

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____	)	
In the Matter of	)	
	)	ORDER TO
APPALACHIAN COMMUNITY BANK	)	CEASE AND DESIST
ELLIJAY, GEORGIA	)	
	)	FDIC-09-010b
(Insured State Nonmember Bank)	)	
_____	)	

Appalachian Community Bank, Ellijay, 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 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 for the Legal Division of 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 17<sup>th</sup> day of April, 2009, 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 Commissioner may issue an order

to cease and desist pursuant to section 7-1-91 of the Official Code of Georgia Annotated, GA Code Ann. Section 7-1-91(1985).

The FDIC and the Commissioner considered the matter and determined that they have reason to believe that the Bank has engaged in unsafe or unsound banking practices and has 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) following hazardous lending and lax collection policies and practices;
- (e) operating in such a manner as to produce operating losses;
- (f) operating with inadequate equity capital 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 allowance for loan and lease losses ("ALLL");

- (i) operating with excessive concentrations of commercial real estate ("CRE") and acquisition, development, and construction ("ADC") loans;
- (j) operating in violation of laws and/or regulations, and in contravention of statements of policy and guidance as more fully described on pages 13 through 18 of the Report of Examination of the Bank dated September 29, 2008 ("Report").

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

**BOARD OF DIRECTORS**

1. Beginning with 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; and individual committee actions. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

**COMPLIANCE WITH ORDER**

2. 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.

### **MANAGEMENT**

3. (a) Within 60 days from the effective date of this ORDER, the Bank shall have and retain qualified management. 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, with such authority recorded in the Board minutes, to implement the provisions of this ORDER. 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 a 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.

(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, earnings, 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 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. § 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. 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.

#### **CAPITAL**

4. (a) Within 90 days from the effective date of this ORDER, the Bank shall have Tier 1 capital in such an amount as to equal or exceed eight percent (8%) of the

Bank's total assets and a total risk based capital in such an amount as to equal or exceed ten percent (10%) of the Bank's total risk-weighted assets. Thereafter, during the life of this ORDER, the Bank shall maintain Tier 1 capital in such an amount as to equal or exceed eight percent (8%) of the Bank's total assets and a total risk based capital in such an amount as to equal or exceed ten percent (10%) of the Bank's total risk-weighted assets.

(b) Within 30 days from the effective date of this ORDER, the Bank shall develop and adopt a plan to meet the minimum risk-based capital requirements for a well-capitalized bank, as described in the FDIC Statement of Policy on Risk-Based Capital contained in Appendix A to Part 325 of the FDIC's 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 and/or visitations.

(c) The level of Tier 1 capital to be maintained during the life of this ORDER pursuant to Subparagraph 4(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.

(d) Any increase in Tier 1 capital necessary to meet the requirements of Paragraph 4(a) of this ORDER may not be accomplished through a reduction from the Bank's ALLL.

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

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

5. Within 30 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and shall revise its policy for determining the adequacy of the ALLL, and such policy shall be comprehensive. 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 at least twenty-one (21) days after the end of 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. The review should focus on 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 ALLL and its implementation shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

## **LIQUIDITY AND FUNDS MANAGEMENT**

6. (a) Within 60 days from the effective date of this ORDER, the Bank shall review, revise, and adopt its written liquidity, contingency funding, and funds management policy to provide effective guidance and control over the Bank's funds management activities, which policy shall include, at a minimum, revisions to address all

items of criticism enumerated on page 11 of the Report. 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. The revised policy shall provide for a periodic review of the Bank's deposit structure.

(b) Within 60 days from the effective date of this ORDER, the Bank shall implement adequate models for managing liquidity.

(c) The Bank shall calculate monthly the liquidity and dependency ratios, following the format utilized internally, and provide the calculations to the Board for review with such review noted in the Board minutes.

### **BROKERED DEPOSITS**

7. While this ORDER is in effect, the Bank shall give written notice to the Supervisory Authorities at such time as the Bank intends to make use of brokered deposits or increase the amount of brokered deposits above the amount outstanding on the date of the Report. The notification should indicate how the brokered deposits are to be utilized with specific reference to credit quality or investments/loans and the effect on the Bank's fund position and asset/liability matching. The Supervisory Authorities shall have the right to reject the Bank's plan for utilizing brokered deposits and may request periodic progress reports on the level, source, and use of brokered deposits within the Bank's plan. For purposes of this ORDER, brokered deposits are defined as described in section 337.6(a)(2) of the FDIC's Rules and Regulations, 12 C.F.R. § 337.6(a)(2), 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.

## **CASH DIVIDENDS**

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

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

9. (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 fifty percent (50%) of all assets or portions of assets classified "Doubtful" in the Report that have not been previously collected or charged off. (If an asset classified "Doubtful" is a loan or a lease, the Bank may, in the alternative, increase its ALLL by an amount equal to fifty percent (50%) of the loan or lease classified "Doubtful.") Elimination of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.

(b) 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 Supervisory Authorities, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any assets classified "Loss" and fifty percent (50%) of those classified "Doubtful", unless otherwise approved in writing by the Supervisory Authorities.

(c) This provision shall further require a reduction in the aggregate balance of assets classified "Substandard" and "Doubtful" in the Report in accordance with 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 twenty percent (20%) in the balance of assets classified “Substandard” or “Doubtful.”

(ii) Within 360 days, a reduction of forty percent (40%) in the balance of assets classified “Substandard” or “Doubtful.”

(iii) Within 540 days, a reduction of sixty percent (60%) in the balance of assets classified “Substandard” or “Doubtful;”

(iv) Within 720 days, a reduction of seventy-five percent (75%) in the balance of assets classified “Substandard” or “Doubtful.”

(d) The requirements of subparagraph 9(c) 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 subparagraph 9(c) the word "reduce" means:

(i) to collect;

(ii) to charge-off; or

(iii) to sufficiently improve the quality of assets adversely classified to

warrant removing any adverse classification, as determined by the Supervisory Authorities.

#### **NO ADDITIONAL CREDIT**

10. (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) Subparagraph 10(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; including an explanatory statement of how the Bank's position would be improved; and
- (iii) an appropriate workout plan has been developed and will be implemented in conjunction with the additional credit to be extended.

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.

## LOAN REVIEW

11. (a) Within 60 days of the effective date of this ORDER the Board shall revise, adopt, and implement an independent loan review program that will provide for a periodic review of the Bank's loan portfolio and the identification and categorization for problem credits. At a minimum, the system 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 repaid according to its terms:

(ii) action plans to reduce the Bank's risk exposure from each identified relationship;

(iii) prompt identification of all outstanding balances and commitments attributable to each obligor identified under the requirements of Subparagraph 11(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 11(i), and an assessment of the risk exposure from the aggregate relationship;

(iv) identification of trends affecting the quality of the loan portfolio, potential problem areas, and action plans to reduce the Bank's risk exposure;

(v) assessment of the overall quality of the loan portfolio;

(vi) identification of credit and collateral documentation exceptions and an action plan to address the identified deficiencies;

- (vii) identification and status of violations of laws or regulations with respect to the lending function and an action plan to address the identified violations;
- (viii) identification of loans that are not in conformance with the Bank's lending policy and an action plan to address the identified deficiencies;
- (ix) identification of loans to directors, officers, principal shareholders, and their related interests;
- (x) an assessment of the ability of individual members of the lending staff to operate within the framework of the Bank's loan policy and applicable laws, rules, and regulations; and an action plan to address the identified deficiencies; and
- (xi) a mechanism for reporting periodically, but in no event less than quarterly, the information developed in Subparagraphs 11(a)(i) through 11(a)(x) above to the Board and the audit committee. The report should also describe the action(s) taken by management with respect to problem credits.

The Bank shall submit the program 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 program, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the program. 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.

### **LENDING AND COLLECTION POLICIES**

12. (a) Within 90 days from the effective date of this ORDER, the Bank shall revise, adopt, and implement a written lending, underwriting 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 criticisms and recommendations enumerated on page 2 through 5 of the Report pertaining to the administration of ADC loans as well as CRE lending and specific guidelines for placing loans on a nonaccrual basis. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio and adopt procedures for leverage financing. 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 30 days from the effective date of this ORDER, the Board shall adopt and implement a policy limiting the use of loan interest reserves. Such policy shall confine the use of interest reserves to properly underwritten ADC loans where development or building plans have specific timetables that commence within a reasonable time of the loan's approval and that include realistic completion dates. Interest reserves shall be used only for payment of interest on ADC loans for projects that are progressing according to their timetables. Interest reserves may be supplemented only with the prior written approval of the Board or a committee thereof, so long as the approval documents a prudent reason for the supplement.

### **REDUCE CONCENTRATIONS OF CREDIT**

13. (a) Within 60 days from the effective date of this ORDER, the Bank shall perform a risk segmentation analysis with respect to concentrations of credit. Concentrations should be stratified as the Board deems appropriate, but shall include concentrations identified by industry, geographic distribution, underlying collateral, direct or indirect extensions of credit to or for the benefit of any borrowers dependent upon the performance of a single developer or builder, and other asset groups that are considered economically related. The Board should refer to the interagency guidance on *Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices*, for information regarding risk segmentation analysis. A copy of the analysis shall be provided to the Supervisory Authorities. The analysis shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(b) Within 90 days from the effective date of this ORDER, the Bank shall adopt and submit to the Supervisory Authorities a plan to reduce the Bank's concentration of credit in ADC and CRE loans.

### **PLAN FOR EXPENSES AND PROFITABILITY**

14. (a) Within 60 days from the effective date of this ORDER, the Bank shall formulate and fully implement a written plan and a comprehensive budget for all categories of income and expense. The plan and budget required by this paragraph shall include formal goals and strategies, consistent with sound banking practices and taking into account the Bank's other written policies, to improve the Bank's net interest margin, increase interest income, reduce discretionary expenses, control overhead, and improve

and sustain earnings of the Bank. The plan shall include a projected balance sheet and a description of the operating assumptions that form the basis for and adequately support major projected income and expense components. Thereafter, the Bank shall formulate such a plan and budget by November 30 of each subsequent year. The plan and budget required by Subparagraph 14(a) of this ORDER shall be acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(b) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plan and budget required by Subparagraph 14(a) of this ORDER 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.

#### **VIOLATIONS OF LAW AND CONTRAVENTIONS OF STATEMENTS OF POLICY**

15. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law, which are more fully set out on pages 13 through 17 of the Report. Within 60 days from the effective date of this ORDER, the Bank shall also correct all contraventions of FDIC Statements of Policy and Interagency Guidance which are more fully set out on pages 17 and 18 of the Report. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws, regulations, statements of policy, and regulatory guidance.

#### **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 30341-5565, at least fifteen (15) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC and Commissioner 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 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 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 Report of Condition and the Bank's Report of 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 immediately upon 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 24<sup>th</sup> day of April, 2009.

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

The Georgia Department of Banking and Finance (“Department”), 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. § 7-1-91(1985).

Dated this 21<sup>st</sup> day of April, 2009.

\_\_\_\_\_/s/  
Robert M. Braswell  
Commissioner  
Department of Banking and Finance  
State of Georgia