

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of )  
EVABANK )  
EVA, ALABAMA ) ORDER TO CEASE AND DESIST  
(INSURED STATE NONMEMBER BANK) ) FDIC-08-209b

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EvaBank, Eva, Alabama ("Bank"), through its board of directors, having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and violations of law and/or regulations alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST ("CONSENT AGREEMENT") with counsel for the Federal Deposit Insurance Corporation ("FDIC") dated October 27, 2008, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of unsafe or unsound banking practices and violations of law and/or regulations, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices and violations of laws and/or regulations. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

**ORDER TO CEASE AND DESIST**

IT IS HEREBY ORDERED, that the Bank and its institution-affiliated parties cease and desist from the following unsafe or unsound banking practices and violations of laws and/or regulations:

- A. Operating the Bank with a board of directors ("Board") which has failed to provide adequate supervision over and direction to, the management of the Bank in the area of consumer compliance.
- B. Operating with management whose policies and practices in the areas of consumer compliance are detrimental to the Bank and jeopardize the safety of its deposits.
  - 1. Failing to develop and administer an effective Compliance Management System, as described in Financial Institution Letter 10-2007, "Compliance Examination Handbook, Heading II, Compliance Examinations - Compliance Management System" ("Compliance Management System Guidance"), that ensures compliance with federal consumer protection

laws, regulatory guidance, regulations, and policies ("Consumer Laws").

- C. Operating with certain officers and employees who do not have adequate knowledge and/or sufficient allocated time and resources to ensure compliance with Consumer Laws.
- D. Failing to establish an effective process to monitor compliance with Consumer Laws.
- E. Operating with ineffective policies and procedures.
- F. Operating with an inadequate audit program.
- G. Operating in violation of Consumer Laws as set forth in the FDIC's Report of Examination (Compliance) of the Bank as of March 12, 2008 ("Compliance Report").

IT IS FURTHER ORDERED, that the Bank take affirmative action as follows:

1. BOARD OF DIRECTORS

- a. From the effective date of this ORDER, the Board shall participate fully in the oversight of the Bank's compliance management system, to include assuming full responsibility for the approval of sound compliance policies and objectives and for the supervision of all the Bank's compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of

comparable size. The Board shall demonstrate clear and unequivocal expectations regarding compliance.

b. Within 30 days from the effective date of this ORDER, the Bank's Board shall establish a compliance committee comprised of at least 3 directors who are not active officers of the Bank and at least 3 members of senior management, including the Compliance Officer ("Compliance Committee").

i. The Compliance Committee shall meet no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: minutes of the Compliance Committee, Compliance Officer reports, Compliance Management Program audit reports, compliance program policies, and compliance with this ORDER.

ii. The Compliance Committee shall report its monthly discussions to the Board and the Board minutes shall document the review and approval, including the names of any dissenting directors.

iii. Establishment of the Compliance Committee does not in any way diminish the responsibility of

the entire Board to ensure compliance with the provisions of this ORDER.

- iv. The Bank's Board, in conjunction with the Compliance Committee, shall allocate resources to the compliance area that are:
  - a) Commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an adequate Compliance Management System, including procedures ensuring the Bank's compliance with Consumer Laws; and
  - b) Sufficient to ensure the Bank's timely compliance with this provision of this ORDER.
  
- v. The Bank's Board, in conjunction with the Compliance Committee, shall:
  - a) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide for accessibility to both the Board and senior management;
  - b) Require the Compliance Officer to provide to the Compliance Committee monthly written reports; including but not limited

to, new or changes to existing Consumer Laws; training performed; monitoring and audits performed; corrective action taken; and compliance with the ORDER;

- c) Require the Compliance Officer to review and respond promptly in writing to audit reports relating to all areas of the Bank's Compliance Management System;
- d) Ensure that the Compliance Officer has and retains sufficient authority and independence to implement policies related to Consumer Laws and to institute corrective action as needed. This authority shall include the ability to cross departmental lines, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies; and
- e) Ensure that the Compliance Officer receives ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's Compliance Management System.

- c. Within 90 days from the effective date of this ORDER, the Bank's Board shall develop and adopt an educational program for periodic training for each member of the Board. The educational program shall specifically address Consumer Laws.

2. QUALIFIED MANAGEMENT

- a. Within 90 days from the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank.
- b. The qualifications of management shall be assessed on its ability to:
  - i. Comply with the requirements of this ORDER;
  - ii. Operate the Bank in a safe and sound manner;
  - iii. Comply with applicable laws and regulations;and
  - iv. Develop, implement and administer a satisfactory Compliance Management System.
- c. During the life of this ORDER, the Bank shall notify the Regional Director of the Atlanta Regional Office of the FDIC ("Regional Director") in writing of any changes in any of the Bank's directors or senior executive officers. For purposes of this ORDER,

"senior executive officer" is defined as in section 32 of the Act ("Section 32"), 12 U.S.C. §1831i and section 303.101(b) of the FDIC Rules and Regulations, 12 C.F.R. § 303.101(b), and includes any person identified by the FDIC, whether or not hired as an employee, with significant influence over, or who participates in, major policymaking decisions of the Bank. The appointment date and name of the Compliance Officer should be reported to the FDIC.

- d. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of Section 32 and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104.

3. COMPLIANCE MANAGEMENT SYSTEM

- a. Within 60 days after the effective date of this ORDER, the Bank shall develop and implement a Compliance Management System that is commensurate with the level of complexity of the Bank's operations. The Compliance Management System shall:
  - i. Include the development and implementation of a comprehensive written compliance program

("Compliance Program"), which will embrace all of the Consumer Laws to which the Bank is subject. At a minimum, the compliance program shall provide for and include:

- a) Development and implementation of operating procedures for each compliance and fair lending law and regulation to which the Bank is subject. Operating procedures should be distributed to all employees having responsibilities that relate to applicable Consumer Laws.
- b) Development and implementation of a formal training program for all personnel, who have compliance responsibilities, to ensure that all such personnel are thoroughly knowledgeable of applicable compliance requirements.
- c) Development and implementation of procedures for monitoring the Bank's compliance with Consumer Laws.
- d) Development and implementation of procedures to ensure follow-up actions and corrective attention are provided to exceptions identified during monitoring.

- e) Development of specific provisions to preclude future violations of Consumer Laws cited in the Compliance Report and to ensure substantial future adherence with all laws and regulations.
  - b. The Board shall approve the written compliance program and/or any subsequent modification thereto, which approval shall be recorded in the minutes of the Board. Thereafter, the Bank, and its successors and assigns shall follow the written compliance program and/or any subsequent modification thereto.
4. COMPLIANCE OFFICER
- a. Within 30 days after the effective date of this ORDER, the Bank shall have and thereafter retain a qualified compliance officer who possesses the requisite knowledge and experience to administer an effective Compliance Management System. The Compliance Officer shall be given stated written authority by the Bank's Board to implement and supervise the Bank's compliance program, including but not limited to, providing training for the Bank's employees in all Consumer Laws, establishing internal controls and procedures reasonably designed to prevent violations of consumer laws, and

performing or supervising periodic internal audits to ascertain compliance with Consumer Laws and/or the Bank's compliance program.

- b. The Compliance Management System shall provide sufficient staff personnel to assist the Compliance Officer.

5. INDEPENDENT AUDIT PROGRAM

- a. Within 90 days from the effective date of this ORDER, the Bank shall have an independent audit to ensure compliance with Consumer Laws. The audit will assess the Bank's Compliance Program in conjunction with the Compliance Management System Guidance, and at a minimum, shall:
  - i. Define a comprehensive scope;
  - ii. Identify the number of transactions sampled by category or product type;
  - iii. Identify deficiencies;
  - iv. Provide descriptions of or suggestions for corrective actions and time frames for correction; and
  - v. Establish follow-up procedures to verify that corrective actions were implemented and effective.

- b. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Board within 10 days after completion of the independent audit.
- c. Within 30 days of receipt of the independent auditor's written report the Board shall take action to address the audits' findings, correct any deficiencies noted, and implement any recommendations or explain in a writing signed by all Board members why a particular recommendation has not been implemented.
- d. After receipt of the independent audit the Bank shall, on a quarterly basis, conduct subsequent independent audits. The subsequent audits shall comply with all of the provisions of this paragraph (5).

6. CORRECTIONS OF VIOLATIONS OF LAW AND/OR REGULATION

Within 60 days of the effective date of the Order, the Bank, consistent with sound banking practices, shall eliminate and/or correct all violations of Consumer Laws existing in the Bank as set forth in the Compliance Report. In addition, the Bank shall ensure its future compliance with all applicable Consumer Laws, including but not limited to, the Home Mortgage Disclosure Act, the Equal Credit Opportunity Act, the Truth in

Lending Act, the Fair Credit Reporting Act, and the Flood Disaster Protection Act of 1973.

7. SHAREHOLDER NOTIFICATION

Following the effective date of this ORDER, the Bank shall send to its shareholders a description of this ORDER, (a) in conjunction with the Bank's next shareholder communication, and also (b) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Accounting and Disclosure Unit, 550 17<sup>th</sup> Street, N.W., Room F-6043, Washington, D.C. 20429-9990 for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

8. WRITTEN PROGRESS REPORTS

Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof. All progress reports and other written responses to this ORDER

shall be reviewed by the Board of the Bank and made a part of the minutes of the Board meeting. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has released the Bank in writing from making additional reports.

The effective date of this ORDER shall be 10 days after the date of its issuance.

The provisions of this ORDER shall be binding upon the Bank and its institution-affiliated parties.

The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Pursuant to delegated authority.

Dated at Atlanta, Georgia, this 29<sup>TH</sup> day of October, 2008.

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Mark S. Schmidt  
Regional Director  
Division of Supervision and  
Consumer Protection