

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

**In the Matter of:** )  
 )  
The Upstate National Bank )  
Lisbon, New York )

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined The Upstate National Bank, Lisbon, New York (Bank), and his findings are contained in the Letter to the Board of Directors, dated March 13, 2002 and the Report of Examination, dated March 5, 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 March 22, 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

### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within ninety (90) days, the Board shall ensure that the Bank has competent management in place on a full-time basis in its Chief Executive Officer/President; Chief Financial Officer; and Senior Loan Officer (or the Bank's functional equivalent of a Senior Loan Officer) positions to carry out the Board's policies, ensure compliance with this Order, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within thirty (30) days, the Board shall review the capabilities of the Bank's Chief Executive Officer/President; Chief Financial Officer and Senior Loan Officer to perform present and anticipated duties, including compliance with the terms of this Order, and determine whether management changes should be made, including the need for additions to or deletions from current management.

(3) For incumbent officers in the positions mentioned in Paragraph (1) of this Article, the Board shall within thirty (30) days make a written assessment of each officers' experience, other qualifications and performance compared to the position's description, duties and responsibilities and with consideration of the Bank's current condition.

(4) If the Board identifies weaknesses in an officer's skills and performance, but determines that an officer will continue in his/her position, the Board will, within sixty (60) days, document in writing the basis for its decision to retain the officer 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 officer's effectiveness;
- (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, objectives and condition.

(5) Upon completion, a copy of the Board's written assessment of each officer, and if applicable, the Board's decision to retain the officer and the program required in (4) shall be submitted to the Assistant Deputy Comptroller.

(6) 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 thirty (30) 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 Bank functions within the scope of that position's responsibility.

(7) Prior to the appointment of any individual to an executive officer position, the Board shall submit to the Assistant Deputy Comptroller 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.

(8) The Assistant Deputy Comptroller 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.

(9) 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) and do not require the Assistant Deputy Comptroller to complete his review and act on any such information or authority within ninety (90) days. Although not anticipated, should the Assistant Deputy Comptroller require more than ninety (90) days to complete his review, then the time period within which the Board must comply with paragraph (1) shall be extended accordingly.

## ARTICLE II

### WHOLESALE FUNDING AND ASSET LIQUIDITY REQUIREMENTS

(1) The Board shall reduce the Bank's net wholesale funding to no more than five percent (5%) of total liabilities by December 31, 2002, in accordance with the following timeframes:

- (a) a reduction in net wholesale funding to no more than thirty-five percent (35%) of total liabilities by May 31, 2002;
- (b) a reduction in net wholesale funding to no more than twenty percent (20%) of total liabilities by July 31, 2002; and
- (c) a reduction in net wholesale funding to no more than five percent (5%) of total liabilities by December 31, 2002.

(2) The Board shall ensure the Bank maintains an asset liquidity ratio of not less than ten percent (10%) of total assets.

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

- (a) "wholesale funding" shall include:
  - (i) for deposits accepted from within the Bank's normal market area, any deposit on which the effective yield exceeds by more than 75

- basis points (.75%) the effective yield paid on deposits of comparable size and maturity in the Bank's normal market area;
- (ii) for deposits accepted outside the Bank's normal market area, any deposit on which the effective yield exceeds by more than 75 basis points (.75%), 120 percent (120%) of the current yield on similar maturity U.S. Treasury obligations or, in the case of any deposit at least half of which is uninsured, 130 percent (130%) of the current yield on similar maturity U.S. Treasury obligations;
  - (iii) any deposit which otherwise meets the definition of "brokered deposit" under 12 C.F.R. §337.6(a)(2);
  - (iv) Federal Home Loan Bank or other borrowings;
  - (v) federal funds purchased; and
  - (vi) repurchase agreements.
- (b) "effective yield" in a relevant market for purposes of (a)(1) shall mean the average of effective yields offered by other insured depository institutions in the market area in which the deposits are being solicited;
- (c) "market area" shall mean any readily defined geographic area in which the rates offered by any one insured depository institution soliciting deposits in that area may affect the rates offered by other insured depository institutions operating in the same area;
- (d) the Bank's "normal market area" shall mean the readily defined geographical areas in which the Bank's offices are located and in which the rates offered by any one insured depository institution soliciting

deposits in that area may affect the rates offered by other insured depository institutions operating in the same area;

- (e) "asset liquidity ratio" means the Bank's total short term investments plus unpledged marketable securities divided by total assets, where "short term investments" includes: interest-bearing bank balances; federal funds sold; securities purchased under agreements to re-sell; fixed and floating rate debt securities with a maturity of less than one year; and acceptances of other banks, and "unpledged marketable securities" means any unpledged security that meets the definition of "investment security" under 12 C.F.R. Part 1; and
- (f) "net wholesale funding" shall mean the Bank's total "wholesale funding" minus "liquid assets";
- (g) "liquid assets" shall mean cash, cash equivalents, non-interest bearing bank balances plus "short term investments" and "unpledged marketable securities" as those terms are defined in (e).

(4) Nothing in this Article shall relieve the Bank of its obligation to comply with all the requirements of 12 U.S.C. §1831f and 12 C.F.R. § 337.6 and to seek necessary approvals from the Federal Deposit Insurance Corporation before accepting brokered deposits.

### ARTICLE III

#### LIQUIDITY RISK MANAGEMENT

(1) The Board shall, within ninety (90) days, develop an action plan to meet the requirements of Article I and to improve the Bank's liquidity position and obtain adequate sources of stable funding to support the Bank's current operations and condition. In formulating the plan, the Board shall consider any anticipated or extraordinary demand against the Bank's funding base and

identify specific actions the Bank will take to ensure adequate sources of liquidity in relation to its needs. Such actions may include:

- (a) selling assets;
- (b) obtaining lines of credit from the Federal Reserve Bank;
- (c) obtaining lines of credit from correspondent banks;
- (d) recovering charged-off assets;
- (e) injecting additional equity capital; and
- (f) developing marketing strategies to increase the Bank's core funding base.

(2) Upon completion, a copy of the action plan required in (1) shall be forwarded to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

(3) The Board shall, within sixty (60) days, ensure the Bank maintains sufficient management information systems to monitor the Bank's liquidity position and risk, including weekly reports which:

(a) segregate the Bank's deposits by program (e.g., brokered deposits obtained through Depository Trust Company (DTC); non-DTC brokered deposits (both insured and uninsured); out of area deposits originally obtained through a broker, but no longer required to be included in the calculation of brokered deposits; deposits obtained through Internet listing services; deposits obtained through the Internet via the Bank's own website; and any other deposits which fall within the definition of "wholesale funding" in Article II, paragraph (3)(a)(i)- (iii)) and:

- (i) list funds obtained through each deposit program;
- (ii) identify rates paid on individual instruments and average rates paid per program;
- (iii) list maturity schedules for instruments within each program;

- (iv) track and analyze renewal percentages per program; and
  - (v) monitor the Bank's utilization of each program individually and in the aggregate as rate-sensitive/credit sensitive deposits relative to the Bank's established concentration limits.
- (b) identify and monitor the Bank's asset liquidity level;
  - (c) identify and monitor the Bank's total wholesale funding (as defined in Article II) as a percentage of total liabilities; and
  - (d) identify 30 and 90 day forward sources and uses of funds, and which, at minimum, consider:
    - (i) a maturity schedule of the deposits identified in (a) above;
    - (ii) geographic disbursement of and risk from the deposits identified in (a);
    - (iii) an analysis of the impact of decreased cash flow from the Bank's loan portfolio resulting from delinquent and non-performing loans;
    - (iv) the amount and type of loan commitments and standby letters of credit; and
    - (v) the volatility of non-maturity deposits.

(4) The Board shall review the reports required in (3) on a monthly basis and take appropriate action to ensure adequate sources of liquidity in relation to the Bank's needs. Copies of the Board's monthly reviews shall be forwarded to the Assistant Deputy Comptroller with the Board's monthly report to the Assistant Deputy Comptroller required in Article XVI.

(5) The Board shall, within ninety (90) days, establish a liquidity contingency plan consistent with the wholesale funding and asset liquidity requirements under Article II, and



strategic and capital plans required under Articles IV and V of this Order. The Board shall review, and if necessary revise, the plan on a monthly basis. At a minimum, the plan shall:

- (a) estimate potential liquidity needs in varying scenarios (including temporary disruption, long-term distressed environment, and severely distressed environment);
- (b) specify, quantify, and prioritize contingent funding sources, based on justifiable assumptions;
- (c) clearly define triggers at which contingent funding sources will be implemented; and
- (d) estimate the impact to earnings and capital of different scenario simulations within the plan.

(5) A copy of the contingency plan shall be forward to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

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

#### ARTICLE IV

##### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall maintain the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Total Capital at least equal to thirteen percent (13%) of risk-weighted assets;
- (b) Tier One Capital at least equal to eleven and one-half percent (11.5%) of risk-weighted assets; and

- (c) Tier One Capital at least equal to ten percent (10%) of adjusted total assets.<sup>1</sup>

(2) The requirement in this Order to 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 one hundred and twenty (120) 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;
- (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (f) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program and the requirements set forth in paragraph (1);
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and

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<sup>1</sup> Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes

(iii) with the prior written determination of no supervisory objection of the Assistant Deputy Comptroller.

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for a written determination of no supervisory objection. Upon the Assistant Deputy Comptroller's written determination of no supervisory objection, 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 V

### STRATEGIC PLANNING

(1) Within one hundred and eighty (180) days, the Board shall enhance and improve the Bank's written strategic plan and related planning processes, and upon adoption, thereafter ensure Bank adherence to the revised plan. The revised plan shall cover at least a three year period and shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development and market segments that the Bank intends to promote or develop, consistent with the other requirements of this Order, together with strategies to achieve those objectives. At a minimum, the plan shall include:

(a) a thorough evaluation of the Bank's profitable versus unprofitable business segments, including identifying why the Bank has not been

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minus end-of-quarter intangible assets.

successful with unprofitable segments and what changes are necessary for the Bank to achieve profitability;

- (b) identification of the divisions and products the Bank can successfully market, with detailed business line strategies and specific quantifiable action plans to accomplish identified strategic goals and objectives and improve Bank earnings;
- (c) the assignment of management responsibility (consistent with Board's determinations required in Article I) to carry out the Bank's plans in (b), with specific time frames for performance and specific accountability measures;
- (d) a management employment and succession program to promote the retention and continuity of capable management;
- (e) a financial forecast which includes projections for major balance sheet and income statement accounts and desired financial ratios, consistent with the other requirements of this Order, over the period covered by the strategic plan;
- (f) control systems to mitigate risks associated with planned new products, current product lines, growth, or any proposed changes in the Bank's operating environment;
- (g) systems to monitor the Bank's progress in meeting the plan's goals and objectives; and
- (h) the appointment of an individual responsible for monitoring the Bank's progress in meeting the plan's goals and objectives, identifying proposed

changes in the Bank's operating environment, and providing quarterly status reports to the Board.

(2) Prior to adoption of the revised strategic plan, the Board shall provide a copy to the Assistant Deputy Comptroller who shall retain the right to determine whether the plan complies with requirements of this article. Upon written notice of no supervisory objection, the Board shall adopt and thereafter ensure Bank adherence to the plan. The Board shall provide written notice to the Assistant Deputy Comptroller prior to making any changes or modifications to the plan.

(3) 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 VI

### CREDIT RISK MANAGEMENT

(1) The Board shall, within sixty (60) days, develop, implement, and thereafter ensure Bank adherence to a written program to improve the Bank's credit risk management. At a minimum, the program shall include:

- (a) a process to ensure continued identification and monitoring of the Bank's asset concentrations, including adherence to established limits;
- (b) a process to ensure ongoing analysis of the impact of current market conditions and any other factors that impact borrowers and industries in which the Bank has identified concentrations;
- (c) a process to ensure ongoing analysis of how specific concentrations impact the Bank's financial condition and risk profile;

- (d) controls to ensure the Bank's adherence to established loan policies and procedures, including controls to ensure the Bank obtains updated appraisals on nonaccrual loans which are collateral dependent; and
- (e) controls to ensure the Bank adheres to accounting and regulatory nonaccrual reporting standards.

(2) Upon completion, a copy of the program shall be forwarded to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

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

## ARTICLE VII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within sixty (60) days, the Board shall review the adequacy of the Bank's Allowance for Loan and Lease Losses (Allowance) and shall establish a program for the maintenance of an adequate Allowance. This review and program shall be designed in light of the comments on maintaining a proper Allowance found in the OCC Bulletin 2001-37, "Policy Statement on Allowance for Loan and Lease Losses Methodology and Documentation for Banks and Savings Institutions", and the Allowance for Loan and Lease Losses booklet, A-ALLL, of the Comptroller's Handbook, and shall focus particular attention on the following factors:

- (a) results of the Bank's internal loan review;
- (b) results of the Bank's external loan review;
- (c) an estimate of inherent loss exposure on each criticized or nonperforming credit or portion thereof that equals or exceeds fifty thousand dollars (\$50,000);

- (d) loan loss experience based on a reasonable period of historical performance;
- (e) trends of delinquent and nonaccrual loans;
- (f) concentrations of credit in the Bank; and
- (g) present and prospective economic conditions.

(2) The program shall provide for a review of the Allowance by the Board at least once each calendar quarter. Any deficiency in the Allowance shall be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

(3) A copy of the Board's program shall be submitted to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

(4) 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

### CRITICIZED AND NONPERFORMING ASSETS

(1) Effective immediately, the Bank shall take immediate and continuing action to protect its interest in those assets criticized in the Letter and in the ROE, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) Within forty-five (45) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written program designed to eliminate the basis of criticism of assets

criticized in the Letter and the ROE, in any subsequent Report of Examination, or by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination as "doubtful," "substandard," "special mention," or "nonperforming (90 days or more past due and/or nonaccrual)." This program shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
- (b) the appraised value of supporting collateral and the position of the Bank's lien on such collateral where applicable;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations; and
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment.

(3) Upon adoption, a copy of the program for all criticized and nonperforming assets equal to or exceeding fifty thousand dollars (\$50,000) shall be forwarded to the Assistant Deputy Comptroller who shall determine whether the program meets the requirements of this article.

(4) 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.

(5) The Board, or a designated committee, shall conduct a review, on at least a monthly basis, to determine:

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds fifty thousand dollars (\$50,000);
- (b) management's adherence to the program adopted pursuant to this Article;
- (c) the status and effectiveness of the written program; and
- (d) the need to revise the program or take alternative action.



(6) A copy of each review shall be forwarded to the Assistant Deputy Comptroller on a monthly basis (in a format similar to Appendix I, attached hereto).

(7) The Bank may extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower whose loans or other extensions of credit are criticized in the Letter and the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination and whose aggregate loans or other extensions exceed fifty thousand dollars (\$50,000) only if each of the following conditions is met:

- (a) the Board or designated committee finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, extending or capitalizing any additional credit, a majority of the full Board (or designated committee) approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank; and
- (b) a comparison to the written program adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(8) A copy of the approval of the Board or of the designated committee shall be maintained in the file of the affected borrower.

## ARTICLE IX

### OTHER REAL ESTATE OWNED

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to Other Real Estate Owned (OREO) policies and procedures designed to

ensure OREO is managed in accordance with 12 U.S.C. § 29 and 12 C.F.R. Part 34. The policies and procedures shall include, at a minimum:

- (a) assignment of responsibility and authority for OREO properties;
- (b) proper accounting procedures for OREO properties from transfer to the Bank and until and upon sale to a third party;
- (c) procedures to require timely appraisals and appropriate evaluations pursuant to 12 C.F.R. § 34.85 and 12 C.F.R. Part 34, Subpart C;
- (d) a process to ensure diligent sales efforts and adequate documentation of those efforts;
- (e) reporting systems to ensure adequate monitoring of OREO properties; and
- (f) controls to ensure the Bank's adherence to the required policy upon implementation.

(2) Upon adoption, the Board shall forward a copy of the policy to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

(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 X

### OTHER REAL ESTATE OWNED - ACTION PLANS

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to action plans for each parcel of Other Real Estate Owned (OREO) to ensure that these assets are managed in accordance with 12 U.S.C. § 29 and 12 C.F.R. Part 34, Subpart E. At a minimum, the plans shall:

- (a) identify the Bank officer(s) responsible for managing and authorizing transactions relating to the OREO properties;
- (b) contain an analysis of each OREO property which compares the cost to carry the property against the financial benefits of near term sale;
- (c) detail the marketing strategies for each parcel;
- (d) identify targeted time frames for disposing of each parcel of OREO;
- (e) establish targeted write-downs at periodic intervals if marketing strategies are unsuccessful;
- (f) establish procedures to require periodic market valuations of each property, and the methodology to be used; and
- (g) provide for reports to the Board on the status of OREO properties on at least a monthly basis.

(2) Upon adoption, the Board shall forward a copy of the plans to the Assistant Deputy Comptroller who shall determine whether the plans comply with the requirements of this article.

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

## ARTICLE XI

### VIOLATIONS OF LAW

(1) The Board shall ensure that Bank management corrects each violation of law, rule or regulation cited in the Letter and the ROE within thirty (30) days, and shall ensure that management corrects each violation of law, rule, or regulation cited in any subsequent ROE within thirty (30) days of receipt of that ROE. The monthly progress reports required by Article

XVI of this Order shall include the date and manner in which each correction has been effected during that reporting period.

(2) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the Letter and 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 ninety (90) 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. These procedures are to include and incorporate internal control systems, as well as 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 Assistant Deputy Comptroller. The Assistant Deputy Comptroller shall retain the right to determine the adequacy of the Bank's corrections of all cited violations of law, rule, or regulation.

## ARTICLE XII

### TRANSACTIONS WITH INSIDERS

(1) Effective immediately, the Bank may not engage in any proposed business transaction or modify any existing business transaction with any of the Bank's or the Bank's holding company's directors, officers, employees, or any individual which has served in any of

these capacities within three months of the effective date of this Order, principal shareholders, or affiliates (collectively "Insiders") or related interests of such Insiders, unless the Board has:

- (a) conducted a written independent review of the proposed business transaction or modification of an existing business transaction;
- (b) determined in writing that the transaction or modification is advantageous for and in the best interest of the Bank, and that such action complies with all applicable laws, rules, regulations, OCC guidance, and the Bank's own conflict of interest policy required to be developed in paragraph (3) of this Article;
- (c) forwarded a copy of its review and determination to the Assistant Deputy Comptroller;
- (d) received from the Assistant Deputy Comptroller his written determination of no supervisory objection to the proposed transaction or modification.

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

- (a) "business transaction" means any single transaction in excess of \$5000 or which creates an aggregate relationship in excess of \$5000 (including any renewal of or changes to an existing transaction).  
"business transaction" applies to transactions and relationships other than as a depositor, borrower, employee or director; and
- (b) "related interest" shall have the same meaning as set forth in 12 C.F.R. § 215.2.

(3) 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

Insiders and Insiders' related interests. The policy, in addition to defining a conflict of interest, shall, at a minimum, 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 or potential conflicts of interest to the Board;
- (d) requirements for arms-length dealing in any transactions with Insiders, or their related interests, involving the Bank's sale, purchase, or rental of property or services;
- (e) disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Bank;
- (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.

(4) The Board shall, within forty-five (45) days, conduct a written review of the Bank's existing business transactions with its Insiders and their related interests and make a written determination of whether and why the relationship is advantageous to and in the Bank's best interest and whether the relationship is in compliance with all applicable laws, rules, regulations, OCC guidance, and the Bank's conflict of interest policy developed under paragraph (3) of this article. The Board shall ensure that, within fifteen (15) days of its review:

- (a) any nonconforming relationships are terminated or brought into conformity; and
- (b) the Bank is properly reimbursed for:

- (i) any excess or improper payments to Insiders and their related interests; and
- (ii) any excess or improper payments for services provided by Insiders and their related interests.

(5) 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 XIII

#### PRODUCTS AND SERVICES - EXISTING OR NEW

(1) Prior to the Bank's involvement in any significant new products or services, or the significant expansion of any existing product or service, Bank management shall prepare and present to the Board a written analysis of that product or service. The analysis shall, at a minimum, include the following:

- (a) an assessment of the risks and benefits of the product or service to the Bank;
- (b) an explanation of how the product or service is consistent with the Bank's strategic plan;
- (c) an evaluation of the adequacy of the Bank's organizational structure, management and other staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
- (d) a profitability analysis, including growth projections and interest rate risk.

(2) Sixty (60) days prior to the Bank's involvement in a significant new product or service, or the significant expansion of an existing product or service, the Board shall review

management's written analysis and shall submit a copy to the ADC for review and prior determination of no supervisory objection.

(3) For purposes of this Article:

- (a) the Bank's involvement in a significant new product or service shall mean a new product or service which is projected to result in an increase of one percent (1%) or more of the Bank's total assets or annualized total operating income, as calculated on the last date of each calendar quarter; and
- (b) the significant expansion of an existing product or service shall mean the expansion of an existing product or service which is projected to result in an increase of three percent (3%) or more of the Bank's total assets or annualized total operating income, as calculated on the last date of each calendar quarter.

#### ARTICLE XIV

##### INTERNAL AUDIT

(1) Within ninety (90) days, the Board shall review the Bank's internal audit program to ensure sufficient risk based audit coverage by an adequately staffed department or outside firm, with respect to both experience level and number of individuals employed, and to ensure that audit scheduling, scope and testing are sufficient to:

- (a) detect material irregularities in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations, and OCC guidance;
- (c) evaluate the Bank's adherence to established policies and procedures; and
- (d) evaluate the adequacy of the Bank's internal control systems;



(2) Within ninety (90) days, the Board shall establish, implement and thereafter ensure adherence to a process to:

- (a) track the auditor's progress in completing the annual audit schedule developed to meet the objectives in paragraph (1); and
- (b) ensure the auditor maintains an appropriate audit trail, which documents the procedures performed and supports the conclusions contained in the audit reports.

(3) The Board shall ensure that the auditor provides written reports detailing any exceptions, deficiencies or recommendations noted as a result of its review. The Board shall also ensure that immediate actions are undertaken to remedy deficiencies cited or to address other audit recommendations in these reports, and that the independent auditor maintains a written record describing those actions. The Board, or a designated committee thereof, shall meet at least quarterly to review the auditor's reports and to verify timely follow-up on cited deficiencies and recommendations.

(4) 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, including external audit staff, and any other parties working on its behalf.

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

(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.

## ARTICLE XV

### REAL ESTATE SETTLEMENT PROCEDURES ACT

(1) Within sixty (60) days, the Board shall adopt, implement and thereafter ensure the Bank's adherence to a comprehensive Real Estate Settlement Procedures Act (RESPA) compliance program, which, at a minimum, provides for:

- (a) a process to ensure the Bank makes appropriate disclosure of any “affiliated business arrangement”<sup>2</sup> pursuant to 24 C.F.R. § 3500.15;
- (b) a process to ensure the Bank's settlement service fees are consistent with RESPA’s prohibitions against kickbacks and unearned fees contained in 12 U.S.C. § 2607 and 12 C.F.R. § 3500.14;
- (c) a process to ensure the Bank only collects fees for settlement services it actually provides; and
- (d) a process to ensure the Bank maintains adequate documentation of settlement services rendered.

(2) Upon adoption, the Board shall forward a copy of the Bank's RESPA compliance program 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.

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<sup>2</sup> As defined in 12 U.S.C. § 2602(7), an ‘affiliated business arrangement’ means an arrangement in which (a) a person who is in a position to refer business incident to or a part of a real estate settlement service involving a federally related mortgage loan, or an associate of such person, has either an affiliate relationship with or a direct or beneficial ownership interest of more than 1 percent in a provider of settlement services; and (b) either of such persons directly or indirectly refers such business to that provider or affirmatively influences the selection of that provider. 12 U.S.C. § 2602(7). The term “associate” includes “an employer, officer, director” of such person. 12 U.S.C. § 2602(8).

## ARTICLE XVI

### COMPLIANCE COMMITTEE

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least four (4) directors, none of whom, with the exception of Chairman Howard J. Zuckerman, 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 Order.

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

(3) Within thirty (30) days of the appointment of the Committee and monthly 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 Order;
- (b) the results of those actions; and
- (c) a description of the actions needed to achieve full compliance with each Article of this Order.

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

(5) Within ten (10) days of receipt, the Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

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

Comptroller of the Currency  
Roger L. Graham  
Assistant Deputy Comptroller  
Syracuse Field Office  
231 Salina Meadows Parkway, Suite 105  
Syracuse, New York 13212-4532

## ARTICLE XVII

### CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review of, or written determination of no supervisory objection by, 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 or his designated representative.

(5) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), 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(i), 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 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, whether oral or written.

IT IS SO ORDERED, this 22<sup>nd</sup> day of March, 2002.

/s/ Roger L. Graham  
Roger L. Graham  
Assistant Deputy Comptroller  
Syracuse Field Office

3/22/02  
Date

APPENDIX I

The Upstate National Bank  
Lisbon, New York

CRITICIZED AND NONPERFORMING ASSET REPORT AS OF: \_\_\_\_\_

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BORROWER (S):

ASSET BALANCE(S) AND RATING (SM, SUBSTANDARD, DOUBTFUL OR LOSS):

\$ \_\_\_\_\_ CRITICISM \_\_\_\_\_

AMOUNT CHARGED OFF TO DATE \_\_\_\_\_

FUTURE POTENTIAL CHARGE-OFF \_\_\_\_\_

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PRESENT STATUS (Fully explain any increase in outstanding balance; include past due status, nonperforming, significant progress or deterioration, etc.):

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FINANCIAL AND/OR COLLATERAL SUPPORT (include brief summary of most current financial information, appraised value of collateral and/or estimated value and date thereof, bank's lien position and amount of available equity, if any, guarantor(s) info, etc.):

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PROPOSED PLAN OF ACTION TO ELIMINATE ASSET CRITICISM(S) AND TIME FRAME FOR ITS ACCOMPLISHMENT:

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IDENTIFIED SOURCE OF REPAYMENT AND DEFINED REPAYMENT PROGRAM (repayment program should coincide with source of repayment):

Use this form for reporting each criticized asset that exceeds fifty thousand dollars (\$50,000) and retain the original in the credit file for review by the examiners. Submit your reports monthly until notified otherwise, in writing, by the Assistant Deputy Comptroller.

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

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**In the Matter of:** )  
 )  
The Upstate National Bank )  
Lisbon, New York )

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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 The Upstate National Bank (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 March 22, 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

(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

(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

- (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

(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.



ARTICLE V

(1) This Stipulation and Consent may be executed in one or more counterparts which, taken together, shall constitute one and the same document.

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

<u>/s/ Roger L. Graham</u> Roger L. Graham Assistant Deputy Comptroller Syracuse Field Office	<u>3/22/02</u> Date
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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.

<u>Signed</u> Preston C. Carlisle	<u>3/22/02</u> Date
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<u>Signed</u> Donald O. Chesworth	<u>3/22/02</u> Date
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<u>Signed</u> Timothy P. McElduff	<u>3/22/02</u> Date
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<u>Signed</u> Richard D. Sanford	<u>3-22-02</u> Date
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<u>Signed</u> Thomas L. Smith, Jr.	<u>3-22-02</u> Date
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<u>Signed</u> Michael L. Triolo	<u>3/22/02</u> Date
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<u>Signed</u> Howard J. Zuckerman	<u>3-22/02</u> Date
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