FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of **ACCESS BANK** **CHAMPLIN, MINNESOTA** **(Insured State Nonmember Bank)**	)	**ORDER TO CEASE AND DESIST** **FDIC-09-440b**

Access Bank, Champlin, Minnesota ("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 regulation alleged to have been committed by the Bank, and its right to a hearing on those charges under section 8(b) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") dated October 22, 2009, with counsel for the Federal Deposit Insurance Corporation ("FDIC"), whereby, solely for the purpose of this proceeding and without admitting or denying any unsafe or unsound banking practices and violations of law and/or regulation, the Bank consented to the issuance of the following ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it has reason to believe that the Bank has engaged in unsafe and unsound banking practices and violations of law and/or regulation. The FDIC, therefore, accepts the CONSENT AGREEMENT and issues the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED that the Bank, its institution-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 or unsound banking practices:

A. Operating with a board of directors and management that failed to implement adequate policies and practices for the prudent operation of the Bank.

B. Operating with inadequate capital and an inadequate allowance for loan and lease losses for the volume, kind, and quality of loans and leases held, and/or failing to make provision for an adequate allowance for possible loan and lease losses.

C. Operating with inadequate liquidity in light of the Bank’s asset and liability mix.

D. Operating with an excessive level of adversely classified loans or assets, and/or delinquent loans and/or nonaccrual loans.

E. Operating with inadequate lending and collection practices.

F. Operating with inadequate earnings.

G. Engaging in violations of law and/or regulation.

H. Operating with inadequate policies and practices regarding the Bank’s information technology systems.

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

1. Assessment of Board of Directors and Management.

(a) From the effective date of this ORDER, the Bank shall take action to have qualified management.

(b) Within 30 days from the effective date of this ORDER, the board of directors shall engage an independent third party acceptable to the Regional Director and the Deputy Commissioner for the Minnesota Department of Commerce (collectively, “Supervisory Authorities”), and that possesses appropriate expertise and qualifications to analyze and assess the Bank’s board of directors, management, and staffing performance and needs.

(c) The Bank shall provide the Supervisory Authorities with a copy of the proposed engagement letter or contract with the third party for review before it is executed. The contract or engagement letter, at a minimum, shall include:

(i) a description of the work to be performed under the contract or engagement letter, the fees for each significant element of the engagement, and the aggregate fee;

(ii) the responsibilities of the firm or individual;

(iii) an identification of the professional standards covering the work to be performed;

(iv) identification of the specific procedures to be used when carrying out the work to be performed;

(v) the qualifications of the employee(s) who are to perform the work;

(vi) the time frame for completion of the work;

(vii) any restrictions on the use of the reported findings;

(viii) a provision for unrestricted examiner access to workpapers; and

(ix) a certification that the firm or individual is not affiliated in any manner with the Bank.

(d) The engagement shall require that the analysis and assessment shall be summarized in a written report to the board of directors ("Management Report") within 90 days of engagement.

(e) Within 30 days of receipt of the Management Report, the board of directors will develop a written Management Plan that incorporates the findings of the report, a plan of action in response to each recommendation contained in the Management Report, and a time frame for completing each action. At a minimum, the Management Plan shall:

(i) contain a recitation of the recommendations included in the Management Report or otherwise communicated to the Bank, along with a copy of any report(s) prepared by the outside consultant(s);

(ii) identify the type and number of officer positions needed to manage and supervise the affairs of the Bank, detailing any vacancies or additional needs and giving appropriate consideration to the size and complexity of the Bank;

(iii) identify the type and number of staff positions needed to carry out the Bank’s strategic plan, detailing any vacancies or additional needs;

(iv) identify the authorities, responsibilities, and accountabilities attributable to each position, as well as the appropriateness of the authorities, responsibilities, and accountabilities, giving due consideration to the relevant knowledge, skills, abilities, and experience of the incumbent (if any) and the existing or proposed compensation;

(v) present a clear and concise description of the relevant knowledge, skills, abilities, and experience necessary for each position, including delegations of authority and performance objectives;

(vi) identify the appropriate level of current and deferred compensation to each officer and staff position, including executive officer positions;

(vii) evaluate the current and past performance of all existing Bank officers, including executive officers and staff members, indicating whether the individuals are competent and qualified to perform present and anticipated duties, adhere to the Bank's established policies and practices, and operate the Bank in a safe and sound manner;

(viii) establish requirements and methodologies to periodically evaluate each individual's job performance;

(ix) identify and establish Bank committees needed to provide guidance and oversight to management;

(x) establish a plan to terminate, rotate, or reassign officers and staff as necessary, as well as recruit and retain qualified personnel consistent with the board's analysis and assessment of the Bank's staffing needs;

(xi) identify training and development needs, and incorporate a plan to provide such training and development;

(xii) establish procedures to periodically review and update the Management Plan, as well as periodically review and assess the performance of each officer and staff member;

(xiii) contain a current organizational chart that identifies all existing and proposed staff and officer positions, delineates related lines of authority and accountability, and establishes a written plan for addressing any identified needs; and

(xiv) contain a current management succession plan.

(f) A copy of the Management Report and Management Plan and any subsequent modification thereto shall be submitted to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director and after consideration of such comment, the board of directors shall approve the Management Plan which approval shall be recorded in the minutes of the meeting of the board. Thereafter, the Bank and its directors, officers and employees shall implement and follow the Management Plan and any modifications thereto. It shall remain the responsibility of the board to fully implement the plan within the specified time frames. In the event the plan, or any portion thereof, is not implemented, the board shall immediately advise the Supervisory Authorities, in writing, of specific reasons for deviating from the Management Plan.

2. Independent Directors.

(a) Within 90 days from the effective date of this ORDER, the Bank shall take action to add at least two (2) directors to the Bank’s board of directors who are independent with respect to the Bank and its affiliates. Such action, consistent with the Bank’s bylaws, may include calling for a special meeting of the Bank’s shareholders. The board of directors shall prepare and forward to each shareholder of the Bank, a list of potential candidates for nomination to the Bank’s board of directors prior to the next meeting of shareholders of the Bank at which directors are to be elected. The list of candidates shall include individuals who are independent with respect to the Bank, in such number that, if elected, would cause the board of directors to have at least two (2) independent directors as defined herein. The actions taken in identifying potential candidates, including any communication with such individuals, shall be documented and made part of the minutes of the meeting of the board of directors.

(b) At the next meeting of the shareholders of the Bank, and at each succeeding meeting of the shareholders at which Bank directors are to be elected, the members of the board of directors who are also shareholders shall nominate and support the election of candidates to the board of directors who are independent with respect to the Bank and its affiliates, in such number as are necessary to cause at least two (2) members of the board of directors to be and to remain independent with respect to the Bank.

(c) For purposes of this ORDER, an individual who is "independent with respect to the Bank" shall be any individual who:

(i) is not employed in any capacity by the Bank, any of its subsidiaries, or affiliated organizations, other than as a director;

(ii) does not own or control any of the outstanding shares of the Bank or its parent company;

(iii) is not related by blood or marriage to an officer or director of the Bank or its affiliates, or to any shareholder of the Bank or its parent company, and who does not otherwise share a common financial interest with such officer, director or shareholder other than ownership interests in publicly traded securities;

(iv) is not indebted, directly or indirectly, to the Bank or any of its affiliates, including the indebtedness of any entity in which the individual has a substantial financial interest, in an amount exceeding 1 percent of the Bank's total Tier 1 capital and allowance for loan and lease losses; <u>and</u>

(v) is a resident of, or engaged in business in, the Bank's trade area; <u>or</u>

(vi) is otherwise deemed to be an independent director for purposes of this ORDER by the Regional Director.

3. Minimum Capital Requirements.

(a) While this ORDER is in effect, the Bank shall have and maintain the following minimum capital levels (as defined in Part 325 of the FDIC’s Rules and Regulations), after establishing an appropriate allowance for loan and lease losses:

(i) Tier 1 capital at least equal to 9 percent of total assets;

(ii) Total risk-based capital at least equal to 12 percent of total risk-weighted assets.

(b) In the event any ratio is or becomes less than the minimum required by subparagraph (a) of this provision, the Bank shall immediately notify the Supervisory Authorities, and within 30 days shall; (1) increase capital in an amount sufficient to comply with subparagraph (a) above, or (2) submit a written plan to the Supervisory Authorities, describing the primary means and timing by which the Bank shall increase its capital ratios up to or in excess of the minimum requirements set forth above, as well as a contingency plan for the sale, merger, or liquidation of the Bank in the event the primary sources of capital are not available. Within 10 days of receipt of all such comments from the Regional Director, and after consideration of all such comments, the Bank shall approve the written plan, which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Bank shall implement and fully comply with the written plan.

(c) Any increase in Tier 1 capital necessary to meet the requirements of subparagraph (a) of this provision may not be accomplished through a deduction from the allowance for loan and lease losses.

4. Dividend Restriction.

While this ORDER is in effect, the Bank shall not declare or pay any cash dividends without the prior written approval of the Supervisory Authorities.

5. Liquidity and Funds Management.

(a) Within 10 days from the effective date of this ORDER, the Bank shall prepare a written liquidity analysis and projection for the sources and uses of funds, including but not limited to the following:

Sources:

(i) listing of loans available for participation or sale and a list of committed purchasers;

(ii) listing of and projected pay offs or pay downs of loans;

(iii) specific listing of all funding sources and borrowings and level of commitments/availability;

(iv) projection and breakdown of deposit growth from non-brokered deposits and sources;

Uses:

(v) listing and timing of contractually binding loan commitments that are expected to be funded;

(vi) projections for known maturities of anticipated brokered deposit withdrawals;

(vii) projections, including best and worse case scenarios, of large public/private deposit withdrawals;

Projections and Contingency Plans:

(viii) projections for curtailing loan growth and shrinking the total asset size of the Bank; and

(ix) specific contingency plans in the event that anticipated events do not materialize, or in case of some other liquidity emergency.

(b) The written analysis and projection required by subparagraph (a) of this provision shall be reviewed for viability on a daily basis, and updated as necessary.

6. <u>Brokered Deposits</u>.

(a) Upon the issuance of this ORDER and so long as this ORDER is in effect, the Bank shall not accept, increase, renew, or rollover any brokered deposits without the prior written approval of the Supervisory Authorities.

(b) For purposes of this ORDER, brokered deposits are defined in section 337.6(a)(2) of the FDIC Rules and Regulations to include any deposits funded by third-party agents or nominees for depositors, including deposits managed by a trustee or custodian when each individual beneficial interest is entitled to or asserts a right to federal deposit insurance.

7. Charge-off of Adversely Classified Assets.

(a) Within 10 days of 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" at the most recent on-going FDIC examination, that have not been previously collected or charged off.

(b) Elimination of reduction of assets through the proceeds of other loans or extensions of credit made by the Bank is not considered collection for purposes of this ORDER.

8. Reduction of Adversely Classified Assets.

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate written plans to reduce the Bank's risk exposure in each asset in excess of $40,000 adversely classified as "Substandard" or "Doubtful" at the most recent FDIC examination. For purposes of this provision, “reduce” means to collect, charge off, or improve the quality of an asset so as to warrant its removal from adverse classification by the Supervisory Authorities. In developing the plans mandated by this subparagraph, the Bank shall, at a minimum, and with respect to each adversely classified loan or lease, 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) Upon completion of the plans, the Bank shall immediately submit the plans to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director, and after consideration of any recommended changes, the Bank shall approve the plans, which approval shall be recorded in the minutes of the meeting of the board of directors. Thereafter, the Bank shall implement and fully comply with the plans.

9. Restrictions on Advances to Adversely Classified Borrowers.

(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 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 adversely classified “Substandard” or "Doubtful," either internally or by either of the Supervisory Authorities in a Report of Examination in the last 18 months, or at the most recent ongoing FDIC examination and is uncollected, or classified “Substandard” or “Doubtful” in any future Reports of Examination from either of the Supervisory Authorities and is uncollected. The requirements of this subparagraph (a) 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 (a) of this provision 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 subparagraph (b), whether in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by the Bank’s board of directors, who shall conclude:

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

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

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

(c) The board of directors' conclusions and approval shall be made a part of the minutes of the board, or designated committee, with a copy retained in the borrower's credit file.

10. <u>Implementation of Loan Review</u>.

(a) Within 30 days of the effective date of this ORDER, the board shall develop a written 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 written program shall provide for:

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

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

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

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

(v) Identification of credit and collateral documentation exceptions;

(vi) Identification and status of violations of laws, rules, or regulations with respect to the lending function;

(vii) Identification of loans that are not in conformance with the Bank’s lending policy;

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

(ix) A mechanism for reporting, in writing, the information developed in (i) through (viii) above to the board of directors on at least a quarterly basis. The report should also describe the action(s) taken by management with respect to problem credits.

(b) The Bank shall submit the written program to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Regional Director, and after consideration of any recommended changes, the Bank shall approve the program, which approval shall be recorded in the minutes of the board of directors meeting. 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 of directors.

11. Maintenance of Allowance for Loan and Lease Losses.

(a) Within 10 days from the effective date of this ORDER, the board of directors shall make a provision which will replenish the allowance for loan and lease losses ("ALLL") for the loans charged off as a result of the most recent FDIC examination and reflect the potential for further losses in the remaining loans or leases classified "Substandard" and

“Doubtful” as well as all other loans and leases in its portfolio.

(b) The appropriateness of the ALLL shall be reviewed at least once each calendar quarter. That review should be completed at such time to ensure that the findings of the board will be properly reported in the Bank’s Call Reports. Such reviews shall, at a minimum, be made in accordance with the Call Report Instructions, the Interagency Statement of Policy on the Allowance for Loan and Lease Losses, other applicable regulatory guidance that addresses the appropriateness of the Bank’s ALLL, and any analysis of the Bank’s ALLL provided by either of the Supervisory Authorities.

(c) A deficiency in the Bank’s ALLL shall be remedied in the calendar quarter in which it is discovered by a charge to current operating earnings prior to any Tier 1 capital determinations required by this ORDER and prior to the Bank’s submission of its Call Report. The board of directors shall thereafter maintain an appropriate ALLL.

12. <u>Information Security Policy</u>.

Within 120 days from the effective date of this ORDER, the Bank shall develop and implement an effective corporate information security policy to safeguard confidential customer information that meets the requirements of the Information

Security Booklet of the Federal Financial Institutions Examination Council’s IT Examination Handbook.

13. <u>Correction of Information Technology Deficiencies</u>.

(a) Within 120 days from the effective date of this ORDER, the Bank shall correct the information technology deficiencies cited in the Report of Examination.

(b) For any deficiencies that cannot be corrected, the Bank shall document why corrections could not be made, which report shall be reviewed by the board of directors at its next meeting, and whose review, discussion and any action taken shall be recorded in its minutes.

14. <u>Correction of Violations</u>.

(a) Within 60 days from the effective date of this ORDER, the Bank shall correct the violations of law and/or regulation cited in the Report of Examination.

(b) For any violations that cannot be corrected, the Bank shall document why corrections could not be made, which report shall be reviewed by the board of directors at its next meeting, and whose review, discussion and any action taken shall be recorded in its minutes.

15. <u>Business/Strategic Plan and Profit and Budget Plan</u>.

(a) Within 90 days from the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the board of directors shall develop and fully implement a 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, consistent with sound banking practices, and taking into account the Bank’s other written plans, policies, or other actions as required by this ORDER.

(b) The 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.

(c) The business/strategic plan and the profit and budget plan, and any subsequent modification thereto, shall be submitted to the Supervisory Authorities for review and comment. No more than 30 days after the receipt of any comment from the Regional Director, and after consideration of any recommended changes, the board of directors shall approve the business/strategic plan and the profit and budget plan, which approval shall be recorded in the board meeting minutes. Thereafter, the Bank shall implement and fully comply with the plans.

16. Progress Reports Detailing Compliance with ORDER.

(a) Within 40 days of the end of the first calendar quarter following the effective date of this ORDER, and within 30 days of the end of each calendar quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form, manner, and results of any actions taken to secure compliance with this ORDER. Such written progress reports shall provide cumulative detail of the Bank's progress toward achieving compliance with each provision of the ORDER, including at a minimum:

(i) description of the identified weaknesses and deficiencies;

(ii) provision(s) of the ORDER pertaining to each weakness or deficiency;

(iii) actions taken or in-process for addressing each deficiency;

(iv) results of the corrective actions taken;

(v) the Bank's status of compliance with each provision of the ORDER; and

(vi) appropriate supporting documentation.

(b) Progress reports may be discontinued when the Regional Director has, in writing, released the Bank from making additional reports.

17. Disclosure of Order to Shareholders.

Following the effective date of this ORDER, the Bank shall provide to its shareholders a copy of this ORDER or otherwise furnish a description of this ORDER, (i) in conjunction with the Bank’s next shareholder communication, and (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 17th Street, N.W., Room F-6066, Washington, D.C. 20429 for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

18. Binding Effect.

(a) This ORDER shall be effective on the date of issuance. The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the FDIC.

(b) The provisions of this ORDER shall not bar, estop or otherwise prevent the Supervisory Authorities or any other federal or state agency or department from taking any action against the Bank, any of the Bank's current or former institution-affiliated parties, or agents for improper acts or omissions, violations of any law or regulations, or engaging in unsafe or unsound banking practices.

Issued Pursuant to Delegated Authority.

Dated the 22nd day of October, 2009

By:

/s/

Mark S. Moylan
Deputy Regional Director
Kansas City Regional Office