

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: NE-09-02
)	
)	
Lehman Brothers Bank, FSB)	Effective Date: January 26, 2009
Wilmington, Delaware)	
)	
OTS Docket No. 06069)	
_____)	

ORDER TO CEASE AND DESIST

WHEREAS, Lehman Brothers Bank, FSB, Wilmington, Delaware, OTS Docket No. 06069 (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 Northeast 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:

1. Compliance with Laws, Regulations and Safe and Sound Practices.

The Association 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 the following unsafe or unsound practices and violations:

(a) 12 USC § 1468(a) & 12 CFR § 563.41, regarding transactions with affiliates (TWA Rules);

(b) An excessive concentration of commitments to make commercial loans, which if funded, would: (i) result in violations of the limitation on commercial loans set forth in 12 USC § 1464(c)(2)(A) and 12 CFR § 560.30 and (ii) deplete its available liquid assets; and

(c) Operating with capital that is insufficient to satisfy the risk-based capital requirement set forth in 12 CFR § 567.2(a)(1).

2. Strategic Plan

(a) The Association shall have and maintain: (i) a Tier 1 (Core) Capital Ratio of at least five percent (5%) and (ii) a total risk-based capital ratio of at least ten percent (10%). If the Association's capital ratios are less than the specified ratios on January 31, 2009, it shall utilize the services of an investment banking firm that is acceptable to the Regional Director to assist in the implementation of the Strategic Plan required by Paragraph 2(b).

(b) The Association shall, pursuant to Board authorization, develop a written Strategic Plan acceptable to the Regional Director that will be activated whenever the Association's Tier 1 (Core) Capital Ratio is less than five percent (5%) or its total risk based capital ratio is less than ten percent (10%). The Strategic Plan shall detail the actions necessary (with specific time frames) to achieve one of the following results: (i) merger with or acquisition by another banking institution or banking institution holding company, or such other transaction that OTS may approve or (ii) voluntary dissolution by, among other things, filing an appropriate application with the OTS in conformity with federal law and regulations. The Strategic Plan shall be

submitted to the Regional Director by no later than January 30, 2009.

(c) The Association shall immediately implement the Strategic Plan, subject to any input from the Regional Director. Specifically, the Association shall make any modifications to the Strategic Plan required in writing by the Regional Director within ten (10) days after receipt. Thereafter the Board shall adopt and the Association shall implement the revised Strategic Plan.

(d) Once the Strategic Plan is implemented, the Board shall obtain status reports from management and monitor compliance with the Strategic Plan no later than the 1st and 15th day of each month following implementation of the Strategic Plan, and provide written status reports detailing the Association's efforts to implement the Strategic Plan to the Regional Director no later than the 3rd and 17th day of each month.

3. Liquidity Management Plan

By no later than January 30, 2009, the Association, pursuant to Board authorization, shall implement and adhere to a written liquidity management and contingency plan (Liquidity Management Plan) that: (i) provides for the safe and sound management of liquidity in accordance with OTS Thrift Bulletin 77, other OTS guidance (*e.g.*, OTS Issuance 03-23, dated July 23, 2003, transmitting the Interagency Advisory on the Use of the Federal Reserve's Primary Credit Program In Effective Liquidity Management), and industry best practices; (ii) includes contingency plans for the Association to implement in the event of unanticipated withdrawals of deposits; (iii) provides for analysis and modeling of projected servicing advances based on various non-performance scenarios of the loans serviced by its operating subsidiary; and (iv) provides for ongoing monitoring by the Association's management and oversight by the Board. At a minimum, the Liquidity Management Plan shall: (i) address the liquidity needs of the Association with reference to its liquid assets (relative to total assets) and its borrowing

capacity (including its capacity to borrow from a Federal Home Loan Bank and/or a Federal Reserve Bank). By no later than January 30, 2009, the Association shall submit to the Regional Director a copy of the Liquidity Management Plan.

4. Plan to Maximize Payments and Support from Holding Company.

By no later than January 30, 2009, the Association shall, in consultation with its outside counsel, develop and implement a plan to: (a) pursue appropriate legal steps to require its parent holding company, Lehman Brothers Holdings, Inc. (LBHI) and LBHI's other subsidiaries, to comply with the TWA Rules by honoring its unfulfilled obligations to the Association; and (b) maximize the Association's recoveries on claims against LBHI through liquidation of collateral, the use of setoffs, or other means as contained in the plan. The plan shall be provided to OTS when it is implemented, but no later than January 30, 2009.

5. Reduction of Commitments to Fund Commercial Loans.

(a) Effective immediately, the Association shall not enter into any new commitments to make Commercial Loans.

(b) Effective immediately, the Association shall, pursuant to Board authorization, implement and adhere to a written plan to reduce its existing level of commitments to fund Commercial Loans (Commercial Loan Commitment Reduction Plan), that includes, at a minimum: (i) an analysis by legal counsel to determine whether, under all the facts and circumstances, the Association has a legally binding commitment to fund such commitments; and (ii) for any such legally binding commitments, the Association shall negotiate with counterparties to terminate or otherwise modify existing commitments to limit potential future funding exposures.

(c) The Association shall provide prior written notice to OTS of any decision to fund

any commitment to make a Commercial Loan (Commercial Loan Commitment) at least 5 business days prior to the proposed funding date (Funding Notice). At a minimum, the Funding Notice shall include: (i) a statement from the Association's counsel that the Association is legally obligated to provide funding; (ii) the status and outcome of any negotiations between the Association and the requestor to limit or eliminate the Association's funding exposure; (iii) a statement indicating that the Board has evaluated the funding request and concluded that the Association can fund the Commercial Loan in a safe and sound manner and without violating any law, rule or regulation; and (iv) the date on which the Association proposes to fund the commitment.

(d) The Association shall not fund any Commercial Loan Commitment unless it has (i) provided the Funding Notice required by (c) above; and (ii) received a written notice of non-objection from the Regional Director within 5 business days of OTS's receipt of the Funding Notice.

6. Restrictions on Transactions With Affiliates.

The Association shall not: (i) engage in any transaction with an affiliate, (ii) make any payment on any tax sharing agreement or (iii) make any tax payment that would exceed the amount that the Association would be obligated to make if it were a separate taxpayer and not part of a consolidated group tax return, unless, with respect to each such transaction, the Association:

(a) has provided the Regional Director with at least 30 days prior written notice of such transaction, which notice shall include:

(i) a full description of the proposed transaction (including, at a minimum, the information required by the record-keeping requirements of 12 CFR § 563.41(c) (3));

(ii) copies of all pertinent transaction documents;

(iii) a legal opinion, provided by counsel experienced in the application of the TWA Rules, which includes the rationale and precedent supporting the conclusion that the proposed transaction comports with the TWA Rules; and

(iv) a letter signed by the Chairman of the Board indicating that the Board has reviewed the proposed transaction and finds that it: (A) comports with the TWA Rules and (B) is in the Association's best interests or, in the case of tax payments, that it is legally compelled; and

(b) the Regional Director has provided written notice of non-objection.

The restrictions set forth in the Paragraph 7 shall not affect transactions or arrangements in effect on the Effective Date that comport with the TWA rules.

7. Capital Distributions Prohibited.

The Association shall not make any capital distribution, as defined in 12 CFR § 563.141.

8. Restriction on Asset Growth.

The Association shall limit its asset growth in any quarter to an amount not to exceed net interest credited on deposit liabilities during the quarter, unless such growth was previously permitted in writing by the Regional Director.

9. Brokered Deposit Restriction.

Effective immediately, the Association shall not accept brokered deposits except in compliance with Section 337.6(b) of the regulations of the Federal Deposit Insurance Corporation (FDIC), 12 CFR § 337.6(b). The Association shall provide to OTS notice if the Association requests a waiver from the FDIC and a copy of the FDIC's response to the waiver request.

10. Contracts Outside of the Ordinary Course of Business.

Effective immediately, the Association and its Subsidiaries shall not enter into any third-party contracts outside of the normal course of business without the prior written non-objection of the OTS. To seek such non-objection, the Association shall provide 30 days advance written notice to the OTS of any such proposed contract, except that for any emergency agreement necessary to meet unforeseen needs requiring immediate resolution the advance notice requirement shall be reduced to 5 business days. 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 Examination Handbook § 310 and OTS Thrift Bulletin 82a.

11. Board/Management Changes, Employment and Golden Parachute Matters.

(a) Notice of Change of Director or Senior Executive Officer. Effective immediately, 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. Without limitation on such requirements and limitations, this means, among other things, that, except as otherwise permitted by 12 CFR § 563.590: (i) the Association must notify OTS at least 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.

(b) Notice of Contractual Arrangements Involving Compensation. Effective immediately, 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 (i) provides OTS with a minimum of 30 days advance written

notice of the proposed transaction, and (ii) receives a written notice of non-objection from the OTS. The notice to 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 Senior Executive Officer or director, including all benefits and perquisites. The Board shall ensure that any contract, agreement or arrangement submitted to OTS fully complies with the requirements of 12 CFR Part 359, 12 CFR §§ 563.39 and 563.161(b), and 12 CFR Part 570 – Appendix A.

(c) Golden Parachute Restrictions. Effective immediately, the Association shall not make any golden parachute payment¹ or prohibited indemnification payment² unless, with respect to each such payment, the Association has complied with the requirements of 12 CFR Part 359 and, as to indemnification payments, 12 CFR § 545.121.

12. Applicability of Order Requirements to Subsidiaries.

The Association (including its Board and officers) shall ensure that each of its Subsidiaries complies with the requirements of this Order.

13. Board Oversight of Compliance with Order.

(a) The Board shall regularly monitor the Association's compliance with the provisions of this Order.

(b) Beginning in January 2009, and at a minimum, on a monthly basis thereafter, the Association's management shall provide to the Board such information and reports to allow the Board to monitor the Association's compliance with the requirements of this Order. Management's reports shall also give an account of the Subsidiaries compliance with this Order.

¹ The term "golden parachute payment" is defined at 12 CFR § 359.1(f).

² The term "prohibited indemnification payment" is defined at 12 CFR § 359.1(l).

(c) Within thirty (30) days after the end of each calendar quarter, the Association's management shall prepare and submit to the Board a written quarterly progress report that:

(i) Details the actions taken by the Association to comply with each provision of this Order, including a description of the results of such actions;

(ii) Identifies all violations of this Order, and further describes all remedial actions that have been effected and/or that are contemplated with respect to such violations; and

(iii) Reports on the Subsidiaries' compliance with this Order.

(d) Within forty-five (45) days after the end of each calendar quarter, the Board shall submit to the OTS: (i) a copy of the Board's quarterly progress report and (ii) a written certification that each director has reviewed the report.

14. Definitions

(a) General. 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.

(b) For purposes of this Order the terms referenced below have the meanings as set out below:

(i) Acceptable to the Regional Director. For purposes of this Order, nothing shall be deemed “acceptable to the Regional Director” unless the Regional Director (or his designee) has stated in writing that it is acceptable or has provided a written notice of non-objection in response to a written request by the Association.

(ii) Commercial Loan. “Commercial Loan” means any loan for a commercial, corporate, business, or agricultural purpose, whether or not secured by real estate, that is subject to the 20 percent of total assets limitation set forth in 12 USC § 1464(c)(2)(A).

(iii) Regional Director. “Regional Director” means the OTS Regional Director for the Northeast Region, and includes any OTS official designated by him to act on his behalf with respect to matters relating to this Order.

(iv) Senior Executive Officer. “Senior Executive Officer” shall have the meaning set forth in 12 C.F.R. § 563.555.

(v) Subsidiary. “Subsidiary” has the meaning set forth in 12 CFR § 559.2.

15. Effective Date, Incorporation of Stipulation.

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.

16. Duration.

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.

17. Time Calculations.

(a) 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.

(b) 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.

18. Submissions and Notices.

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

(b) 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:

(i) To OTS:

<u>The original to:</u> Mr. Michael E. Finn, Regional Director Office of Thrift Supervision Harborside Financial Center Plaza Five Suite 1600 Jersey City, New Jersey 07311	<u>A copy to:</u> Mr. Joseph J. Donohue, Assistant Director Office of Thrift Supervision Harborside Financial Center Plaza Five Suite 1600 Jersey City, New Jersey 07311
--	---

(ii) To the Association:

Board of Directors
c/o Theodore Janulis, Chairman of the Board
Lehman Brothers Bank, FSB
1271 Avenue of the Americas, 46th Floor
New York, NY 10019

19. No Violations Authorized.

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/
Michael E. Finn
Regional Director, Northeast Region

Date: See Effective Date on page 1

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: NE-09-02
)	
)	
Lehman Brothers Bank, FSB)	Effective Date: January 26, 2009
Wilmington, Delaware)	
)	
OTS Docket No. 06069)	
_____)	

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 Northeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed Lehman Brothers Bank, FSB, Wilmington, Delaware, OTS Docket No. 06069 (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 ongoing examination of the Association, and noting that the indirect parent of the Association filed for Bankruptcy under Chapter 11 on September 15, 2008, OTS finds that the Association has engaged in unsafe and unsound banking practices and failed to comply with requirements of various laws and regulations, including:

- a. 12 U.S.C. § 1468(a) & 12 CFR § 563.41, regarding transactions with affiliates (TWA Rules);
- b. An excessive concentration of commitments to make commercial loans, which if funded, would: (i) result in violations of the limitation on commercial loans set forth in 12 USC § 1464(c)(2)(A) and 12 CFR § 560.30 and (ii) deplete its available liquid assets; and.
- c. Operating with capital that is insufficient to satisfy the risk-based capital requirement set forth in 12 CFR § 567.2(a)(1).

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 Savings Association to the issuance of the Order and the execution of the Stipulation. This Stipulation may be executed in counterparts by the directors after approval of execution of the Stipulation at a duly called board meeting. A copy of the Board Resolution authorizing execution of this Stipulation shall be delivered to OTS, along with the executed original(s) of this Stipulation.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Savings Association, by its directors, executes this Stipulation.

Accepted by:

**LEHMAN BROTHERS BANK, FSB
Wilmington, DE**

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Theodore Janulis
Chairman

By: _____ /s/
Michael E. Finn
Regional Director, Northeast Region

Date: See Effective Date on page 1

_____/s/
Daniel L. Rabinowitz, Director

_____/s/
Lana Franks, Director