

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

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In the Matter of)	
)	
BAY BANK)	CONSENT ORDER
THEODORE, ALABAMA)	
)	
)	Docket No. FDIC-09-647b
)	
(Insured State Nonmember Bank))	
_____)	

The Federal Deposit Insurance Corporation ("FDIC") is the appropriate Federal banking agency for Bay Bank, Theodore, Alabama ("Bank"), under 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a "Stipulation to the Issuance of a Consent Order" ("Stipulation"), dated January 12, 2010, that is accepted by the FDIC and the Superintendent of Banks ("Superintendent"), Alabama State Banking Department (the "Department"). The Department may issue an order pursuant to Code of Alabama Annotated Section 5-2A-12 (1980).

With the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulations relating to weaknesses in asset quality, capital adequacy, earnings, management effectiveness, and liquidity, to the issuance of this Consent Order ("ORDER") by the FDIC and the Department.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and Code of Alabama Annotated Section 5-2A-12 (1980) have been satisfied, the FDIC and the Department hereby order that:

BOARD OF DIRECTORS

1. (a) Immediately from 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. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committee. Nothing in this paragraph shall preclude the Board from considering matters other than those contained in the agenda. 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.

(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 (4) 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

2. Within 60 days from 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. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

- (i) a chief executive officer with proven ability in managing a bank of comparable size 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 operating 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 their 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, but not limited to, 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 Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the Department (collectively, "Supervisory Authorities"), in writing, of the resignation or termination of any of the Bank's directors or senior executive officers. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100–303.104 and any requirement of the State of Alabama for prior notification and approval.

CAPITAL

3. (a) Within 60 days from the effective date of this ORDER, the Bank shall have Tier 1 Capital in such an amount as to equal or exceed 9 percent of the Bank's total assets and Total Risk-Based Capital in such an amount as to equal or exceed 12 percent of the Bank's total risk-weighted assets. Thereafter, the Bank shall maintain Tier 1 Capital and Total Risk Based Capital ratios equal to or exceeding 9 percent and 12 percent, respectively, during the life of this ORDER.

(b) The level of Tier 1 Capital and Total Risk-Based Capital to be maintained during the life of this ORDER pursuant to this paragraph shall be in addition to a fully

funded allowance for loan and lease losses ("ALLL"), the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) Any increase in Tier 1 Capital and Total Risk Based Capital necessary to meet the requirements of this paragraph of the ORDER may not be accomplished through a deduction from the Bank's ALLL. For purposes of this ORDER, the terms "Tier 1 Capital", "Total Risk Based Capital", and "total assets" shall have the meaning ascribed to them in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325.

RESTRICTIONS ON CERTAIN PAYMENTS

4. (a) While this ORDER is in effect, the Bank shall not declare or pay dividends or bonuses without the prior written approval of the Supervisory Authorities. All requests for prior approval shall be received at least 30 days prior to the proposed dividend declaration date (at least 5 days with respect to any request filed within the first 30 days after the date of this ORDER) and shall contain, but not be limited to, an analysis of the impact such dividend or bonus payment would have on the Bank's capital, income, and/or liquidity positions.

(b) During the term of this ORDER, the Bank shall not make any distributions of interest, principal or other sums on subordinated debentures, if any, without the prior written approval of the Supervisory Authorities.

CONCENTRATIONS OF CREDIT

5. Within 60 days from the effective date of this ORDER, the Bank shall perform a risk segmentation analysis with respect to the Concentrations of Credit listed on the Concentrations page of the Report of Examination dated September 21, 2009 ("Report")

and any other concentration deemed important by the Bank. Concentrations should be identified by product type, geographic distribution, underlying collateral, or other asset groups which are considered economically related and in the aggregate represent a large portion of the Bank's Tier 1 Capital. A copy of this analysis shall be provided to the Supervisory Authorities. The Board agrees to develop a plan to reduce any segment of the portfolio which the Supervisory Authorities deem to be an undue concentration of credit in relation to the Bank's Tier 1 Capital. The plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

CHARGE-OFF

6. (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 or portions of assets classified "Doubtful" in the Report that have not been previously collected or charged-off unless otherwise approved in writing by the Supervisory Authorities. If an asset classified "Doubtful" is a loan, the Bank may, in the alternative, increase its ALLL by an amount equal to 50 percent of the loan classified "Doubtful."

(b) Additionally, while this ORDER remains in effect, the Bank shall, within 10 days from 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 asset classified "Loss" and 50 percent of those classified "Doubtful" unless otherwise approved in writing by the Supervisory

Authorities. If an asset classified “Doubtful” is a loan, the Bank may, in the alternative, increase its ALLL by an amount equal to 50 percent of the loan classified “Doubtful.”

(c) Elimination or reduction of assets through proceeds of other loans made by the Bank is not considered collection for purposes of this provision.

ALLOWANCE FOR LOAN AND LEASE LOSSES

7. 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 to ensure the policy is 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 ALLL 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 Reports of Condition and Income, 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.

ADVERSELY CLASSIFIED ASSETS

8. (a) 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, or relationship in excess of \$250,000 classified "Substandard" or "Doubtful" in the Report. 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 or lease, 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.

(b) In addition, the plan mandated by this provision shall also include, but not be limited to, the following:

- (i) a quarterly schedule for reducing the outstanding dollar amount of adversely classified assets;
- (ii) 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;
- (iii) a provision for the Bank's submission of monthly written progress reports to its Board; and

(iv) 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.

(c) The plan mandated by this provision shall further require a reduction in the aggregate balance of assets classified “Substandard” or “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-five percent (25%) in the balance of assets classified “Substandard” or “Doubtful”;

(ii) Within 365 days, a reduction of forty-five percent (45%) 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”; and

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

(d) The requirements of this paragraph do not represent standards for future operations of the Bank. Following compliance with the above reduction schedule, the Bank shall continue to reduce the total volume of adversely classified assets. The plan may include a provision for increasing Tier 1 Capital when necessary to achieve the ratio prescribed in paragraph 8(b)(ii).

(e) Within 60 days of the effective date of this ORDER, the Bank shall submit the plan 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 plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the plan. Such plan shall be monitored and progress reports thereon shall be submitted to the Supervisory Authorities at 90-day intervals concurrent with the other reporting requirements set forth in this ORDER.

NO ADDITIONAL CREDIT

9. (a) While this ORDER is in effect, 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 or obligation with the Bank that has been, in whole or in part, charged off or classified "Loss" or "Doubtful" and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing, after collecting in cash all interest and fees due from a borrower, any credit already extended to the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower whose loan is adversely classified as "Substandard" or listed for "Special Mention" by the Supervisory Authorities and is uncollected.

(c) Paragraph 9(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 extending additional credit pursuant to this paragraph 9, whether in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by the Bank's Board, or a designated committee thereof, who shall certify, in writing:

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

- (ii) why the extension of such credit would improve the Bank's position, including an explanatory statement of how the Bank's position would improve; and
- (iii) that an appropriate workout plan has been developed and will be implemented in conjunction with the additional credit to be extended.

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

NO MATERIAL GROWTH WITHOUT PRIOR NOTICE

10. While this ORDER is in effect, the Bank shall notify the Supervisory Authorities at least 60 days prior to undertaking asset growth to 10 percent (10%) or more per annum or initiating material changes in asset or liability composition. In no event shall asset growth result in noncompliance with the capital maintenance provisions of this ORDER unless the Bank receives prior written approval from the Supervisory Authorities.

WRITTEN STRATEGIC/BUSINESS PLAN

11. (a) Within 90 days from the effective date of this ORDER, the Bank shall prepare and submit to the Supervisory Authorities for review and comment a written business/strategic plan covering the overall operation of the Bank. At a minimum the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

- (i) goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;
- (ii) goals for the composition of the deposit base including strategies to reduce reliance on volatile and costly deposits;
- (iii) plans for effective risk management and collection practices.

(b) Within 30 days from the receipt of any comments from the Supervisory Authorities, and after due consideration of any recommended changes, the Board shall approve the business/strategic plan, which approval shall be recorded in the minutes of a Board meeting.

LENDING AND COLLECTION POLICIES

12. Within 30 days from the effective date of this ORDER, the Bank shall develop and/or 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, provisions to address criticisms and recommendations enumerated on pages 8 and 9 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 as determined at subsequent examinations and/or visitations.

PLAN FOR EXPENSES AND PROFITABILITY

13. (a) Within 90 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 for the calendar year ending 2010. 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, 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 paragraph 13(a) 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 paragraph 13(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.

LIQUIDITY AND FUNDS MANAGEMENT PLAN

14. Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a written plan addressing liquidity, contingent funding, and asset liability management. The plan shall address all items of criticism enumerated on page 5, 6, 8 and 9 of the Report. In particular, the plan shall be in conformance with the *Joint Agency Policy Statement on Interest Rate Risk* and FIL 84-2008 on *Liquidity Risk Management*. A copy of the plan shall be submitted to the Supervisory Authorities upon its completion for review and comment. Within 30 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. Thereafter, the Bank shall implement and follow the plan. Annually during the life of

this ORDER, the Bank shall review this plan for adequacy and, based upon such review, shall make appropriate revisions to the plan that are necessary to strengthen funds management procedures and maintain adequate provisions to meet the Bank's liquidity needs.

VIOLATIONS OF REGULATION AND POLICY

15. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of regulations and contravention of policies which are more fully set out beginning on page 11 of the Report. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws, regulations and policies.

BROKERED DEPOSITS

16. (a) Throughout the effective life of this ORDER, the Bank shall not accept, renew, or rollover any brokered deposit, as defined by 12 C.F.R. § 337.6(a)(2), unless it is in compliance with the requirements of 12 C.F.R. § 337.6(b), governing solicitation and acceptance of brokered deposits by insured depository institutions.

(b) The Bank shall comply with the restrictions on the effective yields on deposits described in 12 C.F.R. § 337.6.

POLICY FOR INTERNAL ROUTINE AND CONTROL

17. (a) Within 60 days from the effective date of this ORDER, the Bank shall adopt and implement a policy for the operation of the Bank in such a manner as to provide adequate internal routine and controls within the Bank consistent with safe and sound banking practices. Such policy and its implementation shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies as more fully set

forth on page 8 through 10 of the Report and shall be satisfactory to the Supervisory Authorities.

(b) Within 60 days from the effective date of this ORDER, the Bank shall develop an internal audit program that establishes procedures to protect the integrity of the Bank's operational and accounting systems. The program shall be in a form and manner acceptable to the Supervisory Authorities.

PROGRESS REPORTS

18. (a) Within 30 days of the end of each calendar quarter following the effective date of this ORDER, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form, manner, and results of any actions taken to secure compliance with this ORDER and the results thereof. Such written reports shall provide cumulative detail of the Bank's progress toward achieving compliance with each provision of the ORDER.

(b) The progress report requirements shall continue for the life of this ORDER unless modified or terminated in writing by the Supervisory Authorities.

(c) All progress reports and other written responses to this ORDER shall be reviewed by the Board and be made a part of the minutes of the appropriate Board meeting.

DISCLOSURE

19. 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 Registration Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429, and to the Superintendent, Alabama State Banking Department, 401 Adams Avenue, Suite 680, Montgomery, Alabama 36130-1201, to review at least twenty (20) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC and the Department shall be made prior to dissemination of the description, communication, notice, or statement.

The provisions of this ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or Department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties.

This ORDER shall become effective on the date of its issuance.

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

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 in writing by the Supervisory Authorities.

Pursuant to delegated authority.

Dated this 5th day of February, 2010

/s/

Doreen R. Eberley
Acting 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 Department had issued a separate ORDER that included and incorporated all the provisions of the foregoing ORDER pursuant to the provisions of the §5-2A-12, Code of Alabama, 1980.

Dated this 5th day of February, 2010.

/s/

John D. Harrison
Superintendent of Banks
Alabama State Banking Department