

#2001-78

AGREEMENT BY AND BETWEEN
Marine National Bank of Naples
Naples, Florida
and
The Office of the Comptroller of the Currency

Marine National Bank of Naples, Naples, Florida (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 2, 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 the:

Assistant Deputy Comptroller
South Florida Field Office
5757 Blue Lagoon Drive, Suite 200
Miami, Florida 33126

ARTICLE II

STRATEGIC PLAN

(1) Within ninety days (90) days, the Board shall revise, adopt, implement, and thereafter ensure Bank adherence to its written strategic plan for the Bank covering at least a three-year period. The revised strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;
- (c) the development of strategic goals and objectives to be accomplished over the short and long term;

- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(c) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line development and market segments that the Bank intends to promote or develop;
- (h) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (i) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (j) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and
- (k) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Upon adoption, a copy of the revised plan shall be forwarded to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection.

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

ARTICLE III

PROFIT PLAN

(1) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written profit plan. This plan shall include, at minimum, the following elements:

- (a) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;
- (b) realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
- (c) a budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (d) a description of the operating assumptions that form the basis for major projected income and expense components.

(2) The budgets and related documents required in paragraph (1) above for 2002 shall be submitted to the Assistant Deputy Comptroller upon completion. The Board shall submit to the Assistant Deputy Comptroller annual budgets as described in paragraph (1) above for each year this Formal Agreement remains in effect. The budget for each year shall be submitted on or before November 30, of the preceding year.

(3) The Board shall forward comparisons of its balance sheet and profit and loss statement to the profit plan projections to the Assistant Deputy Comptroller on a quarterly basis.

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

ARTICLE IV

INTEREST RATE RISK POLICY

(1) Within sixty (60) days, the Board shall revise, adopt, implement, and thereafter ensure Bank adherence to its written interest rate risk policy. In formulating this policy, the Board shall refer to the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook. The policy 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) prudent limits on the nature and amount of interest rate risk that can be taken;
- (e) limits based on rate shock analyses for net interest income, net income, and the economic value of equity;
- (f) guidelines based on gap ratios for monitoring on a monthly basis; and
- (g) periodic review of the Bank's adherence to the policy.

(2) Upon adoption, a copy of the written policy 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 V

LIQUIDITY

(1) Within ninety (90) days the Board shall adopt, implement and thereafter ensure Bank adherence to a liquidity plan that is sufficient to withstand any anticipated or extraordinary demand against its funding base. Such actions may include, but are not necessarily limited to:

- (a) selling assets;
- (b) obtaining lines of credit from third parties;
- (c) obtaining lines of credit from correspondent banks; and
- (d) injecting additional equity capital.

(2) The Board shall review the Bank's liquidity on a monthly basis. Such reviews shall consider:

- (a) a maturity schedule of certificates of deposit, including large uninsured deposits;
- (b) the volatility of demand deposits including escrow deposits;
- (c) the amount and type of loan commitments and standby letters of credit;
- (d) an analysis of the continuing availability and volatility of present funding sources;

- (e) an analysis of the impact of decreased cash flow from the Bank's loan portfolio resulting from delinquent and non-performing loans; and
- (f) an analysis of the impact of decreased cash flow from the sale of loans or loan participations.

(3) The Board shall take appropriate action to ensure adequate sources of liquidity in relation to the Bank's needs. Monthly reports shall set forth liquidity requirements and sources and establish a contingency plan. Copies of these reports shall be forwarded to the Assistant Deputy Comptroller in the Bank's quarterly report to the Assistant Deputy Comptroller.

ARTICLE VI

LOAN PORTFOLIO MANAGEMENT

(1) The Board shall, within ninety (90) days, develop, implement, and thereafter ensure Bank adherence to a written program to improve the Bank's loan portfolio management.

The program shall include, but not be limited to:

- (a) mandated semi-annual loan reviews;
- (b) procedures to ensure satisfactory and perfected collateral documentation;
- (c) procedures to ensure that extensions of credit are granted, by renewal or otherwise, to any borrower only after obtaining and analyzing current and satisfactory credit information;
- (d) procedures to ensure conformance with loan approval requirements;
- (e) a system to track and analyze exceptions;
- (f) procedures to ensure conformance with Call Report instructions;

- (g) procedures to ensure the accuracy of internal management information systems;
- (h) a performance appraisal process, including performance appraisals, job descriptions, and incentive programs for loan officers, which adequately consider their performance relative to policy compliance, documentation standards, accuracy in credit grading, and other loan administration matters; and
- (i) procedures to track and analyze concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios.
- (j) Upon completion, a copy of the program shall be forwarded to the Assistant Deputy Comptroller.

ARTICLE VII

CREDIT AND COLLATERAL EXCEPTIONS

(1) Within ninety (90) days the Bank shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(2) Within ninety (90) days the Board shall ensure proper collateral documentation is maintained on all loans and correct each collateral exception listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of

loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(3) At the expiration of the ninety (90) day period, the Board shall list all loans for which it is unable to obtain such credit and collateral documentation. This list shall include a detailed explanation of the actions taken to obtain such documentation, the reasons why such documentation has not been obtained, and a plan to obtain such documentation by a specified time.

(4) Effective immediately, the Bank may grant, extend, renew, alter or restructure any loan or other extension of credit only after:

- (a) documenting the specific reason or purpose for the extension of credit;
- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;
- (d) obtaining and analyzing current and satisfactory credit information, including cash flow analysis, where loans are to be repaid from operations;
 - (i) Failure to obtain the information in (4)(d) shall require a majority of the full Board (or a delegated committee thereof) to certify in writing the specific reasons why obtaining and analyzing the information in (4)(d) would be detrimental to the best interests of the Bank.
 - (ii) A copy of the Board certification shall be maintained in the credit file of the affected borrower(s). The certification will be reviewed by this Office in subsequent examinations of the Bank; and

- (e) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable.

ARTICLE VIII

BANK INFORMATION SYSTEMS RESUMPTION AND CONTINGENCY PLAN

(1) Within sixty (60) days, the Bank shall develop and test a formal Bank Information Systems Resumption and Corporate Contingency Plan which, at a minimum, complies with the requirements set forth in OCC Banking Bulletin 97-23.

(2) Within ninety (90) days, and at least annually thereafter, the Board shall review its Bank Information Systems resumption and contingency planning and perform a test of all necessary programs and system applications using its backup location, or recovery operation center, to ensure the continuation of operations in the event of a disaster. The Board shall document the results of this review and test in its meeting minutes.

(3) A copy of the plan and test results shall be forwarded to the Assistant Deputy Comptroller for review.

ARTICLE IX

CORRECT BANK INFORMATION SYSTEMS DEFICIENCIES

(1) The Bank shall immediately take all steps necessary to improve the management of the Bank's Information Systems (BIS) activities and correct each deficiency cited in the Report of Examination or any subsequent Report of Examination.

(2) Within sixty (60) days, the Bank shall implement effective BIS security and operations procedures as described in the Federal Financial Institutions Examination Council's

1996 Information Systems Examination Handbook, and Banking Circular Number 229, dated May 31, 1988.

(3) Within ninety (90) days, the Bank shall develop an effective and independent internal BIS audit program. At a minimum, the BIS audit program shall be performed by an independent and qualified individual, and include fundamental elements of a sound audit program as described in the Federal Financial Institutions Examination Council's 1996 Information Systems Examination Handbook.

(4) The Board shall provide a quarterly written progress report on each of the requirements of this article to the Assistant Deputy Comptroller.

ARTICLE X

SERVICE AGREEMENTS WITH OUTSIDE PARTIES

(1) Before entering into a contractual agreement with any party which provides technology services to the Bank including data processing, loan applications processing, account management and management information systems (MIS), the Board shall perform a comprehensive due diligence review of the servicer, consistent with OCC Advisory Letter 2000-12, to assess management capabilities, adequacy of staffing, existence of proper internal controls, comprehensiveness of operating procedures, and adequacy of MIS to fulfill the Bank's needs. The Board shall also assess the financial strength of the servicer and determine the ongoing viability of the servicer. If the Board's evaluation does not demonstrate that the servicer possesses these attributes, then the Board shall not enter into the agreement. The Board shall submit to the Assistant Deputy Comptroller a copy of their written evaluation before the execution of a contract with any servicer.

(2) Within sixty (60) days, the Board shall prepare the aforementioned written analysis with regard to any servicer with which the Bank has entered into an existing contractual service agreement, and submit a copy to the Assistant Deputy Comptroller.

(3) The Board shall designate a Bank officer to monitor the operations of such servicer(s) and to submit to the Board, at least annually, a written appraisal of the servicer's performance in providing services to the Bank, and in maintaining sufficient management, staff, controls, procedures and MIS. The Board shall forward a copy of these appraisals to the Assistant Deputy Comptroller.

(4) In the event that the aforementioned written appraisals demonstrate that such servicer(s) has failed to provide acceptable services to the Bank, or to maintain the necessary management, staff, controls, procedures and MIS, and if such servicer(s) is(are) unable or unwilling to correct these deficiencies, the Board shall terminate the contract between the Bank and servicer(s).

ARTICLE XI

INTERNAL AUDIT

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program, sufficient in scope and frequency, to:

- (a) detect irregularities in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) evaluate the Bank's adherence to established policies and procedures, with particular emphasis directed to the Bank's adherence to its loan policies

concerning underwriting standards and problem loan identification and classification;

- (d) ensure adequate audit coverage in all areas; and
- (e) establish an annual audit plan using a risk based approach sufficient to achieve these objectives.

(2) As part of this audit program, the Board shall evaluate, on a quarterly basis, the audit reports of any party providing audit services to the Bank, and shall assess the impact on the Bank of any audit deficiencies cited in such reports.

(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.

(4) The Board shall ensure that the audit function is supported by an adequately staffed department or outside firm, with respect to both the experience level and number of the individuals employed.

(5) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board, which shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board and not through any intervening party.

(6) All audit reports shall be in writing. The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(7) The audit staff shall have access to any records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(8) Upon adoption, a copy of the internal audit program shall be promptly submitted to the Assistant Deputy Comptroller.

ARTICLE XII

CONSUMER COMPLIANCE PROGRAM

(1) Within ninety (90) days, the Bank shall adopt, implement, and thereafter ensure adherence to a written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations.

This program shall include, but not be limited to:

- (a) a written description of the duties and responsibilities of the compliance officer;
- (b) adequate internal controls to ensure compliance with consumer protection laws, rules, and regulations;
- (c) the preparation of a policies and procedures manual covering all consumer protection laws, rules and regulations for use by appropriate Bank personnel in the performance of their duties and responsibilities;
- (d) annual updates of the written policies and procedures manual to ensure it remains current;

- (e) an audit program to test for compliance with consumer protection laws, rules and regulations;
- (f) procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel;
- (g) the education and training of all appropriate Bank personnel in the requirements of all federal and state consumer protection laws, rules and regulations; and
- (h) periodic reporting of the results of the consumer compliance audit to the Board or a committee thereof.

(2) Upon adoption, a copy of the program 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 program developed pursuant to this Article.

ARTICLE XIII

COMPLIANCE COMMITTEE

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one 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 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 quarterly 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 XIV

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 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.

(5) In each instance in this Agreement in which the Board is required to ensure the Bank's adherence to, or undertake to perform certain obligations of the Bank, it is intended to mean that the Board will consistent with its duties and responsibilities: (i) authorize and direct the commencement of such actions as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Agreement; (ii) require the timely implementation by Bank management of such actions directed by the Board to be taken under the terms of this Agreement; (iii) require the timely reporting by Bank management on the level and manner of the Bank's compliance with such actions; and (iv) devise and direct in a timely and appropriate manner any follow-up or corrective action to be taken in response to any non-compliance with such actions.

(6) This Agreement is intended to be, and shall be construed to be, a supervisory "written agreement entered into with the agency" as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S.

Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

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

/s/ C. Wayne Crowell

9/10/2001

C. Wayne Crowell
Assistant Deputy Comptroller
South Florida Field Office

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/

9/11/01

William J. Ryan

Date

/s/

9/11/01

Pierce T. Neese

Date

/s/

9/11/01

Earl G. Hodges

Date

/s/

9/11/01

William L. McDaniel, Jr.

Date

Donald W. Ketterhagen, M.D.

Date

Date

Date

Date

Date