

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

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In the Matter of	)	Order No.: <u>WE-08-013</u>
	)	
<b>DOWNEY FINANCIAL CORP.,</b>	)	Effective Date: <u>September 5, 2008</u>
Newport Beach, California,	)	
	)	
OTS Docket No. H-2408	)	
_____	)	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, Downey Financial Corp., Newport Beach, California, OTS Docket No. H-2408 (Holding Company), by and through its Board of Directors (Board) has executed a Stipulation and Consent to Issuance of Order to Cease and Desist (Stipulation); and

**WHEREAS**, the Holding Company, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

**WHEREAS**, pursuant to delegated authority, the OTS Regional Director for the West Region (Regional Director), is authorized to issue Orders to Cease and Desist where a savings association holding company has consented to the issuance of an order.

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

**Dividends**

1. Effective immediately, the Holding Company shall neither accept nor request that Downey Savings and Loan Association, F.A., Newport Beach, California (OTS Docket No. 06189), a wholly owned savings association subsidiary (Association), make or pay any dividends or other capital distributions, as that term is defined in 12 C.F.R. § 563.134, or commit to make

or pay dividends or any other capital distributions, without receiving the prior written approval of the Regional Director. The Holding Company's written request for such approval shall be submitted to the Regional Director at least forty-five (45) days prior to the anticipated date of the proposed dividend payment or distribution of capital.

### **Management Changes**

2. Effective immediately, the Holding Company shall comply with the prior notification requirements for changes in directors and Senior Executive Officers set forth in 12 C.F.R. Part 563, Subpart H, 12 C.F.R. §§ 563.550 through 563.590.

### **Employment Contracts and Compensation Arrangements**

3. Effective immediately, the Holding Company shall not enter into, renew, extend, or revise any contractual arrangement relating to compensation or benefits for any Senior Executive Officer or director of the Holding Company, unless it first provides the OTS with not less than thirty (30) days prior written notice of the proposed transaction. The notice to the OTS shall include a copy of the proposed employment contract or compensation arrangement, or a detailed, written description of the compensation arrangement to be offered to such officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement, or arrangement submitted to the OTS fully complies with the requirements of 12 C.F.R. Part 359, 12 C.F.R. §§ 563.39 and 563.161(b), and 12 C.F.R. Part 570 - Appendix A.

### **Severance and Indemnification Payments**

4. Effective immediately, the Holding Company shall not make any golden parachute payment<sup>1</sup> or prohibited indemnification payment<sup>2</sup> unless, with respect to each such payment, the

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<sup>1</sup> The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

<sup>2</sup> The term "prohibited indemnification payment" is defined at 12 C.F.R. § 359.1(l).

Holding Company has complied with the requirements of 12 C.F.R. Part 359 and, as to indemnification payments, 12 C.F.R. § 545.121.

**Debt Limitations**

5. Effective immediately, the Holding Company shall not incur, issue, renew or rollover any debt, increase any current lines of credit, or guarantee the debt of any entity, without at least thirty (30) days prior written notice to and receipt of written non-objection from the OTS. In the event no written objection is raised by the Regional Director during the thirty (30) day notice period, the Holding Company may proceed with the transaction.

**Association Order to Cease and Desist**

6. The Board shall ensure that the Association complies with all of the terms of its Order to Cease and Desist entered into with the OTS, dated September 5, 2008.

**Effective Date, Incorporation of Stipulation**

7. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

**Duration**

8. This Order shall remain in effect until terminated, modified or suspended, by written notice of such action by the OTS, acting by and through its authorized representatives.

**Time Calculations**

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

10. The Regional Director may extend any of the deadlines set forth in the provisions of this Order upon written request by the Holding Company that includes reasons in support of any such extension. Any OTS extension shall be made in writing.

**Submissions and Notices**

- 11. All submissions, including progress reports, to the OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.
- 12. Except as otherwise provided herein, all submissions, requests, communications, consents or other documents relating to this Order shall be in writing and sent by first class U.S mail (or by reputable overnight carrier, electronic facsimile transmission or hand delivery by messenger) addressed as follows:

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

Timothy J. Lane, Assistant Director  
West Region  
Office of Thrift Supervision  
1551 N. Tustin Ave., Suite 1050  
Santa Ana, CA 92705

**No Violations Authorized**

- 13. Nothing in this Order or the Stipulation shall be construed as allowing the Holding Company, its Board, officers or employees to violate any law, rule, regulation

**IT IS SO ORDERED.**

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/  
DARREL W. DOCHOW  
Regional Director, West Region

Date: See Effective Date on page 1



denying that such grounds exist, but only admitting the statements and conclusions in ¶ 1 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**1. Jurisdiction.**

a. Downey Savings and Loan Association, F.A., Newport Beach, California (Association), is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 U.S.C. § 1813(c);

b. The Association is a wholly owned savings association subsidiary of the Holding Company. Accordingly, the Holding Company is a savings and loan holding company within the meaning of 12 U.S.C. § 1467a(a)(1)(D)(i).

c. Pursuant to 12 U.S.C. § 1813(q)(4), the Director of the OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association holding company. Therefore, the Holding Company is subject to the authority of the OTS to initiate and maintain an administrative cease-and-desist proceeding against it pursuant to 12 U.S.C. § 1818(b) and (b)(9).

**2. OTS Findings of Fact.**

Based on findings set forth in the Report of Examination of the Holding Company issued on August 7, 2008, the OTS finds that the Holding Company has engaged in unsafe and unsound practices. Specifically, the asset quality, earnings, liquidity planning, management, and projected capital levels of the Holding Company and the Association are not satisfactory and require strengthening.

**3. Consent.**

The Holding Company consents to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). The Holding Company further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

**4. Finality.**

The Order is issued by the OTS under 12 U.S.C. § 1818(b) and upon the Effective Date 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.**

The Holding Company 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) and 12 C.F.R. Part 509;
- b. The right to an administrative hearing of the OTS's charges as provided by 12 U.S.C. § 1818(b) and 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 and/or the Order, whether arising under common law, federal statutes 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 Holding Company if at any time the OTS deems it appropriate to do so to fulfill the responsibilities placed upon the OTS by law.

**7. Other Governmental Actions Not Affected.**

The Holding Company acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with ¶6 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Holding Company that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental 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. If any provision of this Stipulation and/or the 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 Order shall also mean any of the OTS's predecessors, successors, and assigns;

d. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order;



