

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	
FIRST TUSKEGEE BANK	)	ORDER TO
TUSKEGEE, ALABAMA	)	CEASE AND DESIST
	)	
(INSURED STATE NONMEMBER)	)	FDIC-2008 - 159b
_____	)	

FIRST TUSKEGEE BANK, TUSKEGEE, 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 having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC") and with the Superintendent of Banks (“Superintendent”), Alabama State Banking Department, dated the 19th day of November, 2008, 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 Superintendent.

The FDIC and the Superintendent considered the matter and determined that they 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 Superintendent, therefore, accepted the CONSENT AGREEMENT and issued 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 and unsound banking practices and violations of law and/or regulations:

- a) Operating with a board of directors (“Board”) that has failed to provide adequate supervision over and direction to the management of the Bank;
- b) Operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;
- c) Operating with inadequate equity capital in relation to the volume and quality of assets held by the Bank;
- d) Operating with a large volume of poor quality loans;
- e) Operating with an inadequate allowance for loan and lease losses (“ALLL”);
- f) Following hazardous lending and lax collection practices;
- g) Operating with inadequate provisions for liquidity and funds management;
- h) Operating in such a manner as to produce low earnings; and
- i) Operating in contravention of Federal and State Policies and Guidelines, as more fully described on pages 20 through 21 of the Report of Examination dated February 11, 2008 (“Report”).

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

## **I. BOARD OF DIRECTORS**

1. Effective the 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. 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; investment activity; operating policies; and individual committee actions. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.
  
2. Within 60 days from the effective date of this ORDER, the Bank's Board shall develop and adopt an educational program for periodic training for each member of the Board. The educational program shall include, at a minimum:
  - a. specific training in the areas of lending, operations, and compliance with laws, rules and regulations applicable to banks chartered in the State of Alabama; and,
  - b. specific training in the duties and responsibilities of the Board in connection with the safe and sound operation of the Bank.

Upon adoption of the educational program, it shall be submitted to the Supervisory Authorities for review and comment. The Board shall document the training activities in the minutes of the next Board meeting following completion of the training. The Board's actions as required by this paragraph shall be satisfactory to the Regional Director of the

FDIC and the Superintendent (collectively, “Supervisory Authorities”) as determined at subsequent examinations.

3. Within 60 days from the effective date of this ORDER, the Bank shall designate a directors' committee to review and approve loans, with such committee being structured so that a majority of its members are persons who are not actively involved in the Bank's lending activities.
4. Effective the date of this Order, the Bank’s Board shall meet at least monthly. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committees. Nothing in the foregoing sentences shall preclude the Board from considering matters other than those contained in the agenda. Detailed written minutes of all Board meetings shall be maintained and recorded on a timely basis.

## **II. COMPLIANCE WITH ORDER**

1. Within 30 days from the effective date of this ORDER, the Bank shall establish a compliance committee comprised of at least 4 directors who are not senior executive officers of the Bank or a principal shareholder, as those terms are defined in Sections 215.2(e)(1) and (m) of Regulation O, 12 C.F.R. §§ 215.2(e)(1) and (m).
2. The committee shall monitor compliance with this ORDER and, within 60 days from the effective date of this ORDER and every 60 days thereafter, shall submit a written report detailing the Bank’s compliance with this ORDER to the Board, for consideration at its regularly scheduled meeting. The compliance report shall be incorporated into the minutes of the Board meeting. Establishment of this committee does not in any way

diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

### **III. MANAGEMENT**

1. The Bank shall have and retain qualified management.
  - a. Each member of senior management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Senior management shall include, at a minimum, a chief executive officer, a senior lending officer and a salaried chairman of the Board. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER.
  - b. The qualifications of management shall be assessed on its ability to:
    - i. comply with the requirements of this ORDER;
    - ii. operate 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 asset quality, capital adequacy, earnings, management effectiveness, risk management, liquidity and sensitivity to market risk.
  - c. During the life of this ORDER, the Bank shall notify the Supervisory Authorities in writing when it proposes to add any individual to the Board or employ any individual as a senior executive officer, as that term is defined in Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. § 303.102. The notification should include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 30 days before

such addition or employment is intended to become effective.. The Bank shall not add any individual to its Board or employ any individual as a senior executive officer unless the Superintendent provides written approval of such individual and the Regional Director does not issue a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. §1831i.

- d. Within 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;
  - ii. identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;
  - iii. evaluation of each Bank officer, and in particular the chief executive officer, and staff member to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including adherence to the Bank’s established policies and practices, and maintenance of the Bank in a safe and sound condition; 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 staff member positions consistent with the needs identified in the Management Plan.

- e. The written Management Plan and any subsequent modification thereto shall be submitted to the Supervisory Authorities for review and comment. No more than 30 days from the receipt of any comment from the Supervisory Authorities, and after consideration of such comment, the Board shall approve the written Management Plan and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the Board. Thereafter, the Bank and its institution-affiliated parties shall implement and follow the written Management Plan and/or any subsequent modification.
- f. The written Management Plan shall include the requirement that the Board of the Bank, or a committee thereof consisting of not less than four individuals who are independent with respect to the Bank, provide supervision over lending, investment and operating policies of the Bank sufficient to ensure that the Bank complies with the provisions of this ORDER.

#### **IV. CAPITAL**

1. Within 30 days from the effective date of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal or exceed seven and one-half (7.5) percent of the Bank's total assets. Thereafter, during the life of this ORDER, the Bank shall maintain Tier 1 capital in such an amount as to equal or exceed seven and one-half (7.5) percent of the Bank's total assets.
2. Within 60 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to meet the minimum risk-based capital requirements as described in the FDIC Statement of Policy on Risk-Based Capital contained in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, Appendix A. The plan shall be in a

form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations.

3. The level of Tier 1 capital to be maintained during the life of this ORDER pursuant to Subparagraph IV.1 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.
4. Any increase in Tier 1 capital necessary to meet the requirements of Paragraph IV of this ORDER may be accomplished by the following:
  - a. the sale of common stock; or
  - b. the sale of non-cumulative perpetual preferred stock; or
  - c. the direct contribution of cash by the board of directors, shareholders, and/or parent holding company; or
  - d. any other means acceptable to the Supervisory Authorities; or
  - e. any combination of the above means.

Any increase in Tier 1 capital necessary to meet the requirements of Paragraph IV of this ORDER may not be accomplished through a deduction from the Bank's ALLL.

5. If all or part of the increase in Tier 1 capital required by Paragraph IV of this ORDER is accomplished by the sale of new securities, the Board shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held 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 the Federal securities laws. Prior to the implementation of the plan and, in any event, not less than twenty (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, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17<sup>th</sup> Street, N.W., Room F-6066, Washington, D.C. 20429, and to the Alabama State Banking Department, 401 Adams Avenue, Suite 680, Montgomery, Alabama 36130-1201 for review. Any changes requested to be made in the plan or materials by the FDIC and/or the Superintendent shall be made prior to their dissemination. If the increase in Tier 1 capital is provided by the sale of non-cumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Supervisory Authorities for prior approval.

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

7. For the purposes of this ORDER, the terms "Tier 1 capital" and "total assets" shall have, the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. §§ 325.2(v) and 325.2(x).

**V. CHARGE-OFF AND/OR REDUCTION OF CLASSIFIED ASSETS**

1. 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" and 50 percent of all assets or portions of assets classified "Doubtful" in the Report; that have not been previously collected or charged-off. Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.
2. Additionally, while this ORDER remains in effect, the Bank shall, within 30 days of the receipt of any official Report of Examination of the Bank from the FDIC or the Superintendent, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any assets classified "Loss" and to the extent consistent with Financial Accounting Standard (FAS) 114, 50 percent of those classified "Doubtful" unless otherwise approved in writing by the Supervisory Authorities.
3. Within 360 days from the effective date of this Order, the Bank shall have reduced the assets classified "Substandard" in the Report and those assets classified "Doubtful" that have not previously been charged off to not more than 75 percent of Tier 1 capital plus the ALLL.
4. Within 540 days from the effective date of this ORDER, the Bank shall have reduced the assets classified "Substandard" and those assets classified "Doubtful" in the Report that

have not previously been charged off to not more than 50 percent of Tier 1 capital plus the ALLL.

5. The requirements of subparagraphs V.3 and V.4 of this ORDER are not to be construed as standards for future operations and, in addition to the foregoing, the Bank shall eventually reduce the total of all adversely classified assets. Reduction of these assets through proceeds of other loans made by the Bank is not considered collection for the purpose of this paragraph. As used in subparagraphs V.3, V.4, and V.5 the word "reduce" means:

- a. to collect;
- b. to charge-off; or
- c. to sufficiently improve the quality of assets adversely classified to warrant removing any adverse classification, as determined by the FDIC.

## **VI. NO ADDITIONAL CREDIT**

1. 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.
2. Additionally, during the life 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 classified, in whole or part, "Substandard" and is uncollected.

3. Subparagraph VI.2 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 any additional credit pursuant to this paragraph, either in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by a majority of the Board, or a designated committee thereof, who shall certify, in writing:
  - a. why the failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;
  - b. that the Bank's position would be improved thereby; and
  - c. how the Bank's position would be improved.

The signed certification shall be made a part of the minutes of the Board or designated committee, and a copy of the signed certification shall be retained in the borrower's credit file.

## **VII. LENDING AND COLLECTION POLICIES**

1. Within 60 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement a written lending and collection 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 on pages 3 and 4 of the Report and for placing loans on a non-accrual basis. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policies and their implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.
2. The initial revisions to the Bank's loan policy and practices, required by this paragraph, at a minimum, shall include the following:

- a. provisions, consistent with FDIC instructions for the preparation of Reports of Condition and Income, under which the accrual of interest income is discontinued and previously accrued interest is reversed on delinquent loans;
- b. provisions which prohibit the capitalization of interest or loans related expense unless the Board supports in writing and records in the minutes of the corresponding Board meeting why an exception thereto is in the best interests of the Bank;
- c. provisions which require complete loan documentation, realistic repayment terms and current credit information adequate to support the outstanding indebtedness of the borrower. Such documentation shall include current financial information, profit and loss statements or copies of tax returns and cash flow projections;
- d. provisions governing the modification of loan payment terms and adequate collection procedures, including but not limited to the action to be taken against borrowers who fail to make timely payments;
- e. provisions that specify appropriate limitations on the extension of credit through overdrafts and cash items held against deposit accounts;
- f. provisions that establish standards for unsecured credit;
- g. provisions that establish officer lending limits; and
- h. provisions that require the Board to first determine that the lending staff has the expertise necessary to properly supervise construction loans and that adequate procedures are in place to monitor any construction involved before funds are disbursed;

3. The Board shall adopt procedures whereby officer compliance with the revised loan policy is monitored and responsibility for exceptions thereto assigned. The procedures adopted shall be reflected in minutes of a Board meeting at which all members are present and the vote of each is noted.

### **VIII. OTHER REAL ESTATE POLICIES**

1. Within 60 days from the effective date of this ORDER, the Board shall develop a written policy and procedures to ensure proper accounting for the Other Real Estate (“ORE”) of the Bank, including obtaining appraisals in a timely manner to determine property value, ensuring the book value excludes estimated selling costs, requiring accurate documentation of capitalized improvements to properties. In addition, require monthly status updates to the Bank’s Board.
2. The Bank shall submit the policy to the Supervisory Authorities for review and comment. Within 30 days from receipt of any comment from the Supervisory Authorities and after due consideration of any recommended changes, the Bank shall approve the policy, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the policy.

### **IX. ALLOWANCE FOR LOAN AND LEASE LOSSES**

Within 30 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. 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 allowance at least once each calendar quarter. Said review should be completed within 15 days of the end of each quarter, in order that the findings of the Board with respect to the ALLL

for loan and lease losses may be properly reported in the quarterly Reports of Condition and Income. The review should focus on outstanding regulatory policies and guidelines, the accounting standards set forth in FAS 5 and FAS 114, 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, 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 of Banks as determined at subsequent examinations and/or visitations.

**X. PLAN FOR EXPENSES/PROFITABILITY**

1. Within 60 days from the effective date of this ORDER, the Bank shall formulate and implement a written plan improve earnings. This plan shall be forwarded to the Supervisory Authorities for review and comment and shall address, at a minimum, the following:
  - a. goals and strategies for improving and sustaining the earnings of the Bank, including:
    - i. an identification of the major areas in, and means by which, the Board will seek to improve the Bank's operating performance;
    - ii. realistic and comprehensive budgets;
    - iii. a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections; and

- iv. a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components.
- b. coordination of the Bank's loan, investment, and operating policies, and budget and profit planning, with the funds management policy.
- c. following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan required by this paragraph and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the board of directors meeting at which such evaluation is undertaken.

#### **XI. CONTRAVENTION OF POLICY**

1. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all contraventions of policy and which are more fully set out on pages 20 through 21 of the Report.
2. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations, standards, guidelines, and statements of policy.

#### **XII. LIQUIDITY AND FUNDS MANAGEMENT**

Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a written liquidity and funds management policy. 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.

#### **XIII. SAFEGUARDING CUSTOMER INFORMATION**

1. Within 60 days from the effective date of this ORDER, the Bank shall develop and implement, an effective information security program to safeguard customer information in compliance with the standards set forth in Part 364, Appendix B of the FDIC Rules and



Regulations an the Federal Financial Institutions Examination Council's ("FFIEC") Guidance on Authentication in an Internet Banking Environment (FIL-103-2005). At a minimum the written program should:

- a. document methods to identify and assess the likelihood of all internal and external threats to customer information and to assess the adequacy of controls to prevent unauthorized disclosure, misuse, alteration, and destruction of this data;
- b. manage and control the risks identified in the assessment;
- c. test the key controls, systems and procedures of the program;
- d. document the review of service provider information;
- e. adjust the program as technology or servicing arrangements change; and
- f. report to the Board on the compliance of the program after the program is enhanced and annually thereafter.

#### **XIV. CASH DIVIDENDS**

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

#### **XV. DISCLOSURE**

Following the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER in conjunction with the Bank's next shareholder communication, and also 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<sup>th</sup> Street, N.W., Room F-6043, Washington, D.C. 20429, and the

Alabama State Banking Department, 401 Adams Avenue, Suite 680, Montgomery, Alabama 36130-1201, for review at least twenty (20) days prior to dissemination to shareholders. Any changes requested to be made shall be made prior to dissemination of the description, communication, notice, or statement.

#### **XVI. PROGRESS REPORTS**

Within 30 days of the end of the first quarter following the effective date of this ORDER, and within 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 Reports of Condition and 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.

This ORDER shall become effective ten (10) days from 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.

Pursuant to delegated authority.

Dated at Atlanta, Georgia, this \_\_\_\_ day of \_\_\_\_\_, 2008.

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Mark S. Schmidt  
Regional Director  
Division of Supervision and Consumer  
Protection  
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 Code of Alabama Annotated Section 5-2A-12 (1975).

Dated this 19<sup>th</sup> day of November, 2008.

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John D. Harrison  
Superintendent of Banks  
Alabama State Banking Department