

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

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In the Matter of )	Order No.: SE-09-026
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)	
<b>New South Federal Savings Bank</b> )	Effective Date: May 15, 2009
<b>Irondale, Alabama</b> )	
)	
OTS Docket No. 08083 )	
_____ )	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, New South Federal Savings Bank, Irondale, Alabama, OTS Docket No. 08083 (Association), 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 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 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 association has consented to the issuance of an order.

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

**Order to Cease and Desist.**

1. 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 any violation of applicable law, regulation, and nonconformance with regulatory guidance including, but not limited to, the following:

- a. 12 C.F.R. § 560.101 (Real Estate Lending Standards);
- b. 12 C.F.R. Part 570 - Appendix A (Interagency Guidelines Establishing Standards for Safety and Soundness);
- c. 12 C.F.R. § 560.160 (Asset Classification); and
- d. 12 C.F.R. §§ 560.170 and 562.1 (Records for Lending Transactions).

**Capital.**

2. On and after September 30, 2009, the Association shall have and maintain a Tier 1 capital ratio equal to or greater than seven (7) percent and a total risk-based capital ratio equal to or greater than thirteen (13) percent.

3. On or before July 31, 2009, the Board shall prepare and submit for Regional Director review and comment a written plan to achieve and maintain the Association's capital at the levels prescribed in Paragraph 2 (Capital Plan). At a minimum, the Capital Plan shall:

- a. consider the requirements and restrictions imposed by this Order;
- b. consider and address different scenarios based on current asset quality trends and real estate market conditions;
- c. require the Senior Executive Officers (Management)<sup>1</sup> to continually assess the sufficiency of the Association's capital levels relative to the Association's risk profile, classified asset levels, allowance for loan and lease losses (ALLL), earnings, level of construction loans, and trends in all of the above-listed areas;

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

d. detail capital preservation and enhancement strategies with specific narrative goals;

e. consider and address the amount of additional capital that would be necessary to meet the capital requirements of Paragraph 2 of this Order under different forward-looking scenarios involving progressively more challenging economic environments;

f. detail the method by which the additional capital will be raised to maintain at least a Tier 1 capital ratio of seven (7) percent and a total risk-based capital ratio of thirteen (13) percent under the different scenarios established pursuant to Paragraph 3.e of this Order;

g. identify the specific sources of additional capital;

h. detail timeframes by which the additional capital will be raised and specific target month-end capital levels; and

i. require Management to prepare and submit for Board review at each regular monthly Board meeting, a written report on the Association's compliance with the Capital Plan and the Association's current capital levels (Capital Status Report).

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

5. Beginning with the calendar month of August, 2009, the Board shall: (a) review the Association's capital levels and the Capital Status Report at each regular monthly Board meeting; and (b) ensure that Management continually assesses the sufficiency of the Association's capital levels relative to the factors listed in Paragraph 3.c above. Management shall provide the Board with written updates on the status of its compliance with the Capital Plan. The Board's review of items (a) and (b) above at each regular monthly Board meeting shall be fully detailed in the Board meeting minutes. A copy of the Capital Status Report, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review, shall be provided to the Regional Director within ten (10) days after the Board meeting.

6. After implementation of the Capital Plan, Management shall prepare monthly variance reports on the Association's compliance with the Capital Plan within thirty (30) days after the close of each calendar month starting with the month ending August 31, 2009 (Capital Variance Report). The Capital Variance Reports shall: (a) detail actual operating versus projected results; (b) include detailed explanations of any material deviations; and (c) include a description of the specific corrective actions or measures that have been implemented or are proposed to address each material deviation. A deviation shall be considered material under this Paragraph of the Order when the Association: (i) engages in any material activity, line of business, or operation that is inconsistent with the Capital Plan; (ii) exceeds the level of any activity or growth contemplated in the Capital Plan by more than 10 percent; or (iii) falls below or fails to meet the target amounts established in the Capital Plan by more than 10 percent.

7. The Board's review of the monthly Capital Variance Reports and evaluation of Management and the Association's compliance with the elements of the Capital Plan shall be

thoroughly documented in the Board meeting minutes. A copy of the Capital Variance Report, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review, shall be provided to the Regional Director within ten (10) days after the Board meeting.

8. Within fifteen (15) days after the date the Association does not meet the Tier 1 capital ratio of seven (7) percent and the total risk-based capital ratio of thirteen (13) percent or the Association is not in compliance with the Capital Plan implemented pursuant to Paragraph 3 of this Order, or within fifteen (15) days from any request by the Regional Director for the submission of a Contingency Plan, the Board shall prepare and submit for Regional Director review and comment a written Contingency Plan. The Contingency Plan shall detail the actions to be taken, with specific time frames, to achieve one of the following results by the later of the date of receipt of all required regulatory approvals or sixty (60) days after the implementation of the Contingency Plan: (a) merger with, or acquisition by another federally insured depository institution or holding company thereof; or (b) voluntary liquidation by filing an appropriate application with OTS in conformity with federal laws and regulations. The Association also shall submit the Contingency Plan or an updated Contingency Plan within twenty (20) days of the date from any request by the Regional Director.

9. The Board shall make any changes to the Contingency Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Contingency Plan to the Regional Director for review. Upon receipt of non-objection to the revised Contingency Plan from the Regional Director, the Board shall adopt the revised Contingency Plan and the revised Contingency Plan shall be incorporated herein by reference and become part of this Order and any violation of the revised Contingency Plan shall be a

violation of this Order. The Board shall ensure that the Association adheres to and implements the revised Contingency Plan. A copy of the revised Contingency 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.

10. The Association shall provide written status reports to the OTS detailing the Association's actions taken and progress in implementing the Contingency Plan by no later than the 1<sup>st</sup> and 15<sup>th</sup> of each calendar month following the implementation of the Contingency Plan and until such time as the Association has a Tier 1 capital ratio of at least seven (7) percent and a total risk-based capital ratio of at least thirteen (13) percent and is in compliance with its Capital Plan. The bimonthly status reports shall detail: any contacts with investment bankers, any parties doing due diligence, any offers relating to an acquisition or a merger, the execution of binding letters of intent or purchase agreements, capital infusions from the Association's parent holding company, or any other capital raising activities. The Association shall provide the OTS a notification of the termination of negotiations with any party considering the acquisition of five (5) percent or more of the stock of the Association or a subordinated debt offering within one (1) business day of the termination of the negotiations.

**Business Plan.**

11. On or before July 31, 2009, the Board shall prepare and submit to the Regional Director for review and comment a new comprehensive business 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 (Business Plan). The Business Plan shall, at a minimum, include: (a) a detailed and specific discussion of the Board's plans and strategies to strengthen and improve the Association's operations, earnings, and profitability, including plans to reduce the Association's

operating expenses; (b) a discussion of the Association's current financial position and resources and detail the Board's strategies for preserving and enhancing the Association's financial resources to meet the Association's needs under the Business Plan, adequately support the Association's risk profile, maintain compliance with applicable regulatory capital requirements, and satisfy the Association's liquidity needs; (c) quarterly pro forma financial projections (balance sheet and income statement) for each period covered by the Business Plan; and (d) identification of all relevant assumptions and projections made in formulating the Business Plan, as well as documentation supporting such assumptions and projections.

12. The Board shall make any changes to the Business Plan required by the Regional Director within twenty (20) days after being notified of such changes and provide a copy of the revised Business Plan to the Regional Director for review. Upon receipt of non-objection to the revised Business Plan from the Regional Director, the Board shall adopt the revised Business Plan and the revised Business Plan shall be incorporated herein by reference and become a part of this Order and any violation of the revised Business Plan shall be a violation of this Order. The Board shall ensure that the Association adheres to and implements the revised Business Plan. A copy of the revised Business 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 revised Business Plan shall be submitted to the Regional Director for review and written non-objection at least forty-five (45) days prior to implementation. A modification shall be considered material under this section of the Order if the Association plans to: (a) engage in any activity that is inconsistent with the revised Business Plan; or (b) exceed the level of any activity contemplated in the revised Business Plan or fail to meet target amounts established in the revised Business 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.

13. The Board shall require Management to prepare and submit to the Board quarterly variance reports on the Association's compliance with the revised Business Plan within thirty (30) days after the close of each calendar quarter (Quarterly Business Plan Variance Reports) beginning with the quarter ending June 30, 2009. The Quarterly Business Plan Variance Reports shall: (a) identify material variances in the Association's actual performance during the preceding quarter as compared to the projections set forth in the revised Business Plan; (b) contain an analysis and explanation of the identified variances; and (c) detail the specific measures to be taken to address such variances, including adjustments to the underlying assumptions.

14. The Board shall review the Quarterly Business Plan Variance Reports each quarter and conduct a thorough review and assessment of the Association's compliance with the revised Business Plan and take corrective actions if necessary to ensure adherence to the revised Business Plan. The Board's review of the Quarterly Business Plan Variance Reports and assessment of the Association's compliance with the revised Business Plan shall be fully documented in the appropriate Board meeting minutes. A copy of the Quarterly Business Plan Variance Report, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review and corrective actions, if any, shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Lending**

15. Effective immediately, the Association shall not (a) originate or purchase or commit to originate or purchase any new construction loans; or (b) extend additional funds in excess of the

approved loan amounts to borrowers on or relating to existing construction loans without, in each case, the prior written non-objection of the Regional Director. The Bank may fund legally binding commitments that were executed prior to May 1, 2009. Prior to funding a legally binding commitment pursuant to this Paragraph, the Board shall ensure that the Association has and maintains a statement or opinion from legal counsel that the commitment is a legally binding commitment under applicable state law.

16. On or before June 30, 2009, the Board shall prepare and submit to the Regional Director for review and comment a detailed written plan with specific timeframes, targets, and reporting requirements to reduce the Association's level of speculative construction loans<sup>2</sup> (Loan Reduction Plan). The Board shall make any changes to the Loan Reduction Plan required by the Regional Director within thirty (30) days after receipt. Thereafter, the Board shall adopt and ensure that the revised Loan Reduction Plan is fully implemented and adhered to by the Association. Any modifications to the Loan Reduction Plan shall be submitted to the Regional Director for review and written non-objection at least thirty (30) days prior to implementation.

17. The Board shall review the Association's compliance with the revised Loan Reduction Plan within thirty (30) days after the close of each calendar quarter, beginning with the quarter ending on June 30, 2009. The Board shall require Management to prepare and submit to the Board, a written report detailing the Association's compliance with the revised Loan Reduction Plan and the status of all related loan modification activity. The Board's quarterly review shall be fully detailed in the appropriate Board meeting minutes. A copy of the Board meeting minutes and any supporting documents, reports, or other information reviewed by the Board shall be provided to the Regional Director within thirty (30) days after the Board meeting.

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<sup>2</sup> The term speculative construction loan is defined as a loan originated without a contract to sell.

18. On or before July 31, 2009, the Board shall revise the Association's loan underwriting policies and procedures to: (a) include prudent limits on the volume of out-of-area loans<sup>3</sup> deemed acceptable; and (b) prohibit indirect auto lending program loans with loan-to-value ratios in excess of 100 percent (Loan Underwriting Policy). The Board shall adopt the Loan Underwriting Policy and ensure that the Association adheres to and implements the Loan Underwriting Policy. Out-of-area loans shall be monitored by Management as exceptions to the Loan Underwriting Policy and reported to the Board within thirty (30) days after the close of each calendar quarter, beginning with the quarter ending on June 30, 2009.

**Allowance for Loan and Lease Losses.**

19. On or before June 30, 2009, the Board shall revise the Association's policies, procedures, and methodology to ensure the timely establishment and maintenance of adequate ALLL in accordance with applicable laws, regulations, and regulatory guidance (ALLL Policy). The ALLL Policy shall, at a minimum, conform to the regulatory requirements and guidance contained in 12 C.F.R. § 560.160(b), Section 261 of the OTS Examination Handbook, the December 13, 2006 Interagency Policy Statement on ALLL (CEO Memorandum # 250), and Generally Accepted Accounting Principles and Statements of Financial Accounting Standards (SFAS) No. 5 and SFAS No. 114. The Board shall adopt the ALLL Policy and ensure that the Association adheres to and implements the ALLL Policy.

20. Not less than ten (10) days after the end of each calendar quarter, beginning with the quarter ending June 30, 2009, Management shall analyze the adequacy of the Association's ALLL and prepare a written report to the Board containing Management's analysis of the Association's ALLL (Quarterly ALLL Report). The Board's review of the Quarterly ALLL

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<sup>3</sup> The term out-of-area loan is defined as a loan collateralized by property located in a geographic area outside the Association's delineated lending area pursuant to the Community Reinvestment Act that is not held by the Association for sale.

Report shall be fully documented in the appropriate Board meeting minutes and shall include specific details regarding any corrective actions adopted by the Board. The Board shall document the factors considered and conclusions reached by the Board in determining the adequacy of the Association's ALLL in the appropriate Board meeting minutes. In assessing, establishing, and maintaining an appropriate level of ALLL, the Board shall, at a minimum, consider the following:

- a. the results of all internal loan reviews and classifications;
- b. the loan loss experiences and history of the Association covering an expanded segmentation of the Association's loan portfolio;
- c. an estimate of the potential loss exposure on each significant<sup>4</sup> credit;
- d. concentrations of credit; and
- e. current and prospective markets and economic conditions.

A copy of the Quarterly ALLL Report, any supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review shall be provided to the Regional Director within ten (10) days after the Board meeting. Any deficiency in the ALLL shall be remedied in the quarter in which it is discovered and before the Association files its Thrift Financial Report (TFR) with the OTS.

21. Not less than annually, beginning with calendar year 2009, the Board shall retain a qualified and experienced third party consultant to conduct a review of the Association's ALLL methodology to verify and validate the accuracy, thoroughness, and effectiveness of the methodology in establishing appropriate ALLL levels. A written report (ALLL Methodology Report) shall be prepared and submitted to the Board for review within forty-five (45) days

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<sup>4</sup> A credit shall be considered significant for the purposes of assessing, establishing, and maintaining an appropriate level of ALLL if it is/was \$750,000 or greater at origination.

following the end of each calendar or fiscal year end detailing the consultant's review and findings. The Board's review of the ALLL Methodology Report, including any corrective actions adopted by the Board, shall be fully documented in the Board meeting minutes. A copy of the ALLL Methodology Report and the Board meeting minutes detailing the Board's review shall be provided to the Regional Director within ten (10) days after the date of the Board meeting.

**Problem Assets.**

22. On or before July 31, 2009, the Board shall prepare and submit to the Regional Director for review and comment a detailed, written plan with specific strategies, targets and timeframes to reduce the Association's level of criticized assets, which include classified assets, special mention assets, nonperforming assets, and delinquent loans (Problem Asset Plan). For purposes of this Paragraph, "reduce" means to collect, sell, charge off, or improve the quality of an asset sufficient to warrant its removal from adverse criticism or classification. At a minimum, the Problem Asset Plan shall require Management to prepare and submit for Board review: (a) individual written asset resolution plans for each criticized asset and delinquent loan of Seven Hundred and Fifty Thousand Dollars (\$750,000) or greater (Asset Resolution Plans); and (b) a quarterly written asset status report (Quarterly Asset Report). The Quarterly Asset Report shall be submitted to the Board at the first regularly scheduled Board meeting following the end of each calendar quarter, beginning with the quarter ending June 30, 2009. The Quarterly Asset Report shall include:

- a. a summary of and update on the current status of all Asset Resolution Plans for criticized assets and delinquent loans of \$750,000 or greater;
- b. a detailed analysis of the calculation and adequacy of the Association's ALLL

levels and comparison of ALLL levels to the total level of classified assets;

- c. a comparison of classified assets to core and risk based capital;
- d. a comparison of classified assets at the current quarter end with the preceding quarter;
- e. a breakdown of classified assets by type (residential, acquisition and development, construction, land loans, etc.); and
- f. a discussion of the actions taken during the preceding quarter to reduce the Association's level of criticized assets and delinquent loans and recommendations regarding any additional actions or steps that should be taken by Management in the future.

The Board's review of the Quarterly Asset Reports, and any corrective actions adopted by the Board, shall be fully documented in the appropriate Board meeting minutes.

23. On or before June 30, 2009, the Board shall ensure adequate staffing is in place at the Association to assess and resolve the volume and level of criticized assets and delinquent loans as required by this Order and to address the related areas identified in the September 2, 2008 OTS Report of Examination of the Association (2008 Examination) as requiring immediate attention including, but not limited to, credit administration, risk grading, risk monitoring, and management, and implementation of the Problem Asset Plan.

24. The Board shall make any changes to the Problem Asset Plan required by the Regional Director within forty-five (45) days after being notified of such changes and provide a copy of the revised Problem Asset Plan to the Regional Director for review. Upon receipt of non-objection to the revised Problem Asset Plan from the Regional Director, the Board shall adopt the revised Problem Asset Plan and ensure that the Association adheres to and implements the revised Problem Asset Plan.

25. The Board shall review the Association's compliance with the revised Problem Asset Plan and the Asset Resolution Plans within thirty (30) days after the close of each calendar quarter, beginning with the quarter ending September 30, 2009 (Quarterly Problem Asset Plan Review). The Board's review of the Quarterly Problem Asset Plan Reviews and assessment of the Association's compliance with the revised Problem Asset Plan and the Asset Resolution Plans shall be fully documented in the appropriate Board meeting minutes. A copy of the Quarterly Problem Asset Plan Review and supporting documents, reports, or other information reviewed by the Board, and the Board meeting minutes detailing the Board's review shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Liquidity.**

26. On or before June 30, 2009, the Board shall prepare and adopt a liquidity plan to ensure that the Association maintains adequate short-term and long-term liquidity to withstand any anticipated or extraordinary demand against its funding base (Liquidity Plan). The Liquidity Plan shall, at a minimum, include the following:

- a. a cash flow analysis that includes reasonable assumptions, identifies all anticipated funding needs and the sources to meet those needs, considers the level and maturity of any brokered deposits, and addresses any contingent liabilities; and
- b. identification of alternative funding sources in order to meet extraordinary demands or to provide liquidity in the event the sources identified in this Paragraph are insufficient. Such alternative funding sources must consider, at a minimum, the selling of assets, obtaining lines of credit from correspondent banks, recovering charged-off assets, and injecting additional equity capital.

Thereafter, the Board shall ensure that the Association complies with the Liquidity Plan.

27. On or before June 30, 2009, the Board shall ensure that Management reviews and prepares a weekly analysis of the Association's liquidity that assesses the Association's compliance with its liquidity policies and procedures and the Liquidity Plan required by Paragraph 26 (Weekly Liquidity Review). The Weekly Liquidity Review shall evaluate and consider:

- a. a maturity schedule of certificates of deposit, including large uninsured deposits;
- b. the volatility of demand deposits including escrow deposits;
- c. the amount and type of loan commitments and standby letters of credit;
- d. an analysis of the continuing availability and volatility of present funding sources;
- e. an analysis of the impact of decreased cash flow from the Association's loan portfolio resulting from delinquent and non-performing loans; and
- f. an analysis of the impact of decreased cash flow from the sale of loans or loan participations.

28. The Weekly Liquidity Reviews for the immediately preceding calendar month shall be submitted to the Board prior to each monthly Board meeting, beginning with the May 2009 meeting. Management also shall prepare and submit for Board review a written report identifying any funding needs (to repay loans or advances from correspondent banks or to pay off brokered deposits) relating to liquidity issues identified for the immediately preceding month (Monthly Liquidity Review). The Board's review of the Weekly Liquidity Reviews, the Monthly Liquidity Reviews, and any corrective actions adopted by the Board, shall be fully documented in the appropriate Board meeting minutes. The Board shall provide the Regional Director with quarterly updates on the Association's liquidity position and compliance with the Liquidity Plan within thirty (30) days after the end of each calendar quarter, beginning with the quarter ending June 30, 2009.

**Violations of Law and/or Deficiencies and Weaknesses.**

29. On or before July 31, 2009, the Board shall ensure that all violations of law, rule, regulation, noncompliance with applicable OTS and Interagency Guidelines, and other deficiencies and weaknesses discussed in the 2008 Examination are corrected. Within ninety (90) days, the Board shall prepare, adopt, and thereafter ensure that the Association adheres to specific procedures to prevent future violations, noncompliance, or deficiencies and weaknesses.

30. Within thirty (30) days of receipt of any subsequent OTS Report of Examination, internal audit report, independent external audit report, or other report prepared by the Association employees, agents, or independent contractors, which cites or discusses any weakness, deficiency, or violation of law, rule, or regulation, the Board shall prepare, adopt, and thereafter ensure the Association adheres to specific procedures to correct such weaknesses, deficiencies, and violations and prevent future weaknesses, deficiencies, and violations.

**Growth.**

31. Effective immediately, the Association is subject to and shall comply with the requirements and provisions of OTS Regulatory Bulletin (RB) 3b. Without the prior written approval of the Regional Director, the Association shall not increase its total assets during any quarter, beginning with the quarter ending June 30, 2009, in excess of an amount equal to net interest credited on deposit liabilities during the quarter. The growth restrictions imposed by this Paragraph shall remain in effect until the OTS review and approval of the Association's Business Plan under Paragraph 11 of this Order.

**Management Changes.**

32. Effective immediately, the Association 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.**

33. Effective immediately, the Association shall not make any payments to New South Bancshares, Inc., Birmingham, Alabama, OTS No. H-2406 (NSBI) for or representing salary payments, benefits, or reimbursement for travel or other expenses of NSBI directors or employees without the prior written approval of the Regional Director.

34. Effective immediately, the Association 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 Association, 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.**

35. Effective immediately, the Association shall not make any golden parachute payment<sup>5</sup> or prohibited indemnification payment<sup>6</sup> unless, with respect to each such payment, the Association has complied with the requirements of 12 C.F.R. Part 359 and, as to indemnification payments, 12 C.F.R. § 545.121.

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<sup>5</sup> The term “golden parachute payment” is defined at 12 C.F.R. § 359.1(f).

<sup>6</sup> The term “prohibited indemnification payment” is defined at 12 C.F.R. § 359.1(l).

**Third Party Contracts.**

36. Effective immediately, the Association shall not enter into any arrangement or contract with a third party service provider that is significant<sup>7</sup> to the overall operation or financial condition of the Association or outside the Association's normal course of business unless, with respect to each such contract, the Association has: (a) provided the OTS with a minimum of thirty (30) days prior written notice of such arrangement or contract; (b) determined that the arrangement or contract complies with the standards and guidelines set forth in Thrift Bulletin 82a (TB 82a); and (c) received written notice of non-objection from the Regional Director.

37. Effective immediately, the Association shall provide the OTS with written notice of all new arrangements or contracts with third party service providers consistent with the requirements of 12 U.S.C. § 1464(d)(7)(D)(ii). Such notice shall be provided to the Regional Director not later than thirty (30) days after the earlier of: (a) the date on which the Association enters into the contract; or (b) the date on which the performance of the service is initiated. The Board shall review all arrangements or contracts with third party service providers covered by this Paragraph to ensure compliance with the standards and guidelines set forth in TB 82a.

**Brokered Deposits.**

38. Effective immediately, the Association shall comply with the requirements of 12 C.F.R. § 337.6(b)(2) and shall not, without obtaining the prior written approval of the Federal Deposit Insurance Corporation pursuant to 12 C.F.R. § 337.6(c)(i): (a) accept, renew, or roll over any brokered deposit, as that term is defined at 12 C.F.R. § 337.6(a)(2); or (b) act as a deposit broker, as that term is defined at 12 C.F.R. § 337.6(a)(5).

**Dividends.**

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<sup>7</sup> A contract shall be considered significant to the overall operation or financial condition of the Association where the annual contract amount equals or exceeds two (2) percent of the Association's total capital.

39. Effective immediately, the Association shall pay no dividends or make any other capital distributions, as that term is defined in 12 C.F.R. § 563.141, without receiving the prior written approval of the Regional Director. The Association's written request for approval should 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.

**Affiliate and Insider Transactions.**

40. Effective immediately, the Association shall not engage in any transaction with an Affiliate<sup>8</sup> unless, with respect to each such transaction, the Association has complied with the notice requirements set forth in 12 C.F.R. § 563.41(c)(4), which notice also shall include the information set forth in 12 C.F.R. § 563.41(c)(3). The Board shall ensure that any transaction with an affiliate complies with the requirements of 12 C.F.R. § 563.41, 12 C.F.R. Part 223 (Regulation W), and the guidance contained in Section 310 of the OTS Examination Handbook. The Board shall ensure that documentation demonstrating such compliance is maintained in the Association's files and records.

41. Effective immediately, the Association shall not make any loans to or enter into any contracts or agreements with any Insiders<sup>9</sup> except in compliance with applicable laws, rules, and regulations including, but not limited to, 12 C.F.R. Part 215 and 12 C.F.R. § 564.43, and Section 310 of the OTS Examination Handbook. The Board shall ensure that the Association complies with the requirements of this Paragraph and that documentation demonstrating such compliance is maintained in the Association's files and records.

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<sup>8</sup> 12 C.F.R. § 223.2

<sup>9</sup> 12 C.F.R. § 215.2(h)

**Board Compliance Committee.**

42. Within thirty (30) days, the Board shall appoint a committee (Regulatory Compliance Committee) comprising three or more non-employee directors to monitor and coordinate the Association's compliance with the provisions of this Order and the completion of all corrective action required in the 2008 Examination.

43. Within thirty (30) days after the end of each calendar quarter, beginning with the quarter ending June 30, 2009, the Regulatory Compliance Committee shall submit a written progress report to the Board detailing the actions taken to comply with each provision of this Order, the corrective actions required by the 2008 Examination, and the results of all such actions. The Board shall review the Regulatory Compliance Committee's progress report and adopt a resolution: (a) certifying that each director has reviewed the progress report; (b) detailing the Association's compliance with the provisions of this Order and the corrective actions contained in the 2008 Examination; (c) identifying each instance of noncompliance; and (d) setting forth in detail additional corrective actions or steps adopted or required by the Board to address each instance of noncompliance.

44. Within forty-five (45) days after the end of each calendar quarter, the Board shall submit to the Regional Director: (a) a copy of the Regulatory Compliance Committee's quarterly progress report required by Paragraph 43 of this Order; and (b) a copy of the Board resolution required by Paragraph 43 of this Order, including the Board meeting minutes. Nothing contained herein shall diminish the responsibility of the entire Board to ensure the Association's compliance with the provisions of this Order.

**Effective Date, Incorporation of Stipulation.**

45. 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.**

46. 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.**

47. 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.

48. 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.**

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

50. 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 Board  
New South Federal Savings Bank  
2000 Crestwood Blvd  
Irondale, AL 35210  
205.9514375 (Fax)

**No Violations Authorized.**

51. 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/ \_\_\_\_\_  
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-09-026
	)	
	)	
<b>New South Federal Savings Bank</b>	)	Effective Date: May 15, 2009
<b>Irondale, Alabama</b>	)	
	)	
OTS Docket No. 08083	)	

**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 Federal Savings Bank, Irondale, Alabama, OTS Docket No. 08083 (Association), that the OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association 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 association has consented to the issuance of an order; and

**WHEREAS**, the Association 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 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); and

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 enforcement proceeding against a savings association. Therefore, the Association 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).

**2. OTS Findings of Fact.**

a. Based on its September 2, 2008 Report of Examination of the Association , the OTS finds that the Association has engaged in unsafe and unsound banking and lending practices related to the origination, oversight, and administration of its residential speculative construction, indirect auto, floor plan, subprime auto, and subprime nonconforming mortgage portfolios (High Risk Loans) as follows:

i. the Association initiated and pursued an aggressive lending growth strategy resulting in excessive levels of High Risk Loans that have experienced significant credit quality deterioration, are not supported by appropriate levels of capital and allowance for loan and lease losses (ALLL), and were undertaken with inadequate credit administration and risk management policies, procedures, and practices;

ii. the Board of Directors of the Association (Board) failed to exercise

appropriate oversight and monitoring over the Association's Senior Executive Officers<sup>1</sup> and activities and operations, failed to prepare, adopt, and ensure the Association's compliance with appropriate policies, procedures, and requirements to ensure that the lending activities, initiatives and programs were undertaken and conducted in a safe and sound manner and did not present undue risk to the Association's financial condition, failed to properly identify and manage the level of risk in the Association's loan portfolio; failed to properly identify and classify assets, and failed to establish and maintain an adequate level of ALLL in relation to the volume, type, and quality of loans held, resulting in the Association operating with an excessive level of adversely classified loans and assets, delinquent loans, and non-accrual loans; and

iii. the Association's current capital levels are considered inadequate given the Association's risk profile in relation to the volume, type, and quality of loans held, the level of classified assets, and projected future earnings.

b. The OTS also finds that the Association has other deficiencies in its management and operations and has failed to comply with requirements of various laws, regulations, and regulatory guidance, including, but not limited to:

i. the real estate lending standards and interagency guidelines for real estate lending policies, 12 C.F.R. § 560.101;

ii. the Interagency Guidelines Establishing Standards for Safety and Soundness set forth in Appendix A of 12 C.F.R. Part 570;

iii. the OTS regulations regarding asset classification, 12 C.F.R. § 560.160;  
and

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<sup>1</sup> The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555 and includes the Chairman of the Board.

iv. the OTS regulations regarding records for lending transactions, 12 C.F.R. §§ 560.170 and 562.1.

**3. Consent.**

The Association consents to the issuance by the 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 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 Association 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 Association 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 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 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;



