

UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION

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In the Matter of: )	
)	Order No.: ATL-2007-14
<b>New Buffalo Savings Bank, a FSB</b> )	
New Buffalo, Michigan )	Date: June 26, 2007
)	
OTS Docket No. 06624 )	
_____ )	

**STIPULATION AND CONSENT TO 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 against New Buffalo Savings Bank, a FSB, New Buffalo, Michigan, OTS Docket No. 06624 (New Buffalo or Institution) pursuant to 12 U.S.C. § 1818(b),<sup>1</sup> and

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

**WHEREAS**, New Buffalo 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 such 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 of settling this matter in accordance with Rule 408 of the Federal Rules of Evidence and equivalent state provisions.

**NOW, THEREFORE**, on these premises, New Buffalo hereby stipulates and agrees as follows:

**1. Jurisdiction.**

(a) New Buffalo is a "savings association" within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, it is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) Pursuant to 12 U.S.C. § 1813(q), the Director of the OTS is the "appropriate Federal banking agency" to maintain an administrative cease and desist proceeding against such a savings association. Therefore, New Buffalo is subject to the jurisdiction of the OTS to initiate and maintain a cease and desist proceeding against it pursuant to 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 institution has consented to the issuance of the order.

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

**2. OTS Findings of Fact.**

The OTS finds that New Buffalo has engaged in violations of laws and regulations as outlined in the January 29, 2007 Report of Examination of the Institution.

**3. Consent.**

New Buffalo consents to the issuance by the OTS of the accompanying Order to Cease and Desist for Affirmative Relief (Order). It further agrees to comply with the terms of the Order upon issuance and stipulates that the Order complies with all requirements of law.

**4. Finality.**

The 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 12 U.S.C. § 1818(i).

**5. Waivers.**

New Buffalo waives the following:

- (a) the right to be served with a written notice of the OTS's charges against it as provided by 12 U.S.C. § 1818(b);
- (b) the right to an administrative hearing of the OTS's charges against it as provided by 12 U.S.C. § 1818(b);
- (c) the right to seek judicial review of the Order, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the 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 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 the issuance of the Order or the issuance of the 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.**

New Buffalo acknowledges and agrees that its consent to the issuance of the Order does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against or any other proceeding that may be or has been brought by the OTS or another governmental entity.

**7. Reservation of Rights.**

New Buffalo acknowledges that 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. Miscellaneous.**

- (a) The construction and validity of this Stipulation and the Order shall be governed by the laws of the United States of America;
- (b) All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;
- (c) The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the construction hereof;
- (d) If any provision of this Stipulation or the Order is ruled 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; and
- (e) This Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

**9. Signature of Directors.**

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

Remainder of this page intentionally left blank.

**WHEREFORE**, New Buffalo, by a majority of its directors, executes this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief, intending to be legally bound hereby.

New Buffalo Savings Bank, a FSB  
Accepted by a majority of its directors:

OFFICE OF THRIFT SUPERVISION

By:                   /s/                    
Ronald L. Farina

                  /s/                    
John E. Ryan  
Regional Director, Southeast Region

                  /s/                    
Mary Ann Farina-Vanderbrook

Date: \_\_\_\_\_

                  /s/                    
David Blum

                  /s/                    
Gordon E. Kissman

                  /s/                    
Joseph Migely

                  /s/                    
Ralph R. Sommerfeld

                  /s/                    
Jeffrey Vickers

**UNITED STATES OF AMERICA**  
**Before the**  
**OFFICE OF THRIFT SUPERVISION**

In the Matter of ) ) <b>New Buffalo Savings Bank, a FSB</b> ) New Buffalo, Michigan ) ) OTS Docket No. 06624 ) )	Order No.: ATL-2007-14  Date: June 26, 2007
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**CONSENT ORDER TO**  
**CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

**WHEREAS**, New Buffalo Savings Bank, a FSB, New Buffalo, Michigan (the Institution) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation); and

**WHEREAS**, the Institution, by its execution of the Stipulation, has consented and agreed to the issuance of this Consent Order to Cease and Desist for Affirmative Relief (Order) pursuant to 12 U.S.C. § 1818(b);<sup>1</sup> and

**WHEREAS**, the Director of the Office of Thrift Supervision (OTS) has delegated to the Regional Directors of the OTS the authority to issue consent orders on behalf of the OTS pursuant to provisions of Section 8 of Federal Deposit Insurance Act, 12 U.S.C. § 1818.

**NOW, THEREFORE, IT IS ORDERED THAT:**

**1. Compliance With Laws and Regulations.**

The Institution 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 Currency and Foreign Transactions Reporting Act, as amended by the USA Patriot Act and other laws (the Bank Secrecy Act or BSA), 31 U.S.C. §§ 5311 et seq., and the regulations issued there under by the U. S. Department of the Treasury, 31 C.F.R. §§ 103.11 et seq., and the related BSA regulations issued by the OTS, 12 C.F.R. § 563.177 (collectively with the aforementioned laws and regulations, the BSA Laws and Regulations); and
- (b) The OTS regulations requiring the filing of suspicious activities reports, 12 C.F.R. § 563.180(d).

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

## **2. Effective BSA/Anti-Money Laundering Compliance Program.**

Within 30 days of the Effective Date of this Order, the Board of Directors of the Institution (Board) shall review, revise, implement and submit to the Regional Director for review and nonobjection, an effective written compliance program that provides for ongoing compliance with BSA Laws and Regulations, and the Anti-Money Laundering (AML) guidelines of the Financial Crimes Enforcement Network (FinCEN) and the OTS (BSA/AML Compliance Program). After review and non-objection by the Regional Director, the Board shall adhere to the BSA/AML Compliance Program in all material respects. At a minimum, the BSA/AML Compliance Program shall include the following:

- (a) adequate controls and procedures to identify, document and research potential suspicious transactions (over an extended period of time), and to report those transactions deemed by the Institution to be suspicious within required time frames for the filing of Suspicious Activity Reports (SARs) consistent with the requirements of 12 C.F.R. § 563.180 and 31 C.F.R. § 103.18 (SARs Regulations);
- (b) adequate controls and procedures in place to verify that all customer records are reviewed against the Office of Foreign Assets Control (OFAC) list of specially designated nationals and the Department of Treasury's 314(a) list pursuant to the USA Patriot Act of 2001;
- (c) comprehensive provisions that ensure that the Institution's designated BSA Officer is actively managing, coordinating and monitoring the Institution's day-to-day compliance with the BSA Laws and Regulations and the Institution's BSA/AML Compliance Program. The Institution's designated BSA officer shall have day-to-day responsibility for all BSA/AML compliance and related matters, including, without limitation: (i) the timely and accurate filing of Currency Transaction Reports where required; and (ii) monitoring the Institution's compliance and ensuring that full and complete corrective action is taken with respect to previously identified violations and deficiencies;
- (d) procedures for performing risk assessments on noncustomer transactions, designating which noncustomer transactions should be reviewed for OFAC purposes and reviewing designated noncustomer transactions against the OFAC list of specially designated nationals;
- (e) a comprehensive training program for all operational and supervisory personnel involved in BSA and AML compliance and oversight to ensure that they understand the requirements of the BSA, OFAC, and SARs Laws and Regulations, which shall include maintaining adequate written documentation of such training; and
- (f) provisions for the Board to review the Institution's BSA/AML Compliance Program as necessary, but not less than annually, to assess its adequacy and compliance with applicable BSA Laws and Regulations based upon the Institution's operations, activities, size and complexity. Based on such reviews, the Board shall promptly adopt and implement such changes as are necessary to ensure that the BSA/AML Compliance

Program remains adequate and appropriate for the Institution and in compliance with the BSA Laws and Regulations.

**3. BSA Compliance Program Staffing and Resources.**

The Institution's Board shall ensure that the Institution's designated BSA Officer has sufficient authority, competency, time, staff (which may include outsourced staff) and resources to perform his/her assigned BSA responsibilities on a day-to-day basis.

**4. Compliance Committee.**

The Board shall ensure that the Institution maintains a Compliance Committee responsible for all consumer and regulatory compliance oversight. The Compliance Committee shall include at least one independent director. The Board shall require the following:

- (a) the Compliance Committee shall operate in accordance with a preset schedule established by the Committee on an annual basis;
- (b) all findings from independent compliance audits shall be reported directly to the Compliance Committee;
- (c) the Compliance Committee, in its oversight capacity, shall ensure that all significant independent compliance audit recommendations are implemented in a timely manner; and
- (d) the Compliance and BSA Officers shall provide summary reports to the Compliance Committee on a periodic basis corresponding to the independent compliance audits that include basic conclusions, recommendations, and the status of any necessary corrective action.

**5. Compliance with Order.**

- (a) The Board shall take immediate action to cause the Institution to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Institution to continue to carry out the provisions of this Order;
- (b) The Board, on a monthly basis, beginning with the first full month after the Effective Date of this Order, shall adopt a Board Resolution (the Compliance Resolution) formally resolving that, following a diligent inquiry of relevant information (including reports of management), to the best of its knowledge and belief, during the immediately preceding calendar month, the Institution has complied with each provision of this Order currently in effect, except as otherwise stated. The Compliance Resolution shall specify in detail how, if at all, full compliance was found not to exist;
- (c) No later than the 25th calendar day of the month following the end of a month, beginning with the end of the first full month following the Effective Date of this Order, the Institution shall provide to the Regional Director a certified true copy of the Compliance Resolution(s) adopted at the Board meeting. The Board, by virtue of the Institution's submission of a certified true copy of each such Compliance Resolution to

the Regional Director, shall be deemed to have certified to the accuracy of the statements set forth in each Compliance Resolution, except as provided below. In the event that one or more directors do not agree with the representations set forth in a Compliance Resolution, such disagreement shall be noted in the minutes of the Institution; and

- (d) The Board shall promptly respond to any request from the OTS for documents that the OTS reasonably requests to demonstrate compliance with this Order.

## **6. Definitions**

All technical words or terms used in this Order for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act (HOLA), the Federal Deposit Insurance Act (FDIA), OTS Memoranda or other published OTS guidance. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, the HOLA, the FDIA, or OTS Memoranda/guidance shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

## **7. Successor Statutes, Regulations, Guidance, Amendments**

Reference in this 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.

## **8. No Violations Authorized; OTS Not Restricted**

Nothing in this Order or the Stipulation shall be construed as: (a) allowing the Institution 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 OTS determines to be appropriate, arising out of matters described in Reports of Examination, or based on other matters.

## **9. Time Limits; Effect of Headings; Separability Clause; Stipulation Incorporated.**

- (a) Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted.
- (b) The section and paragraph headings herein are for convenience only and shall not affect the construction hereof.
- (c) In case any provision in this 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.

(d) The Stipulation is made a part hereof and is incorporated herein by this reference.

**10. Notices**

- (a) Except as otherwise provided herein, any request, demand, authorization, direction, notice, consent, waiver, or other document provided or permitted by the Order to be made upon, given or furnished to, delivered to, or filed with:
  - (i) The OTS, by the Institution, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid or sent via overnight delivery service or physically delivered, in each case addressed to the Regional Deputy Director, Office of Thrift Supervision, Department of the Treasury, One South Wacker Drive, Suite 2000, Chicago, Illinois, 60606 or telecopied to (312) 917-5001 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.
  - (ii) The Institution by the OTS, shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, or sent via overnight delivery service or physically delivered, in each case addressed to New Buffalo Savings Bank, a FSB, at 45 North Whittaker Street, New Buffalo, Michigan, 49117, or telecopied to (269) 469-2319 and confirmed by first class mail, postage prepaid, overnight delivery service or physically delivered, in each case to the above address.
- (b) Notices hereunder shall be effective upon receipt, if by mail, overnight delivery service or telecopy, and upon delivery, if by physical delivery. If there is a dispute about the date on which a written notice has been received by a party to this Order, then, in the event such notice was sent by the United States mail, there shall be a presumption that the notice was received two Business Days after the date of the postmark on the envelope in which the notice was enclosed.

**11. Effective Date; Duration.**

This 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 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, Southeast Region