

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

_____	)	
In the Matter of	)	Order No.: CN 10-21
	)	
<b>TIERONE BANK</b>	)	Effective Date: June 3, 2010
	)	
Lincoln, Nebraska	)	
OTS Docket No. 03309	)	
_____	)	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, TierOne Bank, Lincoln, Nebraska, OTS Docket No. 03309 (Association), by and through its Board of Directors (Board), has executed a Stipulation and Consent to Issuance of an Order to Cease and Desist (Stipulation); and

**WHEREAS**, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 U.S.C. § 1818(b); and

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

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

**Cease and Desist.**

1. The Association and its directors, officers, and employees shall cease and desist from any action (alone or with others) for or toward, causing, bringing about, participating in, counseling,

or aiding and abetting the unsafe or unsound practices that resulted in the Association operating with: (a) an excessive level of adversely classified and delinquent loans, (b) an inadequate level of capital for the volume, type and quality of assets held by the Association, and (c) inadequate earnings to fund growth and augment capital as described in the OTS Report of Examination of the Association dated October 5, 2009 (2009 ROE).

2. The Association and its directors, officers, and employees shall cease and desist from any action (alone or with others) for or toward, causing, bringing about, participating in, counseling, or aiding and abetting the violations of law and regulation cited in the 2009 ROE, including:

- (a) 12 C.F.R. § 560.160(a) (regarding classification of assets);
- (b) 12 C.F.R. § 560.160(b) (regarding allowance for loan and lease losses (ALLL) and valuation allowances);
- (c) 12 C.F.R. §§ 564.3(a), 560.170(a), 560.170(b), and 560.170(e) (regarding appraisals); and
- (d) 12 C.F.R. § 560.170(b) (regarding loan administration).

Asset Quality.

3. (a) By June 30, 2010, the Association shall develop an individual written specific workout plan for each adversely classified asset and asset designated as special mention (Criticized Asset) or group of such Criticized Assets to any one borrower or loan relationship of five hundred thousand dollars (\$ 500,000) or greater (collectively, Asset Workout Plans).
- (b) Within forty-five (45) days after the end of each quarter, beginning with the quarter ending June 30, 2010, the Association shall submit a quarterly written asset status report (Quarterly Asset Report) to the Board. The Board's review of the Quarterly Asset

Report shall be documented in the Board meeting minutes. The Quarterly Asset Report shall include, at a minimum:

- (i) the current status of all Asset Workout Plans;
  - (ii) a comparison of classified assets to Tier 1 (Core) capital plus ALLL;
  - (iii) a comparison of Criticized Assets to Tier 1 (Core) capital plus ALLL;
  - (iv) a comparison of classified assets and Criticized Assets at the current quarter end with the preceding quarter;
  - (v) a breakdown of Criticized Assets by type and risk factor;
  - (vi) a discussion of the actions taken during the preceding quarter to reduce the Association's level of Criticized Assets; and
  - (vii) any recommended revisions or updates to the Asset Workout Plans.
- (c) Within fifty (50) days after the end of each quarter beginning with June 30, 2010, a copy of the Quarterly Asset Report shall be provided to the Regional Director.

**Appraisals.**

4. (a) Effective immediately, the Association shall comply with the amended appraisal policy approved at the October 27, 2009 Board meeting (Appraisal Policy).
- (b) By June 30, 2010, the Association shall submit to the Regional Director a written plan for compliance with the Appraisal Policy that requires a monthly appraisal tracking report be submitted for Board review.

**Concentrations of Credit.**

5. (a) By June 30, 2010, the Association shall revise its written policy for identifying, monitoring, and controlling risks associated with concentrations of credit (Credit Concentration Policy) to ensure that it addresses all corrective actions set forth in the

2009 ROE relating to concentrations of credit. The Credit Concentration Policy shall comply with all applicable laws, regulations and regulatory guidance and establish comprehensive concentration limits expressed as a percentage of Tier 1 (Core) Capital plus ALLL based on the Association's risk profile.

(b) Immediately after Board approval of the Association's revised Credit Concentration Policy, the Association shall implement and adhere to the Credit Concentration Policy. A copy of the Credit Concentration Policy shall be provided to the Regional Director within five (5) days of adoption by the Board.

**Board Oversight of Compliance with Order and Supervisory Agreement.**

6. Effective immediately, the Board shall monitor and coordinate the Association's compliance with the provisions of this Order and the Supervisory Agreement entered into between the Association and the OTS effective January 15, 2009 (Supervisory Agreement). The Board shall review and adopt all policies and procedures required by this Order prior to submission to the OTS and shall monitor and coordinate completion of all corrective actions required in the 2009 ROE.

7. Within twenty (20) days after the end of each month, beginning with the month ending May 31, 2010, the Association shall prepare a written compliance progress report for the Board (Compliance Tracking Report). The Compliance Tracking Report shall, at a minimum:

- (a) separately list each corrective action required by this Order and the 2009 ROE;
- (b) separately list each corrective action required by the Supervisory Agreement;
- (b) identify the required or anticipated completion date for each corrective action; and
- (c) discuss the current status of each corrective action, including the action(s) taken or to be taken to comply with each corrective action.

8. Within thirty (30) days after the end of each month, beginning with month ending May 31, 2010, the Board shall review the Compliance Tracking Report and all reports required to be prepared by this Order and the Supervisory Agreement. Following its review, the Board shall adopt a resolution: (a) certifying that each director has reviewed the Compliance Tracking Report and all required reports; and (b) documenting any corrective actions adopted by the Board. A copy of the Compliance Tracking Report and the Board resolution shall be provided to the Regional Director within five (5) days after the Board meeting.

**Effective Date, Incorporation of Stipulation.**

9. 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.**

10. 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.**

11. 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.

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

**Submissions and Notices.**

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

14. 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:**

Regional Director  
Office of Thrift Supervision  
One South Wacker Drive, Suite 2000  
Chicago, Illinois 60606  
Facsimile: (312) 917-5001

(b) **To the Association:**

President  
TierOne Bank  
1235 "N" Street  
Lincoln, Nebraska 68508-2008  
Facsimile: (402) 435-0427

**No Violations Authorized.**

15. 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/\_\_\_\_\_  
Daniel T. McKee  
Regional Director, Central Region

Date: See Effective Date on page 1

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

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In the Matter of )	Order No.: CN 10-21
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<b>TIERONE BANK</b> )	Effective Date: June 3, 2010
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Lincoln, Nebraska )	
OTS Docket No. 03309 )	
_____ )	

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

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Central Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed TierOne Bank, Lincoln, Nebraska, OTS Docket No. 03309 (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 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 and 2 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**Jurisdiction.**

1. 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).
2. 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).

**OTS Findings of Fact.**

3. Based on a comprehensive examination of the Association, the OTS finds that the Association has engaged in unsafe or unsound banking practices, including operating with: (a) an excessive level of adversely classified and delinquent loans, (b) an inadequate level of capital for the volume, type and quality of assets held by the Association, and (c) inadequate earnings to fund growth and augment capital as described in the OTS Report of Examination of the Association dated October 5, 2009 (2009 ROE).
4. The OTS also finds that the Association has engaged in violations of law and regulation cited in the 2009 ROE, including:
  - (a) 12 C.F.R. § 560.160(a) (regarding classification of assets);
  - (b) 12 C.F.R. § 560.160(b) (regarding allowance for loan and lease losses (ALLL) and valuation allowances);

(c) 12 C.F.R. §§ 564.3(a), 560.170(a), 560.170(b), and 560.170(e) (regarding appraisals); and

(d) 12 C.F.R. § 560.170(b) (regarding loan administration).

**Consent.**

5. 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.

**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 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.

**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 Association 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 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 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 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.

**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 Association to the issuance of the Order and the execution of the Stipulation. This Stipulation may be executed in counterparts by the directors after approval of execution of the Stipulation at a duly called board meeting.

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

**TIERONE BANK  
Lincoln, Nebraska**

Accepted by:  
**Office of Thrift Supervision**

\_\_\_\_\_/s/\_\_\_\_\_  
Charles W. Hoskins, Acting Chairman

By: \_\_\_\_\_/s/\_\_\_\_\_  
Daniel T. McKee  
Regional Director, Central Region

\_\_\_\_\_/s/\_\_\_\_\_  
James A. Laphen, Director

Date: See Effective Date on page 1

\_\_\_\_\_/s/\_\_\_\_\_  
Campbell R. McConnell, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Joyce Person Pocras, Director