FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of NEXITY BANK BIRMINGHAM, ALABAMA (INSURED STATE NONMEMBER BANK)	ORDER TO CEASE AND DESIST FDIC- 09 -011b

Nexity Bank, Birmingham, Alabama ("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), and § 5-2A-12, Code of Alabama, 1975, and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with a representative of the Legal Division of the Federal Deposit Insurance Corporation ("FDIC") and the Superintendent of Banks ("Superintendent"), Alabama State Banking Department ("DEPARTMENT"), dated March 18, 2009, whereby solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC and the DEPARTMENT.

The FDIC and the DEPARTMENT considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices and had committed violations of law and/or regulations. The FDIC and the DEPARTMENT, therefore, accepted the CONSENT AGREEMENT and issued the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its Bank-affiliated parties, as that 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 and unsound banking practices and violations of law and/or regulation:

(a) Operating with inadequate management and Board of Directors ("Board") oversight, whose policies and procedures are damaging to the Bank and jeopardize the safety and soundness of the Bank;

(b) Operating with inadequate equity capital and reserves in relation to the volume and quality of assets held by the Bank;

(c) Operating with a large volume of poor quality loans;

(d) Operating with an inadequate allowance for loan and lease losses ("ALLL");

(e) Operating with inadequate provisions for liquidity and funds management;

(f) Operating with an inadequate other real estate policy;

(g) Operating with a business strategy that has resulted in unprofitable operations and poor asset quality;

(h) Operating in apparent violation of laws and/or regulations as more fully discussed in the Joint FDIC and DEPARTMENT Report of Examination dated November 10, 2008 ("ROE");

(i) Operating with inadequate policies and procedures to monitor and control risks within concentrations of credit in the Bank's loan portfolio; and

(j) Operating in such a manner as to produce operating losses.

IT IS FURTHER ORDERED, that the Bank, its Bank-affiliated parties, and its successors and assigns, take affirmative action as follows:

1. MANAGEMENT

The Bank shall have and retain qualified management.

(a) Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Management shall include the chief executive officer, senior lending officer, and chief financial officer. All management officials shall have an appropriate level of experience and expertise that is needed to perform his or her duties. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER.

(b) The qualification of management shall be assessed on their ability to:

(i) Comply with the requirements of this ORDER;

(ii) Operate the Bank in a safe and sound manner;

(iii) Comply with applicable laws and regulations; and

(iv) Restore all aspects of the Bank to a safe and sound condition, including but not limited to asset quality, capital adequacy, earnings, management effectiveness, risk management, sensitivity to market risk, and liquidity.

(c) No more than 60 days from the effective date of this ORDER, the Board shall develop a written analysis and assessment of the Bank's management and staffing needs ("management plan"), which shall include, at a minimum:

(i) Identification of both the type and number of officer positions needed to manage and supervise properly the affairs of the Bank. This identification should take into consideration the Bank's current financial condition and problem assets.

(ii) Identification and establishment of such Bank committees that are needed to provide guidance and oversight to active management;

(iii) Evaluation of each Bank officer and Bank employee 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's safe and sound condition; and

(iv) 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

Bank officer or employee positions consistent with the Board analysis, evaluation, and assessment as provided in paragraphs 1(c)(i) and 1(c)(iii) of this ORDER.

(d) The Board shall approve the written management plan and any subsequent modification of such plan. The approval shall be recorded in the minutes of the meeting of the Board. The Bank shall implement the written management plan and any subsequent modification. The Bank shall be submit to the FDIC and the DEPARTMENT (collectively, "Supervisory Authorities") for review and comment.

(e) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Superintendent in writing when it proposes to add any individual to the Bank's Board or employ any individual as a senior executive officer. The notification must be received at least 30 days before such addition or employment is intended to become effective and should include a description of the background and experience of the individual or individuals to be added or employed.

2. BOARD OF DIRECTORS

(a) Beginning with the effective date of this ORDER, the Board shall increase its participation in the affairs of the Bank, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity. This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; new, overdue, renewal, insider, charged-off, and recovered loans; capitalized interest on loans; loans with interest reserves; investment activity; operating policies; and individual committee actions. Board minutes shall fully document these reviews and approvals, including the names of any dissenting directors.

(b) Within 30 days from the effective date of this ORDER, the Board shall establish a Board committee ("Directors' Committee"), consisting of at least four members, responsible for ensuring compliance with the ORDER, overseeing corrective measures with respect to the ORDER, and reporting to the Board. Three of the members of the Directors' Committee shall not be Bank officers. Bank management shall provide the Directors' Committee with monthly reports detailing the Bank's actions with respect to compliance with the ORDER. The Directors' Committee shall present a report detailing the Bank's adherence to the ORDER to the Board at each regularly scheduled Board meeting. Such report and any discussion related to the report or the ORDER shall be recorded in the appropriate minutes of the meeting of the Board and shall be retained in the Bank's records. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

3. CAPITAL

(a) By June 30, 2009, the Bank shall have a Tier 1 Leverage Capital Ratio of not less than 8 percent and a Total Risk-Based Capital Ratio of not less than 12 percent. The Tier 1 Leverage and Total Risk-Based Capital ratios shall be calculated using the definitions contained in Section 325.2 of the FDIC Rules and Regulations. Thereafter, in the event the Tier 1 Leverage Capital Ratio falls below 8 percent or the Total Risk-Based Capital Ratio falls below 12 percent, the Supervisory Authorities should be notified in writing and capital shall be increased in an amount sufficient to meet the ratios required by this provision within 30 days.

(b) The amount of capital needed to maintain the ratios at the levels required in subparagraph 3(a) shall be in addition to a fully funded ALLL, the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) By April 30, 2009, the Bank shall submit to the Supervisory Authorities written details of how the Bank plans to comply with subparagraphs 3(a) and 3(b). In addition the written plan shall consider current and future capital requirements and, at a minimum, address:

(i) The volume of the Bank's adversely classified assets;

(ii) The nature and level of the Bank's asset concentrations;

(iii) The adequacy of the Bank's ALLL;

(iv) Any planned asset growth;

(v) The anticipated level of retained earnings;

(vi) Anticipated and contingent liquidity needs; and

(vii) The source and timing of additional funds to fulfill future capital needs.

4. CHARGE-OFF

(a) Within 10 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets, or portions of assets classified "Loss" in the ROE that have not been previously collected or charged-off.

(b) Additionally, while this ORDER remains in effect, the Bank shall, within 30 days of the receipt of any future report of examination or visitation of the Bank from the Supervisory Authorities, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any assets classified "Loss" and 50 percent of those classified "Doubtful" unless otherwise approved in writing by the Supervisory Authorities.

5. REDUCTION OF CLASSIFIED ITEMS

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate a written plan to reduce the Bank’s risk exposure in each asset in excess of $250,000 classified “Substandard” 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, review, analyze, and 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 written 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 written plan mandated by this provision shall further require a reduction in the aggregate balance of assets classified "Substandard" 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 ORDER.

(i) Within 180 days, to not more than 110% of Tier 1 Capital plus the ALLL;

(ii) Within 360 days, to not more than 75% of Tier 1 Capital plus the ALLL; and

(iii) Within 540 days, to not more than 50% of Tier 1 Capital plus the ALLL.

(d) The requirements of this paragraph are not to be construed as 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.

(e) The Board 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. Such plans shall be monitored and progress reports thereon shall be submitted to the Supervisory Authorities at 90-day intervals concurrently with the other reporting requirements set forth in this ORDER.

6. NO ADDITIONAL CREDIT

(a) Beginning with 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 has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" or "Doubtful" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

(b) While this ORDER 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" by the Supervisory Authorities. Subparagraph 6 (a) of this ORDER 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;

(iv) that the extension of such credit does not violate §5-5A-22, Code of Alabama, 1975; and

(v) 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.

7. LENDING POLICY

Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement a written lending policy to provide effective guidance and control over the Bank's lending function, which policy shall include, at a minimum, revisions to address all items of criticism enumerated in the ROE. The written lending and collection policy must contain specific guidelines for placing loans on a nonaccrual basis, policies and procedures regarding capitalized interest and interest reserve procedures, require a determination that loan officers have the necessary expertise to make, monitor, and service the types and kinds of loans that will be assigned to them, require prior written approval by the Bank's Board for any extension of credit, renewal, or disbursement to insiders of the Bank, and guidelines for the issuance of interest-only loans. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

8. LOAN REVIEW

(a) Within 60 days of the effective date of this ORDER, the Board shall develop 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. At a minimum, the system 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) Action plans to reduce the Bank’s risk exposure from each identified relationship;

(iii) Prompt identification of all outstanding balances and commitments attributable to each obligor identified under the requirements of subparagraph 8(a)(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 8 (a)(i), and an assessment of the risk exposure from the aggregate relationship;

(iv) Identification of trends affecting the quality of the loan portfolio, potential problem areas, and action plans to reduce the Bank’s risk exposure;

(v) Assessment of the overall quality of the loan portfolio;

(vi) Identification of credit and collateral documentation exceptions and an action plan to address the identified deficiencies;

(vii) Identification of loans that are not in conformance with the Bank's lending policy and an action plan to address the identified deficiencies;

(viii) Identification of loans to directors, officers, principal shareholders, and their related interests;

(ix) An assessment of the ability of individual members of the lending staff to operate within the framework of the Bank’s loan policy and applicable laws, rules, and regulations, and an action plan to address the identified deficiencies; and

(x) A mechanism for reporting periodically, but in no event less than quarterly, the information developed in subparagraphs (i) through (ix) above to the Board. The report should also describe the action(s) taken by management with respect to problem credits.

(b) The Board shall approve the program, which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank shall implement and fully comply with the program.

(c) Upon implementation, a copy of each report shall be submitted to the Board, as well as documentation of the actions taken by the Bank or recommendations to the Board that address identified deficiencies in specific loan relationships or the Bank’s policies, procedures, strategies, or other elements of the Bank's lending activities. Such reports and recommendations, as well as any resulting determinations, shall be recorded and retained in the minutes of the meeting of the Board.

9. CONCENTRATIONS OF CREDIT

Within 60 days from the effective date of this ORDER, the Bank shall perform a risk segmentation analysis with respect to the Concentrations of Credit listed on the Concentrations page of the ROE and any other concentration deemed important by the Bank. Concentrations should be identified by product type, geographic distribution, underlying collateral or other asset groups which are considered economically related and in the aggregate represent a large portion of the Bank's capital account. A copy of this analysis will be provided to the Supervisory Authorities and the Board agrees to develop a plan to reduce any segment of the portfolio which the Supervisory Authorities deem to be an undue concentration of credit in relation to the Bank's capital account. The plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

10. ALLOWANCE FOR LOAN AND LEASE LOSSES

Within 60 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and establish a comprehensive policy for determining the adequacy of the ALLL. The comprehensive policy for determining the adequacy of the ALLL will be in full compliance with outstanding regulatory and accounting guidance. 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 should be completed at least ten days prior to the end of each quarter, in order that the findings of the Board with respect to the ALLL may be properly reported in the quarterly Reports of Condition and Income. The review should focus on the results of the Bank's internal loan review, loan and lease loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure of significant credits, concentrations of credit, and present and prospective economic conditions. A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Report 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 Bank’s ALLL and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

11. EARNINGS

(a) Within 60 days from the effective date of this ORDER, the Board shall adopt a written plan to improve earnings at the Bank. The plan shall address (at a minimum):

(i) Goals and strategies for improving the earnings of the Bank;

(ii) An identification of the major areas that the Board will seek to improve the Bank’s operating performance;

(iii) Realistic and comprehensive budgets; and

(iv) A description of the operating assumptions that form the basis for, and adequately support major projected income and expense items.

(b) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan required by subparagraph 11(a) of this ORDER and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the meeting of the Board at which such evaluation is undertaken.

12. REPURCHASE LOAN PARTICIPATIONS

Following the effective date of this ORDER, the Bank shall not repurchase any loan participations sold while this ORDER is in effect, unless legally obligated to do so, without the prior written consent of the Supervisory Authorities.

13. VIOLATIONS OF LAW AND REGULATION

Within 90 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulation that are contained in the ROE.

14. POLICY FOR LIQUIDITY AND FUNDS MANAGEMENT

Beginning with the effective date of this ORDER, the Bank’s management shall review its liquidity position weekly to ensure that the Bank has sufficient liquid assets or sources of liquidity to meet current and anticipated liquidity needs. This review shall include an analysis of the Bank’s sources and uses of funds (cash flow analysis). The results of this review shall be presented to the Board for review each month, with the review noted in the minutes of the meeting of the Board.

15. CASH DIVIDENDS

The Bank shall not pay cash dividends without the prior written consent of the Supervisory Authorities.

16. BROKERED DEPOSITS

Upon the effective date of this ORDER, and so long as this ORDER is in effect, the Bank shall not increase the amount of brokered deposits above the amount outstanding as of the effective date of this ORDER. Within 10 days of the effective date of this ORDER, the Board shall adopt a written plan for eliminating its reliance on brokered deposits, which approval shall be recorded in the minutes of the meeting of the Board. The plan shall detail the current composition of brokered deposits by maturity and explain the means by which such deposits will be paid. Thereafter, the Bank shall implement and fully comply with the plan. For purposes of this ORDER, brokered deposits are defined in section 337.6(a)(2) of the FDIC's Rules and Regulations, 12 C.F.R. §337.6(a)(2).

17. STRATEGIC PLAN

Within 60 days from the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the Board shall develop and fully implement a written strategic 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. The Board shall approve the strategic plan, which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank, its directors, officers, and employees shall fully implement the strategic plan and any subsequently approved modification. The written strategic plan shall include, at a minimum:

(a) Identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;

(b) Specific goals to improve the net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings, as well as maintain adequate provisions to the ALLL;

(c) Coordination of the Bank's loan, investment, funds management, operating policies, strategic plan, and ALLL methodology with the strategic and budget planning;

(d) 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, recording the results of the evaluation and any actions taken by the Bank in the minutes of the meeting of the Board at which such evaluation is undertaken; and

(e) Individual(s) responsible for implementing each of the goals and strategies of the strategic plan.

18. PROGRESS REPORTS

Within 30 days of the end of the first quarter of 2009, and within thirty (30) days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Report of Condition and the Bank's Report of Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports.

19. DISCLOSURE TO SHAREHOLDERS

Following the issuance of this ORDER, the Bank shall provide to its shareholders or otherwise furnish a description of this ORDER (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 ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17^{th} Street, N.W., Room F-6066, Washington, D.C. 20429 and to the Superintendent, Alabama State Banking Department, 401 Adams Avenue, Suite 680, Montgomery, Alabama 36130-1201, to review at least twenty (20) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC and the DEPARTMENT shall be made prior to dissemination of the description, communication, notice, or statement.

This ORDER shall become immediately on the date of its issuance. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC and the DEPARTMENT.

Pursuant to delegated authority.

Dated at Atlanta, Georgia, this 20th day of March, 2009.

/s/

Mark S. Schmidt
Regional Director
Atlanta Region
Federal Deposit Insurance Corporation

The Alabama Superintendent of Banks, having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of said ORDER by the Federal Deposit Insurance Corporation shall be binding as between the Bank and the Alabama Superintendent of Banks to the same degree and legal effect that such ORDER would be binding on the Bank if the Alabama Superintendent of Banks had issued a separate ORDER that included and incorporated all the provisions of the foregoing ORDER pursuant to the provisions of the §5-2A-12, Code of Alabama,1975.

Dated this 20th day of March, 2009.

/s/
John D. Harrison
Superintendent of Banks
Alabama State Banking Department