

#2003-69

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

In the Matter of:)
National Republic Bank)
Chicago, Illinois)

CONSENT ORDER

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined the National Republic Bank of Chicago, Chicago, Illinois (Bank), and his findings are contained in the Report of Examination, dated June 30, 2002 (ROE).

The Bank, by and through its duly elected and acting Board of Directors (Board), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated July 2, 2003, 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

CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Board shall cause the Bank to achieve by September 30, 2003 and thereafter maintain, the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Subject to subparagraph (1)(b) of this Article, Tier 1 capital at least equal to five percent (5%) of adjusted total assets; and
- (b) An additional amount of Tier 1 or Tier 2 capital (subject to the provisions of paragraph (2) of this Article) equal to eleven percent (11%) of the average aggregate outstanding balance of loans to the hotel/motel industry, calculated on a calendar quarter basis using the quarter-end balance of capital and the average of the quarter-end and the two prior month-end aggregate outstanding balances of the hotel/motel loans.

(2) As of December 31, 2003 and thereafter, at least 50% of the amount of capital required by subparagraph (1)(b) of this Article must be Tier 1 capital.

(3) Notwithstanding the above, the Board shall ensure that additional Tier 1 capital of \$6 million is injected into the Bank by September 30, 2003, as part of the requirements of subparagraphs (1)(a) and (b).

(4) For purposes of this Order, loans to the hotel/motel industry shall include:
(i) any and all loans or extensions of credit made to finance the acquisition, construction, operation, or working capital of any hotel or motel or business entity engaged in the business of operating a hotel or motel; (ii) any and all loans or extensions of credit to individuals or businesses entities in which the proceeds are paid over to, or utilized for the benefit of, the acquisition, construction, operation, or working capital of a hotel or motel or business entity engaged in the business of operating a hotel or motel; and (iii) any and all loans or extensions of credit secured by a hotel or motel or the assets or

securities of a business entity that is engaged in the business of operating a hotel or motel.

(5) For the purposes of this Order, the only loans that may be excluded from the outstanding aggregate balance of all loans to the hotel/motel industry are loans or portions of loans sold without recourse.

(6) 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).

(7) Within sixty (60) 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 in no event is less than the requirements of paragraphs (1), (2), and (3);
- (b) projections for growth and capital requirements based upon the strategies of the Bank, historical performance, and an analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and

- (f) a dividend policy that permits the declaration of a dividend only:
 - (i) when the Bank is in compliance with its approved capital ratios; and
 - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60.

(8) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection. Upon notification by the Assistant Deputy Comptroller of no supervisory objection to the capital program, the Board 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.

(9) Except for dividends not to exceed 38% of the Bank's taxable income or for the purposes of servicing debt related to capital infused into the Bank, the Board of Directors (Board) shall cease and desist from declaring or paying any dividends, or making any other distributions of the Bank's capital, unless it has given prior notice to and received a finding of no supervisory objection from the Office of the Comptroller of the Currency (OCC). Any request for no supervisory objection to declare dividends or distribute capital shall be made in writing to the Assistant Deputy Comptroller and supported by adequate documentation, including the following:

- (a) Board resolution supporting the request;
- (b) the amount and date of the requested dividend or distribution;

- (c) the specific purpose of the dividend or distribution;
- (d) an explanation of the amount and timing of the dividend or distribution;
- (e) the Bank's calculation of its current Tier 1 capital and adjusted total assets, pursuant to 12 C.F.R. Part 3;
- (f) the Bank's calculation of its expected Tier 1 capital and adjusted total assets once the dividend or distribution has been made.

(10) The preceding paragraph (9) of this Article shall remain in effect unless and until the Bank is in compliance with paragraphs (1), (2), and (3) of this Article, both before and after the declaration and payout of such dividend.

ARTICLE II

CONCENTRATION OF CREDIT

(1) Within sixty (60) days, the Board shall develop, adopt, implement, and thereafter ensure Bank adherence to a program to manage the Bank's concentration of loans to the hotel/motel industry in a safe and sound manner. At a minimum, the concentration management program must provide for written procedures for the ongoing measurement and monitoring of the hotel/motel loan concentration and for a limit on that concentration in terms of the Bank's capital position that is commensurate with safe and sound banking practices and the overall risk profile of the Bank.

(2) Upon completion, the Bank's concentration management program and the concentration limitation shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

ARTICLE III

RATE SENSITIVE AND BROKERED DEPOSITS

(1) Within sixty (60) days, the Board shall develop, adopt, implement, and thereafter ensure Bank adherence to risk management systems designed to address the Bank's interest rate sensitivity, funding and liquidity risks, especially with respect to deposits obtained through Internet-based deposit solicitation services and deposit brokers, consistent with the guidelines set forth in the Joint Agency Advisory on Brokered and Rate-Sensitive Deposits and OCC Advisory Letter 2001-5. At a minimum, the risk management system shall provide for:

- (a) adequate due diligence when assessing deposit brokers;
- (b) due diligence in assessing the potential risk to earnings and capital associated with brokered or other rate-sensitive deposits, and prudent strategies for their use;
- (c) reasonable control structures to limit funding concentrations;
- (d) management information systems (MIS) that clearly identify non-relationship or higher-cost funding programs and allow management to track performance, manage funding gaps, and monitor compliance with concentration and other risk limits; and
- (e) contingency funding plans that:
 - (i) address the risk that these deposits may not be renewed ("rolled over") upon maturity; and
 - (ii) provide a reasonable alternative funding strategy.

(2) The Board shall ensure that the Bank complies with the provisions of 12 U.S.C. § 1831f and 12 C.F.R. § 337.6, including the restrictions on the use of brokered deposits and the limitations on the effective yields the Bank may pay on deposit accounts accepted, renewed or rolled over as set forth at 12 C.F.R. § 337.6(b).

(3) Upon completion, the Bank's risk management systems required by paragraph (1) of this Article shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

ARTICLE IV

CREDIT ADMINISTRATION

(1) Within sixty (60) days, the Board shall develop, adopt, implement, and thereafter ensure Bank adherence to a credit administration program designed to ensure that the Bank is monitoring the creditworthiness and repayment capacity of its hotel/motel borrowers on an ongoing basis and identifying problem credits in a timely manner. At a minimum, the program shall include:

- (a) a requirement that Bank management evaluate at least every six months current financial information on any borrower whose aggregate loans exceeds \$500,000;
- (b) the identification of minimally acceptable financial information about the hotel/motel property's operations when complete balance sheet and income statements are not available on a timely basis (such as average room rates and average occupancy rates for the current period), and

- (c) procedures to obtain and evaluate such minimally acceptable information; and
- (d) a process to assure the timely identification and categorization of problem credits.

(2) Upon completion, the Bank's credit administration program shall be submitted to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

ARTICLE V

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 any Report of Examination issued subsequent to the date of this Order.

(2) 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 any subsequent Report of Examination 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) Upon adoption, a copy of these procedures shall be promptly forwarded to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

ARTICLE VI

CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

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

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

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller or his authorized representative, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall: (i) 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; (ii) require the timely reporting by Bank management of such actions

directed by the Board to be taken under the terms of this Order; (iii) follow-up on any non-compliance with such actions in a timely and appropriate manner; and (iv) require corrective action be taken in a timely manner of any non-compliance with such actions.

IT IS SO ORDERED, this 2nd day of July, 2003.

-signed-

Donelle Ward
Assistant Deputy Comptroller
Central District

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

In the Matter of:)
National Republic Bank of Chicago)
Chicago, Illinois)

STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER

The Comptroller of the Currency of the United States of America (Comptroller) has initiated cease and desist proceedings against the National Republic Bank of Chicago, Chicago, Illinois (Bank) pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated July 2, 2003 (Order);

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

ARTICLE I

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

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

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

ARTICLE II

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

ARTICLE III

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

ARTICLE IV

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

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

-signed-

Donelle Ward
Assistant Deputy Comptroller
Central District

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.

 /s/

Edward Fitzgerald

 July 2, 2003

Date

 /s/

William M. Frew

 July 2, 2003

Date

 /s/

Donald L. Hower

 July 2, 2003

Date

Enrico J. Mirabelli

Date

Dr. Upendranath Nimmagadda

Date

 /s/

Dr. Usha Nimmagadda

 July 2, 2003

Date

 /s/

Hiren Patel

 July 2, 2003

Date