

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

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In the Matter of)	Order No.: SE-09-025
)	
)	
New South Bancshares, Inc.)	
Birmingham, Alabama)	Effective Date: May 15, 2009
)	
OTS Docket No. H-2406)	
_____)	

ORDER TO CEASE AND DESIST

WHEREAS, New South Bancshares, Inc., Birmingham, Alabama, OTS Docket No. H-2406 (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 Southeast Region (Regional Director), is authorized to issue Orders to Cease and Desist where a savings and loan holding company has consented to the issuance of an order.

NOW, THEREFORE, IT IS ORDERED that:

Capital Augmentation Plan.

1. On or before July 31, 2008, the Board shall prepare and submit for Regional Director review and comment, a written plan to preserve and enhance the capital of the Holding Company

and New South Federal Savings Bank, Irondale, Alabama, OTS Docket No. 08083 (Association) (Capital Augmentation Plan). At a minimum, the Capital Augmentation Plan shall:

a. consider the requirements and restrictions imposed by this Order and the Order to Cease and Desist issued by the OTS against the Association on May 15, 2009;

b. establish the amounts of and timeframes by which additional capital will be raised;

c. detail the method by which the additional capital will be raised and identify the sources of such capital;

d. establish an alternative strategy, including but not limited to, seeking a merger or acquisition partner, to be implemented immediately if the Board's primary strategy to raise additional capital is unsuccessful; and

e. require the Senior Executive Officers (Management)¹ to prepare and submit for Board review at each regular monthly Board meeting, a written report on the Holding Company and the Association's compliance with the Capital Augmentation Plan and the Holding Company and the Association's current capital levels (Capital Status Report).

2. The Board shall make any changes to the Capital Augmentation Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Capital Augmentation Plan to the Regional Director for review. Upon receipt of approval of or non-objection to the revised Capital Augmentation Plan from the Regional Director, the Board shall adopt the revised Capital Augmentation Plan and the revised Capital Augmentation Plan shall be incorporated herein by reference and become a part of this Order and any violation of the revised Capital Augmentation Plan shall be a violation of this Order. The Board shall ensure that the Holding Company and the Association adhere to and

¹ The term Senior Executive Officer is defined at 12 C.F.R. § 563.555.

implement the revised Capital Augmentation Plan. A copy of the revised Capital Augmentation Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

3. If the Board determines that the additional capital proposed in the revised Capital Augmentation Plan cannot be raised in the amounts or within the timeframes detailed in the revised Capital Augmentation Plan, the Board shall: (a) provide the Regional Director with written notice of its determination that the commitments established in the revised Capital Augmentation Plan cannot be fulfilled on the next business day following such determination (Capital Notice); and (b) immediately implement the alternative strategy established under Paragraph 1.d of this Order. Not later than the 1st and the 15th day of each calendar month after issuance of the Capital Notice, the Board shall provide the Regional Director with a written update on the status of its efforts to implement the alternative strategy approved in the revised Capital Augmentation Plan. The Board shall provide the Regional Director with a copy of a definitive merger agreement or other alternative strategy documentation within ten (10) days after execution.

Strategic Plan.

4. On or before July 31, 2009, the Board shall prepare and submit for Regional Director review and comment, a comprehensive strategic plan that covers the second, third, and fourth quarters of calendar year 2009, calendar years 2010 and 2011, and the first quarter of calendar year 2012 (Strategic Plan). The Strategic Plan shall set forth the Board's strategy for improving the financial strength and condition of the Holding Company and strengthening and improving the Association's operations and financial condition. At a minimum, the Strategic Plan shall: (a) consider the Capital Augmentation Plan required by Paragraph 1 of this Order; (b) include a

detailed discussion of the Board's strategies to strengthen and improve the Holding Company and the Association's operations, earnings, and profitability, including plans for reducing the Association's operating expenses and the Holding Company's debt; (c) detail the Board's strategies for strengthening and preserving the Association's financial resources to meet its business and operational needs, adequately support the Association's risk profile, maintain compliance with applicable regulatory capital requirements, and ensure adequate liquidity; (d) include pro forma financial projections (balance sheet and income statement) for each quarter covered by the Strategic Plan; and (e) identify all relevant assumptions and projections and include documentation supporting such assumptions and projections.

5. The Board shall make any changes to the Strategic Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Strategic Plan to the Regional Director for review. Upon receipt of approval of or non-objection to the revised Strategic Plan from the Regional Director, the Board shall adopt the revised Strategic Plan and the revised Strategic Plan shall be incorporated herein by reference and become a part of this Order and any violation of the revised Strategic Plan shall be a violation of this Order. The Board shall ensure that the Holding Company adheres to and implements the revised Strategic Plan. A copy of the revised Strategic Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting. Any material modifications to the Strategic Plan shall be submitted to the Regional Director for approval at least forty-five (45) days prior to implementation. A modification shall be considered material under this section of the Order if the Holding Company plans to: (a) engage in any activity that is inconsistent with the revised Strategic Plan; or (b) exceed the level of any activity contemplated in the revised

Strategic Plan or fail to meet target amounts established in the revised Strategic Plan by more than 10%, unless the activity involves assets risk-weighted 50% or less, in which case a variance of more than 25% shall be deemed to be a material modification.

6. The Board shall provide the Regional Director with quarterly status reports on the Holding Company's compliance with the revised Strategic Plan within thirty (30) days after the close of each calendar quarter beginning with the calendar quarter ending June 30, 2009.

Dividends.

7. Effective immediately, the Holding Company shall neither accept nor request that the 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.

8. Effective immediately, the Holding Company shall not declare or pay any dividends or other capital distributions without 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 thirty (30) days prior to the anticipated date of the proposed dividend payment or distribution of capital.

Debt Limitations.

9. Effective immediately, the Holding Company shall not incur, issue, renew, or rollover any debt or debt securities, increase any current lines of credit, guarantee the debt of any entity, or otherwise incur any additional debt without receiving the prior written approval of the Regional Director. All written requests to the Regional Director shall include, at a minimum, a

statement regarding the purpose of the debt, the terms of the debt, the planned source(s) for debt repayment, and an analysis of the cash flow resources available to meet such debt repayment.

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 debt issuance, renewal, or rollover.

10. Effective immediately, the Holding Company shall not, directly or indirectly, purchase or redeem any shares of its stock without 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 stock purchase or redemption.

Intercompany Transactions.

11. Effective immediately, the Holding Company shall not enter into any agreements, contracts, or arrangements with the Association or renew, amend, or modify any existing agreements, contracts, or arrangements with the Association 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 agreement, contract, or arrangement.

12. Effective immediately, the Holding Company shall not engage in any transactions with the Association, including but not limited to the making and receiving of any loans or the purchase or sale of any assets, without 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 transaction.

Board Oversight.

13. Within ninety (90) days, the Board shall prepare and submit to the Regional Director for review and comment, a written plan to improve the effectiveness of the Board's oversight of the management and operations of the Holding Company, and the Holding Company's oversight of the management and operations of the Association (Oversight Plan). At a minimum, the Oversight Plan shall:

- a. provide that, until such time as a majority of the Holding Company and the Association's directors are Independent of Management,² any expansion of the Board may only include new directors who meet the criteria necessary to be Independent of Management;
- b. specify the actions that the Board will take to improve the Holding Company and the Association's operating and financial condition and its oversight of the Holding Company and the Association's Management and major operations and activities; and
- c. detail the responsibility of and means by which the Board will monitor the Holding Company and the Association's adherence to approved policies, procedures, and applicable laws and regulations.

14. The Board shall make any changes to the Oversight Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Oversight Plan to the Regional Director for review. Upon receipt of approval of or non-objection to the revised Oversight Plan from the Regional Director, the Board shall adopt the revised Oversight Plan and ensure that the Holding Company and the Association adhere to and

² The term "Independent of Management" means a non-employee director that: (a) is not a consultant, advisor, or legal counsel, including family members of such persons, to the Association or its affiliates (as defined in Regulation W); (b) is not a director, officer, or principal shareholder, including immediate family members of such persons, of the Association's affiliates; (c) is not a principal shareholder, or immediate family member thereof, of the Association; and (d) is not an officer, employee, advisor, consultant or legal counsel for any principal shareholder (as defined in Regulation O), immediate family of such person, or a related interest of such person.

implement the revised Oversight Plan. A copy of the revised Oversight Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

Executive Compensation.

15. On or before June 30, 2009, the Board shall initiate an analysis and review of the salary, benefits, expenses, and other compensation of the Chairman of the Board (Chairman Compensation Review). The Board's analysis and review shall ensure that the Chairman's Compensation: (a) satisfies the requirements of 12 C.F.R. § 563.161(b), OTS Regulatory Bulletin (RB) 27b, and the OTS's Examination Handbook Section 310; (b) is reasonable and commensurate with the position's duties and responsibilities, including consideration of and comparison to the job duties and responsibilities of other Board members; (c) considers the compensation arrangements for the other directors; and (d) is comparable with the compensation arrangement for chairmanship positions at other similarly sized peer savings and loan holding companies with similarly sized wholly-owned peer savings associations. Within forty-five (45) days, the Board shall provide a copy of the Chairman Compensation Review, including any changes or modifications to such Compensation resulting from the Board's review, to the Regional Director.

Thrift Oversight.

16. Effective immediately, the Holding Company shall ensure the Association's compliance with applicable laws, rules, regulations, and agency guidance and all the terms of the Order to Cease and Desist issued by the OTS against the Association on May 15, 2009.

implement the revised Oversight Plan. A copy of the revised Oversight Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within ten (10) days after the Board meeting.

Executive Compensation.

15. On or before June 30, 2009, the Board shall initiate an analysis and review of the salary, benefits, expenses, and other compensation of the Chairman of the Board (Chairman Compensation Review). The Board's analysis and review shall ensure that the Chairman's Compensation: (a) satisfies the requirements of 12 C.F.R. § 563.161(b), OTS Regulatory Bulletin (RB) 27b, and the OTS's Examination Handbook Section 310; (b) is reasonable and commensurate with the position's duties and responsibilities, including consideration of and comparison to the job duties and responsibilities of other Board members; (c) considers the compensation arrangements for the other directors; and (d) is comparable with the compensation arrangement for chairmanship positions at other similarly sized peer savings and loan holding companies with similarly sized wholly-owned peer savings associations. Within forty-five (45) days, the Board shall provide a copy of the Chairman Compensation Review, including any changes or modifications to such Compensation resulting from the Board's review, to the Regional Director.

Thrift Oversight.

16. Effective immediately, the Holding Company shall ensure the Association's compliance with applicable laws, rules, regulations, and agency guidance and all the terms of the Order to Cease and Desist issued by the OTS against the Association on May 15, 2009.

Management Changes.

17. 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.

18. Effective immediately, the Holding Company shall not enter into any new, or renew, extend, or revise any current 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.

19. Effective immediately, the Holding Company shall not make any golden parachute payment³ or prohibited indemnification payment⁴ unless, with respect to each such payment, the 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.

³ The term “golden parachute payment” is defined at 12 C.F.R. § 359.1(f).

⁴ The term “prohibited indemnification payment” is defined at 12 C.F.R. § 359.1(l).

Effective Date, Incorporation of Stipulation.

20. 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.

21. 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.

22. 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.

23. 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 for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

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

25. 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 the OTS:
Arthur W. Goodhand, Acting Regional Director
Office of Thrift Supervision
1475 Peachtree St., NE
Atlanta, Georgia 30309
404.897.1861 (Fax)

- b. To the Holding Company:
Board of Directors
New South Bancshares, Inc.
2000 Crestwood Boulevard
Birmingham, Alabama 35210
205.951.4375 (Fax)

No Violations Authorized.

26. 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, or regulation.

IT IS SO ORDERED.

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Arthur W. Goodhand
Southeast Acting Regional Director

Date: See Effective Date on page 1

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: SE-09-025
)	
)	
New South Bancshares, Inc.)	
Birmingham, Alabama)	Effective Date: May 15, 2009
)	
OTS Docket No. H-2406)	
_____)	

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 Southeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed New South Bancshares, Inc., Birmingham, Alabama, OTS Docket No. H-2406 (Holding Company), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Holding Company pursuant to 12 U.S.C. § 1818(b);

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

WHEREAS, the Holding Company desires to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceedings by entering into this Stipulation and Consent to 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 Holding Company is a “savings and loan holding company” within the meaning of 12 U.S.C. § 1813(w)(3) and 12 U.S.C. § 1467a.

b. Pursuant to 12 U.S.C. § 1818(b)(9), the “appropriate Federal banking agency” may initiate a cease and desist proceeding against a savings and loan holding company in the same manner and to the same extent as against a savings association for regulatory violations and unsafe and unsound acts or practices.

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 and loan 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)(1) and (b)(9).

2. OTS Findings of Fact.

Based on its September 2, 2008, Report of Examination of the Holding Company, the OTS finds that the Holding Company has engaged in unsafe and unsound practices that have resulted in the Holding Company’s wholly owned savings association subsidiary, New South Federal Savings Bank, Irondale, Alabama, OTS Docket No. 08083 (Association), being in an unsafe and unsound condition primarily due to credit concentrations in higher risk loans, rising loan delinquencies, loan underwriting and administration deficiencies, increases in the level of problem assets, violations of law and regulations, and inadequate levels of allowance for loan and lease losses. The deterioration in the Association’s condition and increase in risk has resulted in the need for increased levels of capital.

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 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 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.

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.

f. The Stipulation and the Order shall remain in effect until terminated, modified, or suspended in writing by the 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 Holding Company to the issuance of the Order and the execution of the Stipulation.

WHEREFORE, the Holding Company, by its directors, executes this Stipulation.

Accepted by:

**NEW SOUTH BANCSHARES, INC.
Birmingham, Alabama**

OFFICE OF THRIFT SUPERVISION

By: /s/
William T. Ratliff, III
Chairman of the Board

By: /s/
Arthur W. Goodhand
Southeast Acting Regional Director

Date: See Effective Date on page 1

 /s/
Robert W. Jennings, Jr., Director

 /s/
Lizabeth Reynolds, Director