

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of: )  
Fidelity National Bank )  
Norcross, Georgia )

CONSENT ORDER

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, is in the process of examining Fidelity National Bank, Norcross, Georgia (Bank), and his findings will be contained in a Report of Examination to be released at a later date.

The Bank, by and through its duly elected and acting Board of Directors (Board), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated December 21, 2000, that is accepted by the Comptroller. By this Stipulation and Consent, that is incorporated by reference, the Bank has consented to the issuance of this Consent Order (Order) by the Comptroller.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

ARTICLE I

COMPLIANCE COMMITTEE AND REPORTS

(1) Within fifteen (15) days, the Board shall appoint a Compliance Committee of at least three (3) directors, none of whom shall be an employee of the Bank or any of its affiliates (as the term "affiliate" is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Director of Special Supervision/Fraud ("Director"). The Compliance

Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order.

(2) The Compliance Committee shall meet at least monthly.

(3) Within fifteen (15) days of the appointment of the Committee and every thirty (30) days thereafter, the Compliance Committee shall submit a written progress report to the Board and to the Director of Special Supervision/Fraud, Office of the Comptroller of the Currency, 250 E Street, S.W., Mail Stop 6-4, Washington, D.C. 20219.

(4) The report shall set forth in detail:

(a) actions taken to comply with each Article of this Order; and the results of those actions;

(b) a description of the actions still needed to be taken to comply with each Article of this Order;

(c) any actions initiated by the Board and the Bank pursuant to criticisms and comments in any future Report of Examination.

## ARTICLE II

### SOLICITATION / ACCEPTANCE OF NEW ACCOUNTS

(1) Effective immediately, the Bank shall not solicit or accept any new Trust accounts or new Trust account relationships, including, but not limited to, self-directed individual retirement accounts (SDIRAs).

## ARTICLE III

### ENGAGEMENT OF CERTIFIED PUBLIC ACCOUNTING FIRM

(1) The Bank shall engage the services of a Certified Public Accounting (CPA) firm to review and evaluate the accounts and operations of the Bank's Trust Department, including its administration of self-directed individual retirement accounts (SDIRAs).

(2) The Bank shall ensure that the arrangements concerning the Bank's engagement of a Certified Public Accounting (CPA) firm, including the firm selected and the scope of engagement, are acceptable to the Director.

(3) Within fifteen (15) days, the Bank shall deliver to the Director for his review and approval a CPA engagement letter that identifies the CPA firm retained by the Bank and specifies in detail the scope of the engagement.

(4) The Bank shall require, as part of the engagement, that the CPA firm:

- (a) Make available to the Director all preliminary and final findings, recommendations, and work papers related to the engagement at the same time as they are provided to the Bank; and
- (b) Treat all information obtained as a result of the engagement as confidential.

(5) The Bank shall make available to the CPA firm all records, reports and other information necessary, in the judgment of the CPA firm, under the direction of the Director, to carry out the requirements of the engagement letter.

(6) The Bank shall be responsible for all expenses associated with the requirements of this Article, including, but not limited to, all professional fees of the CPA firm.

## ARTICLE IV

### ENGAGEMENT OF LAW FIRM

(1) The Bank shall engage the services of a law firm to review and evaluate the Bank's accounts and operations of the Bank's Trust Department, including its administration of SDIRAs.

(2) The Bank shall ensure that the arrangements concerning the Bank's engagement of a law firm, including the firm selected and the scope of engagement, are acceptable to the Director.

(3) Within fifteen (15) days, the Bank shall deliver to the Director for his review and approval a law firm engagement letter that identifies the law firm retained by the Bank and specifies in detail the scope of the engagement.

(4) The engagement shall provide that the law firm shall treat all information obtained as a result of the engagement as confidential.

(5) The Bank shall require, as part of the engagement, that the law firm make available to the Director all preliminary and final findings and recommendations as well as any interview notes or other factual information or data used to support such findings and recommendations related to the engagement at the same time as they are provided to the Bank.

(6) The Bank shall make available to the law firm all records, reports, and other information necessary, in the judgment of the firm, under the direction of the Director, to carry out the requirements of the engagement letter..

(7) The Bank shall be responsible for all expenses associated with the requirements of this Article, including but not limited to, all professional fees of the law firm.

## ARTICLE V

### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within thirty (30) days, the Board shall ensure that the Bank has management with the requisite competence, experience, character, and integrity in place on a full-time basis in the Trust Department Manager position and in any other position responsible for the management or oversight of SDIRAs to carry out the Board's policies, to ensure compliance with this Order, applicable laws, rules and regulations, and to manage the day-to-day operations of the Trust Department (including SDIRAs) in a safe and sound manner.

(2) Within sixty (60) days, the Board shall:

- (a) review the capabilities of the Bank's management to perform present and anticipated duties with respect to the Trust Department (including SDIRAs) and the Board will determine whether management changes should be made, including the need for additions to or deletions from current management;
- (b) assess each of the officer's experience, other qualifications and performance compared to the position's description, duties and responsibilities.

(3) If the Board determines that an officer will continue in his/her position but that the officer's depth of skills needs improvement, the Board will, within sixty (60) days, develop and implement a written program, with specific time frames, to improve the officer's supervision and management of the Bank. At a minimum, the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;

- (b) a program to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and
- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

Upon completion, a copy of the written program shall be submitted to the Director.

(4) If a position mentioned in Paragraph (1) of this Article is vacant now or in the future, including if the Board realigns an existing officer's responsibilities and a position mentioned in Paragraph (1) of this Article becomes vacant, the Board shall, within sixty (60) days of such vacancy, appoint a capable person to the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Order and the safe and sound operation of functions within the scope of that position's responsibility.

(5) Prior to the appointment of any individual to an executive officer position, the Board shall submit to the Director the following information:

- (a) the information sought in the "Changes in Directors and Senior Executive Officers" booklet of the Comptroller's Corporate Manual, together with a legible fingerprint card for the proposed individual;
- (b) a written statement of the Board's reasons for selecting the proposed officer; and
- (c) a written description of the proposed officer's duties and responsibilities.

(6) The Director shall have the power of veto over the employment of the proposed executive officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer.

(7) The requirement to submit information and the prior veto provisions of this Article are based on the authority of 12 U.S.C. § 1818(b)(6)(E) and do not require the Comptroller to complete his review and act on any such information or authority within ninety (90) days.

## ARTICLE VI

### BANK SECRECY ACT - INTERNAL CONTROLS

(1) Within thirty (30) days, the Board shall review and revise the Bank's written program of policies and procedures and shall implement thereafter and ensure adherence to a revised written program of policies and procedures (including for the Trust Department) that achieves and maintains compliance with the Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 - 5330), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C (collectively referred to as the Bank Secrecy Act). At a minimum, this revised written program shall establish:

- (a) a system of internal controls and independent testing and auditing to ensure ongoing compliance with the Bank Secrecy Act;
- (b) operating procedures for both the opening of new accounts and the monitoring of high risk accounts;
- (c) adequate controls and procedures to ensure that all suspicious and large currency transactions are identified and reported. Procedures should be comprehensive as to all points of cash entry and exit;
- (d) procedures to ensure that records are maintained on monetary instrument transactions and funds transfers, as required by the Bank Secrecy Act;

- (e) comprehensive procedures to identify and report to appropriate management personnel:
  - (i) receipt and disbursement of wire transfers without an apparent business reason; and
  - (ii) receipt and disbursement of wire transfers when they are inconsistent with the customer's business;
- (f) a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness of and compliance with the requirements of the Bank Secrecy Act and the Office of Foreign Assets Control (OFAC), including the currency reporting and monetary instrument and funds transfer record keeping requirements, and the reporting requirements associated with Suspicious Activity Reports (SARs) pursuant to 12 C.F.R. Part 21, Subpart B;
- (g) an officer who will be responsible for filing Currency Transaction Reports (CTRs) and SARs; and
- (h) comprehensive guidelines, procedures, and systems for compliance with the rules and regulations of the Office of Foreign Assets Control (OFAC).

(2) Upon completion, a copy of this program shall be submitted to the Director for approval. In the event the Director recommends changes to the program, the Board shall immediately incorporate those changes into the program.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.



## ARTICLE VII

### SUSPICIOUS ACTIVITY REPORTS

(1) Within thirty (30) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to establish a system of internal controls and processes to maintain compliance with the requirements to file Suspicious Activity Reports set forth in 12 C.F.R. § 21.11, as amended

(2) Upon completion, a copy of this program shall be submitted to the Director for approval. In the event the Director recommends changes to the program, the Board shall immediately incorporate those changes into the program.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

## ARTICLE VIII

### BOOKS AND RECORDS

(1) The Board shall take all necessary actions to ensure that the Trust Department's books, records and management information systems (MIS) are maintained in a complete and accurate condition.

(2) Within thirty (30) days, the Board shall submit to the Director an action plan detailing how the Board will reconcile, balance, and maintain the Trust Department's books, records and MIS in a complete and accurate condition, and setting forth a timetable for implementing the plan. In the event the Director recommends changes to the action plan, the Board shall immediately incorporate those changes into the plan.

## ARTICLE IX

### CHARGE OFF OF ASSETS

(1) The Bank will ensure on an ongoing basis that uncollected trust and custodial fees exceeding ninety (90) days are not maintained as receivables.

(2) The Bank shall place all trust department accounts holding assets in receivership on a cash fee basis. All accounts holding such assets, or assets whose market value is likewise impaired and considered doubtful or worthless, may not be on accrual.

## ARTICLE X

### PRODUCTS AND SERVICES

(1) Within sixty (60) days, the Board shall prepare a written analysis of the Trust (including SDIRA) business which fully assesses the risks and benefits of this line of business. This analysis shall include an assessment of the Bank's controls, procedures, MIS and management of the trust and custodial account operations, and shall tie directly to the Bank's strategic plan. This analysis shall also consider whether the Bank should continue to accept SDIRAs and other trust accounts upon termination of this order.

## ARTICLE XI

### VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the Report of Examination (ROE) to be issued in early 2001. The monthly progress reports required by Article I of this Order shall include the date and manner in which each correction has been effected during that reporting period.

(2) Within sixty (60) days of issuance of the Report of Examination, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(3) Within sixty (60) days of receipt of any subsequent Report of Examination which cites violations of law, rule, or regulation, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(4) Upon adoption, a copy of these procedures shall be promptly forwarded to the Director.

(5) The Board shall ensure that the Bank has policies, processes, personnel, and control systems to ensure implementation of and adherence to the procedures developed pursuant to this Article.

## ARTICLE XII

### CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or approval of the Director, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Unless otherwise stated, any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Director for good cause upon written application by the Board.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

IT IS SO ORDERED, this 20th day of December, 2000.

/s/

12/20/00

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Leann G. Britton  
Senior Deputy Comptroller for Bank Supervision  
Operations

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Date

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

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**In the Matter of:** )  
Fidelity National Bank )  
Norcross, Georgia )

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**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller) has initiated cease and desist proceedings against Fidelity National Bank, Norcross, Georgia (Bank) pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated December 20, 2000 (Order);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

**ARTICLE I**

**Jurisdiction**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## ARTICLE II

### Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller. The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

## ARTICLE III

### Waivers

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Order;
  - (c) all rights to seek any type of administrative or judicial review of the Order; and
  - (d) any and all rights to challenge or contest the validity of the Order.

## ARTICLE IV

### Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting

the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him/her by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set her hand on behalf of the Comptroller.

/s/

12/20/00

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Leann G. Britton  
Senior Deputy Comptroller for Bank Supervision  
Operations

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Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/ James B. Miller, Jr.

12/21/00

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Date

/s/ Larry D. Peterson

12/21/00

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Date

/s/ W. C. Shephard

12/21/00

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Date

/s/ Kevin S. King

12/21/00

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Date

/s/ Edward G. Bowen, MD

12/21/00

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Date

/s/ Rankin M. Smith, Jr.

12/21/00

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Date

/s/ Felker W. Ward, Jr.

12/21/00

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Date

/s/ Gordon M. Sherman

12/21/00

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/s/ David R. Bockel

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Date

12/21/00

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Date

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Date