

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

_____ )	
In the Matter of )	Order No.: SE-10-044
)	
<b>LYDIAN TRUST COMPANY</b> )	Effective Date: September 17, 2010
)	
Palm Beach Gardens, Florida )	
OTS Docket No. H-3488 )	
_____ )	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, Lydian Trust Company, Palm Beach Gardens, Florida, OTS Docket No. H-3488 (Holding Company), 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 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:**

**Cease and Desist.**

1. The Holding Company, its institution-affiliated parties,<sup>1</sup> and its successors and assigns, 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 the unsafe or unsound banking practices that resulted in:

(a) operating its wholly owned savings association subsidiary, Lydian Private Bank, Palm Beach Gardens, Florida, OTS Docket No. 16406 (Association), with an inadequate level of capital protection for the volume, type, and quality of assets held by the Association;

(b) operating the Association with a board of directors that has failed to exercise adequate supervision over, and provide adequate direction to, management of the Association to prevent unsafe and unsound banking practices and violations of laws or regulations;

(c) failing to ensure that all transactions by affiliates with the Association comply with applicable laws and regulations; and

(d) failing to adopt and adhere to a Tax Sharing Agreement that comports with the requirements of the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure contained in OTS Chief Executive Officer Memorandum No. 98.

**Capital Maintenance and Augmentation Plan.**

2. Within sixty (60) days, the Holding Company shall submit for Regional Director review and non-objection a written plan to maintain and enhance the capital of the Holding Company and the Association and to ensure that the Association complies with the capital requirements

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<sup>1</sup> The term “institution-affiliated party” is defined at 12 U.S.C. § 1813(u).

imposed by the Cease and Desist Order issued by the OTS effective September 16, 2010 (Capital Maintenance and Augmentation Plan). The Capital Maintenance and Augmentation Plan shall:

- (a) address the requirements and restrictions imposed by this Order;
- (b) identify the specific sources of additional capital and the timeframes and methods by which additional capital will be raised and infused into the Association, if necessary, including specific target dates and capital levels; and
- (c) require the Board to review, on a monthly basis, the Holding Company's compliance with its Capital Maintenance and Augmentation Plan and the Association's compliance with its Capital Plan.

3. Within thirty (30) days after receipt of written non-objection from the Regional Director, the Holding Company shall implement and adhere to the Capital Maintenance and Augmentation Plan.

**Business Plan.**

4. Within sixty (60) days, the Holding Company shall submit a new comprehensive business plan covering the period beginning October 1, 2010 and ending December 31, 2011 (Business Plan) that is acceptable to the Regional Director and addresses all corrective actions in the December 14, 2009 Report of Examination (2009 ROE) concerning the Holding Company's business operations. Thereafter, the Holding Company shall submit a new one (1) year Business Plan at least sixty (60) days prior to the end of each calendar year. At a minimum, the Business Plan shall conform to applicable laws, regulations and regulatory guidance and include:

- (a) plans to improve the Holding Company's core earnings, reduce expenses, and achieve profitability on a consistent basis throughout the term of the Business Plan;

(b) strategies for ensuring that the Holding Company has the financial and personnel resources necessary to implement and adhere to the Business Plan, adequately support the Holding Company's risk profile, maintain compliance with applicable regulatory requirements, and comply with this Order;

(c) quarterly pro forma financial projections (balance sheet, regulatory capital ratios, and income statement) for each quarter covered by the Business Plan; and

(d) identification of all relevant assumptions made in formulating the Business Plan and a requirement that documentation supporting such assumptions be retained by the Holding Company.

5. Upon receipt of written notification from the Regional Director that the Business Plan is acceptable, the Holding Company shall implement and adhere to the Business Plan. A copy of the 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.

6. Any material modifications<sup>2</sup> to the Business Plan must receive the prior written non-objection of the Regional Director. The Holding Company shall submit proposed material modifications to the Regional Director at least forty-five (45) days prior to implementation.

7. Within sixty (60) days after the end of each quarter, after implementation of the Business Plan, the Board shall review quarterly variance reports on the Holding Company's compliance with the Business Plan (Variance Reports). The Variance Reports shall:

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<sup>2</sup> 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 Business Plan; or (b) exceed the level of any activity contemplated in the Business Plan or fail to meet target amounts established in the Business Plan by more than ten percent (10%), unless the activity involves assets risk-weighted fifty percent (50%) or less, in which case a variance of more than twenty-five percent (25%) shall be deemed to be a material modification.

- (a) identify variances in the Holding Company's actual performance during the preceding quarter as compared to the projections set forth in the Business Plan;
  - (b) contain an analysis and explanation of identified variances; and
  - (c) discuss the specific measures taken or to be taken to address identified variances.
8. A copy of the Variance Reports and Board meeting minutes shall be provided to the Regional Director within ten (10) days after the Board meeting.

**Thrift Oversight.**

9. 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 September 16, 2010.

**Dividends.**

10. 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. § 563.141, or commit to make or pay dividends or any other capital distributions, without receiving the prior written non-objection of the Regional Director. The Holding Company's written request for non-objection 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.
11. Effective immediately, the Holding Company shall not declare or pay any dividends or other capital distributions, as that term is defined in 12 C.F.R. § 563.141, without the prior written non-objection of the Regional Director. The Holding Company's written request for non-objection 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.

### **Debt Limitations.**

12. Effective immediately, the Holding Company shall not: (a) 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 non-objection 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 non-objection 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; the proposed increase in any current lines of credit; the proposed guarantee of the debt of any entity; or any other incurrence of additional debt.

13. Effective immediately, the Holding Company shall not, directly or indirectly, purchase or redeem any shares of its stock without the prior written non-objection of the Regional Director. The Holding Company's written request for such non-objection 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.

### **Severance and Indemnification Payments.**

14. Effective immediately, the Holding Company shall not make any golden parachute payment<sup>3</sup> or prohibited indemnification payment<sup>4</sup> unless, with respect to each such payment, the Holding Company has complied with the requirements of 12 C.F.R. Part 359.

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<sup>3</sup> The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

<sup>4</sup> The term "prohibited indemnification payment" is defined at 12 C.F.R. § 359.1(l).

**Directorate and Management Changes.**

15. Effective immediately, the Holding Company shall comply with the prior notification requirements for changes in directors and Senior Executive Officers<sup>5</sup> set forth in 12 C.F.R. Part 563, Subpart H.

**Employment Contracts and Compensation Arrangements.**

16. Effective immediately, the Holding Company shall not enter into, renew, extend or revise any contractual arrangement relating to compensation or benefits for any Senior Executive Officer or director of the Holding Company, unless it first provides the Regional Director with not less than forty-five (45) 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 officer or director, including 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, 12 C.F.R. §§ 563.39 and 563.161(b), and 12 C.F.R. Part 570 – Appendix A, and the Interagency Guidance on Sound Incentive Compensation Policies contained in OTS Chief Executive Officer Memorandum No. 354.

**Intercompany Transactions.**

17. 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

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<sup>5</sup> The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

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.

18. Effective immediately, the Holding Company shall not engage in any new 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.

**Tax Sharing Agreement.**

19. Effective immediately, the Holding Company shall comply with the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure contained in OTS Chief Executive Officer Memorandum No. 98. Within ten (10) days, the Holding Company shall submit to the Regional Director a copy of its current tax sharing agreement.

20. Within ten (10) days, the Holding Company shall submit to the Regional Director (i) a copy of the analysis and report conducted and prepared by the Holding Company's external audit firm regarding the allocation of tax payment refunds to subsidiaries of the Holding Company, including the Association (Tax Allocation Payment Report), (ii) documentation that all tax payment refunds have been allocated and paid to subsidiaries of the Holding Company consistent with the Tax Payment Allocation Report, and (iii) documentation that any other corrective actions contained in the Tax Payment Allocation Report have been addressed.

**Effective Date, Incorporation of Stipulation.**

21. 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.**

22. 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.**

23. 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.

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

**Submissions and Notices.**

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

26. 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  
1475 Peachtree St., N.E.  
Atlanta, Georgia 30309  
404.897.1861 (Fax)

(b) To the Holding Company:  
c/o Rory Brown, Chairman  
Lydian Trust Company  
3801 PGA Boulevard  
Palm Beach Gardens, FL 33410-2758

**No Violations Authorized.**

27. 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**

/s/

By: \_\_\_\_\_  
James G. Price  
Regional Director, Southeast Region

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA**  
**Before the**  
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<b>LYDIAN TRUST COMPANY</b> )	Effective Date: September 17, 2010
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Palm Beach Gardens, Florida )	
OTS Docket No. H-3488 )	
_____ )	

**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 Lydian Trust Company, Palm Beach Gardens, Florida, OTS Docket No. H-3488 (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 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 through 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 December 14, 2009 examination of the Holding Company (2009 ROE), the OTS finds that the Holding Company has engaged in unsafe or unsound banking practices, including;

(a) operating its wholly owned savings association subsidiary, Lydian Private Bank, Palm Beach Gardens, Florida, OTS Docket No. 16406 (Association), with an inadequate level of capital protection for the volume, type, and quality of assets held by the

Association;

(b) operating the Association with a board of directors that has failed to exercise

adequate supervision over and provide adequate direction to management of the Association to prevent unsafe and unsound banking practices and violations of laws or regulations;

(c) failing to ensure that all transactions by affiliates with the Association comply with applicable laws and regulations; and

(d) failing to adopt and adhere to a Tax Sharing Agreement that comports with the requirements of the Interagency Policy Statement on Income Tax Allocation in a Holding Company Structure contained in OTS Chief Executive Officer Memorandum No. 98.

**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 execution of the Stipulation at a duly called board meeting.

**[Remainder of Page Intentionally Left Blank]**

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

**LYDIAN TRUST COMPANY**  
**Palm Beach Gardens, Florida**

/s/  
By: \_\_\_\_\_  
Rory A. Brown  
Chairman

/s/  
\_\_\_\_\_  
Clark A. Johnson, Director

/s/  
\_\_\_\_\_  
James B. Meany, Director

/s/  
\_\_\_\_\_  
John R. Purcell, Director

/s/  
\_\_\_\_\_  
Daniel W. Stanton, Director

Accepted by:

**OFFICE OF THRIFT SUPERVISION**

/s/  
By: \_\_\_\_\_  
James G. Price  
Regional Director, Southeast Region

Date: See Effective Date on page 1