

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of: )  
Lydian Private Bank )  
Palm Beach, Florida )

AA-EC-11-74

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, Lydian Private Bank, Palm Beach, Florida (“Bank”) is a “critically undercapitalized” insured depository institution pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Part 565 (redesignated 12 C.F.R. Part 165 pursuant to an interim final rule, 76 Fed. Reg. 48950 (August 9, 2011));

WHEREAS, on June 3, 2011, the Office of Thrift Supervision (“OTS”) notified the Bank that, as of May 26, 2011, it was “critically undercapitalized” pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Part 565 (Part 165, as redesignated);

WHEREAS, the Comptroller of the Currency (“Comptroller”) is authorized, pursuant to 12 U.S.C. § 1831o(f) and 12 U.S.C. § 5412(b), to take certain supervisory actions against critically undercapitalized savings associations;

WHEREAS, the Comptroller finds it necessary in order to carry out the purpose of 12 U.S.C. § 1831o to issue this Prompt Corrective Action Directive (“Directive” or “Order”) pursuant to 12 C.F.R. § 165.7(a)(2) requiring the Bank to immediately follow proscriptions and take actions;

NOW THEREFORE, pursuant to the authority in 12 U.S.C. § 1831o and 12 U.S.C. § 5412(b), the Comptroller hereby issues this Directive.

## ARTICLE I

### JURISDICTION

(1) The Bank is a federal savings association as that term is defined in 12 U.S.C. § 1813(b)(1), and (2) and is supervised and examined by the Comptroller pursuant to 12 U.S.C. § 5412(b).

(2) The Office of the Comptroller of the Currency is “the appropriate Federal banking agency” regarding the Bank, pursuant to 12 U.S.C. §§ 1813(q) and 1831o.

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1831o.

(4) This Directive constitutes a final order under 12 U.S.C. § 1831o and is enforceable under 12 U.S.C. § 1818(i).

(5) A violation of this Directive constitutes a violation of a final order under section 1831o and is subject to the assessment of civil money penalties under 12 U.S.C. § 1818(i)(2)(A).

## ARTICLE II

### PRESERVATION OF ASSETS

(6) Effective immediately upon issuance of this Directive, the Bank shall take immediate and continuing action to protect its assets, including with regard to new extensions of credit and permitting draws on unfunded commitments to lend.

(7) The Bank shall not extend, endorse, guarantee, or in any manner provide an extension of credit, directly or indirectly, or permit draws on any new or existing unfunded commitments to lend for fifty thousand dollars (\$50,000) or more, at one time or in the aggregate, to any borrower without first obtaining the written supervisory non-objection from the Director for Special Supervision (Director).

(8) Before seeking the supervisory non-objection of the Director under this Article, the Bank must:

- (a) In the case of a new extension of credit, document the purpose, identify the expected source of repayment, structure the repayment terms to coincide with the expected source of repayment, and obtain and analyze current and satisfactory credit information, including cash flow analysis, where loans are to be repaid from operations;
- (b) In the case of funding a new or existing commitment to lend, ensure that the draws do not exceed the Bank's contractual commitment to lend and that the Bank is fully protected with regard to any representations, warranties, or other contractual provisions aimed at protecting the Bank, including (but not limited to) collateral valuations and current borrower or guarantor credit (or other) information;
- (c) Ensure that any new extension of credit and any advance under an existing commitment to lend complies with the Bank's legal lending limit under 12 U.S.C. § 1464(u) and 12 C.F.R. § 560.93 (§ 106.93, as redesignated).
- (d) In the case of any existing commitment to lend for which the contractual commitment to lend exceeds the Bank's legal lending limit, ensure that the Bank makes reasonable efforts to bring the commitment to lend into conformity with the Bank's legal lending limit consistent with 12 U.S.C. § 1464(u) and 12 C.F.R. § 560.93 (§ 106.93, as redesignated).

(9) The Bank may extend credit and permit draws on new or existing unfunded commitments to lend for less than fifty thousand dollars (\$50,000), provided it promptly notifies the Director of all such extensions and draws.

### ARTICLE III

#### PRESERVATION OF BOOKS AND RECORDS

(10) Effective immediately upon issuance of this Directive, the Bank shall ensure that all documents, books, and records are accurately maintained and shall continue to ensure that no Bank documents, books, or records are destroyed, altered, or removed from the Bank's premises until further notice from the Director.

(11) For purposes of this Article, "documents, books, and records" shall have the broadest possible meaning reasonably imaginable and shall include, without limitation, paper and electronic records of all kinds, reports, notes, calendars, phone logs, e-mails, voice-mails, financial instruments, and tapes.

(12) The Bank shall provide OCC personnel with prompt and unrestricted access to the books, records, directors, officers, and staff of the Bank and shall instruct all agents and representatives of the Bank to do the same.

### ARTICLE IV

#### OTHER ACTIONS REQUIRED

(13) Effective immediately upon issuance of this Directive, the Bank shall not do any of the following without the prior written approval of the Bank's Board of Directors and the prior written non-objection of the Director<sup>1</sup>:

- (a) enter into any material transaction, including any investment, expansion, acquisition, or other similar action;

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<sup>1</sup> This is in addition to any approval required by the FDIC.

- (b) engage in the sale or transfer of any Bank asset involving a fair market value in excess of twenty thousand dollars (\$20,000) or the payment of Bank funds in any amount in excess of twenty thousand dollars (\$20,000);
- (c) enter into or renew any contracts over five thousand dollars (\$5,000);
- (d) engage in any transaction for the transfer of funds, the extension of credit; acceptance or transference of risk and/or the conferring of another type of benefit, directly or indirectly, involving any Bank affiliates, as defined in 12 U.S.C. § 371c, or current or former Bank directors, shareholders, senior executive officers, or their respective family members;
- (e) amend the Bank's charter or bylaws, except to the extent necessary to carry out any other requirement of law, regulation, or order;
- (f) make any change in accounting methods; or
- (g) increase compensation or other payments, including bonuses, to any employee, agent, or independent contractor.

## ARTICLE V

### OTHER PROVISIONS

(14) The provisions of this Directive supplement, and do not replace, the requirements of a September 16, 2010 Order to Cease and Desist (Consent Order) imposed on the Bank.

(15) This Directive is enforceable under 12 U.S.C. § 1818(i). Each provision of this Directive shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, and other persons participating in the affairs of the Bank.

(16) A copy of this Directive shall be immediately provided to all senior executive officers, including all Senior Vice Presidents and above.

