

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	ORDER TO
AMERICAN SOUTHERN BANK	)	CEASE AND DESIST
KENNESAW, GEORGIA	)	
	)	FDIC-08-366b
(INSURED STATE NONMEMBER BANK)	)	
_____	)	

American Southern Bank, Kennesaw, Georgia ("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 the Official Code of Georgia § 7-1-91 Annotated, GA Code Ann. Section 7-1-91, 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 for the Federal Deposit Insurance Corporation ("FDIC") and the Commissioner (the "Commissioner") for the State of Georgia, Department of Banking and Finance (the "Department"), dated the 19th day of March, 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 Commissioner.

The FDIC and the Commissioner 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 Commissioner, 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 regulation:

- (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 a large volume of poor quality loans;
- (d) operating with an inadequate allowance for loan and lease losses (“ALLL”);
- (e) operating with significant concentrations of credit that jeopardize the quality of the asset portfolio
- (f) operating with inadequate equity capital and reserves in relation to the volume and quality of assets held by the Bank;
- (g) operating with inadequate provisions for liquidity and funds management;
- (h) Operating with inadequate information technology policies;

(i) Operating in violation of laws and/or regulations, and in contravention of statements of policy as more fully described on pages 10 and 11 of the Report of Examination of the Bank dated August 4, 2008 (“Report”).

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

**MANAGEMENT**

1. Within 90 days of the effective date of this ORDER, 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:

(i) a chief executive officer with proven ability in managing a bank of comparable size and complexity and in effectively implementing lending, investment, and operating policies in accordance with sound banking practices;

(ii) a senior lending officer with significant amount of appropriate lending, collection, and loan supervision experience, and experience in upgrading a low quality loan portfolio; and,

(iii) a chief operations officer with a significant amount of appropriate experience in managing the operations of a bank of similar size and complexity in accordance with sound banking practices.

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 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 asset quality, capital adequacy, earnings, management effectiveness, and liquidity.

(c) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Commissioner (collectively, "Supervisory Authorities") in writing when it proposes to add any individual to the Bank's Board or employ any individual as a senior executive officer, as that term is defined in section 303.102 of the FDIC's Rules and Regulations, 12 C.F.R. § 102. 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. If the Regional Director issues a notice of disapproval pursuant to section 32 of the Act, 12 U.S.C. § 1831i, with respect to any proposed individual, then such individual may not be added or employed by the Bank.

### **BOARD OF DIRECTORS**

2. Immediately upon 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. 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; liquidity and funding; and individual committee actions. Board minutes shall 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, to oversee the Bank’s compliance with the ORDER. Three of the members of the Directors’ Committee shall not be officers of the Bank. The Directors’ Committee shall receive from Bank management 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 shall be recorded in the appropriate minutes of the Board’s meeting and shall be retained in the Bank’s records. 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.

### **CAPITAL**

3. (a) Within 30 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to maintain a Tier 1 Leverage Capital ratio of not less than 8.00 percent and a Total Risk-Based Capital ratio of not less than 10.00 percent, thereby maintaining an overall well-capitalized position. The plan shall be in a form and manner

acceptable to the Supervisory Authorities as determined at subsequent examinations. The Capital ratios shall be calculated on March 31, June 30, September 30, and December 31 of each year utilizing the definitions contained in Section 325.2 of the FDIC Rules and Regulations. In the event that the Tier 1 Leverage Capital ratio falls below 8.00 percent at any such period, the Supervisory Authorities should be notified and capital shall be increased in an amount sufficient to meet the ratio required by this provision within 60 days.

(b) The capital levels to be maintained during the life of this ORDER pursuant to Paragraph 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.

#### **CHARGE-OFF AND REDUCTION OF CLASSIFIED ITEMS**

4 (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" and 50 percent of all assets classified "Doubtful" in the Report that have not been previously collected or charged-off. 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 DEPARTMENT, 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. Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.

(b) 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 \$500,000 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.

(c) 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.

(d) The written plan mandated by this provision shall further require a reduction in the aggregate balance of items classified “Substandard” in the ROE according to 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, a reduction of 25 percent in the balance of assets classified “Substandard.”

(ii) Within 360 days, a reduction of 45 percent in the balance of assets classified “Substandard.”

(iii) Within 540 days, a reduction of 60 percent in the balance of assets classified “Substandard.”

(iv) Within 720 days, a reduction of 75 percent in the balance of assets classified “Substandard.”

(e) The requirements of Subparagraph 4(b) of this ORDER are not to be construed as standards for future operations. 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.

(f) Within 60 days from the effective date of this ORDER, the Bank shall submit the written reduction plan to the Supervisory Authorities for review and comment. Within 30 days receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank 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 days intervals concurrently with the other reporting requirements set forth in Paragraph 12 of this ORDER.

**NO ADDITIONAL CREDIT**

5. (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) 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.

(c) Paragraph 5(b) 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 the extending of 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:

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

(ii) that the Bank's position would be improved thereby; and

(iii) 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.

### **REDUCE CONCENTRATIONS OF CREDIT**

6. Within 60 days from the effective date of this ORDER, the Bank shall develop a written plan, approved by its Board and acceptable to the Supervisory Authorities for systematically reducing the amount of loans or other extensions of credit advanced, directly or indirectly, to or for the benefit of, any borrowers listed on pages 21 and 22 of the Report.

### **ESTABLISH/MAINTAIN ALLOWANCE FOR LOAN/LEASE LOSSES**

7. 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, 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.

## **LENDING AND COLLECTION POLICIES**

8. Within 60 days from the effective date of this ORDER, the Bank shall ensure the full implementation of its written lending and collection policy to provide effective guidance and control over the Bank's lending function, which implementation shall include the resolution of those exceptions enumerated on pages 1 and 7 of the Report. 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.

## **PLAN FOR EXPENSES/PROFITABILITY**

9. (a) Within 60 days from the effective date of this ORDER, the Bank shall formulate and implement a written plan to improve and/or sustain Bank earnings. This plan shall be forwarded to the Supervisory Authorities for review and comment and shall address, at a minimum, the following:

- (i) goals and strategies for improving and sustaining the earnings of the Bank;
- (ii) the major areas in, and means by which the Bank will seek to improve the Bank's operating performance;
- (iii) realistic and comprehensive budgets;
- (iv) a budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections;
- (v) the operating assumptions that form the basis for, and adequately support, major projected income and expense components; and

(vi) coordination of the Bank's loan, investment, and operating policies and budget and profit planning with the funds management policy.

(b) 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 meeting at which such evaluation is undertaken.

(c) Thereafter, the Bank shall formulate such a plan and budget by November 30 of each subsequent year. These plans and budgets shall be submitted to the Supervisory Authorities for review and comment by December 15 of each subsequent year.

#### **INTERNAL LOAN REVIEW**

10. Within 60 days from the effective date of this ORDER, the Bank shall adopt an effective internal loan review and grading system to provide for the periodic review of the Bank's loan portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality. Such system and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations. At a minimum, the grading system shall provide for the following:

(a) specification of standards and criteria for assessing the credit quality of the Bank's loans;

(b) application of loan grading standards and criteria to the Bank's loan portfolio;

(c) categorization of the Bank's loans into groupings based on the varying degrees of credit and other risks that may be presented under the applicable grading standards and criteria, but in no case, will a loan be assigned a rating higher than that assigned by examiners at the last examination of the Bank without prior written notification to the Supervisory Authorities;

(d) assessment of the likelihood that each loan exhibiting credit and other risks will not be repaid according to its terms and conditions;

(e) identification of any loan that is not in conformance with the Bank's loan policy;

(f) identification of any loan which presents any unsafe or unsound banking practice or condition or is otherwise in violation of any applicable State or Federal law, regulation, or statement of policy;

(g) requirement of a written report to be made to the Board [and Audit Committee], not less than quarterly after the effective date of this ORDER. The report shall identify the status of those loans that exhibit credit and other risks under the applicable grading standards/criteria and the prospects for full collection and/or strengthening of the quality of any such loans; and

(h) specific policies governing Bank charge-offs of loans and underlying collateral taken to repay loans.

**VIOLATIONS OF LAW AND**  
**CONTRAVENTIONS OF POLICIES**

11. Within 30 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of laws and regulations and contraventions of Statements of Policy, which are more fully set out on pages 10 and 11 of the Report. In

addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations and policies.

### **POLICY FOR LIQUIDITY AND FUNDS MANAGEMENT**

12. (a) Within 60 days from the effective date of this ORDER, the Bank shall develop or revise, 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.

(b) Within 60 days from the effective date of this ORDER, the Bank shall develop or revise, adopt, and implement a written liquidity contingency plan. The written liquidity contingency plan shall incorporate the applicable guidance contained in Financial Institution Letter (FIL) 84-2008 dated August 26, 2008, entitled Liquidity Risk Management. The liquidity contingency plan shall provide restrictions on the use of Brokered and Internet deposits consistent with safe and sound banking practices. Such plan shall be submitted to the Supervisory Authorities for review and approval, and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

### **INFORMATION TECHNOLOGY**

13. Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement policies and procedures to ensure the integrity of its information systems consistent with safe and sound banking practices. Such measures shall, at a minimum, eliminate and/or correct all associated deficiencies as more fully set forth on pages 5 through 6 and 12 through 14 of the Report, and prevent the recurrence of any

deficiencies noted. Such policy and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

#### **CASH DIVIDENDS**

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

#### **BROKERED DEPOSITS**

15. Upon the effective date of this ORDER, the Bank shall not increase the amount of brokered deposits above the amount outstanding on that date. Within ten (10) days of the effective date of this ORDER, the Bank shall submit to the Supervisory Authorities a written plan for eliminating its reliance on brokered deposits. The plan should contain details as to the current composition of brokered deposits by maturity and explain the means by which such deposits will be paid or rolled over. The Supervisory Authorities shall have the right to reject the Bank's plan. On the tenth and twenty-fifth days of each month, the Bank shall provide a written progress report to the Supervisory Authorities detailing the level, source, and use of brokered deposits with specific reference to progress under the Bank's plan. For purposes of this ORDER, brokered deposits are defined as described in section 337.6(a)(1) of the FDIC's Rules and Regulations, 12 C.F.R. § 337.6(a)(1), 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.

## **DISCLOSURE**

16. 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-6066, Washington, D.C. 20429, and to the Commissioner, Georgia Department of Banking and Finance, 2990 Brandywine Road, Suite 200, Atlanta, Georgia 30341-5561, at least fifteen (15) 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**

17. Within 30 days of the end of the first quarter following the effective date of this ORDER, 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 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 immediately. 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 31st day of March, 2009.

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

The Georgia Department of Banking and Finance, having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the Georgia Commissioner of Banking and Finance to the same degree and to the same legal effect that such ORDER would be binding if the Department had issued a separate ORDER that included and incorporated all of the provisions of the foregoing ORDER, pursuant to section 7-1-91 of the Official Code of Georgia Annotated, GA Code Ann. Section 7-1-91.

Dated this \_\_\_\_ of March, 2009.

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Robert Braswell  
Commissioner  
Department of Banking and Finance  
State of Georgia