

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

|                                |   |                           |
|--------------------------------|---|---------------------------|
| _____                          | ) |                           |
| In the Matter of               | ) |                           |
|                                | ) |                           |
| FARMERS DEPOSIT BANK OF        | ) | ORDER TO CEASE AND DESIST |
| MIDDLEBURG, INC.               | ) |                           |
| MIDDLEBURG, KENTUCKY           | ) | FDIC-08-185b              |
|                                | ) |                           |
| (Insured State Nonmember Bank) | ) |                           |
| _____                          | ) |                           |

Farmers Deposit Bank of Middleburg, Inc., Middleburg, Kentucky ("**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 or regulation related to its compliance management system alleged to have been committed by the Bank, and of its right to a hearing on the 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**") with counsel for the Federal Deposit Insurance Corporation ("**FDIC**"), dated November 21, 2008, whereby, solely for the purpose of this proceeding and without admitting or denying the charges of unsafe or unsound banking practices and violations of law or regulation, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("**ORDER**") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound

banking practices and had violated laws or regulations. The FDIC, 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), successors, and assigns, cease and desist from the following unsafe or unsound banking practices and violations of law or regulations:

A. Operating with management whose policies and practices in the area of consumer compliance are detrimental to the Bank.

B. Operating with a board of directors which has failed to provide adequate supervision over, and direction to, the active management of the Bank in the area of consumer compliance.

C. Failing to develop and administer an effective compliance management system that ensures compliance with federal consumer protection laws, regulations, and policies ("**Consumer Laws**").

D. Violating Consumer Laws as set forth in the FDIC's Compliance Report of Examination of the Bank as of March 10, 2008 ("**Compliance Report**").

E. Failing to establish an effective process to monitor compliance with Consumer Laws.

F. Operating with ineffective policies and procedures.

G. Operating with an inadequate audit program.

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

MANAGEMENT /COMPLIANCE OFFICER

1. 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. Each member of management shall be provided appropriate written authority from the Bank's board of directors 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 the Bank in a safe and sound manner;
- (iii) comply with applicable laws and regulations; and
- (iv) develop, implement and administer a satisfactory Compliance Management System, as described in Financial Institution Letter 10-2007, "Compliance Examination Handbook, Heading II Compliance

Examinations-Compliance Management  
System," ("**Compliance Management System  
Guidance**").

(c) During the life of this ORDER, the Bank shall notify the Regional Director of the Chicago Regional Office of the FDIC ("**Regional Director**") in writing of any changes in any of the Bank's directors or senior executive officers. For purposes of this ORDER, "senior executive officer" is defined as in section 32 of the Act ("**section 32**"), 12 U.S.C. § 1831(i), and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. § 303.101(b), and includes any person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the Bank.

(d) Prior to the addition of any individual to the board of directors or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100 - 303.104.

(e) Within 30 days from the effective date of this ORDER, the Bank shall have and retain a full-time Compliance Officer who possesses the requisite knowledge and experience to administer an effective Compliance Management System.

(i) The responsibilities of the Compliance

Officer shall at a minimum include:

- (a) Developing compliance policies and procedures, and conducting regular reviews to ensure that updates are accomplished as necessary;
- (b) Administering a compliance training program and providing training in Consumer Laws to the Board of Directors, Bank management and employees on a continuing basis; and
- (c) Coordinating responses to consumer complaints:
  - (ii) The ongoing determination of whether the Bank has retained a qualified Compliance Officer within the meaning of this ORDER shall be based upon the continued effectiveness of the Bank in achieving compliance with the requirements of this ORDER and with the Consumer Laws.

BOARD OVERSIGHT

2. From the effective date of this ORDER, the board of directors 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.

(a) Within 30 days from the effective date of this ORDER, the Bank's board of directors shall designate a committee ("**Compliance Committee**") comprised of at least two directors who are not active officers of the Bank and at least one member of senior management, plus the Compliance Officer retained pursuant to this ORDER. Establishment of the Compliance Committee in no way diminishes the responsibility of the entire board of directors for ensuring compliance with the provisions of this ORDER.

(b) The Bank's board of directors, in conjunction with the Compliance Committee, shall allocate resources to the compliance area that are:

- (i) Commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an adequate Compliance Management System, including procedures ensuring the Bank's compliance with Consumer Laws; and
- (ii) Sufficient to ensure the Bank's timely compliance with the provisions of this ORDER.

(c) The Bank's board of directors shall ensure that the Compliance Officer:

- (i) Has and retains sufficient authority and independence to implement policies related to Consumer Laws and to institute corrective action as needed. This authority shall include the ability to cross departmental lines, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies.
- (ii) Receives ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's Compliance Management System.

(d) The Bank's board of directors, in conjunction with the Compliance Committee, shall:

- (i) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide for accessibility to both the board and senior management;

- (ii) Require the Compliance Officer to provide monthly reports to the board or Compliance Committee;
- (iii) Require the Compliance Officer to review and respond promptly in writing to audit reports relating to all areas of the Bank's Compliance Management System; and
- (iv) Require the Compliance Officer to prepare a schedule of requirements for Consumer Laws (such as the type and timing of disclosures), so that Bank employees will be informed of the requirements relating to their duties.

(e) Within 30 days from the effective date of this ORDER, the Bank's board of directors shall have in place a procedure that will provide for monitoring of the Bank's compliance with this ORDER.

- (i) The procedure shall include, but not be limited to, meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: minutes of the Compliance Committee, Compliance Officer reports, Compliance Program (defined in



the Compliance Management System Guidance), audit reports, compliance program policies, and compliance with this ORDER. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

- (ii) All progress reports and other written responses to this ORDER shall be reviewed and signed by each member of the board, and such reviews shall be recorded in the minutes of the applicable meeting of the board of directors. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has released, in writing, the Bank from making additional reports.

(f) The board shall ensure proper follow-up and resolution to audit and examination findings.

#### COMPLIANCE MANAGEMENT SYSTEM

3. Within 90 days from the effective date of this Order the Bank shall establish and implement an effective Compliance Management System.

(a) The Compliance Committee shall meet at least monthly to discuss the Bank's Compliance Management System, and shall maintain minutes of its meetings, which minutes shall be reviewed and approved by the Bank's board of directors at its monthly meetings.

COMPLIANCE MONITORING

4. Within 60 days from the effective date of this ORDER, the Bank shall ensure that effective compliance monitoring procedures are developed and incorporated into the normal activities of every department. At a minimum, monitoring procedures should include ongoing reviews of:

- (a) Applicable departments;
- (b) Disclosures and calculations for various loan and deposit products;
- (c) Document filing and retention procedures;
- (d) Marketing literature and advertising;
- (e) The internal compliance communication system that provides to Bank personnel appropriate updates resulting from revisions to Consumer Laws; and
- (f) The procedures required by this paragraph (4), shall be acceptable to the Regional Director as determined at subsequent examinations of the Bank.

COMPLIANCE CONSULTANT

5. (a) Within 30 days from the effective date of this ORDER, the Bank shall have and retain a qualified consultant with the requisite knowledge and experience to assist the Bank in developing an effective Compliance Management System.

(b) The Bank shall provide the Regional Director with a copy of the proposed engagement letter or contract with the consultant for review. The contract or engagement letter, at a minimum, should include:

- (i) A description of the work to be performed under the contract or engagement letter;
- (ii) The responsibilities of the consultant;
- (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; and

(viii) A provision for unrestricted examiner access to workpapers.

(c) At a minimum the Compliance Management System developed by the consultant shall address those items described in the "Compliance Management System Guidance".

TRAINING PROGRAM

6. Within 60 days from the effective date of this ORDER, the Bank shall develop a training program, acceptable to the Regional Director as determined at subsequent examinations or visitations, related to Consumer Laws for all Bank personnel, including senior management and the directorate, commensurate with their individual job functions and duties.

COMPLIANCE POLICIES AND PROCEDURES

7. Within 60 days from the effective date of this ORDER, the Bank shall develop and implement a Compliance Policy, acceptable to the Regional Director as determined at subsequent examinations or visitations. At a minimum, this Policy shall:

(a) Require the adoption of a comprehensive Compliance Program as set forth in the Compliance Management System Guidance, which will be reviewed and approved annually by the board; and

(b) Require the development of internal monitoring procedures to ensure that:

(i) The Bank's actual practices reflect the

Compliance Policy;

- (ii) All Consumer Laws are being followed; and
- (iii) Reviews sufficient to determine compliance with consumer laws and regulations are conducted on a regular basis, but no less than monthly, at the transactional level during the normal daily activities of employees in all operating units of the Bank.

EXTERNAL AUDIT

8. (a) Within 90 days from the effective date of this ORDER, the Bank shall have an external audit to ensure compliance with Consumer Laws. The scope of the external audit shall be submitted to and approved by the Regional Director prior to engagement of the external auditor. Further, the audit will assess the Bank's Compliance Program in conjunction with the Compliance Management System Guidance, and at a minimum, shall:

- (i) Define a comprehensive scope;
- (ii) Identify the number of transactions sampled by category or product type;
- (iii) Identify deficiencies;
- (iv) Provide descriptions of or suggestions for corrective actions and time frames for correction; and

- (v) Establish follow-up procedures to verify that corrective actions were implemented and effective.

(b) Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the board of directors within 10 days after completion of the external audit.

(c) Within 30 days of receipt of the external auditors written report the Board shall take action to address the audits' findings, correct any deficiencies noted, and implement any recommendations or explain in a writing signed by all Board members why a particular recommendation has not been implemented.

(d) The contract or engagement letter with the external auditor, at a minimum, should include:

- (i) A description of the work to be performed under the contract or engagement letter;
- (ii) The responsibilities of the external auditor;
- (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 time frame for completion of the work;
- (vi) A provision for unrestricted examiner access to workpapers; and
- (vii) A provision stating that the external auditor will present the findings of the audit directly to the Bank's board of directors.

(e) After receipt of the external audit the Bank shall, on a quarterly basis, conduct subsequent external audits. The subsequent audits shall comply with all of the provisions of this paragraph (8).

(f) The external auditor required by this paragraph must be independent from the consultant required by paragraph 5 of this Order.

DOCUMENTATION OF AUDIT FINDINGS

9. Within 90 days from the effective date of this ORDER, the Bank shall formulate, adopt, and implement procedures, acceptable to the Regional Director, as determined at subsequent examinations or visitations, to ensure that Bank responses to audit findings, as well as Bank corrective actions in response to audit findings, are documented and reported to the board of directors.

FLOOD INSURANCE PROGRAM

10. Within 30 days from the effective date of this ORDER, the Bank shall adopt and implement systems to assure compliance with the Flood Disaster Protection Act of 1973, 42 U.S.C. §§ 4012a et seq., and Part 339 of the FDIC Rules and Regulations, 12 C.F.R. Part 339, with specific provisions requiring the Bank to:

(a) Have and retain adequate flood insurance when making, increasing, extending or renewing a designated loan secured by a building, mobile home or personal property located in a Special Flood Hazard Area, as required by section 339.3(a) of the FDIC Rules and Regulations, 12 C.F.R. § 339.3(a);

(b) Furnish a written notice to the borrower and to the servicer when making, increasing, extending, or renewing a loan secured by a building or mobile home located or to be located in a Special Flood Hazard Area whether or not flood insurance is available, as required by section 339.9(a) of the FDIC Rules and Regulations, 12 C.F.R. § 339.9(a);

(c) Utilize the standard flood hazard determination form developed by the Director of the Federal Emergency Management System when determining whether the building or mobile home offered as collateral for a loan is or will be located in a special flood hazard area in which flood insurance is available, as required by section 339.6(a) of the FDIC Rules and Regulations, 12 C.F.R. § 339.6; and



(d) Ensure that standard flood hazard determination forms are completed in a timely manner prior to loan origination and without backdating.

ECOA COMPLIANCE

11. Within 30 days from the effective date of this ORDER, the Bank shall adopt and implement systems to assure compliance with the Equal Credit Opportunity Act ("**ECOA**"), 15 U.S.C. §§ 1691-1691f, and Part 202 of Federal Reserve Board Regulation B, 12 C.F.R. §§ 202.1-202.16, with specific provisions requiring the Bank to:

(a) Remove overt discriminatory language from the Bank's Lending Procedures;

(b) Monitor requirements of the Bank's revised Lending Procedures to assure that practices and procedures are in compliance with ECOA requirements; and

(c) Prepare written policies and procedures to guide Bank employees on appropriate compliance with ECOA requirements and provide training to Bank employees regarding same.

CORRECTION OF VIOLATIONS

12. Within 30 days from the effective date of this ORDER, the Bank shall eliminate or correct all violations of Consumer Laws identified in the Compliance Report dated March 10, 2008. In addition, the Bank shall establish and implement procedures, acceptable to the Regional Director, as determined at subsequent

examinations or visitations, as part of its Compliance Policy to assure future compliance with all Consumer Laws.

DISCLOSURE TO SHAREHOLDERS

13. Following the effective date of this ORDER, the Bank shall send to its shareholders a description of this ORDER: (1) in conjunction with the Bank's next shareholder communication; or (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, notice, or statement shall be sent to the FDIC Registration and Disclosure Section, 550 17th Street, N.W., 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.

PROGRESS REPORTS

14. Within 30 days from the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter thereafter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof.

CLOSING PARAGRAPHS

The effective date of this ORDER shall be ten calendar days after the date of its issuance by the FDIC.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, successors, and assigns.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Pursuant to delegated authority.

Dated this 1<sup>st</sup> day of December, 2008.

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M. Anthony Lowe  
Regional Director  
Division of Supervision and  
Consumer Protection