

**#2002-88**

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

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In the Matter of: )  
Union Bank of Arizona, N.A. )  
Gilbert, Arizona )

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined Union Bank of Arizona, N.A., Gilbert, Arizona (Bank), and his findings are contained in the Report of Examination for the examination that commenced on April 29, 2002 (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 July 31, 2002, that is accepted by the Comptroller. By this Stipulation and Consent, that is incorporated by reference, the Bank has consented to the issuance of this Consent Order (Order) by the Comptroller.

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

**ARTICLE I**

**COMPLIANCE COMMITTEE**

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than two shall be employees of the Bank or any of its affiliates (as the term "affiliate" is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any

such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order.

(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 Order; 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 II

### NEW PRODUCTS AND SERVICES

(1) Prior to the Bank's involvement in any new products or services the Board shall prepare a written analysis of said 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, staffing, MIS, 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) Prior to the Bank's involvement in the new product or service, a copy of the analysis shall be submitted to the Assistant Deputy Comptroller.

### ARTICLE III

#### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within ninety (90) days, the Board shall ensure that the Bank has competent management on-site on a full-time basis in both its Senior Loan Officer and President 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) For incumbent officers in the positions mentioned in Paragraph (1) of this Article, the Board shall within sixty (60) days assess each of these officers' experience, on-site presence, and other qualifications and performance compared to the position's description, duties and responsibilities.

(3) If the Board determines that an officer will continue in his position but that the officer's depth of skills needs improvement, the Board will within thirty (30) days develop and implement a written program, with specific time frames, to improve the officer's supervision and management of the Bank. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) a program to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and

- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

Upon completion, a copy of the written program shall be submitted to the Assistant Deputy Comptroller.

## ARTICLE IV

### CAPITAL PLAN AND HIGHER MINIMUMS

- (1) The Bank shall achieve and maintain the following capital levels (as defined in 12 C.F.R. Part 3):
  - (a) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets;
  - (b) Tier 1 capital at least equal to six percent (6%) of risk-weighted assets;
  - (c) Total capital at least equal to ten percent (10%) of risk-weighted assets.
- (2) The requirement in this Order to meet and maintain a specific capital level means that the Bank may not be deemed to be "well capitalized" for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

## ARTICLE V

### LIQUIDITY PROGRAM

- (1) Within sixty (60) days, the Bank shall develop a program to maintain liquidity at a level that is sufficient to sustain the Bank's current operations and to withstand anticipated or extraordinary demands against its funding base. At a minimum, this program shall include:
  - (a) a plan to reduce the Bank's dependence on volatile liabilities;
  - (b) limits on aggregate internet funding sources;

(c) minimum on-hand liquidity levels and the method by which such levels will be measured; and

(d) a written contingency funding plan.

(2) Upon completion of the program to improve the Bank's liquidity, the Board shall implement and adhere to the program and submit a copy to the Assistant Deputy Comptroller for review.

(3) The Board shall review the Bank's liquidity position on a monthly basis, or more often, if necessary. Such review shall, at a minimum, include a discussion of:

(a) the maturity schedule of certificates of deposit, including internet deposits and large uninsured deposits;

(b) the volatility of demand and other deposits;

(c) the amount and type of loan commitments;

(d) the continuing availability and volatility of present funding sources; and

(e) an analysis of liquidity requirements and sources.

(4) A copy of each liquidity review shall be forwarded to the Assistant Deputy Comptroller for review.

## ARTICLE VI

### CREDIT ADMINISTRATION

(1) Within sixty (60) days, the Bank shall develop an effective written program to improve its credit administration. This program shall include, but not be limited to:

(a) written procedures governing Board review and approval of all exceptions to established lending policies;

- (b) written procedures that require the Board to periodically review the Bank's adherence to the established lending policies;
- (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, including cash flow information;
- (d) procedures to ensure satisfactory and perfected collateral documentation;  
and
- (e) procedures to ensure the accuracy of internal management information systems.

(2) Upon completion, the Bank shall implement and adhere to the program and forward a copy to the Assistant Deputy Comptroller for review.

## ARTICLE VII

### INTERNAL LOAN REVIEW

(1) The Board shall within ninety (90) days employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem loans.

(2) Within ninety (90) days, the Board shall establish an effective, independent and ongoing loan review system to review, at least quarterly, the Bank's loan portfolio to assure the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Board after each review and shall use a loan grading system consistent with the guidelines set forth in Section 215 of the Comptroller's Handbook for National Bank Examiners. Such reports shall, at a minimum, include conclusions regarding:

- (a) the overall quality of the loan portfolio;

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

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

- (a) monitoring systems for early problem loan identification to assure the timely identification and rating of loans based on lending officer submissions;
- (b) statistical records that serve as a basis for identifying sources of problem loans by industry, size, collateral, division, group, indirect dealer, and individual lending officer;

- (c) system for monitoring previously charged-off assets and their recovery potential;
- (d) system for monitoring compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function; and
- (e) system for monitoring the adequacy of credit and collateral documentation.

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

(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.

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

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

## ARTICLE VIII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) 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 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 significant credit;
- (d) loan loss experience;
- (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) 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 IX

### BUDGET/BUSINESS PLAN

(1) Within ninety (90) days, the Board shall prepare, implement, and thereafter ensure Bank adherence to a written three-year business plan that shall include a projection of major

balance sheet and income statement components, and shall provide for injections of equity capital, as necessary. The business plan shall also include a written profit plan and a detailed budget. Specifically, the plan shall describe the Bank's objectives for improving Bank earnings, contemplated strategies and major capital expenditures required to achieve those objectives. Such strategies shall include specific market segments that the Bank intends to promote or develop. Procedures shall also be established to monitor the Bank's actual results against these projections and to provide for appropriate adjustments to the budget and profit plan. The plan shall set forth specific time frames for the accomplishment of these objectives.

(2) A copy of the plan shall be submitted to the Assistant Deputy Comptroller for review and approval.

(3) The Board shall ensure that variances between the Bank's detailed budget and actual results are promptly reported to it, and the Board shall discuss and determine the causes of such variances.

(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 X

### INTERNAL AUDIT

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program sufficient 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, including all new products and services; 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 the audit reports of any party providing 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 XI

### CALL REPORTS - REFILE AND REPUBLISH

(1) Within thirty (30) days, the Board shall cause the Bank to refile and republish amended Reports of Condition and Income for the periods ending December 31, 2001 and March 31, 2002 to correct the errors noted in the ROE.

(2) Within thirty (30) days, the Board shall adopt and cause the Bank to implement policies and procedures, in accordance with the Instructions for Preparation of Consolidated Reports of Condition and Income, to ensure that all official and regulatory reports filed by the Bank accurately reflect the Bank's condition as of the date that such reports are submitted. Thereafter the Board shall ensure Bank adherence to the policies and procedures adopted pursuant to this Article.

(3) Upon completion of the policies, the Board shall submit a copy of the policies to the Assistant Deputy Comptroller.

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

## ARTICLE XII

### VIOLATIONS OF LAW

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

(2) Within thirty (30) days, 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 that incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(3) Within thirty (30) 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 that incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

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

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

### ARTICLE XIII

#### CONTINGENCY PLAN

(1) If the Bank fails to achieve compliance with any Article of this Order, or any deadline or requirement specified in any plan required to be submitted pursuant to this Order, it shall submit a Contingency Plan to the Assistant Deputy Comptroller within thirty days (30) of receiving notice from the Assistant Deputy Comptroller that it is in noncompliance with the Order.

(2) If the OCC determines, in its sole judgment, that (a) it objects to the Contingency Plan, and the Bank is unable to satisfactorily amend the Contingency Plan or resolve the OCC's supervisory objections; or (b) after receipt of the OCC's written determination of no supervisory objection to the Contingency Plan, the OCC determines, in its sole judgment, that the Contingency Plan has failed to achieve its stated objective, then upon receiving notice of that fact from the OCC, the Bank shall develop and shall submit to the OCC for its review and prior determination of no supervisory objection a Plan of Resolution, which shall detail the board's proposal to sell or merge the Bank, or liquidate the Bank at no cost or loss to the Federal Deposit Insurance Corporation and in conformance with 12 U.S.C. § 181.

(3) The Plan of Resolution shall be submitted to the Assistant Deputy Comptroller no later than sixty (60) days after the receipt of the notice from the OCC as set forth in paragraph (2) of this Article.

(4) After the Assistant Deputy Comptroller has advised the Bank that he does not take supervisory objection to the Plan of Resolution, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the Plan of Resolution. The OCC may, in its sole discretion, deem failure to submit to a timely, acceptable Plan of Resolution to be a violation of this Order.

## ARTICLE XIV

### 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 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 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) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it intended to mean the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) 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.

(7) 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 31st day of July, 2002.

/s/ Richard F. Schobert  
Richard F. Schobert  
Assistant Deputy Comptroller  
Arizona/New Mexico Field Office

7/31/02  
Date

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

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In the Matter of: )  
Union Bank of Arizona, N.A. )  
Gilbert, Arizona )

**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 Union Bank of Arizona, N. A. (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 July 31, 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:

Jurisdiction

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

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

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

## Article II

### Agreement

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

## Article III

### Waivers

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

Article IV

Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him 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/ Richard F. Schobert

7/31/02

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Richard F. Schobert  
Assistant Deputy Comptroller  
Arizona/New Mexico 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.

_____ Stephen Butterfield	_____ Resigned 7/31/02
Signed	Date
_____ Daniel Dunlap	_____ 7/31/02
Signed	Date
_____ Shellie Dunlap	_____ 8/4/02
Signed	Date
_____ James Isardi	_____ 7-31-02
Signed	Date
_____ Gary Zabel	_____ 7-31-02
_____	_____ Date