

96350

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

Order No.: WE-08-002

AMERICAN SAVINGS BANK, F.S.B.,)
Honolulu, Hawaii.)

Effective Date: January 23, 2008

OTS Docket No.: 08384)
_____)

**CONSENT ORDER TO
CEASE AND DESIST FOR AFFIRMATIVE RELIEF**

WHEREAS, American Savings Bank, F.S.B., Honolulu, Hawaii, OTS Docket No. 08384 (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 executing the Stipulation, has consented to the issuance of this Consent Order to Cease and Desist for Affirmative Relief (Order) by the Office of Thrift Supervision (OTS), pursuant to 12 U.S.C. § 1818(b); 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 provisions of 12 U.S.C. § 1818.

NOW, THEREFORE, IT IS ORDERED THAT:

I. ORDER TO CEASE AND DESIST

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 aiding and abetting any violation of:

- A. The Currency and Foreign Transactions Reporting Act (the Bank Secrecy Act or BSA), 31 U.S.C. §§ 5311 et seq., and the related BSA regulations issued by the United States Department of the Treasury, 31 C.F.R. Part 103, and the OTS, 12 C.F.R. § 563.177;
- B. The OTS regulations governing suspicious activity reports (SARs) set forth in 12 C.F.R. § 563.180 (the SAR Regulation);
- C. The Truth in Lending Act, 15 U.S.C. § 1601 et seq., 12 C.F.R. Part 226 (Regulation Z) (TILA);
- D. The Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 et seq., 24 C.F.R. Part 3500 (Regulation X) (RESPA);
- E. The Home Mortgage Disclosure Act, 12 U.S.C. § 2801 et seq., 12 C.F.R. Part 203 (Regulation C) (HMDA); and
- F. The Flood Disaster Protection Act, 42 U.S.C. § 4001 et seq., 12 C.F.R. Part 572 (FDPA).

II. BANK SECRECY ACT/ANTI-MONEY LAUNDERING (BSA/AML)

The Institution shall take the following steps to strengthen its BSA/AML Program:

- A. Within thirty (30) days of the effective date of this Order, the Institution shall provide OTS with a plan for enhancement of the Institution's BSA/AML Program for review and comment by the OTS (BSA/AML Program Plan). The Institution shall revise the BSA/AML Program Plan within fifteen (15) days of receiving comments by the OTS. The BSA/AML Program Plan, as modified by the comments of the OTS, shall be subject to this Order and any deviation from this Plan shall be a violation of the Order.
- B. Within ninety (90) days of the effective date of this Order, the Institution shall take the following steps to improve its BSA/AML Program:

1. Developing written customer due diligence and enhanced due diligence procedures based on business line, customer and product risk-scoring and incorporating those procedures into the Institution's customer identification program;
2. Enhancing the Institution's BSA/AML risk assessment and establishing a process for reviewing and updating the assessment to reflect changes made to the program as a result of the ongoing remediation process;
3. Developing written policies and procedures for tracking and monitoring internal incident reports, investigations and Suspicious Activity Report filings, including applicable document retention requirements;
4. Developing specific and unambiguous accountabilities for the Institution's BSA officer and for all staff and officers with BSA/AML responsibility; and
5. Developing specific training programs for all staff and officers with BSA/AML responsibility and the internal audit department and other units that may audit or otherwise review the Institution's BSA/AML program.

III. COMPLIANCE MANAGEMENT

The Institution shall take the following steps to strengthen its Compliance Management Program:

- A. Within thirty (30) days of the effective date of this Order, the Institution shall provide OTS with plans for enhancement of the Institution's Compliance Management and Internal Audit Programs for review and comment by the OTS (Compliance Management and Internal Audit Program Plans). The Institution shall revise the Compliance Management and Internal Audit Program Plans within thirty (30) days of receiving comments by the OTS.

The Compliance Management and Internal Audit Program Plans, as modified by the

comments of the OTS, shall be subject to this Order and any deviation from either of these Plans shall be a violation of the Order.

B. Within ninety (90) days of the effective date of this Order, unless otherwise noted in the approved Compliance Management Program Plan, the Institution shall take the following steps to strengthen its Compliance Management Program:

1. Providing the Institution's compliance officer with sufficient dedicated staff and other resources to permit the compliance officer to perform all responsibilities in a timely and effective manner;

2. Providing a system for the collection of internal audit, quality control, and self-assessment review findings for the compliance department's analysis and prompt coordination of corrective actions;

3. Establishing a committee composed of representatives from all operating areas of the bank and the compliance department to facilitate communication and coordination on compliance related matters among the units;

4. Enhancing policies and procedures to reflect current practices and regulatory requirements and instituting a system to review and update them on a regular basis going forward;

5. Ensuring compliance with residential mortgage lending requirements such as those set forth in TILA, RESPA, and HMDA, by:

(a) Providing appropriate enhancements to the Institution's policies, procedures and practices to ensure compliance with residential mortgage lending requirements;

(b) Providing training to relevant staff in residential mortgage lending requirements and establishing an ongoing training program that reinforces staffs' continuing awareness of those requirements;

(c) Reviewing, on an ongoing basis, the accuracy of information provided by the Institution's data processing systems to the internal monitoring and oversight groups; and

(d) Reviewing loans on an ongoing basis for compliance with regulatory requirements.

6. Establishing policies, procedures, and practices to ensure compliance with the requirements of the FDPA, including ensuring that required notices are provided to borrowers if the flood insurance coverage is determined to be inadequate and ensuring that the Institution takes the necessary steps to force place insurance if the borrower fails to secure adequate coverage.

IV. COMPLIANCE COMMITTEE

A. Within thirty (30) days of the effective date of this Order, the Board shall establish and appoint an oversight committee of the Board (the Compliance Committee) comprised of at least three directors, the majority of whom shall be Outside Directors,¹ to coordinate and monitor the Institution's progress and compliance with this Order.

B. Beginning at the first regular meeting of the Board after the end of the first full quarter after the effective date of this Order and quarterly thereafter, the Compliance Committee shall provide a written progress report to the Board that:

1. Describes the actions taken by the Institution to comply with this Order and the results of such actions;
2. Identifies remaining actions to be completed within the quarter;
3. Identifies with specificity any noncompliance with the Order and remedial actions taken or proposed with respect to any noncompliance;

¹ As used in this Order, "Outside Director" means a director who is not: (1) a controlling shareholder (as defined in 12 C.F.R. § 215.2(m)); (2) a salaried officer or employee of the Savings Association or its subsidiary(ies) or service corporation(s); or (3) a salaried officer or employee of its holding company or subsidiary of the holding company.

4. Within thirty (30) days thereafter, the Board shall submit to the OTS:
 - (a) A copy of the Compliance Committee's progress reports for that quarter, with any additional comments made and actions taken by the Board; and
 - (b) A copy of the Board minutes reflecting discussion of the progress report.
5. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Institution's compliance with the provisions of this Order.

V. SUBMISSION TO OTS

All submissions to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes. Submissions, including progress reports and any requests for extension of time, shall be sent to:

Darrel Dochow, Regional Director
Office of Thrift Supervision
2001 Junipero Serra Blvd.
Daly City, CA 94014-3897

Mark Johnson, Assistant Director
Office of Thrift Supervision
101 Stewart Street, Suite 1010
Seattle, WA 98101-2419

VI. 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 BSA, 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, 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.

VII. 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.

VIII. 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 the OTS determines to be appropriate, arising out of matters described in Reports of Examination or based on other information in the possession of the OTS.

IX. TIME CALCULATIONS; SEPARABILITY CLAUSE; STIPULATION INCORPORATED

A. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be calendar based, unless otherwise noted;

B. The Regional Director may extend any of the deadlines set forth in the provisions of this Order upon written request by the Institution that includes reasons in support for any such extension. Any OTS extension shall be made in writing and sent to the Savings Association;

C. In the event 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 discretion determines otherwise;
and

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

X. EFFECTIVE DATE; DURATION.

This Order is effective on the Effective Date as shown on the first page. This Order
(including the related Stipulation) shall remain in effect until terminated, modified, or
suspended, in writing by the OTS, acting by and through its authorized representatives.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/_____
Darrel W. Dochow
Regional Director
West Region

(ASB HI CD Order j:\ASB-BSA)

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

AMERICAN SAVINGS BANK, F.S.B.,)
Honolulu, Hawaii.)

OTS Docket No.: 08384)
_____)

Order No.: WE-08-002

Effective Date: January 23, 2008

**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 for affirmative relief against American Savings Bank, F.S.B., Honolulu, Hawaii, OTS Docket No. 08384 (Institution), pursuant to 12 U.S.C. § 1818(b);

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

WHEREAS, the Institution enters into this Stipulation and Consent to the Issuance of an Order to Cease and Desist for Affirmative Relief (Stipulation) without admitting or denying that grounds exist to initiate an administrative cease and desist proceeding but admitting the statements and conclusions in Paragraph 1 below, concerning jurisdiction, hereby stipulates and agrees to the following:

1. Jurisdiction.

(a) The Institution is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Institution 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” with jurisdiction to maintain an administrative cease and desist proceeding against such a savings association. Therefore, the Institution 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); and

(c) The Director of the OTS has delegated to the Regional Director of the West Region of the OTS (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. The OTS has found that the Institution has failed to comply fully with the requirements of the Currency and Foreign Transactions Reporting Act (the Bank Secrecy Act or BSA), 31 U.S.C. § 5311 et seq.; the related BSA regulations issued by the United States Department of the Treasury, 31 C.F.R. Part 103 and the OTS, 12 C.F.R. § 563.177; and the OTS regulations governing suspicious activity reports (SAR) set forth in 12 C.F.R. § 563.180.

In addition, the OTS has determined that the Institution has failed to comply fully with certain consumer affairs and compliance laws and regulations, including specifically those related to the Truth in Lending Act, 15 U.S.C. §1601 et seq., 12 C.F.R. Part 226 (Regulation Z); the Real Estate Settlement Procedures Act, 12 U.S.C. §2601 et seq., 24 C.F.R. Part 3500 (Regulation X); the Flood Disaster Protection Act, 42 U.S.C. 4001 et seq., 12

C.F.R. Part 572; and the Home Mortgage Disclosure Act, 12 U.S.C. §2801 et seq., 12 C.F.R. Part 203 (Regulation C).

The Institution has begun taking corrective actions to address the deficiencies found by the OTS.

3. **Consent.** The Institution consents to the issuance by the OTS of the accompanying Consent Order to Cease and Desist for Affirmative Relief (Order). The Institution 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) and upon its effective date shall be a final order, effective and fully enforceable by the OTS under 12 U.S.C. § 1818(i).

5. **Waivers.** The Institution waives the following:

- (a) The right to be served with a written notice of the OTS's charges provided by 12 U.S.C. § 1818(b) and 12 C.F.R. Part 509;
- (b) The right to an administrative hearing of the OTS's charges against it as provided by 12 U.S.C. § 1818(b), 12 C.F.R. Part 509;
- (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; and
- (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 whether arising under common law, federal statute, or otherwise.

6. **OTS Authority Not Affected.** Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent the OTS from taking any other action affecting the Institution if at any time OTS deems it appropriate to do so to fulfill the responsibilities placed upon OTS by law.

7. **Other Government Actions Not Affected.** Institution 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 liability of the Institution that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS.

8. **Miscellaneous.**

(a) The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order;

(b) All references to OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assignees;

(c) The section and paragraph headings in this Stipulation and the Order are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Order;

(d) The terms of this Stipulation and the 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; 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, Senior Deputy Director, Regional Director, or other authorized representative.

9. Signature of Directors.

Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Institution to the issuance of the Order and the execution of the Stipulation.

WHEREFORE, the Institution, 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.

American Savings Bank, F.S.B.
Honolulu, Hawaii

Office of Thrift Supervision
West Region

Accepted by a majority of its directors:

By: _____ /s/

Darrel W. Dochow
Regional Director, West

By:

Dated: _____ /s/

_____/s/_____
Director

(ASB HI CD Stip)\ASB-BSA)