

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

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In the Matter of)	Order No.: SE-11-006
)	
)	
BANKATLANTIC BANCORP, INC.)	Effective Date: February 23, 2011
)	
Fort Lauderdale, Florida)	
OTS Docket No. H-2327)	
_____)	

ORDER TO CEASE AND DESIST

WHEREAS, BankAtlantic Bancorp, Inc., Fort Lauderdale, Florida, OTS Docket No. H-2327 (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 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,¹ and its successors and assigns, shall cease and desist from any action (alone or with others) for or toward causing, bringing about, participating in, counseling, or the aiding and abetting of unsafe or unsound banking practices that resulted in:

- (a) operating its wholly owned savings association subsidiary, BankAtlantic, Fort Lauderdale, Florida OTS # 05551 (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 inadequate earnings to augment capital and support reserves; and
- (c) operating the Association with an excessive level of adversely classified loans and assets.

Capital Maintenance and Augmentation Plan.

2. By March 31, 2011, 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 imposed by the Association's Order to Cease and Desist issued by the OTS effective February 23, 2011 (Capital Maintenance and Augmentation Plan). The Capital Maintenance and Augmentation Plan shall:

- (a) address the requirements and restrictions imposed by this Order;

¹ The term "institution-affiliated party" is defined at 12 U.S.C. § 1813(u).

- (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;
 - (c) 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 Holding Company's primary strategy to raise and infuse additional capital is unsuccessful; and
 - (d) require the Board to review, at each regularly scheduled Board meeting, the Holding Company's compliance with its Capital Maintenance and Augmentation Plan and the Association's compliance with its Capital Plan.
3. Upon receipt of written non-objection from the Regional Director, the Holding Company shall implement and adhere to the Capital Maintenance and Augmentation Plan. A copy of the Capital Maintenance and Augmentation Plan and the Board meeting minutes reflecting the Board's adoption thereof shall be provided to the Regional Director within twenty (20) days after the Board meeting.

Business Plan.

4. By March 31, 2011, the Holding Company shall submit a comprehensive business plan for calendar year 2011 (Business Plan) to the Regional Director for review and non-objection. Thereafter, the Holding Company shall submit an updated one 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) consideration of the capital needs and requirements at the Association, in addition to the capital necessary to support operations and debt service at the Holding Company;

- (b) 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;
- (c) 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;
- (d) quarterly pro forma financial projections (balance sheet, regulatory capital ratios, and income statement) for each quarter covered by the Business Plan; and
- (e) identification of all relevant assumptions made in formulating the Business Plan.

5. Upon receipt of written notice of non-objection from the Regional Director, 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 twenty (20) days after the Board meeting.

6. Any material modifications² 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 forty-five (45) 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:

² 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 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 material 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.

Association Oversight.

9. Effective immediately, the Holding Company shall ensure the Association's compliance with applicable laws, rules, regulations, and agency guidance and the terms of the Association's Order to Cease and Desist issued by the OTS effective February 23, 2011.

Dividends.

10. 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 thirty (30) days prior to the anticipated date of the proposed dividend payment or distribution of capital.

Debt Limitations.

11. Effective immediately, the Holding Company, on an unconsolidated, parent company only basis, shall not: (a) incur, issue, renew, repay, or rollover any debt or debt securities,³ increase any current lines of credit, guarantee the debt of any entity, or otherwise incur any

³ For purposes of this Paragraph of the Order, the term "debt" includes, but is not limited to: loans, bonds, cumulative preferred stock, hybrid capital instruments such as subordinated debt or trust preferred securities, and guarantees of debt; and does not include: liabilities that are 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.

additional debt 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 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.

Cash Flow Projections.

12. The Holding Company, on an unconsolidated, parent company only basis, shall submit to the Regional Director copies of its quarterly cash flow projections, all assumptions used to make such projections, and asset and funding concentrations consistent with applicable law, regulation and regulatory guidance including, but not limited to, the Interagency Policy Statement on Funding and Liquidity Risk Management (March 17, 2010) (Projections). The Projections shall be submitted to the Regional Director no later than fifteen (15) days prior to the beginning of each calendar quarter, with the first submission due for the quarter beginning April 1, 2011.

Transactions with Affiliates.

13. 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 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 proposed date of any transaction covered by this Paragraph.

Directorate and Management Changes.

14. Effective immediately, the Holding Company shall comply with the prior notification requirements for changes in directors and Senior Executive Officers⁴ set forth in 12 C.F.R. Part 563, Subpart H.

Employment Contracts and Compensation Arrangements.

15. 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.

16. Effective immediately, the Holding Company shall not make or agree to make any incentive compensation payments (cash or non-cash) to Senior Executive Officers who also are directors of the Association without the prior written approval of the Regional Director.

17. By March 31, 2011, the Board must revise the Holding Company's incentive compensation plan to address the corrective actions in the 2010 Examination and to conform with applicable law, regulation and agency guidance including, but not limited to, the Interagency Guidance on Sound Incentive Compensation Policies (June 21, 2010). A third-party consultant must be engaged to review the revised plan and address compliance with this Order and standard industry practices. Within seventy-five (75) days, the Board shall adopt and

⁴ The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

implement the revised plan and provide the Regional Director with a copy of the Board meeting minutes indicating its actions.

Golden Parachute and Indemnification Payments.

18. Effective immediately, the Holding Company shall not make any golden parachute payment⁵ or prohibited indemnification payment⁶ unless, with respect to each such payment, the Holding Company has complied with the requirements of 12 C.F.R. Part 359.

Board Oversight of Compliance with Order.

19. Within thirty (30) days, the Board shall designate a committee to monitor and coordinate the Holding Company's compliance with the provisions of this Order (Oversight Committee). The Oversight Committee shall be comprised of three (3) or more directors, the majority of whom shall be independent⁷ directors.

20. Within forty-five (45) days after the end of each quarter, beginning with the quarter ending March 31, 2011, the Oversight Committee shall submit a written compliance progress

⁵ The term "golden parachute payment" is defined at 12 C.F.R. § 359.1(f).

⁶ The term "prohibited indemnification payment" is defined at 12 C.F.R. § 359.1(l).

⁷ For purposes of this Order, an individual who is "independent" with respect to the Holding Company shall be any individual who:

- (a) is not employed in any capacity by the Holding Company, its subsidiaries, or its affiliates, other than as a director;
- (b) does not own or control more than ten percent (10%) of the outstanding shares of the Holding Company or any of its affiliates;
- (c) is not related by blood or marriage to any officer or director of the Holding Company or any of its affiliates, or to any shareholder owning more than ten percent (10%) of the outstanding shares of the Holding Company or any of its affiliates, and who does not otherwise share a common financial interest with any such officer, director or shareholder;
- (d) is not indebted, directly or indirectly, to the Holding Company or any of its affiliates, including the indebtedness of any entity in which the individual has a substantial financial interest, in an amount exceeding 10 percent (10%) of the Association's total Tier 1 (Core) capital; and
- (e) has not served as a consultant, advisor, underwriter, or legal counsel to the Holding Company or any of its affiliates.

report to the Board (Compliance Tracking Report). The Compliance Tracking Report shall, at a minimum:

- (a) separately list each corrective action required by this Order;
- (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.

21. Within forty-five (45) days after the end of each quarter, beginning with the quarter ending March 31, 2011, the Board shall review the Compliance Tracking Report and all reports required to be prepared by this Order. 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 ten (10) days after the Board meeting.

Effective Date, Incorporation of Stipulation.

22. 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.

23. 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.

24. 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.

25. 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.

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

27. 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., NE
Atlanta, Georgia 30309

- (b) To the Holding Company:
BankAtlantic Bancorp
c/o Alan B. Levan
2100 West Cypress Creek Road
Fort Lauderdale, FL 33309

No Violations Authorized.

28. 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/
James G. Price
Regional Director, Southeast Region

Date: See Effective Date on page 1

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

_____)	
In the Matter of)	Order No.: SE-11-006
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BANKATLANTIC BANCORP, INC.)	Effective Date: February 23, 2011
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Fort Lauderdale, Florida)	
OTS Docket No. H-2327)	
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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 BankAtlantic Bancorp, Inc., OTS Docket No. H-2327 (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 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 May 24, 2010 examination of the Holding Company, the OTS finds that the Holding Company has engaged in unsafe or unsound banking practices, including:
 - (a) operating its wholly owned savings association subsidiary, BankAtlantic, Fort Lauderdale, Florida OTS # 05551 (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 inadequate earnings to augment capital and support reserves;

- (c) operating the Association with an excessive level of adversely classified loans and assets; and
- (d) operating the Association with an excessive concentration of commercial real estate and construction loans.

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

Accepted by:

BANKATLANTIC BANCORP, INC.
Fort Lauderdale, Florida

OFFICE OF THRIFT SUPERVISION

By: _____ /s/
Alan B. Levan
Chairman

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

Date: See Effective Date on page 1

DIRECTORS SIGNATURES

_____/s/
John E. Abdo, Director

_____/s/
David A. Lieberman, Director

_____/s/
D. Keith Cobb, Director

_____/s/
Charlie C. Winningham II

_____/s/
Steven M. Coldren, Director

_____/s/
Jarett S. Levan, Director

_____/s/
Bruno Di Giulian, Director

_____/s/
Willis N. Holcombe, Director