

# 337  
RECEIVED  
3/5/09

March 3, 2009

Special Inspector General – TARP  
1500 Pennsylvania Avenue, N.W.  
Suite 1064  
Washington, D.C. 20220

Dear Special Inspector General:

We received your letter of February 6, 2009, requesting information pertaining to Middleburg Financial Corporation's use of funds and compliance with The Emergency Economic Stabilization Act of 2008. The original questions, as stated in your request, are listed in bold below along with our response.

**(1) A narrative response specifically outlining (a) your anticipated use of TARP funds; (b) whether the TARP funds were segregated from other institutional funds; (c) your actual use of TARP funds to date; and (d) your expected use of TARP funds. In your response, please take into consideration your anticipated use of unspent TARP funds at the time that you applied for such funds, or any actions that have taken that you would not have been able to take absent the infusion of TARP funds.**

The Company's Board of Directors has adopted a resolution (copy attached) that specifies the authorized uses of TARP funds. For your information, Southern Trust Mortgage LLC is a majority owned subsidiary of Middleburg Bank, which is a wholly owned subsidiary of the Company. Upon receipt, the TARP funds were deposited in the Company's account at the Federal Reserve Bank of Richmond. As of the close of business on February 25, 2009, \$9,682,912 remained in that account and \$12,317,088 had been used to purchase residential mortgage loans or participations in residential mortgage loans from Southern Trust Mortgage LLC. We expect that over time the amount of TARP funds used to purchase mortgage loans and participations from Southern Trust Mortgage LLC will increase. However, the Company's Board of Directors or its Executive Committee may change our authorized uses of TARP funds at any time.

**(2) Your specific plans, and the status of implementation of those plans, for addressing executive compensation requirements associated with the funding. Information provided regarding executive compensation should also include any assessments made of loan risks and their relationship to executive compensation;**

**how limitations on executive compensation will be implemented in line with Department of Treasury guidelines; and whether any such limitations may be offset by other changes to other, longer-term or deferred forms of executive compensation.**

In connection with the consummation of our sale of preferred stock to the Department of Treasury, our five senior executive officers signed letter agreements that address compensation issues. Copies of those letters are attached. Our belief is that those letter agreements have implemented the executive compensation limitations in line with Department of Treasury guidelines.

The Company's Compensation Committee is reviewing our compensation plans to determine whether or not any of those plans provide incentives to take excessive or unnecessary risks that could threaten the value of the Company. That review is not yet complete. However, if upon completion, the Committee determines that amendments to any plan is necessary, the Company has the right to adopt such amendments without the consent of any senior executive officer.

We do not understand that any updates to this letter are required, but, of course, we will provide additional information if you request.

I certify the foregoing is true and correct to the best of my knowledge and belief, pursuant to 18 USC 1001.

Sincerely,



Joseph L. Boling  
Chairman & CEO

Attachments

1719131v1

**MIDDLEBURG FINANCIAL CORPORATION**  
**RESOLUTION OF THE BOARD OF DIRECTORS**

**FEBRUARY 25, 2009**

WHEREAS, the Corporation issued shares of its preferred stock and warrants to purchase shares of its common stock to the United States Department of the Treasury (“UST”) on January 30, 2009 pursuant to the Capital Purchase Program of the UST; and

WHEREAS in the weeks and months preceding such transaction the Corporation carefully analyzed the advisability of issuing its securities to the UST; and

WHEREAS, such analysis included the possible impact on the Corporation of various possible uses of any funds (“CPP Funds”) that the Corporation might receive from the UST; and

WHEREAS, the Board of Directors has determined to specify the permissible uses of the CPP Funds received by the Corporation from the UST.

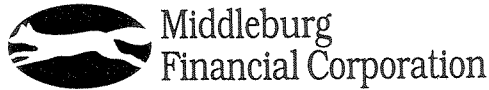
NOW, THEREFORE, BE IT RESOLVED, that the following are authorized uses of the CPP Funds received by the Corporation:

- (1) Interest and noninterest bearing deposits at the Federal Reserve Bank of Richmond;
- (2) Purchases of loans or participations in mortgage loans originated by Southern Trust Mortgage, LLC;

FURTHER RESOLVED, that there is no limit on the amount of CPP Funds that may be devoted to either of such uses; and

FURTHER RESOLVED, that possible other uses of CPP Funds included in any analysis prepared by the Corporation or its employees are not authorized; and

FURTHER RESOLVED, that by action of the Board of Directors or its Executive Committee the authorized uses of CPP Funds received by the Corporation may be changed at any time for any reason that the Board of Directors or Executive Committee, in accordance with Virginia law, determines to be in the best interests of the Corporation.



## Consent Letter

Joseph L. Boling  
Middleburg Financial Corporation  
111 West Washington Street  
Middleburg, Virginia 20117

Dear Mr. Boling:

Middleburg Financial Corporation (the "*Company*") anticipates entering into a Securities Purchase Agreement (the "*Securities Purchase Agreement*"), with the United States Department of Treasury ("*Treasury*") that provides for the Company's participation in the Treasury's TARP Capital Purchase Program (the "*CPP*"). If the Company does not participate or ceases at any time to participate in the CPP, this letter shall be of no further force and effect.

For the Company to participate in the CPP and as a condition to the closing of the investment contemplated by the Securities Purchase Agreement, the Company is required to establish specified standards for incentive compensation to its senior executive officers and to make changes to its compensation agreements. The Company intends to apply these standards to its senior executive officers. To comply with these requirements, and in consideration of the benefits that you will receive as a result of the Company's participation in the CPP, you agree as follows:

- (1) *No Golden Parachute Payments.* The Company is prohibiting any golden parachute payment to you during any "CPP Covered Period." A "*CPP Covered Period*" is any period during which (A) you are a senior executive officer and (B) Treasury holds an equity or debt position acquired from the Company in the CPP.
- (2) *Recovery of Bonus and Incentive Compensation.* Any bonus and incentive compensation paid to you during a CPP Covered Period is subject to recovery or "clawback" by the Company if the payments were based on materially inaccurate financial statements or any other materially inaccurate performance metric criteria.
- (3) *Compensation Program Amendments.* Each of the Company's compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, "*Benefit Plans*") with respect to you is hereby amended to the extent necessary to give effect to provisions (1) and (2) and you agree to execute any such amendments as maybe necessary to implement the agreements contained in this letter.


- (4) *Benefit Plan Review.* In addition, the Company is required to review its Benefit Plans to ensure that they do not encourage senior executive officers to take unnecessary and excessive risks that threaten the value of the Company. To the extent any such review requires revisions to any Benefit Plan with respect to you, you agree that the Company may implement unilaterally such changes to the Benefits Plans that the Company determines are necessary consistent with its review of the Benefit Plans.
- (5) *Definitions and Interpretation.* This letter shall be interpreted as follows:
- "Senior executive officer" means the Company's "senior executive officers" as defined in subsection 111(b)(3) of EESA Treasury Regulation, Title 31 CFR Part 30.9.
  - "Golden parachute payment" is used with the same meaning as in Section 111(b)(2)(C) of EESA.
  - "EESA" means the Emergency Economic Stabilization Act of 2008 as implemented by guidance or regulation issued by the Department of the Treasury and as published in the Federal Register on October 20, 2008.
  - The term "Company" includes any entities treated as a single employer with the Company under 31 C.F.R. § 30.1(b) (as in effect on the Closing Date). You are also delivering a waiver pursuant to the Securities Purchase Agreement, and, as between the Company and you, the term "employer" in that waiver will be deemed to mean the Company as used in this letter.
  - The term "CPP Covered Period" shall be limited by, and interpreted in a manner consistent with, 31 C.F.R. § 30.11 (as in effect on the Closing Date).
  - Provisions (1), (2), and (4) of this letter are intended to, and will be interpreted, administered and construed to, comply with Section 111 of EESA (and, to the maximum extent consistent with the preceding, to permit operation of the Benefit Plans in accordance with their terms before giving effect to this letter).
  - Miscellaneous. To the extent not subject to federal law, this letter will be governed by and construed in accordance with the laws of the Commonwealth of Virginia. This letter may be executed in two or more counterparts, each of which will be deemed to be an original. A signature transmitted by facsimile will be deemed an original signature.

We appreciate the concessions you are making and look forward to your continued leadership during these financially turbulent times.


[Signatures on next page]

Yours sincerely,

MIDDLEBURG FINANCIAL CORPORATION

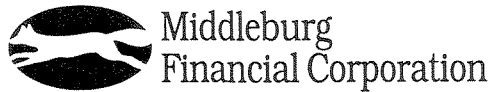
By:   
Gary K. Shook  
President

Intending to be legally bound,  
I agree with and accept the foregoing  
terms on the date set forth below.

  
Joseph L. Boling

Date: January 30, 2009

cc: Joseph L. Boling, via Hand Delivery



## Consent Letter

Gary R. Shook  
Middleburg Financial Corporation  
111 West Washington Street  
Middleburg, Virginia 20117

Dear Mr. Shook:

Middleburg Financial Corporation (the "*Company*") anticipates entering into a Securities Purchase Agreement (the "*Securities Purchase Agreement*"), with the United States Department of Treasury ("*Treasury*") that provides for the Company's participation in the Treasury's TARP Capital Purchase Program (the "*CPP*"). If the Company does not participate or ceases at any time to participate in the CPP, this letter shall be of no further force and effect.

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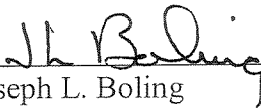
We appreciate the concessions you are making and look forward to your continued leadership during these financially turbulent times.

*[Signatures on next page]*

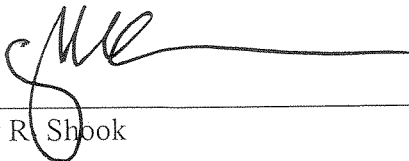


Yours sincerely,

MIDDLEBURG FINANCIAL CORPORATION

By:   
Joseph L. Boling  
Chairman and Chief Executive Officer

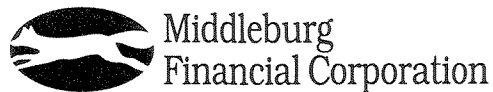
Intending to be legally bound,  
I agree with and accept the foregoing  
terms on the date set forth below.

  
\_\_\_\_\_  
Gary R. Shook

Date: January 30, 2009

cc: Gary R. Shook, via Hand Delivery

\_\_\_\_\_



## Consent Letter

Arch A. Moore, III  
Middleburg Financial Corporation  
111 West Washington Street  
Middleburg, Virginia 20117

Dear Mr. Moore:

Middleburg Financial Corporation (the "*Company*") anticipates entering into a Securities Purchase Agreement (the "*Securities Purchase Agreement*"), with the United States Department of Treasury ("*Treasury*") that provides for the Company's participation in the Treasury's TARP Capital Purchase Program (the "*CPP*"). If the Company does not participate or ceases at any time to participate in the CPP, this letter shall be of no further force and effect.

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- (3) *Compensation Program Amendments.* Each of the Company's compensation, bonus, incentive and other benefit plans, arrangements and agreements (including golden parachute, severance and employment agreements) (collectively, "*Benefit Plans*") with respect to you is hereby amended to the extent necessary to give effect to provisions (1) and (2) and you agree to execute any such amendments as maybe necessary to implement the agreements contained in this letter.
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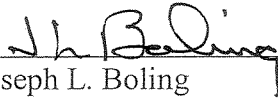
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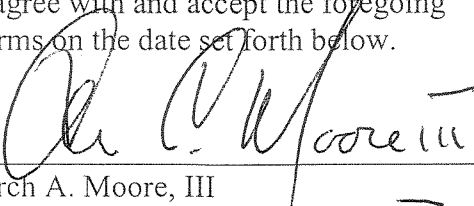
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Yours sincerely,

MIDDLEBURG FINANCIAL CORPORATION

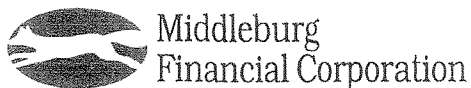
By:   
Joseph L. Boling  
Chairman and Chief Executive Officer

Intending to be legally bound,  
I agree with and accept the foregoing  
terms on the date set forth below.

  
Arch A. Moore, III

Date: January 30, 2009

cc: Arch A. Moore, III, via Hand Delivery



## Consent Letter

James H. Patterson  
Middleburg Financial Corporation  
111 West Washington Street  
Middleburg, Virginia 20117

Dear Mr. Patterson:

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*[Signatures on next page]*

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MIDDLEBURG FINANCIAL CORPORATION

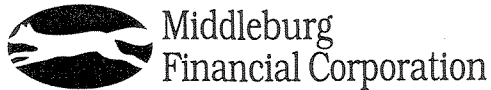
By:   
Joseph L. Boling  
Chairman and Chief Executive Officer

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I agree with and accept the foregoing  
terms on the date set forth below.

  
James H. Patterson

Date: January 30, 2009

cc: James H. Patterson, via Hand Delivery



## Consent Letter

Rodney J. White  
Middleburg Financial Corporation  
111 West Washington Street  
Middleburg, Virginia 20117

Dear Mr. White:

Middleburg Financial Corporation (the "*Company*") anticipates entering into a Securities Purchase Agreement (the "*Securities Purchase Agreement*"), with the United States Department of Treasury ("*Treasury*") that provides for the Company's participation in the Treasury's TARP Capital Purchase Program (the "*CPP*"). If the Company does not participate or ceases at any time to participate in the CPP, this letter shall be of no further force and effect.

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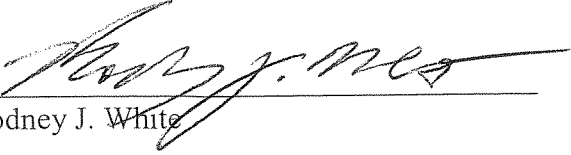
*[Signatures on next page]*

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By:   
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Chairman and Chief Executive Officer

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Date: January 30, 2009

cc: Rodney J. White, via Hand Delivery