

#2001-41

**AGREEMENT BY AND BETWEEN
CLEAR LAKE NATIONAL BANK
SAN ANTONIO, TEXAS
AND
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

Clear Lake National Bank, San Antonio, Texas (Bank) and the Comptroller of the Currency of the United States of America (Comptroller) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination, dated April 30, 2001 (ROE).

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (Board), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

ARTICLE I -- JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(4) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to:

Gerry B. Hagar
Assistant Deputy Comptroller
San Antonio South Field Office
10101 Reunion Place, Blvd., Suite 402
San Antonio, Texas 78216-4165

ARTICLE II -- COMPLIANCE COMMITTEE

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least five (5) directors, of which no more than three shall be employees 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 Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement.

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

(3) Within thirty (30) 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 setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

ARTICLE III -- CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by September 30, 2001 and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

(a) Risk based capital at least equal to ten percent (10%) of risk-weighted assets;

(b) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets.¹

(2) The requirement in this Agreement to meet and maintain a specific capital level means that the Bank may not be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(3) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a three year capital program. The program shall include:

(a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);

(b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;

(c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;

(d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs; and

¹ Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets. As further noted in 12 C.F.R. § 3.2(a), a bank may be required to compute and maintain its leverage ratio on the basis of actual, rather than average total assets. This language would have to be modified to reflect that change.

(e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available.

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for approval. Upon approval by the Assistant Deputy Comptroller, the Bank shall implement and adhere to the capital program. The Board shall review and update the Bank's capital program on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Assistant Deputy Comptroller.

(5) 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 IV -- LIQUIDITY

(1) The Board shall ensure that the liquidity of the Bank continues to be maintained at a level that is sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base, including a plan for funding the large block of certificates of deposit, \$17 million, maturing in 2002.

(2) Within sixty (60) days, the board shall develop a written plan detailing the measures being considered to fund its maturing deposits. The plan should have at least one alternative measure to utilize if the preferred one does not materialize.

(a) The Board shall review, and create a report detailing, the Bank's liquidity on a monthly basis. The review shall consider: a maturity schedule of certificates of deposit; and,

(b) the volatility of deposits, especially certificates of deposit.

(3) The monthly reports shall set forth liquidity requirements and sources, and shall establish a contingency plan for addressing decreases in deposits. Copies of these reports and a copy of the written plan described in (2) shall be forwarded to the Assistant Deputy Comptroller.

ARTICLE V -- BANK SECRECY ACT: INTERNAL CONTROLS

(1) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to ensure 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 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) frequent or large volume cash deposits or wire transfers or book entry transfers to or from offshore or domestic entities or individuals;
 - (ii) wire transfers or book entry transfers that are deposited into several accounts;
 - (iii) receipt and disbursement of wire transfers or book entry transfers without an apparent business reason;
 - (iv) receipt and disbursement of wire transfers or book entry transfers when they are inconsistent with the customer's business;
 - (v) receipt and disbursement of currency or monetary instruments when they are inconsistent with the customer's business; and
 - (vi) bank accounts opened in the name of a casa de cambio (money exchange house) or any "financial institution" as defined in 31 C.F.R. § 103.11(n) (bank, broker/dealer, currency dealer or exchanger, issuer or seller or redeemer of traveler's checks or money orders, transmitter of funds, telegraph company, casino, etc.);
- (c) 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 recordkeeping requirements, and the

reporting requirements associated with Suspicious Activity Reports (SARs) pursuant to 12 C.F.R. Part 21, Subpart B;

- (d) an officer who will be responsible for filing Currency Transaction Reports (CTRs), Reports of International Transportation of Currency or Monetary Instruments (CMIRs), and Reports of Foreign Bank and Financial Accounts (FBARs);
- (e) comprehensive guidelines and procedures to identify and report both the shipment and receipt of currency or monetary instruments via common couriers, which guidelines should specifically detail procedures that will cover and address improperly labeled courier pouches containing monetary instruments, as well as related procedures for reporting and filing Suspicious Activity Reports for such pouches; and
- (f) 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 Assistant Deputy Comptroller for review. In the event the Assistant Deputy Comptroller 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 VI -- INTEREST RATE RISK MANAGEMENT

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written interest rate risk management plan. In formulating this plan, the

Board shall refer to the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook. The plan shall provide for a coordinated interest rate risk strategy and, at a minimum, address:

- (a) the establishment of adequate management reports on which to base sound interest rate risk management decisions;
- (b) establishment and guidance of the Bank's strategic direction and tolerance for interest rate risk;
- (c) implementation of effective tools to measure and monitor the Bank's performance and overall interest rate risk profile;
- (d) employment of competent personnel to manage interest rate risk;
- (e) prudent limits on the nature and amount of interest rate risk that can be taken; and
- (f) periodic review of the Bank's adherence to the policy.

(2) Upon adoption, a copy of the written plan shall be forwarded to the Assistant Deputy Comptroller for review.

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

ARTICLE VII -- INTERNAL LOAN REVIEW

(1) The Board shall, within sixty (60) days, employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem loans and leases.

(2) Within ninety (120) days, the Board shall establish an effective, independent and on-going loan review system to periodically review the Bank's loan and lease portfolios to assure

the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth the Loan Portfolio Management booklet, A-LPM, of the *Comptroller's Handbook*. Such reports shall, at a minimum, include conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;
- (d) credit and collateral documentation exceptions;
- (e) the identification and status of credit related violations of law, rule or regulation;
- (f) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of the Article;
- (g) concentrations of credit;
- (h) loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (i) loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(3) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program providing for independent review of problem loans and leases in the Bank's loan and lease portfolios for the purpose of periodically monitoring portfolio trends. The program shall require a written report to the Board. At a minimum the program shall provide for an independent reviewer's assessment of the Bank's:

- (a) monitoring systems for early problem loan identification to assure the timely identification and rating of loans and leases based on lending officer submissions;
- (b) statistical records that serve as a basis for identifying sources of problem loans and leases by industry, size, collateral, and individual lending officer;
- (c) system for monitoring previously charged-off assets and their recovery potential;
- (d) system for monitoring compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function; and
- (e) system for monitoring the adequacy of credit and collateral documentation.

(4) Within sixty (60) days, the board shall review a monthly report reflecting the level and trend of major credit and collateral exceptions. The report should track exceptions at the officer level as well as at the bank level. The amount of exceptions should be expressed as a percentage of the dollar amount of each portfolio as well as a percentage of the number of loans in the portfolios. The report should also include the age of each exception. The Board should use this report to ensure that critical documentation is being received in a timely manner to make informed credit decisions and that the number of exceptions remains at a manageable level.

(5) A written description of the program called for in this Article shall be forwarded to the Assistant Deputy Comptroller upon implementation.

(6) 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.

(7) The Board shall evaluate the internal loan and lease review report(s) and shall ensure that immediate, adequate, and continuing remedial action, if appropriate, is taken upon all findings noted in the report(s).

(8) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be preserved in the Bank.

ARTICLE VIII -- CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or approval, 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/her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

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

-signed-

Gerry B. Hagar
Assistant District Comptroller

06-20-01

Date

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

-signed-

Charles I. Castro, Jr.

06-20-01

Date

-signed-

Dr. William B. Donovan

06-20-01

Date

-signed-

Billie C. Holbert, Jr.

06-20-01

Date

-signed-

Perry M. Kallison

06-20-01

Date

-signed-

Oscar Nipper

06-20-01

Date

-signed-

H. Keith Spalding

06-20-01

Date

-signed-

Nancy A. Kinder

06-20-01

Date