

FEDERAL DEPOSIT INSURANCE CORPORATION  
 WASHINGTON, D.C.  
 and  
 TEXAS DEPARTMENT OF BANKING  
 AUSTIN, TEXAS

In the Matter of	)	
	)	CONSENT ORDER
	)	
ACCESS 1ST CAPITAL BANK	)	
DENTON, TEXAS	)	FDIC 10-697b
	)	
(Insured State Nonmember Bank)	)	COMMISSIONER ORDER
	)	No. 2010-059
	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Access 1st Capital Bank, Denton, Texas (“Bank”), under 12 U.S.C. § 1813(q).

The Texas Department of Banking ("Department") is the appropriate state banking agency for the Bank, under Texas Finance Code, Title 3, Subtitle A, §§ 31.001et seq.

The Bank, by and through its duly elected and acting board of directors, has executed a “STIPULATION TO THE ISSUANCE OF A CONSENT ORDER” (“STIPULATION”), dated November 1, 2010, that is accepted by the FDIC and the Banking Commissioner of Texas (“Commissioner”). With the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices relating to deficiencies in board oversight, management performances, asset quality, capital protection and earnings performance, to the issuance of this CONSENT ORDER (“ORDER”) by the FDIC and the Commissioner.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and Texas Finance Code §§ 35.002 have been satisfied, the FDIC and the Commissioner hereby order that:

## CAPITAL PLAN

1. (a) Within 60 days after the effective date of this ORDER, the Bank shall submit a written capital plan to the Regional Director and the Commissioner. The capital plan shall require the Bank, after establishing an Allowance for Loan and Lease Losses, to increase and maintain its Tier 1 Leverage Capital ratio equal to or greater than 10 percent of the Bank's Average Total Assets; to achieve and maintain its Tier 1 Risk-Based Capital ratio equal to or greater than 12 percent of the Bank's Total Risk-Weighted Assets; and to achieve and maintain its Total Risk-Based Capital ratio equal to or greater than 13 percent of the Bank's Total Risk Weighted Assets.

(b) If any such capital ratios are less than required by the ORDER, as determined as of the date of any Report of Condition and Income or at an examination by the FDIC or the Department, the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director or the Commissioner, present to the Regional Director and the Commissioner a new capital plan to increase the Bank's Tier 1 Capital or to take such other measures to bring all the capital ratios to the percentages required by this ORDER. After the Regional Director and the Commissioner respond to the new capital plan, the Bank's board of directors shall adopt the new capital plan, including any modifications or amendments requested by the Regional Director and the Commissioner.

Part of the capital plan must include a contingency plan in the event that the Bank (i) fails to maintain the minimum capital ratios required by the Order, (ii) fails to submit an acceptable capital plan or (iii) fails to implement or adhere to a capital plan to which no written objection was provided by the Regional Director or Commissioner. Said contingency plan shall include a plan to sell or merge the Bank. The Bank shall implement the contingency plan upon

written notice from the Supervisory Authorities.

(c) Thereafter, the Bank shall immediately initiate measures detailed in the plan, to the extent such measures have not previously been initiated, to increase its Tier 1 Capital by an amount sufficient to bring all the Bank's capital ratios to the percentages required by this ORDER within 60 days after the Regional Director and the Commissioner respond to the new capital plan.

(d) If all or part of the increase in Tier 1 Capital required by this ORDER is to be accomplished by the sale of new securities, the Bank's board of directors shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan, and in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 Capital is to be provided by the sale of non-cumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director and the Commissioner for prior approval.

(e) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(f) 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.

(g) For purposes of this ORDER, all terms relating to capital shall be calculated according to the methodology set forth in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325.

### **CONCENTRATIONS – PLAN FOR REDUCTION**

2. (a) Within 60 days after the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and the Commissioner for review and comment a written plan ("Concentration Reduction Plan") to:

(1) Reduce non-owner occupied commercial real estate concentrations of credit identified in the July 6, 2010 Report of Examination ("Report of Examination"); and

- (2) Reduce construction and development loan concentrations of credit identified in the Report of Examination.

Such Concentration Reduction Plan shall prohibit any additional advances that would increase the concentrations or create new concentrations and shall include, but not be limited to:

- (1) Dollar levels to which the Bank shall reduce each concentration;  
and
- (2) Provisions 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 Bank's board of directors.

(b) For purposes of the Concentration Reduction Plan, "reduce" means to:

- (1) Charge-off;
- (2) Collect; or
- (3) Increase Tier 1 Capital.

(c) After the Regional Director and the Commissioner have responded to the Concentration Reduction Plan, the Bank's board of directors shall adopt the Concentration Reduction Plan as amended or modified by the Regional Director and the Commissioner. The Concentration Reduction Plan shall be implemented immediately to the extent that the provisions of the Concentration Reduction Plan are not already in effect at the Bank.

### **CLASSIFIED ASSETS - CHARGE-OFF AND PLAN FOR REDUCTION**

3. (a) Within 30 days after the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss by the FDIC or the Department as a

result of its examination of the Bank as of July 06, 2010. Elimination or reduction of these assets through proceeds of loans made by the Bank shall not be considered “collection” for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan (“Classified Assets Reduction Plan”) to the Regional Director and the Commissioner to reduce the remaining assets classified Doubtful and Substandard as of July 06, 2010. The Classified Assets Reduction Plan shall address each asset so classified with a balance of \$250,000 or greater, in addition to any classified assets added subsequent to the examination, and provide the following:

- (1) The name under which the asset is carried on the books of the Bank;
- (2) Type of asset;
- (3) Actions to be taken in order to reduce the classified asset; and
- (4) Timeframes for accomplishing the proposed actions.

The plan shall also include, at a minimum:

- (1) Review the financial position of each such borrower, including the source of repayment, repayment ability, and alternate repayment sources; and
- (2) Evaluate the available collateral for each such credit, including possible actions to improve the Bank’s collateral position.

In addition, the Bank’s Classified Assets Reduction Plan shall contain a schedule detailing the projected reduction of total classified assets on a quarterly basis. Further, the Classified Assets Reduction Plan shall contain a provision requiring the submission of monthly

progress reports to the Bank's board of directors and a provision mandating a review by the Bank's board of directors.

(c) The Bank shall present the Classified Assets Reduction Plan to the Regional Director and the Commissioner for review. Within 30 days after the Regional Director's and the Commissioner's response, the Classified Assets Reduction Plan, including any requested modifications or amendments shall be adopted by the Bank's board of directors which approval shall be recorded in the minutes of the meeting of the Bank's board of directors. The Bank shall then immediately initiate measures detailed in the plan to the extent such measures have not been initiated.

(d) For purposes of the plan, the reduction of adversely classified assets as of July 6, 2010 shall be detailed using quarterly targets expressed as a percentage of the Bank's Tier 1 Capital plus the Bank's ALLL and may be accomplished by:

- (1) Charge-off;
- (2) Collection;
- (3) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC or the Department; or
- (4) Increase in the Bank's Tier 1 Capital.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any future examination conducted by the FDIC or the Department.

## **RESTRICTION ON ADVANCES TO CLASSIFIED BORROWERS**

4. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose existing credit has been classified Loss by the FDIC or the Department as the result of its examination of the Bank, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Doubtful and/or Substandard by the FDIC or the Department as the result of its examination of the Bank, either in whole or in part, and is uncollected, unless the Bank's board of directors has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable Bank's board of directors' meeting.

## **LOAN POLICY**

5. (a) Within 60 days after the effective date of this ORDER, and annually thereafter, the board of directors of the Bank shall review the Bank's loan policy and procedures for effectiveness and, based upon this review, shall make all necessary revisions to the policy in order to strengthen the Bank's lending procedures and abate additional loan deterioration. The

revised written loan policy shall be submitted to the Regional Director and the Commissioner for review and comment upon its completion.

(b) The initial revisions to the Bank's loan policy required by this paragraph, at a minimum, shall include provisions:

- (1) Designating the Bank's normal trade area;
- (2) Establishing review and monitoring procedures to ensure that all lending personnel are adhering to established lending procedures and that the directorate is receiving timely and fully documented reports on loan activity, including any deviations from established policy;
- (3) Requiring that all extensions of credit originated or renewed by the Bank be supported by current credit information and collateral documentation, including lien searches and the perfection of security interests; have a defined and stated purpose; and have a predetermined and realistic repayment source and schedule. Credit information and collateral documentation shall include current financial information, profit and loss statements or copies of tax returns, and cash flow projections, and shall be maintained throughout the term of the loan;
- (4) Requiring loan committee review and monitoring of the status of repayment and collection of overdue and maturing loans, as well as all loans classified "Substandard" in the Report of Examination;

- (5) Requiring the establishment and maintenance of a loan grading system and internal loan watch list;
- (6) Requiring a written plan to lessen the risk position in each line of credit identified as a problem credit on the Bank's internal loan watch list;
- (7) Addressing concentrations of credit and diversification of risk, including goals for portfolio mix, establishment of limits within loan and other asset categories, and development of a tracking and monitoring system for the economic and financial condition of specific geographic locations, industries, and groups of borrowers;
- (8) Requiring guidelines and review of out-of-territory loans which, at a minimum, shall include complete credit documentation, approval by a majority of the Bank's board of directors prior to disbursement of funds, and a detailed written explanation of why such a loan is in the best interest of the Bank;
- (9) Establishing standards for extending unsecured credit;
- (10) Prohibiting the extension of a maturity date, advancement of additional credit or renewal of a loan to a borrower whose obligations to the Bank were classified "Substandard," "Doubtful," or "Loss," whether in whole or in part, as of July 06, 2010, or by the FDIC or Department in a subsequent Report of Examination, without the full collection in cash of accrued and unpaid interest, unless the loans are well secured and/or are supported by current

and complete financial information, and the renewal or extension has first been approved in writing by a majority of the Bank's board of directors;

(c) The Bank shall submit the foregoing loan policy to the Regional Director and the Commissioner for comment. After the Regional Director and the Commissioner has/have responded to the loan policy, the Bank's board of directors shall adopt the loan policy as amended or modified by the Regional Director and the Commissioner. The loan policy will be implemented immediately to the extent that they are not already in effect at the Bank.

#### **SPECIAL MENTION AND TECHNICAL EXCEPTIONS**

6. (a) Within 60 days after the effective date of this ORDER, the Bank shall correct the technical exceptions listed in the Report of Examination.

(b) Within 60 days after the effective date of this ORDER, the Bank shall implement a system of monitoring loan documentation exceptions on an ongoing basis and implement procedures designed to reduce the occurrence of such exceptions in the future.

#### **LOAN COMMITTEE AND LOAN REVIEW REQUIREMENTS**

7. (a) Within 60 days after the effective date of this ORDER, the Bank's board of directors shall adopt a Loan Review Policy. The Loan Review Policy shall specify frequency of the loan review function; parameters utilized for selecting universe of loans to be reviewed; and, responsible parties, either internal or external, tasked with actual performance of the loan review function.

(b) Within 30 days after the effective date of this ORDER, the Bank's board

of directors shall establish a loan review committee to ensure compliance with the Loan Review Policy. The committee shall file a report with the Bank's board of directors at each board meeting. This report shall include the following information:

- (1) The overall quality of the loan portfolio;
- (2) The identification, by type and amount, of each problem or delinquent loan and proposed strategies to collect and/or improve the loan;
- (3) The identification of all loans not in conformance with the Bank's lending policy; and
- (4) The identification of all loans to officers, directors, principal shareholders or their related interests.

(b) At least 75 percent of the members of the loan review committee shall be directors not employed in any capacity by the Bank other than as a director.

### **STRATEGIC PLAN**

8. (a) Within 60 days after the effective date of this ORDER, the Bank shall prepare and adopt a comprehensive strategic plan ("Strategic Plan"). The Strategic Plan required by this paragraph shall contain an assessment of the Bank's current financial condition and market area, and a description of the operating assumptions that form the basis for major projected income and expense components.

- (b) The written Strategic Plan shall address, at a minimum:
- (1) Financial goals, including pro forma statements for asset growth, capital adequacy, and earnings;

- (2) Strategies for pricing policies and asset/liability management;
- (3) Plans for sustaining adequate liquidity, including back-up lines of credit to meet any unanticipated deposit withdrawals;
- (4) Goals for reducing problem loans and commercial real estate concentrations of credit;
- (5) Plans for attracting and retaining qualified individuals to fill vacancies in the lending and accounting functions;
- (6) Formulation of a mission statement and the development of a strategy to carry out that mission.

(c) The Bank shall submit the Strategic Plan to the Regional Director and the Commissioner for review and comment. After consideration of all such comments, the Bank shall approve the plan, which approval shall be recorded in the minutes of the Bank's board of directors' meeting. Thereafter, the Bank shall implement and follow the Strategic Plan.

(d) Within 30 days after the end of each calendar quarter following the effective date of this ORDER, the Bank's board of directors shall evaluate the Bank's performance in relation to the Strategic Plan required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Bank's board of directors' meeting at which such evaluation is undertaken.

(e) The Strategic Plan required by this ORDER shall be revised and submitted to the Regional Director and the Commissioner for review and comment 30 days after the end of each calendar year for which this ORDER is in effect. Within 30 days after receipt of all such comments from the Regional Director and the Commissioner and after consideration of all such comments, the Bank shall approve the revised plan, which approval shall be recorded in the

minutes of the Bank's board of directors' meeting. Thereafter, the Bank shall implement the revised plan.

### **BUDGET AND PROFIT PLAN**

9. (a) Within 60 days after the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and the Commissioner for review and comment a written profit plan and a realistic, comprehensive budget for all categories of income and expense for calendar year 2011. The plan required by this paragraph shall contain formal goals and strategies, be consistent with sound banking practices, reduce discretionary expenses, improve the Bank's overall earnings and net interest income, and shall contain a description of the operating assumptions that form the basis for major projected income and expense components.

(b) The written profit plan shall address, at a minimum:

- (1) An analysis of the Bank's pricing structure; and
- (2) A recommendation for reducing the Bank's cost of funds.

(c) Within 30 days after the end of each calendar quarter following completion of the profit plan and budget required by this paragraph, the Bank's board of directors shall evaluate the Bank's actual performance in relation to the written profit plan and budget, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the board of directors' meeting when such evaluation is undertaken.

(d) A written profit plan and budget shall be prepared for each calendar year for which this ORDER is in effect and shall be submitted to the Regional Director and the Commissioner for review and comment within 30 days after the end of each year. Within 30

days after receipt of all such comments from the Regional Director and the Commissioner and after adoption of any recommended changes, the Bank shall approve the written profit plan and budget, which approval shall be recorded in the minutes of a board of directors' meeting.

Thereafter, the Bank shall implement and follow the plan.

### **MANAGEMENT**

10. (a) The Bank shall have and retain qualified management. Each member of management shall possess qualifications and experience commensurate with his or her duties and responsibilities at the Bank. The qualifications of management personnel shall be evaluated on their ability to:

- (1) Comply with the requirements of the ORDER;
- (2) Operate the Bank in a safe and sound manner;
- (3) Comply with applicable laws and regulations; and
- (4) Restore all aspects of the Bank to a safe and sound condition, including improve the Bank's asset quality, capital adequacy, earnings, management effectiveness, liquidity, and its sensitivity to market risk.

(b) While this ORDER is in effect, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in management. The notification must include the name(s) and background(s) of any replacement personnel and must be provided 60 days prior to the individual(s) assuming the new position(s).

### **BOARD SUPERVISION**

11. Within 30 days after the effective date of this ORDER, the Bank's board of directors shall increase its participation in the affairs of the Bank by assuming full responsibility for the approval of the Bank's policies and objectives and for the supervision of the Bank's management, including all the Bank's activities. The board's participation in the Bank's affairs shall include, at a minimum, monthly meetings in which the following areas shall be reviewed and approved by the board: reports of income and expenses; new, overdue, renewed, insider, charged-off, delinquent, nonaccrued, and recovered loans; investment activities; operating policies; and individual committee actions. The Bank's board of directors' minutes shall document the board's reviews and approvals, including the names of any dissenting directors.

### **DIVIDEND RESTRICTION**

12. (a) As of the effective date of this ORDER, the Bank shall not declare or pay any cash dividend without the prior written consent of the Regional Director and the Commissioner.

### **COMPLIANCE COMMITTEE – NON-EMPLOYEE DIRECTORS REQUIRED**

13. Within 30 days after the effective date of this ORDER, the Bank's board of directors shall establish a committee of the board of directors of the Bank charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. At least 5 of the members of such committee shall be directors not employed in any capacity by the Bank other than as a director. The committee shall report monthly to the full board of directors of the Bank, and a copy of the report and any discussion relating to the report or the ORDER shall be

noted in the minutes of the Bank's board of directors' meetings. The establishment of this committee shall not diminish the responsibility or liability of the entire board of directors of the Bank to ensure compliance with the provisions of this ORDER.

### **SHAREHOLDER NOTIFICATION**

14. After the effective date of this ORDER, the Bank shall send a copy of this ORDER, or otherwise furnish a description of this ORDER, to its shareholders (1) in conjunction with the Bank's next shareholder communication, and also (2) 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 Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review at least 20 days prior to dissemination to shareholders. Any changes requested by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

### **PROGRESS REPORTS**

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

The provisions of this ORDER shall not bar, stop, or otherwise prevent the FDIC, the Department, 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 by the FDIC and Commissioner.

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 Department.

Issued pursuant to delegated authority this 1<sup>st</sup> day of November, 2010.

/s/  
Kristie K. Elmquist  
Acting Regional Director  
Dallas Region  
Division of Supervision and Consumer Protection  
Federal Deposit Insurance Corporation

/s/  
Charles G. Cooper  
Banking Commissioner  
Texas Department of Banking