

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

AND

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKING

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In the Matter of )	CONSENT ORDER
)	
AZTECAMERICA BANK )	FDIC-13-0408b
BERWYN, ILLINOIS )	2013-DB-27
)	
(STATE CHARTERED )	
INSURED NONMEMBER BANK) )	
_____ )	

AztecAmerica Bank, Berwyn, Illinois ("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 38 Ill. Adm. Code Section 392 *et seq.*, regarding hearings before the Illinois Department of Financial and Professional Regulation, Division of Banking ("Division"), and having waived those rights, entered into a STIPULATION TO THE ISSUANCE OF A CONSENT ORDER ("STIPULATION") with representatives of the Federal Deposit Insurance Corporation ("FDIC") and the Division, dated

NOVEMBER 19, 2013, whereby, solely for the purpose of this proceeding and without admitting or denying any charges of unsafe or unsound banking practices relating to asset quality, management or earnings, the Bank consented to the issuance of a CONSENT ORDER ("ORDER") by the FDIC and the Division.

The FDIC and the Division considered the matter and determined to accept the STIPULATION.

Having also determined that the requirements for the issuance of an order under 12 U.S.C. § 1818(b) and section 48(6) of the Illinois Banking Act, 205 ILCS 5/48(6), have been satisfied, the FDIC and the Division HEREBY ORDER that the Bank, its institution-affiliated parties, as the term is defined in Section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, take affirmative action as follows:

MANAGEMENT

1. (a) During the life of this ORDER, the Bank shall have and retain qualified management. Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities at the bank. Management shall be provided the necessary written authority from the Board to implement the provisions of this ORDER.

(b) During the life of this ORDER, prior to the addition of any individual to the board of directors or the

employment of any individual as a senior executive officer, the Bank shall request and obtain the Division's written approval. For purposes of this ORDER, "senior executive officer" is defined as in section 32 of the Act ("section 32"), 12 U.S.C. § 1831i, and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. § 303.101(b).

(c) Within 90 days of the effective date of this ORDER, the Bank shall identify and submit for approval, pursuant to paragraph (b) above, an individual to fill the vacant position of Chief Credit Officer.

#### MANAGEMENT PLAN

2. (a) Within thirty (30) days from the effective date of this ORDER, the Bank shall create a committee of three (3) or more independent directors which will develop a written analysis and assessment of the Bank's management needs ("Management Study") for the purpose of providing qualified management for the Bank.

(b) The Management Study shall be developed within sixty (60) days from the effective date of this ORDER. The Management Study 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) Review of the Bank's committee structure and an evaluation of the effectiveness of such committees in providing guidance and oversight to active management;
- (iii) Evaluation of all Bank officers and staff members to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Bank's established policies and practices, and restoration and maintenance of the Bank in a safe and sound condition;
- (iv) Evaluation of all Bank officer's compensation, including salaries, director fees, and other benefits; and
- (v) 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 identified by this paragraph of this ORDER.

(c) Within thirty (30) days after completion of the Management Study the Bank shall formulate a plan to implement the recommendations of the Management Study.

(d) A copy of the plan required by this paragraph shall be submitted to the Regional Director of the Chicago Regional Office of the FDIC ("Regional Director") and the Division.

#### BOARD PARTICIPATION

3. (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 continue to be held no less frequently than monthly at which, at a minimum, the following areas shall continue to 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; and compliance with this ORDER. Board minutes shall continue to 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.

#### CAPITAL

4. (a) During the life 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 eight percent (8%) and its level of qualifying total capital as a percentage of risk-weighted assets ("total risk based capital ratio") at a minimum of twelve percent (12%). 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 17<sup>th</sup> Street, N.W., Washington, D.C. 20429 and to Scott D. Clarke, Assistant Director, Illinois Department of Financial and Professional Regulation, Division of Banking, 320 West Washington, Springfield, Illinois 62786, for their review. Any changes requested to be made in the materials by the FDIC or the Division 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.

(d) Should the Bank be unable to maintain the required capital levels specified in subparagraph (a) above, then within thirty (30) days of receipt of written direction from the Regional Director and the Division, the Bank shall develop, adopt, and implement a written plan to sell or merge itself into another federally insured financial institution or otherwise immediately obtain a sufficient capital investment into the Bank to fully meet the capital requirements of this paragraph. A copy of the plan required by this paragraph shall be submitted to, and determined to be acceptable by, the Regional Director and the Division.

#### DIVIDEND RESTRICTION

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

#### PROHIBITION OF ADDITIONAL LOANS TO CLASSIFIED BORROWERS

6. (a) As of the effective date of this ORDER, 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 April 23, 2012 Report of Examination ("Report"), so long as such credit remains uncollected.

(b) As of the effective date of this ORDER, 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" in the Report, and is uncollected unless the Bank's board of directors has adopted, prior to such extension of credit, a detailed written statement giving the reasons why such extension of credit is in the best interest of the Bank. A copy of the statement shall be signed by each director, and incorporated in the minutes of the applicable board of directors' meeting. A copy of the statement shall be placed in the appropriate loan file.

#### REDUCTION OF DELINQUENCIES AND CLASSIFIED ASSETS

7. (a) Within 60 days from the effective date of this ORDER, the Bank shall review and amend its written plan to reduce the Bank's risk position in each asset in excess of \$400,000 which is more than 90 days delinquent or adversely classified in the Report. 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, source of repayment, repayment ability and alternative repayment sources;
- (iii) Evaluate the available collateral, including possible actions to improve the collateral position;
- (iv) Delineate areas of responsibility for loan officers;
- (v) 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
- (vi) 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 Division.

(c) A copy of the revised plan required by this paragraph shall be submitted to the Regional Director and the Division.

(d) While this ORDER remains in effect, the plan shall be revised to include assets which become more than 90 days delinquent after the effective date of this ORDER or are adversely classified at any subsequent examinations.

#### LENDING AND COLLECTION POLICIES

8. (a) 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.

(b) At a minimum, the revisions to the Bank's loan policy and practices required by this paragraph shall address the lending and collection concerns discussed in the Report.

(c) The policies and revisions thereto required by this paragraph shall be submitted to the Regional Director and the Division.

LOAN REVIEW AND GRADING SYSTEM

9. (a) Within 60 days from the effective date of this ORDER, the Bank shall implement revised comprehensive loan grading and review procedures that will provide for a periodic review of the Bank's loan portfolio and the identification and categorization of problem credits. The plan shall include, but not be limited to, provisions which require:

- (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 an assessment of the degree of risk that the loan will not be fully repaid according to its terms;
- (ii) Identification of trends affecting the quality of the loan portfolio, potential problem areas, and action plans to reduce the Bank's risk exposure;

- (iii) Assessment of the overall quality of the loan portfolio;
- (iv) Identification of violations of law, rules or regulations and credit and collateral documentation exceptions, and an action plan to address the identified deficiencies and track corrective measures;
- (v) Identification of loans not in conformance with the Bank's loan policy;
- (vi) Requiring periodic confirmation of the accuracy and completeness of the watch list and all risk grades assigned by the Bank's loan officers; and
- (vii) A mechanism for reporting periodically, but in no event less than quarterly, the information developed through the loan review program, to the board of directors. The report should also describe the action(s) taken by management with respect to problem credits.

(b) A copy of the plan required by this paragraph shall be submitted to the Regional Director and the Division.

CONCENTRATIONS OF CREDIT

10. (a) Within 60 days from the effective date of this Order the Bank shall review and revise its written plan to systematically reduce, manage and monitor the Bank's concentration of commercial real estate to an amount that is commensurate with the Bank's capital position, its size and business strategy, Bank management's expertise, safe and sound banking practices, and the overall risk profile of the Bank. Further, such plan shall prohibit any additional advances that would increase the concentration or create new concentrations and shall include, but not be limited to:

- (i) Dollar levels to which the Bank shall reduce each concentration; and
- (ii) Provision for the submission of monthly written progress reports to the Bank's board of directors for review and notation in the minutes of the board of directors' meetings.

(b) A copy of the plan required by this paragraph shall be submitted to the Regional Director and the Division.

ALLOWANCE FOR LOAN AND LEASE LOSSES

11. (a) After the effective date of this ORDER, and prior to the submission of all Reports of Condition and Income

required by the FDIC and the Division, 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 the Division.

(b) ALLL entries required by this paragraph shall be made prior to any capital determinations required by this ORDER.

#### AMENDMENTS TO THE CALL REPORTS

12. Within 30 days of the effective date of this ORDER, the Bank shall amend its Reports of Condition and Income for the periods ending December 31, 2011; December 31, 2012; and March 31, 2013 to reflect:

(a) the loan loss provision expenses recommended in the Report;

(b) the adjustments to the capital accounts;

(c) the charge-off of Loss required by the Report; and

(c) all other amendments to the balance sheet and income statement accounts, as detailed on pages 28 and 29 of the Report.

BUSINESS/STRATEGIC PLAN AND PROFIT PLAN AND BUDGET

13. (a) At least 30 days prior to the end of each calendar year, the Board shall revise as necessary and fully implement its 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, 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 budget shall include a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components, including projected salaries and bonuses.

(c) The Board shall approve the business/strategic plan and the profit and budget plan, which approval shall be recorded in the Bank's minutes. Thereafter, the



business/strategic plan and the profit and budget plan, and any subsequent modification thereto, shall be submitted to the Regional Director and Division for comment and approval. The Bank shall incorporate any changes required by the Regional Director or Division and thereafter adopt, implement, and adhere to the plan.

#### LIQUIDITY

14. (a) During the life of this ORDER, weekly or on a schedule determined by the FDIC and the Division, the Bank shall submit to the Regional Director and the Division a liquidity analysis report in a format that is acceptable to the Regional Director and the Division.

#### NOTIFICATION TO SHAREHOLDER

15. Following the effective date of this ORDER, the Bank shall send to its shareholder a copy of this ORDER: (1) in conjunction with the Bank's next shareholder communication; or (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting.

#### PROGRESS REPORTS

16. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall

furnish two copies to the Regional Director and one copy to the Division of 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.

The effective date of this ORDER shall be upon issuance by the FDIC and the Division.

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 the Division.

Pursuant to delegated authority.

Dated: November, 20, 2013.

M. Anthony Lowe ✓  
Regional Director  
Chicago Regional Office  
Federal Deposit Insurance  
Corporation

Scott D. Clarke ✓  
Assistant Director  
Division of Banking  
Illinois Department of  
Financial and Professional  
Regulation