

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

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In the Matter of )	Order No.: NE-11-15
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)	
<b>BFS BANCORP, MHC</b> )	
Brooklyn, New York )	Effective Date: March 31, 2011
OTS Docket No. H4158 )	
)	
<b>and</b> )	
)	
<b>BROOKLYN FEDERAL BANCORP, INC.</b> )	
Brooklyn, New York )	
OTS Docket No. H4159 )	
_____ )	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, BFS BANCORP, MHC, Brooklyn, New York, OTS Docket No. H4158 (BFS-MHC), and BROOKLYN FEDERAL BANCORP, INC., Brooklyn, New York, OTS Docket No. H4159 (BFB-HC), (collectively, the Holding Companies), by and through their respective Boards of Directors (Board or Boards), have executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

**WHEREAS**, the Holding Companies, by executing the Stipulation, have 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 Northeast 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 Companies and their 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 have resulted in an inadequate level of capital protection at Brooklyn Federal Savings Bank, Brooklyn, New York, OTS Docket No. 03198 (Association), for the volume, type, and quality of assets held by the Association, and inadequate earnings at the Association to augment capital.

**Association Oversight.**

2. Effective immediately, the Holding Companies shall ensure the Association's compliance with the terms of the Order to Cease and Desist issued by the OTS against the Association, Order No.: NE-11-14, effective date March 31, 2011 (2011 Association Order).

**Capital Maintenance and Augmentation Plan.**

3. By April 30, 2011, the Holding Companies shall submit for Regional Director review and non-objection a written plan to maintain and enhance the capital of the Holding Companies and the Association and to ensure that the Association complies with the capital requirements imposed by the 2011 Association Order (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 time frames and methods by which additional capital will be raised and infused into the Association, 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 Companies and/or the Association, to be implemented immediately if the Holding Companies' primary strategy to raise and infuse additional capital is unsuccessful; and

(d) require the Boards to review, on a monthly basis, the Holding Companies' compliance with the Capital Maintenance and Augmentation Plan and the Association's compliance with the Capital Maintenance and Augmentation Plan.

4. Within ten (10) days after receipt of written non-objection from the Regional Director, the Holding Companies shall implement and adhere to the Capital Maintenance and Augmentation Plan. Each Board's review of the Capital Maintenance and Augmentation Plan shall be documented in the respective Board's meeting minutes.

**Capital Distributions and Stock Repurchases.**

5. Effective immediately, the Holding Companies shall not declare, make, or pay any dividends or other capital distributions<sup>1</sup>, or repurchase or redeem any capital stock without receiving the prior written non-objection of the Regional Director. The Holding Companies shall submit a written request for such non-objection to the Regional Director at least thirty (30) days prior to the anticipated date of the proposed dividend payment, capital distribution, or stock redemption.

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<sup>1</sup> The term "capital distribution" is defined in 12 C.F.R. § 563.141.

6. Effective immediately, the Holding Companies shall not take, directly or indirectly, dividends or any other form of payment representing a reduction in the Association's capital from the Association without receiving the prior written non-objection of the Regional Director. The Holding Companies' written request for such 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 capital distribution.

**Directorate and Management Changes.**

7. Effective immediately, the Holding Companies shall comply with the prior notification requirements for changes in directors and Senior Executive Officers<sup>2</sup> as set forth in 12 C.F.R. Part 563, Subpart H.

**Employment Contracts/Compensation Arrangements.**

8. Effective immediately, the Holding Companies 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 Companies, unless they first provide 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 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.

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<sup>2</sup> The term "Senior Executive Officer" is defined at 12 C.F.R. § 563.555.

**Golden Parachute Payments.**

9. Effective immediately, the Holding Companies shall not make any golden parachute payment<sup>3</sup> unless, with respect to each such payment, the Holding Companies have complied with the requirements of 12 C.F.R. Part 359.

**Effective Date, Incorporation of Stipulation.**

10. 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.**

11. 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.**

12. 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.

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

**Submissions and Notices.**

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

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

15. 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:  
Office of Thrift Supervision  
Michael E. Finn  
Regional Director, Northeast Region  
Harborside Financial Center Plaza Five  
Suite 1600  
Jersey City, NJ 07302  
Fax: (201) 413-7543
- (b) To the BFS-MHC:  
Attn: Richard A. Kielty, President and Chief Executive Officer  
BFS Bancorp, MHC  
81 Court Street  
Brooklyn, New York 11201
- (c) To the BFB-HC:  
Attn: Richard A. Kielty, President and Chief Executive Officer  
Brooklyn Federal Bancorp, Inc.  
81 Court Street  
Brooklyn, New York 11201

**No Violations Authorized.**

16. Nothing in this Order or the Stipulation shall be construed as allowing the Holding Companies, their respective Boards, officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED.**

**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Finn  
Regional Director, Northeast Region

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA**  
**Before the**  
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In the Matter of )	Order No.: NE-11-15
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<b>BFS BANCORP, MHC</b> )	
Brooklyn, New York )	
OTS Docket No. H4158 )	
)	Effective Date: March 31, 2011
<b>and</b> )	
)	
<b>BROOKLYN FEDERAL BANCORP, INC.</b> )	
Brooklyn, New York )	
OTS Docket No. H4159 )	
_____ )	

**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 Northeast Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed BFS BANCORP, MHC, Brooklyn, New York, OTS Docket No. H4158 (BFS-MHC), and BROOKLYN FEDERAL BANCORP, INC., Brooklyn, New York, OTS Docket No. H4159 (BFB-HC), (collectively, the Holding Companies), that the OTS is of the opinion that grounds exist to initiate administrative proceedings against the Holding Companies 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 Companies desire to cooperate with the OTS to avoid the time and expense of such administrative cease and desist proceedings 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 4 below concerning Jurisdiction, hereby stipulate and agree to the following terms:

**Jurisdiction.**

1. Brooklyn Federal Savings Bank, Brooklyn, New York, OTS Docket No. 03198 (Association) is a “savings association” within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(4).
2. The Holding Companies are “savings and loan holding companies” within the meaning of 12 U.S.C. § 1813(w)(3) and 12 U.S.C. § 1467a. Accordingly, the Holding Companies are “depository institution holding companies” as that term is defined in 12 U.S.C. § 1813(w)(1).
3. 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.
4. 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 savings associations and savings and loan holding companies. Therefore, the Holding

Companies are subject to the authority of the OTS to initiate and maintain administrative cease and desist proceedings against them pursuant to 12 U.S.C. § 1818(b).

**OTS Findings of Fact.**

5. Based on the exercise of its regulatory responsibilities, including recent examinations of the Association and the Holding Companies, the OTS finds that the Holding Companies have engaged in unsafe or unsound banking practices that have resulted in an inadequate level of capital protection at the Association for the volume, type, and quality of assets held by the Association, and inadequate earnings at the Association to augment capital.

**Consent.**

5. The Holding Companies consent to the issuance by the OTS of the accompanying Order to Cease and Desist (Order). The Holding Companies further agree to comply with the terms of the Order upon the Effective Date of the Order and stipulate 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 Companies waive the following:
- (a) the right to be served with a written notice of the OTS's charges against them 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 Companies 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 Companies acknowledge and agree that their 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 Companies 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 each of the respective Holding Companies 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 duly called board meetings. Copies of the Board Resolutions authorizing the execution of this Stipulation shall be delivered to the OTS, along with the executed original(s) of this Stipulation.

WHEREFORE, BFS Bancorp, MHC, by its directors, executes this Stipulation.

**BFS BANCORP, MHC**  
**Brooklyn, New York**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Angelo J. Di Lorenzo, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Richard A. Kielty, Director

\_\_\_\_\_/s/\_\_\_\_\_  
John A. Loconsolo, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Rebecca Northey, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Daniel O. Reich, Director

\_\_\_\_\_/s/\_\_\_\_\_  
Arthur R. Williams, Director

Accepted by:  
**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Finn  
Regional Director, Northeast Region

Date: See Effective Date on page 1

**WHEREFORE**, Brooklyn Federal Bancorp, Inc., by its directors, executes this

Stipulation.

**BROOKLYN FEDERAL BANCORP, INC.**  
**Brooklyn, New York**

Accepted by:  
**OFFICE OF THRIFT SUPERVISION**

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Angelo J. Di Lorenzo, Director

By: \_\_\_\_\_ /s/ \_\_\_\_\_  
Michael E. Finn  
Regional Director, Northeast Region

Date: See Effective Date on page 1

\_\_\_\_\_/s/\_\_\_\_\_  
Richard A. Kielty, Director

\_\_\_\_\_/s/\_\_\_\_\_  
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\_\_\_\_\_/s/\_\_\_\_\_  
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\_\_\_\_\_/s/\_\_\_\_\_  
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