

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

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**In the Matter of:** )  
The Fullerton National Bank )  
Fullerton, Nebraska )

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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 The Fullerton National Bank, Fullerton, Nebraska (“Bank”), and his findings are contained in the Report of Examination for the examination that commenced on May 17, 2004 (“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 September 21, 2004, that is accepted by the Comptroller. By this Stipulation and Consent, that is incorporated by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

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

Article I

COMPLIANCE COMMITTEE

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least 3 (three) directors, of which no more than 2 (two) shall be employees of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee

shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order

(2) The Compliance Committee shall meet at least monthly.

(3) Within thirty (30) days of the appointment of the Committee and every ninety (90) days thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) actions taken to comply with each Article of this Order; and

(b) the results of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

## Article II

### INDEPENDENT CONSULTANT

(1) Within thirty (30) days, the Board shall retain the services of a qualified independent consultant to perform a comprehensive review of the Bank's compliance with the Bank Secrecy Act ("BSA").

(2) Within sixty (60) days from the date of his retention, the independent consultant shall perform transactional testing in all areas of BSA compliance to assess the Bank's overall compliance with applicable laws and regulations and to identify areas that need improvement. For purposes of this Order, the "BSA" includes all implementing regulations, as well as the rules and regulations of the Office of Foreign Assets Control. The consultant shall also develop findings, observations and recommendations to enhance the Bank's internal controls and internal audit with respect to BSA compliance.

(3) Within sixty (60) days from the date of his retention by the Bank, the consultant shall conduct a BSA review of all account activity at the Bank since January 1, 2004. 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 Consultant 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 Consultant, 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.

(4) A copy of the Bank's proposed "Engagement Letter" with the independent consultant, and any amendments thereto, shall be submitted to the Assistant Deputy Comptroller for review and determination of no supervisory objection prior to execution.

### Article III

#### BANK SECRECY ACT - AUDIT FUNCTION

(1) Within thirty (30) days of receiving the independent consultant's findings regarding the Bank's internal audit of BSA compliance, 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 the Internal Auditor can assist in ensuring the Bank's compliance with the BSA.

(2) Within sixty (60) days of receiving the independent consultant's findings regarding the Bank's internal audit of BSA compliance, the Board shall expand the Bank's existing internal audit procedures to include:

- (a) development of a program to test the adequacy of internal controls designed to ensure compliance with the BSA;
- (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 BSA compliance that includes transactional testing and verification of data for higher risk accounts or geographic areas of specific concern.

#### Article IV

##### BANK SECRECY ACT - INTERNAL CONTROLS

(1) Within sixty (60) days of receiving the independent consultant's findings regarding the Bank's internal controls for BSA compliance, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to ensure compliance with the BSA. 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 BSA;
- (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 BSA;

- (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 BSA 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
- (i) 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
- (j) comprehensive guidelines, procedures, and systems for compliance with the rules and regulations of the 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.

(4) Within ninety (90) days, the Board shall send the compliance officer to external training for applicable consumer regulations.

(a) The above mentioned compliance training should include, at a minimum, the following consumer regulations:

- (i) Bank Secrecy Act, Regulation, 12 C.F.R. § 21.21 and 31 C.F.R. § 103
- (ii) Flood Disaster Protection Act, 12 C.F.R. § 22
- (iii) Home Mortgage Disclosure Act, 12 C.F.R. § 203
- (iv) Equal Credit Opportunity Act, 12 C.F.R. § 202
- (v) Fair Credit Reporting Act, 15 U.S.C. § 1681
- (vi) Fair Housing Home Loan Data System, 12 C.F.R. § 27
- (vii) Truth in Lending, 12 C.F.R. § 226
- (viii) Real Estate Settlement Procedures Act, 24 C.F.R. § 3500
- (ix) Interest on Loans, 12 C.F.R. § 590
- (x) Right to Financial Privacy Act, 12 C.F.R. § 3403
- (xi) Electronic Fund Transfer Act, 12 C.F.R. § 205
- (xii) Expedited Funds Availability Act, 12 C.F.R. § 229
- (xiii) Interest on Deposits, 12 C.F.R. § 204
- (xiv) Truth in Savings Act, 12 C.F.R. § 230

(5) Within ninety (90) days, the Board shall send the BSA officer to external training for applicable consumer regulations.

(a) The above mentioned compliance training should include, at a minimum, the following consumer regulations:

- (i) Bank Secrecy Act, Regulation, 12 C.F.R. § 21.21 and 31 C.F.R. § 103

(6) Within sixty (30) days after the compliance officer and BSA officer receive external training, they shall prepare and the Board shall approve a revised compliance training schedule for all applicable staff that provides training for all regulations noted in Paragraph (1) above over the next 6 months, and annually thereafter.

(7) All internal training will be documented including who attended, copies of curriculum provided and retained in the bank as a record for 3 years.

## Article VI

### CONSUMER COMPLIANCE PROGRAM

(1) Within sixty (60) days, after receiving external training, the Compliance Officer shall develop and propose and the Board shall adopt, implement, and thereafter ensure adherence to a written consumer compliance program designed to ensure that the Bank operates in compliance with all applicable consumer laws, rules and regulations. This program shall include, but not be limited to:

- (a) Audit scope sufficient to cover all applicable consumer regulations, including transactional testing
- (b) Written compliance audit report of findings, reported directly to the Board or the audit committee of the Board
- (c) periodic reporting of the results of the consumer compliance audit to the Board or a committee thereof.

- (d) procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel;
- (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 VI

### 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 VI of this Order shall include the date and manner in which each correction has been effected during that reporting period.
- (2) Within one hundred and twenty (120) 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 VII

### PROGRESS REPORTING - QUARTERLY

(1) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller, Denver Field Office, 1225 17th Street, Suite 450, Denver, CO 80202. 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 any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the Report of Examination or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending October 31, 2004 and will be due within fifteen (15) days of that date. Thereafter, progress reports will be due within fifteen (15) days after the quarter end.

## Article VIII

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Board determines that an exception to any provision of this Order is in the best interests of the Bank, or requires an extension of any timeframe within this Order, 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 Order. 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 IX

### CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or prior determination of no supervisory objection of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United

States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time 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, 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) 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 Comptroller or the United States.

(6) The terms of this Order, 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.

IT IS SO ORDERED, this 21<sup>st</sup> day of September, 2004.

*/s/ Karen M. Boehler*

*9/21/04*

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Karen M. Boehler  
Assistant Deputy Comptroller  
Denver Field Office

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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:** )  
The Fullerton National Bank )  
Fullerton, Nebraska )

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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 The Fullerton National Bank, Fullerton, Nebraska (“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 September 21, 2004 (“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 Comptroller 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 Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’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/her representative, has hereunto set his/her hand on behalf of the Comptroller.

*/s/ Karen M. Boehler*

*September 21, 2004*

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Karen M. Boehler  
Assistant Deputy Comptroller  
Denver Field Office

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Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

Thomas H. Olson	9/21/04
	Date
Thomas H. Olson, Jr.	9-21-04
	Date
Ronald Christensen	9-21-04
	Date
Donald R. Treadway	September 21, 2004
	Date
Joseph L. Wegner	9/21/04
	Date
	Date
	Date
	Date
	Date
	Date