

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	
OCEAN BANK	)	MODIFICATION OF ORDER TO
MIAMI, FLORIDA	)	CEASE AND DESIST
	)	
(Insured State Nonmember Bank)	)	FDIC-07-017b
_____	)	

OCEAN BANK, MIAMI, FLORIDA ("Bank"), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), prior to the issuance of the ORDER TO CEASE AND DESIST dated March 16, 2007, Docket No. FDIC-07-017b ("ORDER"), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF A MODIFICATION OF ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Legal Division of the Federal Deposit Insurance Corporation ("FDIC") and the Director ("Director") of the Division of Financial Institutions of the Florida Office of Financial Regulation ("OFR") (collectively, "Supervisory Authorities") dated April 24, 2008, whereby, solely for the purpose of this proceeding and without admitting or denying any of the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of a MODIFICATION OF ORDER TO CEASE AND DESIST ("MODIFICATION") by the FDIC.

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as such term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns cease and desist from the following unsafe or unsound banking practices and violations of law and/or regulations:

- (b) violating laws, regulations and/or statements of policy as more fully described on pages 31-33 of the FDIC Report of Examination dated April 2, 2007 (“ROE”);
- (g) operating in a manner that could result in inadequate equity capital and reserves in relation to the volume and quality of assets held by the Bank;
- (h) operating with inadequate management and staff levels for the financial condition and risks of the Bank;
- (i) operating with a large volume of poor quality loans;
- (j) operating with an inadequate methodology for determining the allowance for loan and lease losses (“ALLL”);
- (k) operating with loan underwriting and administration practices that have resulted in a high volume of poor quality loans; and
- (l) operating in such a manner as to produce operating losses.

The FDIC and the Director therefore, accepted the CONSENT AGREEMENT and hereby modifies the ORDER TO CEASE AND DESIST as follows:

Paragraph 10 is hereby stricken, and in its stead is inserted the following:

VIOLATIONS OF LAW AND REGULATION

10. Within ninety (90) days from the effective date of this MODIFICATION, the Bank shall take steps necessary, consistent with sound banking practices, to attempt in good faith to eliminate and/or correct all violations of laws, regulations, and/or statements of policy on

pages 31-33 in the ROE, and shall adopt and implement appropriate procedures to ensure future compliance with all such applicable laws and regulations.

The following paragraphs 17 through 25 are hereby added to the ORDER:

CHARGE-OFF

17. (a) Within 30 days from the effective date of this MODIFICATION, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" and 50 percent of all assets or portions of assets classified "Doubtful" in the Report that have not been previously collected or charged-off. If an asset classified "Doubtful" is a loan or lease, the Bank may, in the alternative, increase its ALLL by an amount equal to 50 percent of the loan or lease classified "Doubtful". Elimination of any of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.

(b) Additionally, while this MODIFICATION remains in effect, the Bank shall, within 30 days from the receipt of any official Report of Examination of the Bank from the FDIC or the OFR, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any asset classified "Loss" and 50 percent of the those classified "Doubtful" unless otherwise approved in writing by the Supervisory Authorities.

(c) Within 30 days from the effective date of the MODIFICATION, the Bank shall establish a reserve for contingent liabilities and charge all contingent liabilities classified "Loss" in the ROE to the reserve. Thereafter, the Bank shall maintain an adequate reserve for contingent liabilities.

(d) Elimination or reduction of assets through proceeds of other loans made by the Bank is not considered collection for purposes of this provision.

ALLOWANCE FOR LOAN AND LEASE LOSSES

18. (a) Within 30 days from the effective date of this MODIFICATION, 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 at least ten (10) days prior to the filing of the quarterly Reports of Condition and Income in order that the findings of the Board with respect to the ALLL may be properly reported in such quarterly Reports of Condition and Income. Such reviews shall, at a minimum, include the following:

- (i) 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 including the Construction Program, present and prospective economic conditions, and trends in the severity of weaknesses in extensions of credit identified as "Special Mention" and adversely classified in the latest Report of Examination by the Supervisory Authorities;
- (ii) The Federal Financial Institutions Examination Council's Instructions for the Reports of Condition and Income, the Interagency Statement of Policy on the ALLL, and other applicable regulatory guidance that addresses the adequacy of the Bank's ALLL.

(b) 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 at subsequent examinations and/or visitations.

LOAN INTEREST RESERVES

19. Within 30 days from the effective date of this MODIFICATION, the Board shall adopt and enforce a policy limiting loan interest reserves. Such policy shall confine the use of interest reserves to properly underwritten construction or development loans where development or building plans have specific timetables that commence within a reasonable time of the loans' approvals and that include realistic completion dates. Interest reserves shall be used only for payment of interest on development or construction loans for projects that are progressing according to their timetables. Interest reserves may be supplemented only with the prior written approval of the Board or a committee thereof, so long as the approval documents a prudent reason for the supplement.

ADVERSELY CLASSIFIED ASSETS

20. (a) Within 60 days from the effective date of this MODIFICATION, the Bank shall formulate a written plan to reduce the Bank's risk exposure in each asset, or relationship in excess of \$10,000,000 (\$10 million) "Substandard" or "Doubtful" in the ROE. 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 plan mandated by this paragraph, the Bank shall, at a minimum, and with respect to each adversely classified loan or lease, review, analyze, and to the best of its abilities in good faith, document the financial position of the 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.

(b) In addition, the plan mandated by this provision shall also include, but not be limited to, the following:

- (i) 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 expected dollar balance on a quarterly basis);
- (ii) Specific action plans intended to reduce the Bank's risk exposure in each classified asset;
- (iii) A schedule showing, on a quarterly basis, the expected consolidated balance of all adversely classified assets, and the ratio of the consolidated balance to the Bank's projected Tier 1 capital plus the ALLL;
- (iv) A provision for the Bank's submission of monthly written progress reports to its Board; and
- (v) A provision mandating Board review of the progress reports, with a notation of the review recorded in the minutes of the meeting of the Board.

(c) The plan mandated by this provision shall further require a reduction in the aggregate balance of assets classified "Substandard" and "Doubtful" in the ROE in accordance with the following schedule. For purposes of this paragraph, "number of days" means number of days from the effective date of this MODIFICATION.

- (i) Within 120 days, to not more than 100 percent of Tier 1 capital plus the ALLL as determined at the end of the 120 day period.
- (ii) Within 240 days, to not more than 80 percent of Tier 1 capital plus the ALLL as determined at the end of the 240 day period.
- (iii) Within 360 days, to not more than 70 percent of Tier 1 capital plus the ALLL as determined at the end of the 360 day period.
- (iv) Within 540 days, to not more than 50 percent of Tier 1 capital plus the ALLL as determined at the end of the 540 day period.

(d) The requirements of Subparagraph 20(c) are applicable only to the assets classified in the ROE and do not represent standards for future operations of the Bank.

Following compliance with the above reduction schedule, the Bank shall continue to reduce the total volume of adversely classified assets. The plan may include a provision for increasing Tier 1 capital when necessary to achieve the prescribed ratios.

(e) The Bank shall immediately submit the plan to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank shall implement and fully comply with the plan.

SPECIAL MENTION ASSETS

21. Within 60 days from the effective date of this MODIFICATION, the Bank shall develop a plan to correct all deficiencies in the assets listed for “Special Mention” in the ROE. The Bank shall immediately submit the plan to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank shall approve the plan, which

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

RESTRICTIONS ON ADVANCES TO ADVERSELY CLASSIFIED BORROWERS

22. (a) While this MODIFICATION 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 classified "Loss" or "Doubtful" 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 22(a) 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 paragraph, whether in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by the Bank's Board, or a designated committee thereof, who shall certify, in writing:

- (i) Why failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;
- (ii) That the extension of such credit would improve the Bank's position, including an explanatory statement of how the Bank's position would improve;
- (iii) An appropriate workout plan has been developed and will be implemented in conjunction with the additional credit to be extended; and

- (iv) The signed certification shall be made a part of the minutes of the meeting of the Board, or designated committee, with a copy retained in the borrower's credit file.

(c) While this MODIFICATION is in effect, the Bank shall not make any further extensions of credit, directly or indirectly, to any borrower whose loans are adversely classified "Substandard" or "Doubtful" by the FDIC and the OFR, without prior approval by the Bank's Board. The Bank's Board shall not approve the proposed extension without first making affirmative determinations that:

- (i) The extension of credit is in full compliance with the Bank's loan policy;
- (ii) The extension of credit is necessary to protect the Bank's interests, or is adequately secured;
- (iii) The Bank found the primary and secondary obligors to be creditworthy based on a credit analysis; and
- (iv) All necessary loan documentation is on file, including, at a minimum, current financial and cash flow information, and satisfactory appraisal, title and lien documents.

(d) The affirmative determination shall be recorded in the minutes of the meeting of the Board, with a copy retained in the borrower's credit file.

CAPITAL

23. (a) From the effective date of this MODIFICATION the Bank shall not permit its capital levels (as defined in Part 325 of the FDIC's Rules and Regulations), after establishing an adequate ALLL, to fall below the following minimum levels:

- (i) Tier 1 capital at least equal to 7.0 percent of total assets;

- (ii) Tier 1 risk-based capital at least equal to 10.0 percent of total risk-weighted assets; and
- (iii) Total risk-based capital at least equal to 12.0 percent of total risk-weighted assets.

(b) In addition, 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 Rules and Regulations, 12 C.F.R. Part 325, App. A.

(c) In the event any ratio falls below the established minimum, the Bank shall notify the Supervisory Authorities and shall increase capital in an amount, or take such other action acceptable to the Supervisory Authorities, sufficient to comply with this provision within 90 days.

(d) In addition to the level of Tier 1 capital, Tier 1 risk based capital, and total risk based capital to be maintained during the life of this MODIFICATION pursuant to this paragraph, the Bank shall maintain a fully funded ALLL, the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(e) 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 without the prior written authorization of the Supervisory Authorities.

(f) In the future, any increase in Tier 1 capital required that may be necessary to meet the requirements of this paragraph may be accomplished by the sale of new securities or in any other manner acceptable to the Supervisory Authorities. In the event that the Bank decides to raise capital through a plan involving 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 any applicable securities laws. Prior to the implementation of the plan and, in any event, not less than 15 days prior to the dissemination of such materials, the plan and any materials to be used in the sale of the securities shall be submitted to the FDIC, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6043, Washington, D.C. 20429, and the OFR, 200 East Gaines Street, Tallahassee, Florida, 32399-0371, for review. Any changes requested to be made in the plan or materials shall be made prior to their dissemination.

(g) 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 that 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 developed 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.

MANAGEMENT

24. Within 120 days from the effective date of this MODIFICATION, the Bank shall have and retain qualified management and adequate staff levels.

(a) Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Board to implement the provisions of this MODIFICATION. At a minimum management shall include:

- (i) a chief executive officer with the ability to manage a bank of comparable size and to effectively implement lending, investment, and operating policies in accordance with sound banking practices; and
- (ii) a senior lending officer with a significant amount of appropriate lending, collection, and loan supervision experience for the type and quality of the Bank's loans.

(b) The qualifications of management shall be assessed on its ability to:

- (i) comply with the requirements of this MODIFICATION;
- (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 management effectiveness and risk management.

(c) During the life of this MODIFICATION, the Bank shall notify the Supervisory Authorities, in writing, when it proposes to add any individual to the Bank's Board or employ any individual as a senior executive officer as that term is defined in Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. § 303.101 and Fla. Stat. Ch. 655, §655.0385 and Rule 69U-100.03852. The notification should include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 30 days before such addition or employment is intended to become effective. If the FDIC Regional Director or OFR Director issues a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. § 1831i, or Fla. Stat. Ch. 655, §655.0385(2), with respect to any proposed individual, then such individual may not be added or employed by the Bank.

(d) To facilitate having and retaining qualified management and adequate staff levels in no more than 60 days from the effective date of this MODIFICATION, the Board shall develop a written analysis and assessment of the Bank's senior executive officers and staffing needs ("Management Plan") which shall include, at a minimum:

- (i) identification of both the type and number of other positions needed to manage and supervise properly the affairs of the Bank during a period of declining asset quality considering the labor intensive nature of the Bank's needs to work out of large, complex problem loans;
- (ii) evaluation of each senior executive officer [as defined above] and other staff 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 maintenance of the Bank in a safe and sound condition;
- (iii) a plan of action to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications, which the Board determines are necessary to fill those senior executive officer or staff member positions consistent with the needs identified in the Management Plan;
- (iv) an organizational chart which specifies lines of authority and responsibility; and

- (v) maintaining a fully-staffed special assets unit to oversee and monitor the successful workout of the Bank's significant volume of problem loans and assets.

(e) The Management Plan and any subsequent modification thereto shall be submitted to the Supervisory Authorities for review and comment. No more than 30 days from the receipt of any comment from the Supervisory Authorities, and after consideration of such comment, the Board shall approve the Management Plan and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the Board. Thereafter, the Bank and its institution-affiliated parties shall implement the Management Plan and/or any subsequent modification in accordance with the provisions and time tables therein.

DISCLOSURE TO SHAREHOLDERS

25. Following the issuance of this MODIFICATION, the Bank shall provide to its shareholders or otherwise furnish a description of this MODIFICATION (i) in conjunction with the Bank's next shareholder communication or (ii) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the MODIFICATION 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 and to the Director of the OFR, 200 East Gaines Street, Tallahassee, FL 32399 to review at least twenty (20) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC and the OFR shall be made prior to dissemination of the description, communication, notice, or statement.

This MODIFICATION shall become immediately upon its issuance. The

provisions of the ORDER as modified by this MODIFICATION shall be binding upon the Bank and its institution-affiliated parties.

The provisions of the ORDER as modified by this MODIFICATION shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this MODIFICATION shall have been modified, terminated, suspended, or set aside in writing by the FDIC.

Pursuant to delegated authority.

Dated this 7th day of May, 2008.

Mark S. Schmidt
Regional Director
Division of Supervision and Consumer
Protection
Atlanta Region
Federal Deposit Insurance Corporation

The OFR Director having duly approved the foregoing MODIFICATION, and the Bank, through its Board, having agreed that the issuance of said MODIFICATION by the FDIC shall be binding as between the Bank and the OFR to the same degree and legal effect that such MODIFICATION would be binding upon the Bank if the OFR had issued a separate MODIFICATION that included and incorporated all of the provisions of the foregoing MODIFICATION pursuant to Section 655.033, Florida Statutes (2006).

Dated this 5th day of May, 2008.

Linda B. Charity
Director
Division of Financial Institutions
Florida Office of Financial Regulation