

#2002-95
also Terminates #2002-28

AGREEMENT BY AND BETWEEN
Excel Bank, National Association
New York, New York
and
The Office of the Comptroller of the Currency

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

The Comptroller, through his National Bank Examiner, has examined the Bank, and his findings are contained in the Report of Examination for the examination that commenced on December 3, 2001 (ROE).

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

ARTICLE I

JURISDICTION

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

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

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

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

ARTICLE II

PROGRESS REPORTING - MONTHLY

- (1) The Board shall submit monthly progress reports. These reports shall set forth in detail:
 - (a) actions taken to comply with Articles III through XIII of the Agreement;
 - (b) results of those actions; and
 - (c) a description of the actions, if any, needed to achieve full compliance with each Article of this Agreement.
- (2) The progress reports shall also include any actions initiated in response to the comments in the ROE or in any future Report of Examination.

ARTICLE III

CONCENTRATION REDUCTIONS AND EXPOSURE LIMITS

- (1) The Bank, on a consolidated basis with its subsidiary, Excel Capital Corporation, shall not increase its total exposure to Designated Countries as of the effective date of this Agreement. The Bank shall further limit its total exposure to Designated Countries, excluding Brazil, to no

more than two hundred percent (200%) of Tier 1 capital plus the allowance for loan and lease losses by September 30, 2002 and, including Brazil, to two hundred fifty percent (250%) by March 31, 2003, provided:

- (a) that the Bank obtains an additional voluntary capital injection of two million dollars (\$2 million) in qualifying Tier 1 capital by September 30, 2002; and
- (b) an additional voluntary capital injection of two million dollars (\$2 million) in qualifying Tier 1 capital prior to March 31, 2003 if projected losses associated with the reduction of the Bank's Brazilian exposure exceeds nine million dollars (\$9 million).

Otherwise, the total exposure to all Designated Countries, including Brazil, shall not exceed two hundred fifty percent (250%) of Tier 1 capital plus the allowance for loan and lease losses by September 30, 2002.

(2) The Bank, on a consolidated basis with its subsidiary, Excel Capital Corporation, shall not increase its total exposure to any one of the Designated Countries as of the effective date of this Agreement. The Bank shall further limit its total exposure to any of the Designated Countries, except Brazil, to no more than fifty percent (50%) of Tier 1 capital plus the allowance for loan and lease losses by September 30, 2002.

(3) The Bank, on a consolidated basis with its subsidiary, Excel Capital Corporation, shall not increase its exposure with respect to Brazil as of the effective date of this Agreement and will decrease its exposure to Brazil to fifty percent (50%) of Tier 1 capital plus the allowance for loan and lease losses by March 31, 2003, provided:

- (a) that the Bank obtains an additional voluntary capital injection of two million dollars (\$2 million) in qualifying Tier 1 capital by September 30, 2002; and

(b) an additional voluntary capital injection of two million dollars (\$2 million) in qualifying Tier 1 capital prior to March 31, 2003 if projected losses associated with the reduction of the Bank's Brazilian exposure exceeds nine million dollars (\$9 million).

Otherwise, the total exposure to Brazil shall not exceed fifty percent (50%) of Tier 1 capital plus the allowance for loan and lease losses by September 30, 2002.

(4) The Bank shall not purchase or acquire securities in any of the Designated Countries, whether the Bank makes such acquisition using its investment authority or loan authority, that do not meet the definition of "investment grade" pursuant to 12 C.F.R. Part 1.

(5) On a weekly basis, the Bank shall determine the value of all "Designated Country" exposure. The value of the assets will be based on the average bid price obtained from three (3) independent sources who are active in, and have sufficient knowledge of, emerging market debt such as the debt the Bank holds. The weekly valuation shall be submitted to the Director for Special Supervision/Fraud (Director) who reserves the right to request changes in the sources used to provide pricing.

(6) For the purposes of this Agreement, the term "Designated Countries" shall include Mexico, Turkey, and all non-OECD countries.

ARTICLE IV

STRATEGIC/BUSINESS PLAN

(1) The Board shall cause to be developed within ninety (90) days a written strategic/business plan for the Bank covering at least a three-year period. The strategic/business plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, product line

development, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;
- (c) the identification and development of strategic goals and objectives to be accomplished over the short and long term;
- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established under paragraph (1) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems, and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under paragraph (1) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line development and market segments that the Bank intends to promote or develop;
- (h) an action plan to accomplish identified strategic goals and objectives, including individual responsibilities, accountability, and specific timeframes;
- (i) a financial forecast for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic/business plan;

- (j) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
 - (k) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and
 - (l) systems to monitor the Bank's progress in meeting the plan's goals and objectives.
- (2) Prior to adoption and implementation by the Board, a copy of the plan shall be forwarded to the Director for review and prior determination of no supervisory objection.
 - (3) Upon receipt of no supervisory objection, the Board shall cause the strategic plan to be implemented and thereafter ensure Bank adherence to the written strategic/business plan.
 - (4) Prior to making any significant deviations or changes to the Bank's approved strategic/business plan, the Board shall evaluate the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with such deviation or change. The evaluation shall also include an assessment of the impact of the deviation or change on the Bank's condition.
 - (5) Prior to adoption and implementation, the Board shall forward any proposed significant deviation from or change to the approved strategic/business plan to the Director for review and prior 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 plan developed pursuant to this Article.

ARTICLE V

CAPITAL PLAN

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

Part 3¹:

- (a) Total capital at least equal to ten percent (10%) of risk-weighted assets;
- (b) Tier 1 capital at least equal to eight percent (8%) of risk-weighted assets; and
- (c) Tier 1 capital at least equal to six percent (6%) of actual adjusted total assets.

(2) The Bank shall, and has submitted, a Capital Plan to the OCC for prior supervisory non-objection covering a three (3) year period. The Capital Plan shall include specific plans to maintain the capital levels listed above as well as include:

- (a) projections for capital based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet assets and activities;
- (b) projections of the sources and timing of additional capital and/or projections of the methods and timing of reducing assets;
- (c) the primary source(s) from which the Bank will strengthen its capital structure to meet the requirements of paragraph (1) of this Article;
- (d) alternative source(s) from which the Bank will strengthen its capital structure should the primary source(s) under (c) above not be available;
- (e) a dividend policy that permits the declaration of a dividend only:
 - (i) when the dividend would not cause the Bank, after making the distribution, to be undercapitalized;

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

- (ii) when the Bank is in compliance with its approved Capital Plan;
 - (iii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
 - (iv) with the prior written determination of no supervisory objection by the Director.
- (f) maintenance of adequate liquidity while complying with the restrictions or requirements set forth in this Agreement; and
- (g) a business strategy that details the types and levels of activities in which the Bank will prospectively engage.
- (3) Upon receipt of supervisory non-objection from the Director, the Bank shall thereafter adhere to the provisions of the Capital Plan. The Board shall review and update the Bank's Capital Plan on an annual basis, or more frequently if necessary. The Bank shall submit any changes to the Capital Plan to the Director for a determination of no supervisory objection.

ARTICLE VI

MANAGEMENT

- (1) The Board shall ensure that the Bank has the necessary management structure and personnel in place to implement and adhere to the strategic/business plan developed pursuant to this Agreement, carry out the Board's policies, ensure overall compliance with this Agreement and applicable laws, rules, and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.
- (2) The Board shall cause all management positions to have a position description detailing duties and responsibilities, objectives by which the individual's effectiveness will be measured, and 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.

(3) Within one hundred twenty (120) days, the Board shall review and assess the capabilities of the Bank's management to perform present and anticipated duties to determine whether there is a need for additions to or deletions from current management.

(4) If the Board determines that a member of management or an officer will continue in his/her position but that the individual's depth of skills needs improvement, the Board will, within thirty (30) days of the determination, develop and cause to be implemented a written program, with specific timeframes, to improve the individual's skills. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to effectively fulfill the duties and responsibilities of his/her position;
- (b) objectives by which the officer's effectiveness will be measured; and
- (c) 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 any written program developed pursuant to paragraph (4) of this Article shall be submitted to the Director for review.

(5) If a management position is vacant now or in the future, including if the Board terminates an existing officer or realigns his/her responsibilities and a position then becomes vacant, the Board shall within sixty (60) days of such vacancy identify a capable person to fill the vacancy and vest him/her with sufficient authority to ensure the safe and sound operation of the functions within the scope of that position's responsibility.

- (6) Prior to the appointment of any individual to an officer position, the Board shall submit to the Director 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.
- (7) The Director shall have the power of veto over the employment of the proposed officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer.
- (8) 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)(6)(E) and do not require the Comptroller to complete his review and act on any such information or authority within ninety (90) days.

ARTICLE VII

INSIDER TRANSACTIONS

- (1) The Bank may enter into a transaction with an “Insider” or a “Related Interest” only if it 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; and

- (b) 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.
- (2) For purposes of this Agreement, the terms “Insider” and “Related Interest” shall have the same meaning as set forth in 12 C.F.R. § 215.2.

ARTICLE VIII

ENGAGEMENT OF THIRD PARTIES

- (1) The Bank shall not renew or enter into new contracts exceeding a threshold of sixty-five thousand dollars (\$65,000) on an annual basis with a third party company, entity, or person (third party) to perform services for, or on behalf of, the Bank unless:
 - (a) the Board performs a written analysis that includes:
 - (i) a cost/benefit analysis for using a third party;
 - (ii) a description of the Bank’s due diligence process for selecting the third party and the results of the due diligence review;
 - (iii) an assessment that the contract or commitment is being conducted at arm’s length on terms and conditions fair and reasonable to the Bank, including the ability of the parties to perform under the contract or commitment;
 - (iv) a disclosure of any affiliation with any present or past bank Insider or Related Interest of such Insider; and
 - (v) a determination that the contract is in the best interests of the Bank.

(b) the written analysis pursuant to paragraph (1)(a) of this Article is included in the Board minutes along with details of the deliberations and approval; and

(c) the contract is in writing.

(2) The Board shall immediately forward any Board-approved, written contract, along with the written analysis and Board approval pursuant to paragraph (1)(b) of this Article, to the Director. The Bank may execute the contract only upon receipt of written notice from the Director of no supervisory objection to the contract or its implementation. The contract must, at a minimum:

(a) be made a part of the Bank's books and records, identify the third party, and specify all services to be provided;

(b) define the rights, obligations, and responsibilities of all parties to the contract;

(c) specify the beginning and ending dates of the contract, including any renewal options;

(d) specify and itemize the price to be paid by the Bank for the services;

(e) set standards for quality of services provided by the third party;

(f) provide the Bank appropriate remedies in the event of a default, failure of the third party to meet the quality standards, or failure of the third party to comply with any other material provision of the contract;

(g) require the third party to provide the Bank with annual financial statements if the viability of the third party is integral to the Bank's safe and sound operation;

(h) require the third party to carry appropriate insurance, if applicable, given the nature of the contract;

- (i) require the third party to maintain reliable and accurate books, records, and management information systems; and
 - (j) require the third party to grant the Bank, Bank auditors, and the Comptroller immediate access to the third party's books and records as they relate to services performed on behalf of the bank.
- (3) The Board must ensure all existing third party relationships conform with paragraphs (1) and (2) of this Article, including the execution of a written contract where the existing agreement is oral. The Bank shall not use the services of or compensate in any way any third party where the Board has determined that the relationship is not in the best interests of the Bank.
- (4) The Bank must routinely monitor the performance of the third party to ensure that committed goods and services are received, and that the third party is in compliance with the contract.
- (5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to this Article.

ARTICLE IX

BUSINESS EXPANSION

- (1) Prior to the Bank's involvement in any 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) Further, the Board shall review management's written analysis and shall submit a copy to the Director for review and prior determination of no supervisory objection.
- (3) For purposes of this Article, "significant expansion" shall be defined as an annualized growth rate of an existing product or service greater than fifteen percent (15%), as calculated on the last date of each calendar quarter.

ARTICLE X

CREDIT RISK MANAGEMENT

- (1) The Board shall cause to be developed and implemented within one hundred and twenty (120) days, a written program to improve the credit risk administration of the Bank's loan and investment portfolios. The program shall include, but not be limited to:
- (a) revisions to the loan policy to include:
 - (i) a reflection of the existing credit department structure and workflow;
 - (ii) realistic target markets that can adequately be supported by Bank resources;

- (iii) minimum underwriting standards by type of industry and obligor's internal or external credit rating;
 - (iv) stress testing of each transaction as part of the Bank's underwriting process;
 - (v) substantially lower limits on credit approval delegations;
 - (vi) clear direction regarding application of internal credit ratings; and
 - (vii) internal risk rating definitions, which mirror regulatory guidelines, for the Bank's criticized and classified loans and investments.
- (b) an evaluation of the credit department's staffing needs in terms of numbers and skills considering the Bank's strategic/business plan;
- (c) an improved credit monitoring and risk rating process to ensure that:
 - (i) changes in the obligor's ability to repay are identified on a timely basis by obtaining and analyzing current financial statements;
 - (ii) credit and investment risk ratings are appropriately applied and adjusted in response to changes in the obligor's financial condition; and
 - (iii) workout plans are developed and implemented for problem relationships.
- (d) a credit information reporting process to:
 - (i) provide the Board with sufficiently detailed reports, and a broad view of the risk profile, trends, and incremental changes; and
 - (ii) ensure that an independent party on a regular basis validates the accuracy of the reports.

- (e) an improved loan review function by:
 - (i) requiring direct contact between the person or entity performing loan review for the Bank and the Board to discuss the scope and findings of the reviews; and
 - (ii) developing a process to resolve disagreements in risk ratings between management and the person or entity performing loan review for the Bank.

- (f) a methodology for the allowance for loan and lease losses that:
 - (i) segments the loan portfolio by considering the inherent risks in the credits;
 - (ii) validates the factors applied to the pools of loans using the Bank's historical experience or other means; and
 - (iii) adjusts the factors on an ongoing basis to reflect the Bank's experience and changing conditions.

(2) The Board shall submit to the Director a copy of the credit risk program developed pursuant to paragraph (1) of this Article. At least quarterly, the Board shall prepare a written assessment of the Bank's credit risk, which shall evaluate the Bank's progress under the aforementioned program. The Board shall submit a copy of each assessment to the Director for review.

(3) Prior to committing to extend credit or purchase an investment, an analysis of the obligor's ability to repay the extension shall be made. The analysis shall be written and, at a minimum, include:

- (a) the obligor's and guarantor's current and expected financial condition using up-to-date financial statements;
 - (b) the obligor's ability to withstand adverse or stressed conditions;
 - (c) the obligor's history of servicing debt, whether projected and historical repayment capacities are correlated, and the obligor's willingness to repay;
 - (d) the collateral pledged (amount, quality, and liquidity), control over the collateral, and other credit risk mitigants;
 - (e) qualitative factors such as the caliber of management, strength of the industry, and condition of the economy; and
 - (f) a risk rating at inception, which is consistent with paragraph (1)(a)(vii) of this Article.
- (4) Prior to committing to extend credit or purchase an investment equal to or exceeding thirty percent (30%) of the bank's legal lending limit, members of the Directors' Loan Committee or the Board shall review the written analysis prepared pursuant to paragraph (3) of this Article. The decision to approve, deny, or modify the requested extension of credit or purchase of an investment shall be documented and dated.
- (5) Within one hundred twenty (120) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written concentration risk program. The program shall include, but not be limited to:
- (a) identification and evaluation of risk factors, including but not limited to, industry, structure, tenor, and risk rating of the loans and investments;
 - (b) ensuring that concentrations are identified, reported to the Board, appropriate limits are set consistent with the risk factors, and compliance with limits is monitored;

- (c) an evaluation of key risk factors on an on-going basis, including stress testing, and adjustments to concentration limits accordingly; and
 - (d) development of an effective country risk management process.
- (6) 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

CRITICIZED ASSETS

- (1) The Bank shall take immediate and continuing action to protect its interest in those assets, or any portion thereof, criticized in the ROE, in any subsequent Report of Examination, in any internal or external credit review, or in any list provided to management by the National Bank Examiners during any examination (Criticized Assets).
- (2) The Board shall cause to be developed and implemented within sixty (60) days a written program designed to eliminate the basis of criticism of each Criticized Asset. 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 or investments are to be repaid from operations; and
 - (d) the proposed action to eliminate the basis of criticism and the timeframe for its accomplishment.

- (3) Upon adoption, a copy of the program for each Criticized Asset equal to or exceeding one million dollars (\$1,000,000) shall be forwarded to the Director for review.
- (4) At least monthly, the Board, or a Board-designated committee, shall conduct a review to determine:
 - (a) the status of each Criticized Asset, or criticized portion thereof, that equals or exceeds one million dollars (\$1,000,000);
 - (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.
- (5) A copy of each review shall be forwarded to the Director on a monthly basis.
- (6) The Bank shall not extend credit, directly or indirectly, including renewals, extensions, or capitalization of accrued interest, to an obligor of a Criticized Asset unless each of the following conditions is met:
 - (a) the Board or Board-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 any additional credit, or capitalizing any accrued interest, 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) the Board or Board-designated committee finds in writing that the additional extension of credit or capitalization of accrued interest will not compromise the Bank's written program to collect or strengthen the Criticized Asset.
- (7) A copy of the approval of the Board or of the Board-designated committee shall be maintained in the file of the affected obligor.

ARTICLE XII

ASSET/LIABILITY MANAGEMENT POLICY

(1) The Board shall cause to be developed and implemented within ninety (90) days a written interest rate risk and liquidity policy. In formulating this policy, the Board shall refer to the Interest Rate Risk booklet, L-IRR and the Liquidity booklet, L-L, of the Comptroller's Handbook. The policy shall provide for a coordinated asset/liability management strategy and, at a minimum, address:

- (a) the establishment of management reports on which to base sound interest rate risk and liquidity management decisions;
- (b) implementation of effective tools to measure and monitor the Bank's performance and overall interest rate risk profile;
- (c) prudent limits on the nature and amount of interest rate risk the Bank will accept;
- (d) requirements for a written analysis identifying and assessing all applicable risks prior to purchasing any new type of instrument;
- (e) requirements for Board approval prior to purchasing any new type of instrument, and this approval must be clearly documented in the Board minutes showing a discussion and understanding of the nature of the risks being assumed;
- (f) establishment of systems to properly value and account for these instruments;
- (g) requirements for regular reporting to the Board on positions taken, the level of risk being assumed, and compliance with the limits established pursuant to paragraph (1) of this Article;
- (h) primary and secondary sources of liquidity;

- (i) liquidity risk management systems, prudent limits, and reports that enable the Board and management to monitor the Bank's liquidity position and maintain liquidity at a level sufficient to meet present and future funding needs without adversely affecting the Bank's operations;
 - (j) the liquidity, maturity, and pledging requirements of the investment portfolio;
 - (k) development of a liquidity contingency plan;
 - (l) the nature, extent, and purpose of Bank borrowings; and
 - (m) periodic review of the Bank's adherence to the policy.
- (2) Upon adoption, a copy of the written policy shall be forwarded to the Director for review.
- (3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policy developed pursuant to this Article.

ARTICLE XIII

AUDIT AND INTERNAL CONTROLS

- (1) The Board shall cause to be implemented within one hundred and twenty (120) days an independent, audit and internal control 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;
 - (d) ensure adequate audit coverage in all areas; and
 - (e) establish an annual audit plan using a risk-based approach sufficient to achieve these objectives; and

- (f) assure that the person responsible for implementing the internal audit program described above shall report directly to the Board, which shall have the sole power to direct the responsible persons' activities. All reports prepared by the audit staff shall be in writing and filed directly with the Board and not through any intervening party.
- (2) The Bank shall ensure that internal and external auditors review and opine on the adequacy of the Bank's accounting processes and practices for financial and regulatory reporting of loans and investments.
- (3) As part of this audit program, the Board shall review 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.
- (4) The Bank shall require that the audit function is supported by a fully staffed department or outside firm, with respect to both the experience level and number of the individuals employed.
- (5) The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, that all violations cited in any Report of Examination are corrected, and that the Bank maintains a written record describing those actions.
- (6) The audit staff shall continue to have access to any records necessary for the proper conduct of its activities. National bank examiners shall continue to have access to all reports and work papers of the audit staff and any other parties working on its behalf.
- (7) Upon adoption, a copy of the internal audit program shall be promptly submitted to the Director for review.
- (8) The Board shall ensure the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plan developed pursuant to this Article.

ARTICLE XIV

ADMINISTRATIVE RELIEF AND EXTENSIONS OF TIME

- (1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any timeframe within this Agreement, the Bank shall submit a written request to the Director asking for relief.
- (2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Director to exempt the Bank from any provision, or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.
- (3) The Director's decision in granting the request is final and not subject to further review.

ARTICLE XV

NOTICE TO THE COMPTROLLER

- (1) All correspondence related to this Agreement, and any information or documentation required to be submitted shall be sent by overnight mail, hand delivery, or facsimile to:

Ronald G. Schneck
Director for Special Supervision/Fraud
Office of the Comptroller of the Currency
Mail Stop 6-4
250 E Street, S.W.
Washington, DC 20219
202-874-4450
202-874-5214 (fax)

Louis M. Ferreira
National Bank Examiner
New York Field Office
1114 Avenue of the Americas
Suite 3900
New York, New York 10036
212-790-4020
212-790-4083 (fax)

ARTICLE XVI

CLOSING

(1) Although the Bank has agreed to submit certain programs and reports to the Director for review or approval, the Board has the ultimate responsibility for the safe and sound operation of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

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

(4) In each instance in this Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that 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 Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (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.

(5) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

(6) The Memorandum of Understanding, dated March 18, 1999, is hereby terminated.

(7) The Bank entered into a Formal Agreement dated April 11, 2002. This Agreement replaces in its entirety the Agreement dated April 11, 2002. As a result, the April 11, 2002 Agreement is hereby terminated.

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

/s/ Ronald G. Schneck
Ronald G. Schneck
Director for Special Supervision/Fraud

9/24/02
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
John Altenau

9/24/02
Date

Signed
Donald Frain

9/24/02
Date

Signed
Arthur Keller

9/24/02
Date

Signed
Robert F. Moreschi

9/24/02
Date

Signed
Roy Nersesian

9/24/02
Date