

**#2003-37** also *Terminates*  
**#2002-2**

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

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**In the Matter of:** )  
Guaranty National Bank of Tallahassee )  
Tallahassee, Florida )

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**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined Guaranty National Bank of Tallahassee, Tallahassee, Florida (Bank), and his findings are contained in the Report of Examination (ROE) for the examination that commenced on July 8, 2002.

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 5/2/03, 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**

**PROGRESS REPORTING - MONTHLY**

(1) The Board shall submit monthly progress reports to the Director for Special Supervision (Director), 250 E. Street, SW, Washington, DC 20219 and to the Assistant Deputy

Comptroller, North Florida Field Office, 8375 Dix Ellis Trail, #403, Jacksonville, Florida

32256. These reports shall set forth in detail:

- (a) actions taken since the prior progress report to comply with each Article of the Order;
  - (b) results of those actions; and
  - (c) a description of the actions needed to achieve full compliance with each Article of this Order.
- (2) The progress reports should also include:
- (a) a copy of monthly Board minutes and the Board package;
  - (b) the latest month-end balance sheet and income statement which should include the Bank's Tier 1 leverage capital ratio, Tier 1 and Total risk based capital ratios, and the Bank's calculation of return on average assets;
  - (c) any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the ROE or in any future ROE.
- (3) Notwithstanding the provisions of paragraphs (1) and (2) above, the Bank shall timely notify the Office of the Comptroller of the Currency (OCC) of any material adverse developments affecting the Bank's condition, performance, or outlook.

## ARTICLE II

### CONSUMER COMPLIANCE VIOLATIONS – ADVERSE ACTIONS

(1) Within sixty (60) days, the Bank shall conduct a file search to identify those applicants who never received or received inadequate adverse action notices related to loan applications made through the Bank's mortgage loan operations in Chantilly, Virginia. The file

search should commence as of January 8, 2002 and continue until mortgage operations were discontinued. The file search must identify:

- (a) applicants whose loan applications were denied, where inappropriate, inadequate, or insufficient reasons were set out as the basis for denial; and
- (b) applicants who were denied credit or were “cancelled,” but never received an adverse action notice.

(2) Within seventy-five (75) days, the Bank shall send complete and accurate adverse action notices to affected applicants identified in paragraph (1) above.

(3) For purposes of this Order, the term “applicant” shall be defined as any person who has applied for a mortgage loan through the Bank’s mortgage operations in Chantilly, Virginia, regardless of whether the loan was approved, denied, cancelled, renewed, or withdrawn.

### ARTICLE III

#### STRATEGIC PLAN

(1) The Bank shall continue its existing practice of strategic plan development and review. Within ninety days (90) days, the Board shall develop a revised, written strategic plan for the Bank covering at least a three-year period. The strategic plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, and reduction in the volume of nonperforming assets, together with strategies to achieve those objectives. At a minimum, the plan should 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 including a determination of the Bank's overall risk profile;
- (c) the 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 in subparagraph (1)(c) 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 subparagraph (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line 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 time frames;
- (i) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the three-year period covered by the strategic 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) A copy of the strategic plan, and any subsequent amendments or revisions, shall be forwarded to the Director for review and prior determination of no supervisory objection.

(3) Upon receipt of a written determination of no supervisory objection, the Board shall immediately adopt, implement and thereafter ensure that the Bank has adequate processes, personnel, and control systems to ensure implementation of and adherence to the strategic plan developed pursuant to this Article.

#### ARTICLE IV

##### PROFIT PLAN

(1) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written profit plan, consistent with the Bank's strategic plan, to improve and sustain the earnings of the Bank. Specifically, the plan shall describe the Bank's objectives for improving Bank earnings, contemplated strategies, and major capital expenditures required to achieve those objectives. This plan shall include, at minimum, the following elements:

- (a) specific goals relative to profits of the bank;
- (b) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance and reach the goals set forth in (a) above;

- (c) realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
- (d) a budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (e) a description of the operating assumptions that form the basis for major projected income and expense components.

(2) The budgets and related documents required in paragraph (1) of this Article shall be submitted to the Director upon completion for no supervisory objection. The Board shall submit to the Director annual budgets as described in paragraph (1) for each year this Order remains in effect. The budget for each year shall be submitted on or before November 30 of the preceding year.

(3) The Board shall forward comparisons of its balance sheet and profit and loss statement to the profit plan projections to the Director on a quarterly basis.

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

## ARTICLE V

### CAPITAL PLAN AND HIGHER MINIMUMS

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

- (a) Tier 1 capital at least equal to seven percent (7%) of adjusted total assets<sup>1</sup>;
- (b) Tier 1 capital at least equal to nine percent (9%) of risk-weighted assets;

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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 minus end-of-quarter intangible assets.

- (c) Total risk-based capital at least equal to eleven percent (11%) 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).

(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) of this Article;
- (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 subparagraph (3)(d) above not be available; and
- (f) prior approval of the Director before the declaration of a dividend.

(4) Upon completion, the Bank's capital program shall be submitted to the Director for prior determination of no supervisory objection. Upon receiving a written determination of no supervisory objection from the Director, 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. Revisions to the Bank's capital program shall be submitted to the Director for prior determination of no supervisory objection.

(5) If the OCC determines, in its sole judgment, that the Bank has failed to submit an acceptable capital program as required by paragraph (3) of this Article, or fails to implement or adhere to a capital program for which the OCC has taken no supervisory objection pursuant to paragraph (4) of this Article, then within thirty (30) days of receiving written notice from the OCC of such fact, the Bank shall develop and submit to the OCC for its review and prior determination of no supervisory objection a revised capital plan.

(6) If the OCC determines, in its sole judgment, that the Bank has failed to submit an acceptable revised capital program, or fails to implement or adhere to a revised capital program for which the OCC has taken no supervisory objection, then within thirty (30) days of receiving written notice from the OCC of such fact, the Bank shall develop and submit to the OCC for its review and prior determination of no supervisory objection, a capital contingency plan, which shall detail the Board's proposal to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181 at no loss or cost to the Federal Deposit Insurance Fund. After the OCC has advised the Bank that it does not take supervisory objection to the capital contingency plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the contingency plan, unless the Bank receives no supervisory objection from the Director to a revised capital plan. Failure to submit a timely, acceptable contingency plan may be deemed a violation of this Order, in the exercise of the OCC's sole discretion.

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



## ARTICLE VI

### NEW SENIOR EXECUTIVE OFFICER

(1) Within sixty (60) days, the Board shall identify a new, capable President/CEO who, following review and no objection by the Director, shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and ensure the safe and sound operation of the Bank.

(2) Prior to the appointment of any individual as President/CEO, 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.

(3) The Director shall have the power of veto over the initial employment of the proposed President/CEO. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer.

(4) 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 Comptroller to complete his review and act on any such information or authority within ninety (90) days.

## ARTICLE VII

### MANAGEMENT AND BOARD SUPERVISION STUDY

(1) Within thirty (30) days following the employment of a new President/CEO pursuant to Article VI, the Board shall submit to the Director the name and the qualifications of an independent outside management consultant proposed to be employed by the Bank. The Director shall have the power of veto over the employment of the proposed consultant. However, failure to exercise such veto power shall not constitute approval or endorsement of the consultant.

(2) 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 Comptroller to complete his review and act on any such information or authority within ninety (90) days.

(3) Within sixty (60) days of receipt of the OCC's non-objection to the proposed management consultant, the consultant shall complete a study of current management and Board supervision presently being provided to the Bank, the Bank's management structure, and its staffing requirements in light of the Bank's present condition. The findings and recommendations of the consultant shall be set forth in a written report to the Board. At a minimum, the report shall contain:

- (a) recommendations regarding the identification of present and future management and staffing requirements of each area of the Bank, with particular emphasis given to the lending area;
- (b) recommended detailed written job descriptions for all executive officers;
- (c) an evaluation of each officer's qualifications and abilities and a determination of whether each of these individuals possesses the

experience and other qualifications required to perform present and anticipated duties of his/her officer position;

- (d) recommendations as to whether Board, management or staffing changes should be made, including the need for additions to or deletions from the current management team or Board of Directors;
- (e) recommended objectives by which management's effectiveness will be measured;
- (f) a recommended training program to address identified weaknesses in the skills and abilities of the Bank's staff and management team;
- (g) an evaluation of current lines of authority, reporting responsibilities and delegation of duties for all officers, including identification of any overlapping duties or responsibilities;
- (h) a recommended organization chart that clearly reflects areas of responsibility and lines of authority for all officers, including the Bank's President/CEO;
- (i) an assessment of the Board's strengths and weaknesses along with a director education program designed to strengthen identified weaknesses;
- (j) an assessment of whether Board members are receiving adequate information on the operation of the Bank to enable them to fulfill their fiduciary responsibilities and other responsibilities under law;
- (k) recommendations to expand the scope, frequency and sufficiency of information provided to the Board by management;

- (l) an evaluation of the extent of responsibility of current management and/or the Board for present weaknesses in the Bank's condition; and
- (m) recommendations to correct or eliminate any other deficiencies in the supervision or organizational structure of the Bank.

(4) Within forty-five (45) days of the submission by the consultant of this study to the Board, the Board shall develop, implement, and thereafter ensure Bank adherence to a written plan with specific time frames that will correct any deficiencies which are noted in the study.

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

(6) Copies of the Board's written plan and the consultant's study shall be forwarded to the Director. The Director shall retain the right to determine the adequacy of the report and its compliance with the terms of this Order. In the event the written plan, or any portion thereof, is not implemented, the Board shall immediately advise the Director in writing of specific reasons for deviating from the plan.

## ARTICLE VIII

### LOAN PORTFOLIO MANAGEMENT

(1) The Board shall continue to implement and thereafter ensure Bank adherence to its written program to improve the Bank's loan portfolio management. The program shall include, but is not limited to:

- (a) procedures to ensure satisfactory and perfected collateral documentation;

- (b) 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;
- (c) procedures to ensure conformance with loan approval requirements;
- (d) a system to track and analyze exceptions;
- (e) procedures to ensure conformance with Call Report instructions;
- (f) procedures to ensure the accuracy of internal management information systems;
- (g) a performance appraisal process, including performance appraisals, job descriptions, and incentive programs for loan officers, which adequately consider their performance relative to policy compliance, documentation standards, accuracy in credit grading, and other loan administration matters; and
- (h) procedures to track and analyze concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios.

(2) The Board shall ensure Bank adherence to systems which provide for effective monitoring of:

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

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

(3) Management will continue to provide the Board with written monthly reports including, at a minimum, the following information:

- (a) the identification, type, rating, and amount of problem loans and leases;
- (b) the identification and amount of delinquent loans and leases;
- (c) credit and collateral documentation exceptions;
- (d) the identification and status of credit related violations of law, rule or regulation;
- (e) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (3)(a) through (d) of this Article;
- (f) an analysis of concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios;
- (g) the identification and amount of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (h) the identification of loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(4) The Board shall forward copies of the monthly reports to the Director.

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

## ARTICLE IX

### 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 maintain 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 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 credit in excess of two hundred fifty thousand dollars (\$250,000);
- (d) loan loss experience;
- (e) trends of delinquent and nonaccrual loans;
- (f) concentrations of credit in the Bank;
- (g) present and prospective economic conditions; and
- (h) a peer bank comparison.

(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 adequate processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

## ARTICLE X

### CRITICIZED ASSETS

(1) The Bank shall continue to take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent ROE, by internal or external loan review, or in any list provided to management making reference to Article X by the National Bank Examiners.

(2) For each asset criticized in the ROE, in any subsequent ROE, or by any internal or external loan review, or in any list making reference to Article X provided to management by the National Bank Examiners as "doubtful," "substandard," or "special mention", the Board shall adopt, implement, and thereafter ensure Bank adherence to a written program designed to eliminate the basis of criticism. 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 assets equal to or exceeding one hundred thousand dollars (\$100,000) shall be forwarded to the Director.

(4) The Board shall ensure that the Bank has adequate 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 one hundred thousand dollars (\$100,000);
- (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 specified in paragraph (5) of this Article shall be forwarded to the Director on a monthly basis.

(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 ROE, in any subsequent ROE, in any internal or external loan review, or in any list making reference to Article X provided to management by the National Bank Examiners and whose aggregate loans or other extensions exceed one hundred thousand dollars (\$100,000) 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 XI

### CREDIT AND COLLATERAL EXCEPTIONS

- (1) The Bank may grant, extend, renew, alter or restructure any loan or other extension of credit 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;
    - (i) Failure to obtain the information in subparagraph (1)(d) shall require a majority of the full Board (or a delegated committee

thereof) to certify in writing the specific reasons why obtaining and analyzing the information in subparagraph (1)(d) would be detrimental to the best interests of the Bank.

(ii) A copy of the Board certification shall be maintained in the credit file of the affected borrower(s). The certification will be reviewed by the OCC in subsequent examinations of the Bank; and

(e) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable.

(2) For each loan lacking current and satisfactory credit information, including those listed in the ROE, in any subsequent ROE, in any internal or external loan review, or in any list of loans provided to management making reference to Article XI by the National Bank Examiners, the Board shall take all appropriate steps to obtain current and satisfactory credit information.

(3) For each loan lacking proper collateral documentation, including those listed in the ROE, in any subsequent ROE, in any internal or external loan review, or in any list of loans provided to management making reference to Article XI by the National Bank Examiners, the Board shall take all steps necessary to correct each collateral exception.

## 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 internally identified, or cited in the July 8, 2002 ROE or in any subsequent ROE. The monthly 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 sixty (60) 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 ROE which cites violations of law, rule, or regulation, the Board shall take the same steps as specified in paragraph (2) of this Article.

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

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

### ARTICLE XIII

#### INTERNAL AUDIT

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

(4) The Board shall continue to 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.

(5) 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.

(6) 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. This provision does not negate the right to assert legally recognized privileges where applicable.

- (7) A copy of the internal audit program shall be submitted annually to the Director.

#### ARTICLE XIV

##### CONSUMER COMPLIANCE PROGRAM

(1) The Bank shall 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) semi-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) A copy of any program revisions or amendments shall be forwarded to the Director.
- (3) The Board shall ensure that the Bank has adequate processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

## ARTICLE XV

### PRODUCTS AND SERVICES – EXISTING OR NEW

- (1) Prior to the Bank's involvement in any significant new product or service, or its significant expansion of any existing product or service, the Board shall prepare, or cause to be prepared and shall review, 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, 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) an analysis of profitability, including growth projections and interest rate risk.

(2) Prior to the Bank's involvement in the significant new product or service, or the significant expansion of any existing product or service, a copy of the analysis shall be submitted to the Director for prior determination of no supervisory objection.

(3) For the purposes of this Article, "significant new product or service" shall be defined as one whose asset size exceeds or is projected to exceed ten percent (10%) of Tier 1 Capital, or whose gross earnings exceed or are projected to exceed two percent (2%) of annual gross revenue.

(4) For the purposes of this Article, "significant expansion" shall be defined as:

- (a) annualized asset growth, as calculated on the last date of each calendar quarter, of any existing product or service, greater than ten percent (10%), where that product or service exceeds ten percent (10%) of Total Assets, or
- (b) any increase in gross earnings from an existing product or service, as calculated on the last date of each calendar quarter, which exceeds ten percent (10%), where the gross earnings from that product or service constitutes ten percent (10%) or more of annual gross revenue.

(5) For purposes of this Article "gross revenue" shall equal total interest income plus total noninterest income as defined in the Consolidated Reports of Condition and Income.

(6) The term "significant expansion" does not include the expansion of any existing product or service if: (i) that product or service is comprehensively discussed in the strategic and



profit plans previously submitted by the Bank pursuant to this Order; and (ii) the Director has previously issued a determination of no supervisory objection to those plans.

## ARTICLE XVI

### ENGAGEMENT OF THIRD PARTIES

(1) Effective immediately, the Bank shall not renew or enter into new contracts or engagements which exceed or are projected to exceed thirty thousand dollars (\$30,000), on an annual basis, with a third party company, entity, or person (third party) to perform professional services for, or on behalf of, the Bank unless:

- (a) the Board performs a comprehensive 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 has been negotiated at arm's length, and that it contains 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 officer, director, principal shareholder, or related interest of such a person; and
  - (v) a determination that the contract or engagement is in the best interests of the Bank.

- (b) the written analysis pursuant to subparagraph (1)(a) of this Article is included in the Board minutes along with details of the deliberations and approval; and
- (c) the contract or engagement is in writing.

(2) The Board shall immediately forward any written contract approved by the Board pursuant to paragraph (1) of this Article, along with the written analysis and Board approval pursuant to subparagraph (1)(b) of this Article to the Director. The Bank may execute the contract or engagement only upon receipt of written notice from the Director of no supervisory objection to the contract or engagement. The Director shall advise the Bank promptly (within thirty days of receipt) of any objection. Unless otherwise advised in writing by the Director, the contract or engagement 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) clearly 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 reasonable standards for quality of services provided by the third party;
- (f) provide the Bank with effective 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 sufficient 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 OCC 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 adequate processes, personnel, and control systems to ensure implementation of and adherence to the requirements of this Article.

(6) For purposes of this Article "professional services" shall include where:

- (a) the Bank contracts with or engages a third party to perform functions of the Bank's operations rather than conduct them internally. This includes, but is

not limited to, loan review, asset management, network security management, human resources administration, treasury operations, internal audit, electronic funds transfer, payroll processing, mortgage servicing, internet banking services, bill payment, bill presentment, account aggregation, digital certification, merchant processing activities, and customer call centers;

- (b) the Bank contracts with or engages a third party to make available to its customers products and services produced by the third party. These include, but are not limited to, joint marketing relationships in which the bank sells to its customers nonbank products (e.g., nondeposit investments or insurance made available by a brokerage firm or insurance company); or
- (c) the Bank lends its name or regulated entity status to products and services originated by third parties, or activities predominantly conducted by third parties. These include complete pass-through type arrangements in which the Bank receives a fee in return for the use of its name, to more participatory arrangements on the Bank's part.

## ARTICLE XVII

### CLOSING

(1) Although the Board is, by this Order, required to submit certain proposed actions and programs for the review or approval of the Director, 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) Unless otherwise specified, 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 Director 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) The Bank entered into a Formal Agreement dated January 25, 2002. This Order replaces the Formal Agreement in its entirety and therefore, the January 25, 2002 Agreement is hereby terminated.

(6) 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 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 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.

(7) 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.

(8) 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 2<sup>nd</sup> day of May, 2003.

*/s/ Ronald G. Schneck*

*5/2/03*

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Ronald G. Schneck  
Director for Special Supervision

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Date

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

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**In the Matter of:** )  
Guaranty National Bank of Tallahassee )  
Tallahassee, Florida )

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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 Guaranty National Bank of Tallahassee, Tallahassee, Florida (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 5/2/03 (Order);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

Jurisdiction

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

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

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

## ARTICLE II

### Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) 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). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Office of the Comptroller of the Currency (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.

(3) 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.

## 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/her 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/ Ronald G. Schneck  
Ronald G. Schneck  
Director for Special Supervision

5/2/03  
Date

[Signature page for Directors of Bank follows]

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	May 1, 2003
_____ Linda C. Alexionok	_____ Date
Signed	May 1, 2003
_____ David A. Barrett	_____ Date
Signed	May 1, 2003
_____ Rica Barrett	_____ Date
Resigned (1/03)	
_____ Lawrence H. Fuchs	_____ Date
Signed	May 1, 2003
_____ Kenneth C. Fuqua	_____ Date
Signed	May 1, 2003
_____ Wilma B. Lauder	_____ Date
Resigned (4/03)	
_____ Marilyn B. Newton	_____ Date