

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)	Order No.: ATL-2007-09
)	
ebank)	Date: June 4, 2007
Atlanta, Georgia)	
)	
OTS Docket No.: 14912)	
)	

**STIPULATION AND CONSENT TO THE ISSUANCE OF AN
ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, the Office of Thrift Supervision (OTS), based upon information derived from the exercise of its regulatory responsibilities, is of the opinion that grounds exist to initiate an administrative cease and desist proceeding for affirmative relief against ebank, Atlanta, Georgia, OTS Docket No. 14912 (ebank or Bank), pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b),¹ and

WHEREAS, ebank desires to cooperate with the OTS and to avoid the time and expense of such administrative proceeding, and

WHEREAS, ebank enters into this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation) (i) without any adjudication on the merits, (ii) without admitting or denying that grounds exist to initiate an administrative cease and desist proceeding, (iii) without admitting or denying the Findings of Fact, except as to Jurisdiction (Paragraph 1 below), which jurisdiction is admitted, and (iv) solely for the purpose

¹ All references to the United States Code (U.S.C.) are as amended, unless otherwise indicated.

of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions.

NOW, THEREFORE, on these premises, ebank hereby stipulates and agrees as follows:

1. Jurisdiction.

- a. ebank is a "savings association" within the meaning of Section 3(b) of the FDIA, 12 U.S.C. § 1813(b), and Section 2(4) of the Home Owners' Loan Act (HOLA), 12 U.S.C. § 1462(4). Accordingly, ebank is an "insured depository institution" as that term is defined in Section 3(c) of the FDIA, 12 U.S.C. § 1813(c).
- b. Pursuant to Section 3(q) of the FDIA, 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain an administrative cease and desist proceeding against such a savings association. Therefore, the Bank is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to Section 8(b) of the FDIA, 12 U.S.C. § 1818(b). The Director of the OTS has delegated to the Regional Director of the Southeast Region of the OTS or his/her designee (Regional Director) the authority to issue cease and desist orders where the savings association has consented to the issuance of the orders.

2. OTS Findings of Fact.

- a. The OTS finds that the Bank has engaged in certain unsafe and unsound practices and violated various laws and regulations to which the Bank is subject, as outlined in detail in the OTS's December 29, 2006 Report of Examination of ebank (2006 Examination). Such violations include violations of the OTS regulations regarding real estate lending standards, 12 C.F.R. § 560.101 and violations of the

OTS regulations regarding classification of assets and maintenance of adequate allowances for loan and lease losses, 12 C.F.R. § 560.160.

- b. Further, the Bank has engaged in unsafe and unsound practices relating to its (i) administration, monitoring and oversight of acquisition, development and/or construction loans, (ii) failure to comply with Board established limitations on nonhomogenous loan categories, and (iii) failure to comply with Board established policies and procedures relating to the Bank's compliance with the loans to one borrower requirements in 12 C.F.R. § 560.93.

3. Consent.

ebank consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief (C&D Order). The Bank further agrees to comply with the terms of the C&D Order upon issuance and stipulates that the C&D Order complies with all requirements of law.

4. Finality.

The C&D Order is issued under 12 U.S.C. § 1818(b). Upon its issuance by the Regional Director, it shall be a final order, effective and fully enforceable by the OTS under the provisions of Section 8(i) of the FDIA, 12 U.S.C. § 1818(i).

5. Waivers.

ebank waives the following:

- a. the right to be served with any written notice of the OTS's charges against it as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);
- b. the right to an administrative hearing of the OTS's charges against it as provided by Section 8(b) of the FDIA, 12 U.S.C. § 1818(b);

- c. the right to seek judicial review of the C&D Order including, without limitation, any such right provided by Sections 8(h) or (i) of the FDIA, 12 U.S.C. §§ 1818(h) and (i), or otherwise to challenge the validity of the C&D Order;
- d. any and all claims against the OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the C&D Order, whether arising under common law, the Equal Access to Justice Act, 5 U.S.C. § 504, or 28 U.S.C. § 2412; and
- e. the right to assert this proceeding, its consent to issuance of the C&D Order, and/or the issuance of the C&D Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity.

6. Other Governmental Actions Not Affected.

- a. Upon the OTS's issuance of the accompanying C&D Order, following the OTS's acceptance of this Stipulation executed by Bank, OTS does release and discharge ebank from all potential claims and charges that have been or might have been asserted by the OTS, based on the alleged violations described in the Findings of Fact set forth in Paragraph 2 of this Stipulation, to the extent known to the OTS as of the effective date of the accompanying C&D Order. However, the violations alleged above in Paragraph 2 of this Stipulation may be utilized by the OTS in future enforcement actions to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OTS to determine and ensure compliance with the terms and provisions of this Stipulation and the accompanying C&D Order.

- b. ebank acknowledges and agrees that its consent to the issuance of the accompanying C&D Order is solely for the purpose of resolving certain potential OTS administrative enforcement charges as provided by Paragraph 6(a) above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, liability, or other administrative, civil, or criminal proceeding that arise pursuant to this action or otherwise, and that may be or have been brought by another governmental entity.

7. **Reservation of Rights.**

ebank acknowledges that the OTS reserves the right to bring such additional action(s), charge(s), or proceeding(s) arising from or related in any way to the Findings of Fact or any other matter, as the OTS deems appropriate, in its sole discretion.

8. **Agreement for Continuing Cooperation.**

ebank agrees that, on reasonable notice and without service of a subpoena, it will promptly respond to any written request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with the C&D Order. ebank agrees to cooperate with the OTS or any other federal agency in any review requested by the OTS or any other federal government agency, or in any investigation, litigation, or other proceeding relating to ebank, its holding company, subsidiaries, service corporations, or institution-affiliated parties.

9. **Miscellaneous.**

- a. The construction and validity of this Stipulation and the C&D Order shall be governed by the laws of the United States of America.
- b. If any provision of this Stipulation and the C&D Order is ruled to be invalid, illegal, or unenforceable by the decision of any Court of competent jurisdiction,

the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise.

- c. All references to the OTS in this Stipulation and the C&D Order shall also mean any of the OTS's predecessors, successors, and assigns.
- d. The section and paragraph headings in this Stipulation and the C&D Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the C&D Order.
- e. The terms of this Stipulation and the C&D Order represent the final agreement of the parties with respect to the subject matters hereof and constitute the sole agreement of the parties with respect to such subject matters.
- f. This Stipulation and the C&D Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Deputy Director, Regional Director, or other authorized representative.

10. Signature of Directors.

Each Director signing this Stipulation attests that he/she voted in favor of a resolution authorizing the execution of the Stipulation.

WHEREFORE, ebank, by a majority of its directors, executes this Stipulation and Consent to

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CONSENT ORDER TO CEASE AND DESIST FOR AFFIRMATIVE RELIEF

WHEREAS, ebank, Atlanta, Georgia, OTS Docket No. 14912 (ebank or Bank), by and through its Board of Directors (Board), has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation); and

WHEREAS, ebank, by executing the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief (C&D Order) by the Office of Thrift Supervision (OTS), pursuant to Section 8(b) of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. § 1818(b)¹; and

WHEREAS, the Director of the OTS has delegated to the Regional Directors of the OTS the authority to issue consent orders on behalf of the OTS pursuant to the provisions of Section 8 of the FDIA, 12 U.S.C. § 1818.

NOW, THEREFORE, IT IS ORDERED THAT:

¹ All references to the United States Code (U.S.C.) are as amended.

Order to Cease and Desist

1. The Bank and its directors, officers, employees, and agents shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding and abetting of any violation of:
 - a. the OTS regulations regarding real estate lending standards set forth in 12 C.F.R. § 560.101; and
 - b. the OTS regulations regarding classification of assets and establishment of appropriate levels of loan and lease loss allowances contained at 12 C.F.R. § 560.160.

Loans to One Borrower

2. On or before July 15, 2007, the Board shall review its existing policies and procedures regarding compliance with the LTOB requirements set forth in 12 C.F.R. § 560.93 (LTOB Policies) and amend or develop, adopt and implement such additional policies and procedures as are necessary to address the weaknesses and deficiencies noted in the Bank's 2006 Examination and ensure the Bank's compliance with its LTOB limitations. At a minimum, the Board shall ensure that the Bank's LTOB Policies require each loan file to contain documentation and analysis sufficient to demonstrate that the Bank has identified any and all related persons, entities, interests, or arrangements designed or structured to circumvent the Bank's LTOB limitations and that the loan is in compliance with all requirements of 12 C.F.R. § 560.93 and 12 C.F.R. Part 32.

Allowance for Loan and Lease Losses

3. Effective immediately, the Board shall ensure that the additional Allowance for Loan and Lease Losses (ALLL) provisions (ALLL Provisions) directed by OTS in the Bank's 2006 Examination have been established. The Board shall provide documentation evidencing the establishment of the additional ALLL Provisions to the Regional Director within thirty (30) days after the Effective Date of this C&D Order.
4. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall develop an appropriate ALLL methodology to ensure the Bank establishes and maintains ALLL

in an amount that is adequate for the Bank's size, asset composition and complexity in accordance with OTS regulatory guidance, including 12 C.F.R. § 560.160(b), Section 261 of the Thrift Activities Handbook (TAH), and the December 13, 2006 Interagency Policy Statement on ALLL. The Board shall require Management to conduct a quarterly analysis of the adequacy of the Bank's ALLL and prepare a written report each quarter for the Board's review. The Board's review of Management's analysis will be fully documented in the Board meeting minutes, including specific detail regarding corrective actions adopted and/or required by the Board. Any deficiency in the ALLL shall be cured in the quarter in which it is discovered, before the Bank files its Thrift Financial Report (TFR) with the OTS. The Board shall document the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL in the appropriate Board meeting minutes. In assessing, establishing and maintaining adequate ALLL, the Board shall, at a minimum, consider the following:

- a. the results of all internal loan reviews and classifications;
- b. the loan loss experiences and history of the Bank covering an expanded segmentation of the Bank's loan portfolio;
- c. an estimate of the potential loss exposure on each significant credit;
- c. concentrations of credit; and
- e. current and prospective markets and economic conditions.

Loan Underwriting and Administration

5. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall review and revise the Bank's loan underwriting policies and procedures for acquisition, development, and/or construction loans² (ADC Underwriting Policy) to strengthen the Bank's construction and development lending practices. The Board shall ensure that the ADC Underwriting Policy, as revised, conforms to the requirements contained in 12 C.F.R. §§ 560.100, 563.101, and 560.170 and the guidance provided in TAH Section 210. At a minimum, the ADC Underwriting Policy shall:

² The phrase "acquisition, development, and/or construction loans" as used in Paragraph 5 of this C&D Order shall include (a) land acquisition and development loans, excluding loans financing the purchase of lots by borrowers whose primary residence will be constructed on the lot; (b) speculative or builder financing for residential development or construction; and (c) commercial development and construction loans.

- a. establish the Board's requirements for the types of ADC loans that will be granted by the Bank, which requirements shall at a minimum include (i) limitations on the nature and types of projects to be considered; (ii) establishment of the minimum amount of equity the borrower must invest in the project; (iii) obtaining a feasibility study on each project prior to making any loan commitment exceeding \$500,000; (iv) establishment of the amount and terms of any required presales of developed lots; (v) obtaining any mandatory regulatory approvals that are required prior to making the loan ; and (vi) establishment of loan requirements specifically tailored to the needs and capabilities of the Bank, including consideration of the Bank's lines of business, complexity, and size, the expertise of the Bank's lending personnel, the liability structure of the Bank, profitability and competition factors, and the credit needs of the community;
- b. detail the types and frequency of reports required by the Board to monitor the Bank's activities and compliance with its ADC Underwriting Policy;
- c. require at least an annual review of the ADC Underwriting Policy by the Board to ensure that it remains appropriate in light of changes in market conditions and applicable laws and regulations;
- d. clearly define the Bank's market area, which definition should be consistent with the Bank's business plan and Community Reinvestment Act Statement;
- e. establish requirements for the amount of borrower's equity, the financial condition and resources of the borrower and any guarantor, acceptable levels and types of collateral, loan to value ratios, and loan terms and pricing;
- f. establish loan approval authority limits for each lending officer based on the officer's experience and tenure with the Bank, as well as limits for groups of officers, who may be given greater limits than an individual officer, and those limits above which Board approval is required;
- g. require Bank personnel to conduct a thorough analysis and documentation of each loan's compliance with the ADC Underwriting Policy prior to entering into a credit commitment;

- h. require a thorough analysis and confirmation, prior to credit commitment, of all feasibility studies, pre-sales, builder takeout commitments, and any necessary county and/or state development or building permits;
- i. establish a system of independent, ongoing credit monitoring and review to ensure periodic updated financials, collateral status, and other necessary information is obtained with appropriate communication to Management and to the Board; and
- j. consider the risks associated with concentrations of credit and establish specific diversification limits for all ADC loans (i) as a percentage of the Bank's assets, (ii) as a percentage of the Bank's capital, (iii) by borrower, including all persons and entities with loans that would be required to be combined under the loans to one borrower regulations set forth in 12 C.F.R. § 560.93, (iv) by loan type (speculative versus pre-sold), (v) by subdivision or development, (vi) by borrower for each subdivision or development, and (vii) by metropolitan area.

6. The Board shall ensure the Bank's compliance with the ADC Underwriting Policy and shall require such reports as are necessary from Management to satisfy this obligation and its fiduciary responsibility. A copy of the ADC Underwriting Policy and the Board meeting minutes reflecting the Board's discussion and approval of the ADC Underwriting Policy shall be provided to the Regional Director for approval within ten (10) days after the Board's approval.

7. Effective immediately, the Board shall require Management to prepare and submit to the Board for review a quarterly report, to be submitted in writing within thirty (30) days following the end of each calendar quarter, identifying all loans granted by the Bank as an exception to the Bank's loan policies, including but not limited to loan to value requirements and the ADC Underwriting Policy. The Board shall ensure that all loans granted as exceptions to the Bank's loan policies do not exceed the limitations set forth in 12 C.F.R. § 560.101. The Board shall conduct its review of the quarterly reports required by this Paragraph 7 within thirty (30) days of receipt of the quarterly reports from Management. The Board's review of all loans granted as exceptions to the Bank's loan policies shall be fully documented in the appropriate Board minutes.

Internal Loan Reviews

8. Within thirty (30) days after the Effective Date of this C&D Order, the Board shall develop, adopt and implement, or engage a qualified, independent third party (Consultant) to prepare for Board adoption and implementation, an internal asset review program (IAR Program) that is consistent with the requirements of OTS Chief Executive Officer Memorandum No. 140 (CEO 140) and will strengthen and improve the early identification of problem or classified assets. The IAR Program shall be adopted by the Board no later than sixty (60) days after the Effective Date of this C&D Order. The IAR Program shall fully address the concerns noted by the OTS in the Bank's 2006 Examination and shall establish timeframes and procedures for reporting the results of all independent asset reviews to the Board for consideration. The IAR Program shall require Management to conduct quarterly reviews of all classified assets and to prepare quarterly reports to the Board, to be submitted in writing within thirty (30) days following the end of each calendar quarter, regarding the status and resolution of each such classified asset and whether such asset is appropriately classified in accordance with 12 C.F.R. § 560.160 and applicable OTS guidance. The Board shall conduct its review of the quarterly reports required by this Paragraph 8 within thirty (30) days of receipt of the quarterly reports from Management. The Board shall fully document its review of the IAR Program results in the appropriate Board meeting minutes. The Board shall provide a copy of the Bank's IAR Program and the Board meeting minutes regarding the adoption of the IAR Program to the Regional Director for review within ten (10) days after adoption by the Board.

Tax and Expense Sharing Agreements

9. Within sixty (60) days after the Effective Date of this C&D Order, the Board shall develop and ensure that the Bank executes an Expense Reimbursement Agreement and a Tax Sharing Agreement (collectively, Agreements) with ebank Financial Services, Inc (EFS). These Agreements shall ensure that all transactions between the Bank and EFS comply with applicable OTS regulations and guidance. Copies of the Agreements shall be provided to the Regional Director for review within ten (10) days after adoption by the Board.

Board Compliance Committee

10. Within thirty (30) days of the Effective Date of this C&D Order, the Board shall appoint a committee (the Regulatory Compliance Committee) comprising three or more Directors, the majority of whom shall be independent of Management, to monitor and coordinate the Bank's compliance with the provisions of this C&D Order and the completion of all corrective action required in the 2006 Examination. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Bank's compliance with the provisions of this C&D Order.

11. Within sixty (60) days after the Effective Date of this C&D Order, and thereafter within thirty (30) days after the end of each calendar quarter, the Regulatory Compliance Committee shall submit a written progress report to the full Board detailing the actions taken to comply with each provision of this C&D Order, the corrective actions required by the 2006 Examination and the results of all such actions. The Board shall review the Regulatory Compliance Committee's progress report and adopt a resolution (i) certifying that each director has reviewed the progress report; (ii) detailing the Bank's compliance with the provisions of this C&D Order and the directives and corrective actions contained in the 2006 Examination; (iii) identifying each instance of noncompliance; and (iv) setting forth in detail additional corrective actions or steps adopted or required by the Board to address each instance of noncompliance.

12. Within seventy-five (75) days after the Effective Date of this C&D Order, and thereafter within forty-five (45) days after the end of each calendar quarter, the Board shall submit to the Regional Director: (i) a copy of the Regulatory Compliance Committee's quarterly progress report required by Paragraph 11 above and (ii) a copy of the Board resolution required by Paragraph 11 above, including the Board meeting minutes.

Compliance with Order

13. All policies, procedures, corrective actions, plans, programs, reviews and systems required by this C&D Order (collectively, Policies and Procedures) shall conform to all applicable statutes, regulations, OTS policy and guidance. The Board shall submit copies of all

Policies and Procedures required by this C&D Order to the Regional Director within the timeframes specified or, in the event a timeframe is not specified, within thirty (30) days after adoption by the Board. The Board shall revise such Policies and Procedures as required by the Regional Director within thirty (30) days of receipt of written direction from the Regional Director. The Policies and Procedures, as modified consistent with the written direction of the Regional Director, shall be incorporated into this C&D Order and any deviation from such Policies and Procedures shall be a violation of this C&D Order.

Definitions

14. All technical words or terms used in this C&D Order for which meanings are not specified or otherwise provided by the provisions of this C&D Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the HOLA, the FDIA, OTS Memoranda or other published OTS guidance. Any such technical words or terms used in this C&D Order and undefined in said Code of Federal Regulations, the HOLA, the FDIA, OTS Memoranda, or other published regulatory guidance shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

Successor Statutes, Regulations, Guidance, Amendments

15. Reference in this C&D Order to provisions of statutes, regulations, OTS Memoranda, and other published regulatory guidance shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

No Violations Authorized; OTS Not Restricted

16. Nothing in this C&D Order or the Stipulation shall be construed as: (a) allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject, or (b) restricting or estopping the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law including, without limitation, any type of supervisory,

enforcement or other action that the OTS determines to be appropriate, arising out of matters described in the most recent Report of Examination, or based on other matters.

Time Limits; Effect of Headings; Separability Clause; Stipulation Incorporated

17. Time limitations for compliance with the terms of this C&D Order run from the Effective Date, unless otherwise noted.

18. The section and paragraph headings herein are for convenience only and shall not affect the construction hereof.

19. In case any provision in this C&D Order is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

20. The Stipulation is made a part hereof and is incorporated herein by this reference.

Effective Date; Duration

21. This C&D Order is and shall become effective on the date it is issued, i.e., the Effective Date as shown on the first page hereof. This C&D Order (including the related Stipulation) shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
John E. Ryan
Regional Director