funds Management Policy"). The policy shall be submitted for review as described in subparagraph (c).

(b) The Liquidity and Funds Management Policy shall include, at a minimum, provisions that:

(i) provide a statement of the Bank's long-term and short-term liquidity needs and plans for ensuring that such needs are met;

(ii) provide for a periodic review of the Bank's deposit structure, including the volume and trend of total deposits and the volume and trend of the various types of deposits offered, the maturity distribution of time deposits, rates being paid on each type of deposit, rates being paid by trade area competition, caps on large time deposits, public funds, out-of-area deposits, and any other information needed;

(iii) establish a reasonable range for its net non-core funding ratio as computed in the Uniform Bank Performance Report and shall address the means by which the Bank will seek to reduce its reliance on non-core funding and high cost rate-sensitive deposits;

(iv) identify the source and use of borrowed and/or volatile funds;

(v) establish sufficient back-up lines of credit that would allow the Bank to borrow funds to meet depositor demands if the Bank's other provisions for liquidity proved to be inadequate;

(vi) require the retention of securities and/or other identified categories of investments that can be liquidated within one day in amounts sufficient (as a percentage of the Bank's total assets) to ensure the maintenance of the Bank's liquidity posture at a level consistent with short- and long-term liquidity objectives;

(vii) establish a minimum liquidity ratio and defining how the ratio is to be calculated;

(viii) establish contingency plans by identifying alternative courses of action designed to meet the Bank's liquidity needs;

(ix) address the use of borrowings (i.e., seasonal credit needs, match funding mortgage loans) and provide for reasonable maturities commensurate with the use of the borrowed funds; address concentration of funding sources; and address pricing and collateral requirements with specific allowable funding channels (i.e., brokered deposits, internet deposits, Fed funds purchased and other correspondent borrowings); and

(x) comply with the guidance set forth in Liquidity Risk Management (FIL-84-2008, issued August 26, 2008).

(c) The Liquidity and Funds Management Policy shall be submitted to the Regional Director for non-objection or comment. Within 30 days from receipt of non-objection or any

comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve the Liquidity and Funds Management Policy, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the Liquidity and Funds Management Policy.

(d) The Bank shall review annually its Liquidity and Funds Management Policy for adequacy and, based upon such review, shall make necessary revisions to the policy.

### **CORRECTION AND PREVENTION**

10. Beginning on the effective date of this ORDER, the Bank shall take steps necessary, consistent with other provisions of this ORDER and sound banking practices, to eliminate or correct and prevent the unsafe or unsound banking practices that were identified in the Report of Examination.

### **PROGRESS REPORTS**

11. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall furnish to the Regional Director written progress reports detailing the form, manner, and results of any actions taken to secure compliance with this ORDER. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the Board minutes.

### **COMPLIANCE COMMITTEE**

12. Within 30 days from the effective date of this ORDER, the Board shall appoint a committee ("Compliance Committee") composed of at least three directors who are not now, and have never been, involved in the daily operations of the Bank, and whose composition is acceptable to the Regional Director, to monitor the Bank's compliance with this ORDER. Within 30 days from the effective date of this ORDER, and at monthly intervals thereafter, such Compliance Committee shall prepare and present to the Board a written report of its findings,

detailing the form, content, and manner of any action taken to ensure compliance with this ORDER and the results thereof, and any recommendations with respect to such compliance. Such progress reports shall be included in the minutes of the Board meetings. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

#### **OTHER ACTIONS**

13. It is expressly and clearly understood that if, at any time, the Regional Director shall deem it appropriate in fulfilling the responsibilities placed upon him or her under applicable law to undertake any further action affecting the Bank, nothing in this ORDER shall in any way inhibit, estop, bar, or otherwise prevent him or her from doing so, including, but not limited to, the imposition of civil money penalties.

#### **EFFECTIVE DATE**

14. 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: May 7, 2010

By:

\_\_\_\_\_/s/\_\_\_\_\_  
Doreen R. Eberley  
Regional Director  
Division of Supervision and  
Consumer Protection  
New York Regional Office  
Federal Deposit Insurance Corporation