

**#2002-15**

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

In the Matter of: )  
Delta National Bank )  
Manteca, California )

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined Delta National Bank, Manteca, California (Bank), and his findings are contained in the Report of Examination, dated August 28, 2001 (ROE).

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 February 12, 2002, that is accepted by the Comptroller. By this Stipulation and Consent, which 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

VIOLATIONS OF LAW

(1) The Bank shall comply with applicable laws and regulations pertaining to loans or extensions of credit to executive officers, directors, and principal shareholders of member banks, including Regulation O, 12 C.F.R. Part 215, and 12 C.F.R. Part 31 (collectively, “Regulation O”).

(2) The Board shall immediately take all necessary steps to ensure that the Bank corrects each violation of law, rule, or regulation cited in the ROE and in any subsequent Report of Examination

(3) Within thirty (30) days, the Board shall develop, adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall develop, 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) The Board shall ensure that the Bank is reimbursed for foregone interest and fees on loans granted in violation of 12 C.F.R. Part 215, as more fully described in the Violations of Law section of the ROE. Within fifteen days (15) days, the Bank shall determine what would have been a lawful and proper interest rate at the loan's inception under the criteria set forth in 12 C.F.R. § 215.4 and submit its analysis for determining the interest rate to the Assistant Deputy Comptroller for review. Within fifteen days (15) after a proper rate is determined by the Board and the Assistant Deputy Comptroller does not object to the proposed interest rate, the Board shall ensure that the Bank is reimbursed the foregone interest from the inception date of the loan. The Bank shall provide the Assistant Deputy Comptroller with notice and appropriate documentation evidencing reimbursement. The individual Board members are jointly and severally liable for these payments.

(5) Within thirty (30) days, where necessary to comply with 12 C.F.R. Part 215, the Bank shall re-execute loans made in violation of 12 C.F.R. Part 215, as more fully described in the Violations of Law section of the ROE, incorporating an interest rate that complies with the dictates of 12 C.F.R. § 215.4. To the extent that the Bank is unable to re-execute any of these

loans, the Board shall ensure that the Bank receives the amount of interest income it should have received under 12 C.F.R. § 215.4 as frequently as the borrower is required to pay interest under the loan terms. The individual board members are jointly and severally liable for these payments.

## ARTICLE II

### INDEPENDENT AUDIT

(1) Within sixty (60) days, the Bank shall complete an independent audit of all insider activities and processes, including compliance with Regulation O, 12 C.F.R. Part 215. The Bank shall assess compliance with insider lending laws and regulations, with specific emphasis on Regulation O. The Bank shall:

- (a) identify weaknesses in bank risk management systems related to all bank insider activities; and
- (b) develop an action plan to address identified weaknesses.
- (c) Within thirty (30) days after receipt of the final audit report, the Bank shall submit a copy of the action plan to the Assistant Deputy Comptroller for review.

(2) The Bank shall immediately expand the scope of its independent external audit program to include a current and future quarterly reviews of all bank insider activities, including compliance with Regulation O, 12 C.F.R. Part 215.

(3) The Bank shall also submit a copy of any audit performed under this Article to the Assistant Deputy Comptroller for review.

### ARTICLE III

#### BOOKS AND RECORDS

(1) The Bank shall maintain its books, records, and management information systems (MIS) in a complete and accurate condition at all times.

(2) The Bank shall provide the OCC and its national bank examiners with prompt and unrestricted access to the Bank's books, records, and staff, and provide full and complete details or purposes of the Bank's transactions to agency personnel upon inquiry.

(3) Within sixty (60) days, the Board shall provide training to all directors, senior executive officers, and Bank employees on the requirements of 12 U.S.C. §§ 481 and 1867.

### ARTICLE IV

#### CONFLICT OF INTEREST POLICY

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written, comprehensive conflict of interest policy applicable to the Bank's and the Bank's holding company's directors, principal shareholders, executive officers, affiliates, and employees (Insiders) and related interests of such Insiders. The policy, in addition to defining a conflict of interest, shall address:

- (a) avoidance of conflicts of interest and breaches of fiduciary duty, and the appearance of conflicts of interest;
- (b) involvement in the loan approval process of Insiders who may benefit directly or indirectly from the decision to grant credit;
- (c) disclosure of actual and potential conflicts of interest to the Board, and periodic disclosure of "related interests" as defined by 12 C.F.R. Part 215;

- (d) requirements for arms-length dealing in any transactions by Insiders, or their related organizations, involving the Bank's sale, purchase, or rental of property and services;
- (e) disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Bank; and
- (f) restrictions on and disclosure of receipt of anything of value by Insiders, directly or indirectly, from borrowers, loan applicants, other customers, or suppliers of the Bank.

(2) Upon adoption, a copy of this conflict of interest policy shall be forwarded to the Assistant Deputy Comptroller for review.

(3) Within sixty (60) days, and annually thereafter, the Board shall provide training to all directors and senior executive officers on the revised conflict of interest policy and any future revisions to the policy.

(4) 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

### INSIDER BUSINESS TRANSACTIONS

(1) From the effective date of this Order, the Bank is prohibited from entering into any new Business Transaction with Mr. Andrew Rossi, his spouse, children, parents or siblings, any person who acts on Mr. Rossi's behalf, and any of Mr. Rossi's or the foregoing persons'

Related Interests except as provided in this Article. For purposes of this Article, each of these parties is considered to be an “Insider.”

(2) The Bank may enter into a Business Transaction with an Insider only if the Business Transaction is:

- (a) made on terms and under circumstances that are substantially the same, or at least as favorable to the Bank, as those prevailing at the time for comparable transactions with or involving other companies or individuals who are not Insiders or related interests of Insiders;
- (b) made, in the absence of comparable transactions, on reasonable commercial terms entered into in good faith and reflecting comparable service fees payable to similarly situated service providers (for example, professional service contracts);
- (c) preceded by a finding by the Board that the primary purpose of the Business Transaction is to further the best interests of the Bank; and
- (d) approved in advance by a majority of the entire Board, not merely a quorum thereof, with any interested Insider abstaining from voting and participating directly or indirectly in the deliberations regarding the approval.

(3) For purposes of this Order, the following definitions shall apply:

- (a) "Related Interest" shall have the same meaning as set forth in 12 C.F.R. § 215.2.

- (b) "Business Transaction" means any single transaction in excess of \$10,000 or which creates an aggregate relationship in excess of \$100,000 (including any renewal of or changes to an existing transaction).
- (c) "Company" shall have the same meaning as set forth in 12 C.F.R. § 215.2.
- (d) "Person" shall mean an individual or a company.
- (e) "Control" shall mean the power to vote directly or indirectly 25 percent or more of any class of voting securities of a company, the ability to control in any manner the election of a majority of a company's directors, or the ability to exercise a controlling influence over the management and policies of a company. Any general partner of a partnership is presumed to control the partnership. A person who directly or indirectly owns, controls, or has power to vote at least 10 percent of any class of voting securities of a company and is an executive officer or director of that company is deemed to control that company by exercising a controlling influence over that company.

## ARTICLE VI

### INSIDER TRANSACTIONS - RECORDKEEPING

- (1) Effective immediately, the Board shall maintain adequate, centralized records of all Insider transactions subject to this Order in a form and manner that will enable easy, independent review. These records shall identify all Insiders and shall also:
  - (a) specify the names of the parties to the transaction other than the Bank,
  - (b) state the relationship of the parties to the Bank,
  - (c) provide a brief description of the transaction and its terms, and

- (d) provide a notation of the approval of the transaction by the Board including the vote of each director and the bases for any dissenting or abstaining votes.

(2) The Bank shall require each executive officer, director, and principal shareholder to provide at least annually and in writing, a listing of the preceding parties' respective Related Interests as defined in 12 C.F.R. Part 215. The list of these persons' Related Interests shall be maintained by the Board and any changes to these listings of Related Interests shall be promptly reported to the Board and reflected in the centralized records.

## ARTICLE VII

### PROGRESS REPORTING -- QUARTERLY

(1) The Board shall submit quarterly progress reports, on a calendar basis, to the Assistant Deputy Comptroller. These reports shall set forth in detail:

- (a) actions taken to comply with each Article of this Order;
- (b) results of those actions; and
- (c) a description of the actions needed to achieve full compliance with each Article of this Order.

(2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the ROE or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending March 31, 2002, and will be due within fifteen (15) days of that date. Thereafter, the progress reports will be due within fifteen (15) days after the calendar quarter end.



## ARTICLE VIII

### CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or approval of the Assistant Deputy Comptroller, 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) 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 Assistant Deputy Comptroller 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.

(5) This Order is intended, 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 Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, oral or written.

IT IS SO ORDERED, this 12<sup>th</sup> day of February 12, 2002.

/s/ Brian J. Quade

2/12/02

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Brian J. Quade  
Assistant Deputy Comptroller  
San Francisco Field Office

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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:** )  
Delta National Bank )  
Manteca, California )

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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 Delta National Bank, Manteca, California (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 February 12, 2002 (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. The Order 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 Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, oral or written

## 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 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 his hand on behalf of the Comptroller.

/s/ Brian J. Quade

2/12/02

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Brian J. Quade  
Assistant Deputy Comptroller  
San Francisco Field Office

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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.

Signed  
Robert Brocchini

2/12/02  
Date

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Signed

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Joseph A. Freitas

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Signed

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Theodore Poulos

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Signed

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Andrew J. Rossi

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Signed

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Toinette Rossi

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2-12-2002

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Date

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Feb. 12, 2002

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Date

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2/12/02

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Date

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2/12/02

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Date