

#2003-162

AGREEMENT BY AND BETWEEN
First National Bank - Colorado
Fowler, Colorado
and
The Office of the Comptroller of the Currency

First National Bank - Colorado, Fowler, Colorado (“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 July 28, 2003 (“ROE”).

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

ARTICLE I

JURISDICTION

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

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

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

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

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

Until December 5, 2003, send to:

Assistant Deputy Comptroller
Denver Field Office
1099 18th Street, Suite 2650
Denver, CO 80202

After December 5, 2003, send to:

Assistant Deputy Comptroller
Denver Field Office
1225 17th Street, Suite 450
Denver, CO 80202-5534

ARTICLE II

COMPLIANCE COMMITTEE

(1) Within fifteen (15) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) 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 Agreement

- (2) The Compliance Committee shall meet at least quarterly.
- (3) Within fifteen (15) days of the appointment of the Committee and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:
 - (a) actions taken to comply with each Article of this Agreement; and
 - (b) the results of those actions.
- (4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

ARTICLE III

BANK SECRECY ACT - AUDIT FUNCTION

- (1) Within thirty (30) days, the Board shall review and evaluate the level of service and ability of the audit function currently being provided by its internal auditor. Such an assessment should include the Board's expectations of how this department can assist in ensuring the Bank's compliance with the Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 - 5330), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C (including, but not limited to, Currency Transaction Reports ("CTRs") and Suspicious Activity Reports ("SARs")) (collectively referred to herein as the "Bank Secrecy Act"), and the rules and regulations of the Office of Foreign Assets Control.
- (2) Within thirty (30) days, the Board shall expand the Bank's existing audit procedures to include:

- (a) development of a program to test the adequacy of internal controls designed to ensure compliance with the provisions of the Bank Secrecy Act;
- (b) prompt management response and follow-up to all audit exceptions or other recommendations of the Bank's auditor; and
- (c) a risk-based approach to Bank Secrecy Act compliance that includes transactional testing and verification of data for higher risk accounts or geographic areas of specific concern.

(3) Within sixty (60) days, the independent internal or external auditor shall conduct a review of all account activity at the Bank since July 1, 2003. This review shall include deposit accounts, loan transactions, wire activity, certified check activity, Currency Transaction Report activity (including structuring) and traveler's check activity, in order to ascertain any unusual or suspicious transactions that may have occurred at the Bank during this period. Upon completion of this review, the findings of the independent auditor shall be reported to the Board, with a copy to the Assistant Deputy Comptroller. Within thirty (30) days of receiving the written report of the independent auditor, the Bank shall file Suspicious Activity Reports, in accordance with 12 C.F.R. § 21.11, for any previously unreported suspicious activity identified during this review.

ARTICLE IV

BANK SECRECY ACT - COMPLIANCE OFFICER

(1) Within thirty (30) days the Board shall appoint a capable officer of the Bank who shall be vested with sufficient authority to monitor and ensure the Bank's compliance with the

Bank Secrecy Act, and the rules and regulations of the Office of Foreign Assets Control (OFAC). This compliance officer shall report directly to the Board and shall be completely independent of the Bank's management. This officer shall be responsible for the complete and timely filing of all reports required under the Bank Secrecy Act, including, but not limited to, Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs).

(2) The requirement to submit information and the provision for a prior determination of no supervisory objection in this Article are based on the authority of 12 U.S.C. § 1818(b) and do not require the Comptroller or the Assistant Deputy Comptroller to complete his or her review and act on any such information or authority within ninety (90) days.

ARTICLE V

BANK SECRECY ACT - INTERNAL CONTROLS

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to ensure compliance with the Bank Secrecy Act. At a minimum, this written program shall establish:

- (a) a system of internal controls and independent testing and auditing to ensure ongoing compliance with the Bank Secrecy Act;
- (b) operating procedures for both the opening of new accounts and the monitoring of high risk accounts;
- (c) adequate controls and procedures to ensure that all suspicious and large currency transactions are identified and reported. Procedures should be comprehensive as to all points of cash entry and exit;

- (d) procedures to ensure that records are maintained on monetary instrument transactions and funds transfers, as required by the Bank Secrecy Act;
- (e) comprehensive procedures to identify and report to appropriate management personnel:
 - (i) frequent or large volume cash deposits or wire transfers or book entry transfers to or from offshore or domestic entities or individuals;
 - (ii) wire transfers or book entry transfers that are deposited into several accounts;
 - (iii) receipt and disbursement of wire transfers or book entry transfers without an apparent business reason;
 - (iv) receipt and disbursement of wire transfers or book entry transfers when they are inconsistent with the customer's business;
 - (v) receipt and disbursement of currency or monetary instruments when they are inconsistent with the customer's business; and
 - (vi) bank accounts opened in the name of a casa de cambio (money exchange house) or any "financial institution" as defined in 31 C.F.R. § 103.11(n) (bank, broker/dealer, currency dealer or exchanger, issuer or seller or redeemer of traveler's checks or money orders, transmitter of funds, telegraph company, casino, etc.);
- (f) a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness of and compliance with

the requirements of the Bank Secrecy Act and the Office of Foreign Assets Control (OFAC), including the currency reporting and monetary instrument and funds transfer recordkeeping requirements, and the reporting requirements associated with Suspicious Activity Reports (SARs) pursuant to 12 C.F.R. Part 21, Subpart B;

- (g) an officer who will be responsible for filing Currency Transaction Reports (CTRs), Reports of International Transportation of Currency or Monetary Instruments (CMIRs), and Reports of Foreign Bank and Financial Accounts (FBARs);
- (h) comprehensive guidelines and procedures to identify and report both the shipment and receipt of currency or monetary instruments via common couriers, which guidelines should specifically detail procedures that will cover and address improperly labeled courier pouches containing monetary instruments, as well as related procedures for reporting and filing Suspicious Activity Reports for such pouches; and
- (i) comprehensive guidelines, procedures, and systems for compliance with the rules and regulations of the Office of Foreign Assets Control (OFAC).

(2) Upon completion, a copy of this program shall be submitted to the Assistant Deputy Comptroller for review. In the event the Assistant Deputy Comptroller recommends changes to the program, the Board shall immediately incorporate those changes into the program.

(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 VI

SUSPICIOUS ACTIVITY REPORTS

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to establish a system of internal controls and processes to ensure compliance with the requirements to file Suspicious Activity Reports set forth in 12 C.F.R. § 21.11, as amended. At a minimum, this written program shall establish procedures for identifying and reporting known or suspected violations of Federal law, violations of the Bank Secrecy Act, or suspicious transactions related to money laundering activity, including suspicious activity relating to the opening of new accounts, the monitoring of current accounts, and the transfer of funds through the Bank.

(2) Upon completion, a copy of this program shall be submitted to the Acting Assistant Deputy Comptroller for review. In the event the Assistant Deputy Comptroller recommends changes to the program, the Board shall immediately incorporate those changes into the program.

(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 VII

CONSUMER COMPLIANCE PROGRAM

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure adherence to a written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations. This program shall include, but not be limited to:

- (a) a written description of the duties and responsibilities of the compliance officer;
- (b) adequate internal controls to ensure compliance with consumer protection laws, rules, and regulations;
- (c) the preparation of a policies and procedures manual covering all consumer protection laws, rules and regulations for use by appropriate Bank personnel in the performance of their duties and responsibilities;
- (d) annual updates of the written policies and procedures manual to ensure it remains current;
- (e) an audit program to test for compliance with consumer protection laws, rules and regulations;
- (f) procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel;
- (g) the education and training of all appropriate Bank personnel in the requirements of all federal and state consumer protection laws, rules and regulations; and
- (h) periodic reporting of the results of the consumer compliance audit to the Board or a committee thereof.

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

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

ARTICLE VIII

COMPLIANCE AUDIT

- (1) Within ninety (90) days, the Board shall complete an audit all applicable consumer laws, rules and regulations.
- (2) When completed, the Board shall evaluate the audit reports and shall assess the impact on the Bank of any audit deficiencies cited in such reports.
- (3) Upon completion, a copy of the compliance audit report(s) and the board/management response(s) shall be promptly submitted to the Assistant Deputy Comptroller.

ARTICLE IX

CREDIT AND COLLATERAL EXCEPTIONS

- (1) Within sixty (60) days the Board shall obtain current and satisfactory credit information on all loans lacking such information, including those listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.
- (2) Within sixty (60) days the Board shall ensure proper collateral documentation is maintained on all loans and correct each collateral exception listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(3) Effective immediately, the Bank may grant, extend, renew, alter or restructure any loan or other extension of credit that equals or exceeds seventy-five thousand dollars (\$75,000) only after:

- (a) documenting the specific reason or purpose for the extension of credit;
- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;
- (d) obtaining and analyzing current and satisfactory credit information, including cash flow analysis, where loans are to be repaid from operations;
- (e) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable.

ARTICLE X

LOAN REVIEW CONSULTANT

(1) The Board shall continue to employ a qualified consultant to perform an annual asset quality review of the Bank. The consultant shall be utilized until such time as an ongoing internal asset quality review system is developed by the Board, implemented and demonstrated to be effective.

(2) Before terminating the consultant's asset quality review services, the Board shall both certify the effectiveness of the internal asset quality review system, and receive prior determination of no supervisory objection from the Assistant Deputy Comptroller.

ARTICLE XI

CAPITAL PLAN

(1) The Bank shall achieve by December 31, 2003 and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Tier 1 capital at least equal to six and one-half percent (6.5%) of adjusted total assets.¹

(2) The requirement in this Agreement to maintain a specific capital level means that the Bank cannot 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 ninety (90) 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) specific plans for the achievement of “well-capitalized” as defined in 12 C.F.R. Part 6.4 on or before June 30, 2004;
- (c) 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;
- (d) projections of the sources and timing of additional capital to meet the Bank's current and future needs and meet “well-capitalized” per 12 C.F.R. 6.4;
- (e) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;

¹ Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets. As further noted in 12 C.F.R. § 3.2(a), a bank may be required to compute and maintain its leverage ratio on the basis of actual, rather than average total assets. This language would have to be modified to reflect that change.

- (f) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (g) a dividend policy that permits the declaration of a dividend only:
 - (i) when the Bank is in compliance with its approved capital program; and
 - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60;

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Assistant Deputy Comptroller, 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 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 II of this Agreement 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 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 sixty (60) 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 which 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

ADMINISTRATIVE APPEALS 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 Board shall submit a written request to the Assistant Deputy Comptroller 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 Assistant Deputy Comptroller 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 Assistant Deputy Comptroller's decision in granting the request is final and not subject to further review.

ARTICLE XIV

CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior determination of no supervisory objection, 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/her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are

amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Agreement in which the Board is required to ensure 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.

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

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

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

/s/ Linda H. Pfortmiller

Linda H. Pfortmiller
Acting Assistant Deputy Comptroller
Denver Field Office

12/18/2003

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 Kenny Anderson	12/18/03 Date
Signed Geoffrey Burney	12/18/03 Date
Signed John Daurio	12-18-03 Date
Signed Edward J. DeRose	12/18/03 Date
Signed Raymond J. Herrick	12/18/03 Date
Signed William Larson	12-18-03 Date
Signed Jack Quinn	12-18-03 Date
Signed Richard White	12/18/03 Date
Signed H.B. Whittmore	12/18/03 Date

