

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: WN-09-038
)	
CHARTER COMPANIES, INC.)	Effective Date: November 20, 2009
)	
Albuquerque, New Mexico)	
OTS Docket No. H1173)	
_____)	

ORDER TO CEASE AND DESIST

WHEREAS, Charter Companies, Inc., Albuquerque, New Mexico, OTS Docket No. H1173 (Holding Company), 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 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 Western 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:

Cease and Desist.

1. The Holding Company 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 unsafe or unsound practices that resulted in:

- (a) the failure to identify, measure, monitor, and control specific risks to the Holding Company's operations;
- (b) the operation of the Holding Company and its subsidiary Charter Bank, Santa Fe, New Mexico, an insured depository institution (Association) with inadequate cash flow; and
- (c) the operation of the Association with a significant level of classified assets and with an inadequate level of capital for the kind and quality of assets held by the Association.

Holding Company Capital Plan.

2. By November 30, 2009, the Holding Company shall submit for Regional Director's review and comment a written plan to preserve and enhance the capital of the Holding Company and the Association and to ensure that the Association complies with the capital requirements imposed by the Order to Cease and Desist issued by the OTS against the Association on November 20, 2009 (Capital Augmentation Plan). At a minimum, the Capital Augmentation Plan shall:

- (a) address the requirements and restrictions imposed by this Order and the Order to Cease and Desist issued by the OTS against the Association on November 20, 2009 (Association Order);
- (b) detail the Holding Company's capital preservation and enhancement strategies with specific narrative goals;

(c) identify the specific sources of additional capital and the timeframes and methods by which additional capital will be raised, including specific target dates and capital levels;

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

(e) require the Board to review, on a monthly basis the Holding Company's compliance with the Capital Augmentation Plan and the Association's compliance with its Capital Plan (Capital Status Report).

3. Within fifteen (15) days after receipt of comments from the Regional Director, if any, the Holding Company shall revise the Capital Augmentation Plan to incorporate any recommended changes by the Regional Director and adopt the Capital Augmentation Plan as revised.

Thereafter, the Holding Company shall implement the Capital Augmentation Plan. Within ten (10) days after the Board meeting, the Holding Company shall submit a copy of the Capital Augmentation Plan and the Board meeting minutes reflecting the Board's adoption thereof to the Regional Director.

4. Within fifteen (15) days after (a) the Association fails to meet the capital requirements imposed by Association Order, (b) the Holding Company fails to comply with the Capital Augmentation Plan prescribed in Paragraph 2, or (c) any request from the Regional Director, the Holding Company shall submit a written Contingency Plan that is acceptable to the Regional Director.

5. 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 of the Holding Company or Association with, or acquisition of the Holding Company or Association by another federally insured depository institution or holding company thereof; or (b) voluntary liquidation of the Association by filing an appropriate application with OTS in conformity with federal laws and regulations.

6. Upon receipt of notification from the Regional Director, the Holding Company shall implement the Contingency Plan immediately. By no later than the first (1st) and fifteenth (15th) of each calendar month following implementation of the Contingency Plan, the Board shall provide the Regional Director with written status reports detailing the Holding Company's progress in implementing the Contingency Plan.

Capital Distributions and Stock Repurchases.

7. Effective immediately, the Holding Company shall not declare, make, or pay any dividends or other capital distributions without the prior written notice of non-objection of the Regional Director.

8. Effective immediately, the Holding Company or any nonbank subsidiary shall not, directly or indirectly, accept or request that the Association or any subsidiary thereof make or pay any capital distributions, as that term is defined in 12 C.F.R. § 563.141, or commit to make or pay dividends or any other capital distributions, without the prior written notice of non-objection of the Regional Director.

9. Effective immediately, the Holding Company shall not, directly or indirectly, purchase, repurchase, or redeem any shares of its stock without the prior written notice of non-objection of

the Regional Director.

10. Effective immediately, the Holding Company shall not issue a new class of stock or change the terms of any existing classes of stock, or convert any class of stock into another class of stock without the prior written notice of non-objection of the Regional Director.

11. Within sixty (60) days prior to the anticipated date of any proposed dividend payment, capital distribution, or stock transaction, the Holding Company shall submit its written request for the Regional Director's written notice of non-objection to engage in the transaction set forth in Paragraphs 7, 8, 9, and 10 of this Order. The written request for such non-objection shall: (a) contain current and pro forma projections regarding the Holding Company's capital, earnings, and cash flow and the Association's capital, asset quality, earnings, and allowance for loan and lease losses; (b) identify the source of funds for the proposed payment or distribution; and (c) set forth documentation that the Association is in compliance with all capital measures required by applicable regulations and the Association Order.

Debt Restrictions.

12. Effective immediately, the Holding Company and any nonbank subsidiary shall not, directly or indirectly incur, renew, roll over, or issue any debt or debt securities, increase any current lines of credit, guarantee the debt of any entity, or otherwise incur any additional debt (other than for accrued and unpaid interest, late fees, or similar charges), or enter into a commitment for debt without the prior written notice of non-objection of the Regional Director. For purposes of this Paragraph of this Order, the term "debt" includes, but is not limited to, loans, bonds, cumulative preferred stock, guarantees of debt, and hybrid capital instruments, such as subordinated debt or trust preferred securities. For purposes of this Paragraph of this Order, the term "debt" does not include liabilities incurred in the ordinary course of business to

acquire goods and services and that are normally recorded as accounts payable under generally accepted accounting principles. All written requests for such non-objection to the Regional Director to engage in such debt transactions, at a minimum, shall: (a) describe the purpose of the proposed debt; (b) set forth and analyze the terms of the proposed debt and covenants; (c) analyze the Holding Company's current cash flow resources available to satisfy such debt repayment; and (d) set forth the anticipated source(s) of repayment of the proposed debt. The Holding Company shall submit its written request for such non-objection to the Regional Director at least thirty (30) days prior to incurring, renewing, rolling over, or issuing any debt; increasing any current lines of credit; guaranteeing the debt of any entity; or incurring any additional debt.

Employment Contracts and Compensation Arrangements.

13. Effective immediately, the Holding Company shall not enter into, renew, extend, or revise any contractual arrangement related to compensation or benefits with any director or Management of the Holding Company, unless it first provides the Regional Director with not less than thirty (30) days prior written notice of the proposed transaction. The notice to the Regional Director 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 director or Management, including, but not limited to all benefits and perquisites. The Board shall ensure that any contract, agreement, or arrangement submitted to the Regional Director fully complies with the requirements of 12 C.F.R. Part 359.

Severance and Indemnification Payments.

14. Effective immediately, the Holding Company shall not make any golden parachute payment¹ or any prohibited indemnification payment² unless, with respect to each such payment, the Holding Company has complied with the requirements of 12 C.F.R. Part 359

Directorate and Management Changes.

15. Effective immediately, the Holding Company shall comply with the prior notification requirements for changes in directors and Senior Executive Officers³ set forth in 12 C.F.R. Part 563, Subpart H.

Effective Date, Incorporation of Stipulation.

16. 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.

17. 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.

18. 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.

19. The Regional Director, or an OTS authorized representative, may extend any of the deadlines set forth in the provisions of this Order upon written request by the Holding Company

¹ The term “golden parachute payment” is defined at 12 C.F.R. § 359.1(f).

² The term “prohibited indemnification payment” is defined at 12 C.F.R. § 359.1(l).

³ The term “Senior Executive Officer” is defined at 12 C.F.R. § 563.555.

that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

Submissions and Notices.

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

21. 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:

*C.K. Lee, Regional Director
Attn: Vivian Carlton, Assistant Director
225 E. John Carpenter Freeway, Suite 500
Irving, Texas 75062-2326*

(b) To the Holding Company:

*Attn: Robert Wertheim, CEO
Charter Companies, Inc.
2130 Eubank Blvd., NE
Albuquerque, New Mexico 87112*

No Violations Authorized.

22. 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/ _____
C.K. Lee
Regional Director, Western Region

Date: See Effective Date on page 1

UNITED STATES OF AMERICA
Before the
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CHARTER COMPANIES, INC.)	Effective Date: November 20, 2009
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Albuquerque, New Mexico)	
OTS Docket No. H1173)	

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 Western Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed Charter Companies, Inc., Albuquerque, New Mexico, OTS Docket No. H1173 (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 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 Paragraphs

1 - 3 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

Jurisdiction.

1. 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. Accordingly, the Holding Company is a “depository institution holding company” as that term is defined in 12 U.S.C. § 1813(w)(1).

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

3. 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 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).

OTS Findings of Fact.

4. Based on its ongoing August 27, 2009 examination of the Holding Company, the OTS finds the Holding Company engaged in unsafe and unsound practices as a result of: (a) its failure to identify, measure, monitor, and control specific risks to the Holding Company’s operations; (b) the operation of the Holding Company and wholly-owned savings association subsidiary, Charter Bank, Santa Fe, New Mexico, the OTS Docket No. 08337 (Association), with insufficient cash flow; and (c) the operation of the Association with a significant level of classified assets and with inadequate capital for the kind and quality of assets held by the Association.

Consent.

5. 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.

Finality.

6. The Order is issued by the OTS under 12 U.S.C. § 1818(b). Upon the Effective Date, the Order shall be a final order, effective, and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

Waivers.

7. 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.

OTS Authority Not Affected.

8. 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.

Other Governmental Actions Not Affected.

9. 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 8 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.

Miscellaneous.

10. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order.

11. 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.

12. All references to the OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns.

13. 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.

14. 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.

15. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Regional Director or other authorized representative.

Signature of Directors/Board Resolution.

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

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