

97037

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION

In the Matter of	)	Order No.: CN 08-15
	)	
	)	
<b>AMTRUST BANK</b>	)	Effective Date: November 19, 2008
	)	
Cleveland, Ohio	)	
OTS Docket No. 04072	)	
	)	

**ORDER TO CEASE AND DESIST**

**WHEREAS, AMTRUST BANK**, Cleveland, Ohio, OTS Docket No. 04072 (Association), by and through its Board of Directors (Board) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

**WHEREAS**, the Association, 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 USC § 1818(b); and

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

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

**Capital**

1. By no later than December 31, 2008, and at all times thereafter, the Association shall have and maintain: (i) a Tier 1 (Core) Capital Ratio of at least seven percent (7%) and (ii) a Total

Risk-Based Capital Ratio of at least twelve percent (12 %).

2. Effective immediately, the Board shall (i) review the Association's capital levels at each regular monthly Board meeting, and (ii) ensure that Association management continually assesses the sufficiency of the Association's capital levels relative to its risk profile, including but not limited to such risks as, classified asset levels, allowance for loan and lease losses (ALLL) and special valuation allowance (SVA) amounts, dollar volume and portfolio percentage of nontraditional mortgage loans, and core earnings. The trends in such risks shall also be reviewed and monitored by the Board. The Board's review of capital adequacy shall be fully detailed in the Board meeting minutes.

**Business Plan**

3. (a) By November 30, 2008, the Board shall revise the Association's current business and strategic plan (Business Plan), to include the requirements contained within this Order and the comments contained within the OTS Report of Examination, dated October 15, 2007 (ROE), as well as ensuring, at a minimum, inclusion of the following:

- i) Defined strategies for capital preservation and enhancement commensurate with the risk profile of the Association;
- ii) Defined limits on high-risk lending activities expressed as a percentage of Core Capital plus ALLL;
- iii) Detailed strategies designed to improve and sustain earnings;
- iv) Detailed strategies to stress-test and adjust earnings forecasts based on continuing operating results, economic conditions and credit quality of the loan portfolio; and
- v) Detailed pro forma balance sheets and income statements for a rolling three-year period on a quarterly basis beginning with January 1, 2009.

(b) By November 30, 2008, the Board shall forward a copy of the revised Business Plan to the Regional Director for review and comment. The Board shall revise and implement the Business Plan within ten (10) days of receiving the Regional Director's comments or non-

objection. The Board shall immediately send a copy of the Business Plan implemented by the Board to the Regional Director.

(c) On a quarterly basis, beginning with the first quarter following the receipt of the Regional Director's comments on or non-objection to the Business Plan, the Board shall compare projected operating results contained within the Business Plan to actual results. Additionally, as part of the variance analysis required pursuant to this subparagraph, the Board shall determine any material deviations between the projections contained in the Business Plan and actual results. The Board shall prepare a written report describing any material deviations between the projections contained in the Business Plan and actual results.

(d) Within thirty (30) days of the close of each quarter, the Board shall provide the Regional Director with a copy of the variance analysis report required by this paragraph.

**Asset Quality**

4. (a) As of the Effective Date of this Order, the Association shall not make any new loans or issue new lines of credit for the following purposes:

- i) Land acquisition or development; or
- ii) Speculative residential construction.

(b) For purposes of complying with the provisions of this paragraph, the Association may:

i) enter into extensions, refinancings, assumptions or modifications of existing loans or lines that do not involve the granting of new funds; and

ii) make disbursements pursuant to legally binding commitments made prior to the Effective Date of this Order, provided that:

(A) for any extension, refinancing, assumption, or modification of an existing loan or line, the Association shall maintain documentation sufficient to demonstrate that such a transaction was in the best interest of

the Association (i.e., obtaining additional collateral, etc.); and

(B) the Association shall maintain a detailed report of all loans and lines extended, refinanced, assumed, or modified pursuant to this subparagraph, an updated copy of which shall be provided to the Regional Director on a quarterly basis, beginning with the quarter ending December 31, 2008.

5. (a) Within 30 days, the Board shall revise the Association's ALLL and SVA methodologies and policies taking into account the methodology revisions as contained in the OTS Limited Report of Examination dated August 25, 2008.

(b) Within 40 days, the Board shall submit the revised ALLL and SVA policies to the Regional Director for approval.

(c) As of the Effective Date of this Order, the Board shall review the adequacy of the Association's ALLL and SVA on a quarterly basis, including a review of the then current market conditions and the reasonableness of the Association's inputs and assumptions in relation to current economic data and trends. The Board's review, including the factors considered and the conclusions reached in determining the adequacy of the ALLL and SVA, shall be fully documented in the appropriate Board meeting minutes.

6. (a) As of the Effective Date of this Order, the Board shall ensure that the Association continues to prepare written plans to resolve the basis of criticism for any asset or loan relationship that equals or exceeds twenty-five million dollars (\$25,000,000) and is adversely classified or special mention in the Association's internal loan review (Remediation Plan). At a minimum, each Remediation Plan shall continue to include:

- i) An identification of the expected source of repayment,
- ii) The appraised value of supporting collateral and the position of the Association's lien on such collateral where applicable,
- iii) An analysis of current and satisfactory credit information, including cash

flow analysis, where loans are to be repaid from operations, and  
iv) The proposed action to resolve the basis for criticism and the time frame for its accomplishment.

(b) In addition, the Association shall prepare a Remediation Plan for each asset or loan relationship, regardless of the dollar amount, written up in the ROE or any future OTS report of examination of the Association.

(c) Within thirty (30) days of completion of the Association's internal loan review reports or of receipt of an OTS report of examination, Remediation Plans shall be completed and a copy of each Remediation Plan shall be sent immediately to the Regional Director.

(d) Thereafter, for each asset or loan subject to a Remediation Plan that is subsequently downgraded to substandard or doubtful, a Revised Remediation Plan shall be prepared within 30 days of the Association's internal loan review downgrade and a copy of the Revised Remediation Plan shall be sent immediately to the Regional Director.

7. The Board, or a delegated Committee thereof, shall review, on at least a quarterly basis:

- (a) Management's adherence to each Remediation Plan referenced in paragraph 6;
- (b) The status and effectiveness of each Remediation Plan; and
- (c) The need to revise a Remediation Plan or pursue alternative action.

**Loss Mitigation**

8. (a) As of the Effective Date of this Order, the Board shall continue to monitor the Association's written procedures for monitoring and quarterly reporting of the financial effects associated with the various loss mitigation programs implemented by the Association and ensure that the loss mitigation programs include best practices, including the "safety net" program, which is discussed within the ROE; and

(b) Within twenty (20) days of the end of each quarter, beginning with the quarter ending December 31, 2008, the Board shall provide the Regional Director with a copy of the quarterly financial effects report required in subparagraph (a) above.

**Concentrations**

9. As of the Effective Date of this Order, the Board shall continue to review on a quarterly basis the Association's asset concentration policy that establishes specific asset concentration limits as a percentage of core capital plus the ALLL (Concentration Policy) and ensure such concentration limits are consistent with the Business Plan strategies. Asset concentration categories within the Concentration Policy shall include, but are not limited to, the following:

- (a) Geographic concentrations for residential loans;
- (b) Geographic concentrations for acquisition, development and construction (ADC) loans;
- (c) Aggregate commercial and ADC loans;
- (d) Aggregate nonprime loans, as that term is defined within the ROE and Concentration Policy; and
- (e) Aggregate low documentation and no documentation loans.

**Nontraditional Mortgage Products**

10. As of the Effective Date of this Order, the Association shall not grant any new reduced or no documentation loans as defined in the OTS Memorandum for Chief Executive Officers #244, dated October 10, 2006, entitled Interagency Guidance on NonTraditional Mortgage Products

**Risks**

11. As of the Effective Date of this Order, management of the Association shall continue to report monthly to the Board the portfolio dollar volume and portfolio percentage of low documentation and no documentation loans to ensure the proper oversight of risk contained within the Association's nontraditional mortgage loan portfolio.

### **Restriction on Asset Growth**

12. Without the prior written approval of the Regional Director and consistent with the requirements and provisions of OTS Regulatory Bulletin 3b, the Association may not increase its total assets during any quarter in excess of an amount equal to net interest credited on deposit liabilities during the quarter.

### **Notice of Change of Director or Senior Executive Officer**

13. As of the Effective Date of this Order, the Association shall comply with the prior notification requirements for changes in directors and Senior Executive Officers set forth in 12 CFR Part 563, Subpart H. Specifically, (i) the Association must notify OTS at least thirty (30) days before adding or replacing any member of its Board, employing any person as a Senior Executive Officer, or changing the responsibilities of any Senior Executive Officer so that the person would assume a different senior executive officer position, and (ii) the proposed director or Senior Executive Officer may not begin service except as permitted by 12 CFR 563.585 and 12 USC § 1831i.

### **Golden Parachute Restrictions**

14. Upon the Effective Date of this Order, the Association shall be subject to the restrictions set forth in 12 CFR Part 359. Such restrictions govern the making of agreements, including employment agreements, with severance provisions, “golden parachute payments” and “prohibited indemnification payments”. The Association shall not make or agree to make any “golden parachute payment”, as that term is defined in 12 USC §1828(k) and in 12 CFR Part 359, unless permitted by the referenced statutory provision and regulations, 12 CFR §359.2 and §359.4.

**Notice of Contractual Arrangements Involving Compensation**

15. Upon the Effective Date of this Order, the Association shall not enter into, renew, extend or revise any contractual arrangement related to compensation or benefits with any director or Senior Executive Officer of the Association, unless it first (a) provides a minimum of thirty (30) days advance notice of the proposed transaction to the Regional Director and (b) receives a written notice of non-objection from OTS pursuant to OTS Regulatory Bulletin 27b and OTS Examination Handbook § 310 (p. 310.17).

**Contracts Outside of the Ordinary Course of Business**

16. Upon the Effective Date of this Order, the Association and its subsidiaries shall not enter into any third-party contracts outside of the normal course of business without prior written non-objection of OTS. To seek such non-objection, the Association shall provide thirty (30) days advance written notice to the Regional Director of any such proposed contract. At a minimum, such notice shall set forth the Association's reasons for seeking the contract and shall transmit a copy of the proposed contract pursuant to OTS Thrift Bulletin 82a and OTS Examination Handbook § 310 (pp. 310.18-19).

**Dividend Restriction**

17. Upon the Effective Date of this Order, the Association may not issue a capital distribution without prior approval of OTS after submission of a capital distribution application to the Regional Director pursuant to the OTS Applications Processing Handbook § 635 (p. 635.3).

**Brokered Deposits Restriction**

18. Upon the Effective Date of this Order, the Association shall not accept brokered deposits except in compliance with 12 CFR § 337.6(b)(2) without obtaining prior written approval of the Federal Deposit Insurance Corporation (FDIC). Unless a waiver is granted by the FDIC, the

Association shall not solicit deposits by offering interest rates more than seventy-five (75) basis points over the local rate in the Association's normal market area. The Association shall provide (i) written notice to the Regional Director if the Association requests a waiver from the FDIC and (ii) the Regional Director with a copy of the FDIC's document indicating its disposition of any request for such a waiver.

**Transactions with Affiliates Restriction**

19. Upon the Effective Date of this Order, the Association may not engage in transactions with any affiliate or subsidiary (other than exempt transactions under 12 CFR Part 223). The Association shall provide a thirty (30) day advance written notice to the Regional Director of any proposed affiliate or subsidiary transaction that includes a full description of the transaction. If OTS does not respond within the thirty (30) day notice period, the Association may proceed with the transaction pursuant to 12 CFR § 563.41(c)(4).

**Applications and Notices and Related Fees**

20. The Association no longer qualifies for expedited treatment for applications and notices filed with the OTS. As a result, application fees may be higher pursuant to 12 CFR § 516.5 and OTS Thrift Bulletin 48-21.

**OTS Assessments**

21. The Association is subject to the payment of higher assessments if its composite CAMELS rating is a "3", "4" or "5" pursuant to 12 CFR Part 502 and OTS Thrift Bulletin 48-25.

**Effective Date, Incorporation of Stipulation**

22. 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**

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

### **Time Calculations**

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

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

### **Submissions and Notices**

26. All submissions, including progress reports, to OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

27. 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:

- (a) **To OTS:**  
Thomas A. Barnes, Regional Director  
Office of Thrift Supervision  
One South Wacker Drive, Suite 2000  
Chicago, Illinois 60606  
Facsimile: (312) 917-5002
  
- (b) **To the Association:**  
David Goldberg, Chairman of the Board  
AmTrust Bank  
1801 East Ninth Street, Suite 200  
Cleveland, Ohio 44114  
Facsimile: (216) 588-7838

**No Violations Authorized**

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

**IT IS SO ORDERED.**

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Thomas A. Barnes  
Regional Director, Central Region

Date: See Effective Date on page 1

UNITED STATES OF AMERICA  
Before the  
OFFICE OF THRIFT SUPERVISION

In the Matter of	)	Order No.: CN 08-15
	)	
	)	
<b>AMTRUST BANK</b>	)	Effective Date: November 19, 2008
	)	
Cleveland, Ohio	)	
OTS Docket No. 04072	)	

**STIPULATION AND CONSENT TO ISSUANCE OF ORDER TO CEASE AND DESIST**

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Central Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed **AMTRUST BANK**, Cleveland, Ohio, OTS Docket No. 04072 (Association) that OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 USC § 1818(b);

**WHEREAS**, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

**WHEREAS**, the Association desires to cooperate with OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraph

1 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**1. Jurisdiction**

- a. The Association is a “savings association” within the meaning of 12 USC § 1813(b) and 12 USC § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 USC § 1813(c); and
- b. Pursuant to 12 USC § 1813(q), the Director of OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 USC § 1818(b).

**2. OTS Findings of Fact**

Based on an August 25, 2008 limited examination of the Association and the failure of the Association to meet the specific capital enhancement and preservation requirements contained within the Association’s business plan, OTS finds that the Association has engaged in unsafe and unsound banking practices, including operating with an unsafe level of adversely classified assets relative to existing core capital plus allowances for loan and lease losses.

**3. Consent**

The Association consents to the issuance by OTS of the accompanying Order to Cease and Desist (Order). The Association 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 OTS under 12 USC § 1818(b) and upon the Effective Date it shall

be a final order, effective and fully enforceable by OTS under the provisions of 12 USC § 1818(i).

**5. Waivers**

The Association waives the following:

- a. The right to be served with a written notice of OTS's charges against it as provided by 12 USC § 1818(b) and 12 CFR Part 509;
- b. The right to an administrative hearing of OTS's charges as provided by 12 USC § 1818(b) and 12 CFR Part 509;
- c. The right to seek judicial review of the Order, including, without limitation, any such right provided by 12 USC § 1818(h), or otherwise to challenge the validity of the Order; and
- d. Any and all claims against 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 OTS from taking any other action affecting the Association if at any time OTS deems it appropriate to do so to fulfill the responsibilities placed upon OTS by law.

**7. Other Governmental Actions Not Affected**

The Association 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 Paragraph 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 Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than 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 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;
- e. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- f. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by OTS, acting through its Regional Director or other authorized representative.

9. **Signature of Directors/Board Resolution**

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

**[Remainder of Page Intentionally Left Blank]**

