

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

STATE OF ALABAMA
STATE BANKING DEPARTMENT
MONTGOMERY, ALABAMA

In the Matter of

NEXITY FINANCIAL CORPORATION
Birmingham, Alabama

Docket No. 09-062-B-HC

Cease and Desist Order Issued
Upon Consent Pursuant to the
Federal Deposit Insurance Act,
as Amended

WHEREAS, in recognition of their common goal to maintain the financial soundness of Nexity Financial Corporation, Birmingham, Alabama, a registered bank holding company (“Nexity”), and its subsidiary bank, Nexity Bank (the “Bank”), a state chartered nonmember bank, Nexity has consented to the issuance of a Cease and Desist Order (the “Order”) by the Board of Governors of the Federal Reserve System (the “Board of Governors”) and the Alabama State Banking Department (the “Superintendent”);

WHEREAS, on May 26, 2009, the board of directors of Nexity at a duly constituted meeting adopted a resolution authorizing and directing Greg Lee, to enter into this Order on behalf of Nexity, and consenting to compliance by Nexity and its institution-affiliated parties, as defined in sections 3(u) and 8(b)(3) of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. §§ 1813(u) and 1818(b)(3)), with each and every provision of this Order and waiving any and all rights that Nexity may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818) to: (i) a hearing for the purpose of taking evidence on any matters set forth in this Order;

(ii) judicial review of this Order; (iii) contest the issuance of this Order by the Board of Governors pursuant to section 8 of the FDI Act and the Superintendent pursuant to Section 5-2A-12 (1975) of the Alabama Banking Code; and (iv) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provisions hereof.

NOW, THEREFORE, IT IS HEREBY ORDERED that, pursuant to sections 8(b)(1) and (3) of the FDI Act, and Section 5-2A-12 of the Code of Alabama, that Nexity and its institution-affiliated parties shall cease and desist and take affirmative action as follows:

Capital Plan

1. Within 30 days of this Order, Nexity shall submit to the Reserve Bank and the Superintendent an acceptable written plan to maintain sufficient capital at Nexity, on a consolidated basis, and the Bank, as a separate legal entity on a stand-alone basis. The plan shall, at a minimum, address, consider, and include:

(a) The consolidated organization's and the Bank's current and future capital requirements, including compliance with the Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure and Tier 1 Leverage Measure, Appendices A and D of Regulation Y of the Board of Governors (12 C.F.R. Part 225, App. A and D) and the applicable capital adequacy guidelines for the Bank issued by the Bank's federal regulator;

(b) the adequacy of the Bank's capital, taking into account the volume of classified credits, concentrations of credit, allowance for loan and lease losses ("ALLL"), current and projected asset growth, and projected retained earnings;

(c) the source and timing of additional funds to fulfill the consolidated organization's and the Bank's future capital requirements;

(d) supervisory requests for additional capital at the Bank or the requirements of any supervisory action imposed on the Bank by its federal or state regulator; and

(e) the requirements of section 225.4(a) of Regulation Y of the Board of Governors (12 C.F.R. § 225.4(a)) that Nexity serve as a source of strength to the Bank.

2. Nexity shall notify the Reserve Bank and the Superintendent, in writing, no more than 30 days after the end of any quarter in which Nexity's consolidated capital ratios or the Bank's capital ratios (total risk-based, tier 1 risk-based, or leverage) fall below the plan's minimum ratios. Together with the notification, Nexity shall submit an acceptable written plan that details the steps Nexity will take to increase its and/or the Bank's capital ratios above the plan's minimums.

Dividends and Distributions

3. (a) Nexity shall not declare or pay any dividends without the prior written approval of the Reserve Bank, the Director of the Division of Banking Supervision and Regulation of the Board of Governors (the "Director"), and the Superintendent.

(b) Nexity shall not directly or indirectly take dividends or any other form of payment representing a reduction in capital from the Bank without the prior written approval of the Reserve Bank and the Superintendent.

(c) Nexity and its nonbank subsidiaries shall not make any distributions of interest, principal, or other sums on subordinated debentures or trust preferred securities without the prior written approval of the Reserve Bank, the Director, and the Superintendent.

(d) All requests for prior approval shall be received by the Reserve Bank and the Superintendent at least 30 days prior to the proposed dividend declaration date, proposed distribution on subordinated debentures, and required notice of deferral on trust preferred

securities. All requests shall contain, at a minimum, current and projected information on Nexity's capital, earnings, and cash flow; the Bank's capital, asset quality, earnings, and ALLL; and identification of the sources of funds for the proposed payment or distribution. For requests to declare or pay dividends, Nexity must also demonstrate that the requested declaration or payment of dividends is consistent with the Board of Governors' Policy Statement on the Payment of Cash Dividends by State Member Banks and Bank Holding Companies, dated November 14, 1985 (Federal Reserve Regulatory Service, 4-877 at page 4-323), and Alabama State policies on dividends.

Debt and Stock Redemption

4. (a) Nexity and any nonbank subsidiary shall not, directly or indirectly, incur, increase, or guarantee any debt without the prior written approval of the Reserve Bank and the Superintendent. All requests for prior written approval shall contain, but not be limited to, a statement regarding the purpose of the debt, the terms of the debt, and the planned source(s) for debt repayment, and an analysis of the cash flow resources available to meet such debt repayment.

(b) Nexity shall not, directly or indirectly, purchase or redeem any shares of its stock without the prior written approval of the Reserve Bank and the Superintendent.

Compliance with Laws and Regulations

5. (a) In appointing any new director or senior executive officer, or changing the responsibilities of any senior executive officer so that the officer would assume a different senior executive officer position, Nexity shall comply with the notice provisions of section 32 of the FDI Act (12 U.S.C. § 1831i) and Subpart H of Regulation Y of the Board of Governors

(12 C.F.R. §§ 225.71 *et seq.*) and also provide thirty days prior written notice to the Superintendent.

(b) Nexity shall comply with the restrictions on indemnification and severance payments of section 18(k) of the FDI Act (12 U.S.C. § 1828(k)) and Part 359 of the Federal Deposit Insurance Corporation's regulations (12 C.F.R. Part 359).

Approval and Implementation of a Plan and Progress Reports

8. (a) Nexity shall submit the plan that is acceptable to the Reserve Bank and the Superintendent within the applicable time period set forth in paragraph 1 of this Order.

(b) Within 10 days of approval by the Reserve Bank and the Superintendent, Nexity shall adopt the approved plan. Upon adoption, Nexity shall implement the approved plan and thereafter fully comply with it.

(c) During the term of this Order, the approved plan shall not be amended or rescinded without the prior written approval of the Reserve Bank and the Superintendent.

9. Within 30 days after the end of each calendar quarter following the date of this Order, the board of directors shall submit to the Reserve Bank and the Superintendent written progress reports detailing the form and manner of all actions taken to secure Nexity's compliance with the provisions of this Order and the results thereof. The Reserve Bank and the Superintendent may, in writing, discontinue the requirements for progress reports or modify the reporting schedule.

Communications

10. All communications regarding this Order shall be sent to:
 - (a) Mr. Steve Wise
Assistant Vice President
Federal Reserve Bank of Atlanta
1000 Peachtree Street, N.E.
Atlanta, Georgia 30309-4470
 - (b) Mr. John D. Harrison
Superintendent of Banks
State of Alabama
State Banking Department
401 Adams Avenue, Ste. 680
Montgomery, Alabama 36130-1201
 - (c) Mr. Greg L. Lee
CEO
Nexity Financial Corporation
3680 Grandview Parkway, Suite 200
Birmingham, Alabama 35243

Miscellaneous

11. Notwithstanding any provision of this Order to the contrary, the Reserve Bank and the Superintendent may, in their sole discretion, grant written extensions of time to Nexity to comply with any provision of this Order.
12. The provisions of this Order shall be binding upon Nexity and its institution-affiliated parties, in their capacities as such, and their successors and assigns.
13. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated or suspended in writing by the Reserve Bank and the Superintendent.
14. The provisions of this Order shall not bar, estop or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any other action

affecting Nexity or any of its current or former institution-affiliated parties and their successors and assigns.

15. The Superintendent, having duly approved this Order, and Nexity, through its board of directors, agree that the issuance of this Order by the Board of Governors shall be binding as between Nexity and the Superintendent to the same degree and legal effect that such Order would be binding upon Nexity if the Superintendent had issued a separate Order and included and incorporated all of the provisions of this Order pursuant to the provisions of section 5-2A-12 of the Code of Alabama.

By Order of the Board of Governors of the Federal Reserve System and the Superintendent effective this 9th day of June, 2009.

NEXITY FINANCIAL CORPORATION

BOARD OF GOVERNORS OF
THE FEDERAL RESERVE SYSTEM

By: /s/ Greg L. Lee
Greg L. Lee
Chief Executive Officer

By: /s/ Jennifer J. Johnson
Jennifer J. Johnson
Secretary of the Board

ALABAMA STATE SUPERINTENDENT
OF BANKS

By: /s/ John D. Harrison
John D. Harrison
Superintendent of Banks
State of Alabama