

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

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IN THE MATTER OF: )  
FIRST NATIONAL BANK OF PAONIA )  
PAONIA, COLORADO )

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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 First National Bank of Paonia, Paonia, Colorado (“Bank”), and his findings are contained in the Report of Examination dated July 19, 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 November 18, 2004, that is accepted by the Comptroller. By this Stipulation and Consent, which is hereby incorporated by reference the same as if fully set forth, 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) The Board shall continue to have a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee 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 any changes to the Committee, a new list of Committee members 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) The Compliance Committee shall submit a monthly 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

### PROGRESS REPORTING - MONTHLY

(1) The Board shall submit monthly 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 November 30, 2004, and shall be due within fifteen (15) days of that date. Thereafter, progress reports shall be due within fifteen (15) days after month end.

(4) The board shall also submit a copy of its monthly board packet to the Assistant Deputy Comptroller. The board packet shall be due within 15 days of the scheduled board meeting. The packet should include all information provided to the directors.

### ARTICLE III

#### EXTERNAL AUDIT

(1) By November 15, 2004, the Bank shall retain the services of a qualified and independent Certified Public Accountant to render an opinion on the Bank's September 30, 2004, Statement of Condition ("Balance Sheet") and each subsequent year-end Statement of Condition and Income Statement during the term of this Order, or until no longer required by the Comptroller.

(2) By September 30, 2004, and prior to the appointment or employment of any independent Certified Public Accountant or entering into any contract with the independent CPA to perform the auditing and accounting services required by this Article, the Board shall submit the name and qualifications of the proposed CPA and the proposed terms of employment (including the proposed engagement letter and any amendments thereto) to the Assistant Deputy Comptroller for a prior determination of no supervisory objection. The engagement letter shall

include, at a minimum, the audit specified in paragraph (1) of this Article, as well as an annual audit of the bank.

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

#### ARTICLE IV

##### BANK INFORMATION SYSTEMS

(1) The Board shall immediately take all steps necessary to improve the management of the Bank's Information Systems ("BIS") activities and correct each deficiency cited in the ROE or any subsequent Report of Examination.

(2) Within thirty (30) days, the Board shall ensure that the data processing manager has the necessary skills and experience to supervise effectively the BIS area.

(3) Within thirty (30) days, the Board shall implement effective BIS security and operations procedures, as described in the Federal Financial Institutions Examination Council's 2003 and 2004 Information Systems Examination Handbooks.

(4) Within ninety (90) days, the Board shall develop an effective and independent BIS audit program. At a minimum, the BIS audit program shall be performed by an independent and qualified individual, and include fundamental elements of a sound audit program, as described in the Federal Financial Institutions Examination Council's 1996 Information Systems Examination Handbook.

(5) Within thirty (30) days, the Board shall appoint a Security Officer familiar with BIS operations. The Security Officer shall be responsible for reviewing and ensuring appropriate data security of the Bank.

(6) The Board shall immediately hire an external and independent IT security firm in order to determine whether anyone has gained unauthorized access to customer and bank information. This review shall be completed by October 31, 2004. The Board shall notify the Assistant Deputy Comptroller upon the hiring of this firm and shall provide a copy of the review once it is completed.

(7) The Board shall provide a quarterly written progress report on each of the requirements of this article to the Assistant Deputy Comptroller.

## ARTICLE V

### MANAGEMENT AND BOARD SUPERVISION STUDY

(1) By December 31, 2004, the Board shall complete a study of current management and Board supervision presently being provided to the Bank, the Bank's management structure, and its staffing requirement in light of the Bank's present condition. The findings and recommendations of the Board shall be set forth in a written report. At a minimum, the report shall contain:

- (a) the identification of present and future management and staffing requirements of each area of the Bank;
- (b) 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;

- (c) recommendations as to whether management or staffing changes should be made, including the need for additions to or deletions from the current management team;
- (d) objectives by which management's effectiveness will be measured;
- (e) a training program to address identified weaknesses in the skills and abilities of the Bank's staff and management team;
- (f) an evaluation of current lines of authority, reporting responsibilities and delegation of duties for all officers, including identification of any overlapping duties or responsibilities;
- (g) an assessment of the Board's strengths and weaknesses, along with a director education program designed to strengthen identified weaknesses;
- (h) 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;
- (i) recommendations to expand the scope, frequency and sufficiency of information provided to the Board by management; and
- (j) recommendations to correct or eliminate any other deficiencies in the supervision or organizational structure of the Bank.

(2) As part of this assessment, the Board shall also independently investigate the allegations identified in the letter from a bank employee dated April 29, 2004.

(3) Within thirty (30) days of completion of this study, the Board shall develop, implement, and thereafter ensure Bank adherence to a written plan, with specific time frames, that will correct any deficiencies that are noted in the study.

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

(5) Copies of the Board's written plan, and the independent investigation, shall be forwarded to the Assistant Deputy Comptroller. The Assistant Deputy Comptroller shall retain the right to determine the adequacy of the report and whether it complies 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 Assistant Deputy Comptroller, in writing, of specific reasons for deviating from the plan.

## ARTICLE VI

### VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, regulation or guideline cited in the ROE and in any subsequent Report of Examination. 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) The Board shall immediately 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 that incorporate internal control systems and education of employees regarding laws, regulations and guidelines applicable to their areas of responsibility.

(3) Within ninety (90) days of receipt of any subsequent Report of Examination that cites violations of law, regulation, or guideline, 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 that 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

### CONFLICT OF INTEREST POLICY

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written, comprehensive conflict of interest policy applicable to the Bank's and the Bank's holding company's directors, principal shareholders, executive officers, affiliates, and employees ("Insiders") and related interests of such Insiders. The policy, in addition to defining a "conflict of interest," shall address:

- (a) avoidance of conflicts of interest and breaches of fiduciary duty, and the appearance of conflicts of interest;



- (b) involvement in the loan approval process of Insiders who may benefit directly or indirectly from the decision to grant credit;
- (c) disclosure of actual and potential conflicts of interest to the Board, and periodic disclosure of "related interests" as defined by 12 C.F.R. Part 215;
- (d) requirements for arms-length dealing in any transactions by Insiders, or their related interests, involving the Bank's sale, purchase, or rental of property and services;
- (e) disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Bank;
- (f) restrictions on and disclosure of receipt of anything of value by Insiders, directly or indirectly, from borrowers, loan applicants, other customers, or suppliers of the Bank; and
- (g) avoidance of preferential treatment for family and friends of Insiders.

(2) Upon adoption, a copy of this conflict of interest policy 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 policy developed pursuant to this Article.

(4) Within one hundred twenty (120) days, the Compliance Committee shall conduct a review of the Bank's existing relationships with its and its holding company's directors, executive officers, affiliates, principal shareholders, employees and their related interests for the purpose of identifying relationships not in conformity with the policy. The Board shall ensure that:

- (a) any nonconforming relationships are brought into conformity with the policy within thirty (30 ) days; and
- (b) within ninety (90) days, the Bank is properly reimbursed for:
  - (i) any excess or improper payments to Insiders and their related interests; and
  - (ii) any excess or improper payments for services provided by Insiders and their related interests.

Thereafter, the Board shall review all proposed transactions, or modifications of existing relationships, between the Bank and any of its or its holding company's directors, executive officers, affiliates, principal shareholders, employees and their related interests to ensure conformance with the Bank's conflict of interest policy. Documentation supporting these reviews shall be in writing and preserved in the Bank.

## ARTICLE VIII

### INTERNAL CONTROLS

(1) By December 31, 2004, the Board shall conduct a review of internal controls to identify deviations from safe and sound internal control procedures, and submit a compliance plan to address these deficiencies and institute corrective action. Satisfactory internal controls should be appropriate for the size and nature, scope, and risk of the Bank's activities, and include:

- (a) an organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;
- (b) effective risk assessment;

- (c) timely and accurate financial, operational, and regulatory reports;
- (d) adequately policies/procedures to safeguard and manage assets; and
- (e) compliance with applicable laws and regulations.

(2) A copy of the Board's plan shall be submitted to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection.

(3) Within one hundred twenty (120) days of receiving this report, the Board shall address the weaknesses identified in the ROE in the areas of liquidity, interest rate risk, and investment management.

(4) Upon completion, the Board shall submit a copy of the actions take by the Board to address these weaknesses.

(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 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 immediately establish 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, A-ALLL, 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 significant credit;
- (d) loan loss experience;
- (e) trends of delinquent and nonaccrual loans;
- (f) concentrations of credit in the Bank; and
- (g) present and prospective economic conditions.

(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) A copy of the Board's program shall be submitted to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection.

(4) 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 X

### CREDIT AND COLLATERAL EXCEPTIONS

(1) The Board shall immediately 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) The Board shall immediately 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 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 (3)(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 (3)(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), where it can be reviewed by

National Bank Examiners in subsequent examinations of the Bank;  
and

- (e) documenting, with adequate supporting material, the value of collateral and properly perfecting a Bank lien where applicable.

## ARTICLE XI

### CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) Immediately, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written program designed to eliminate the basis of criticism of assets criticized in the ROE, in any subsequent Report of Examination, or by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination as "doubtful," "substandard," or "special mention." 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 fifty thousand dollars (\$50,000) shall be forwarded to the Assistant Deputy Comptroller.

(4) 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.

(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 fifty thousand dollars (\$50,000);
- (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 shall be forwarded to the Assistant Deputy Comptroller on a monthly basis in a format similar to Appendix A, attached hereto.

(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 Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination and whose aggregate loans or other extensions exceed fifty thousand dollars (\$50,000) 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 XII

### LENDING POLICY

(1) Immediately, the Board shall review and revise the Bank's written loan policy. In revising this policy, the Board shall refer to the Loan Portfolio Management and Commercial Real Estate and Construction Lending booklets of the Comptroller's Handbooks. The loan policy shall incorporate, but not necessarily be limited to, the following:

- (a) a description of acceptable types of loans;
- (b) a provision that current and satisfactory credit information will be obtained on each borrower;
- (c) maturity scheduling related to the anticipated source of repayment, the purpose of the loan, and the useful life of the collateral;
- (d) maximum ratio of loan value to appraised value or acquisition costs of collateral securing the loan;



- (e) collection procedures, to include follow-up efforts, that are systematically and progressively stronger;
- (f) a definition of the Bank's trade area;
- (g) guidelines and limitations for loans originating outside of the Bank's trade area;
- (h) a limitation on aggregate outstanding loans in relation to other balance sheet accounts;
- (i) distribution of loans by category;
- (j) guidelines for loans to insiders, including a statement that such loans will not be granted on terms more favorable than those offered to similar outside borrowers;
- (k) guidelines and limitations on concentrations of credit;
- (l) guidelines for completing adequate appraisals and evaluations on real estate;
- (m) a limitation on the type and size of loans that may be made by loan officers without prior approval by the Board or a committee established by the Board for this purpose;
- (n) measures to correct the deficiencies in the Bank's lending procedures noted in any ROE;
- (o) guidelines designed to improve Board oversight of the loan approval process, specifically with regard to credits exhibiting significant risk;
- (p) charge-off guidelines, by type of loan or other asset, including Other Real Estate Owned, addressing the circumstances under which a charge-off

would be appropriate and ensuring the recognition of losses within the quarter of discovery;

- (q) procedures to ensure that cash flow analyses are performed on construction loan borrowers;
- (r) procedures to ensure that copies of original invoices are received and retained in file, scrutinized and compared to the construction budget to identify and resolve cost overruns;
- (s) procedures to ensure that periodic inspections are performed on all construction projects; and
- (t) procedures to ensure that all construction loans are either in conformity with the Bank's construction loan policies or in compliance with the Bank's written provisions for exceptions to loan policies.

(2) Upon adoption, the policy shall be implemented, the Board shall thereafter ensure Bank adherence to the policy, and a copy of the policy shall be forwarded to the Assistant Deputy Comptroller for review.

(3) Immediately, the Board shall develop, implement, and thereafter ensure Bank adherence to systems that provide for effective monitoring of:

- (a) compliance with the Bank's lending policy and construction underwriting standards, as well as laws, rules, and regulations pertaining to the Bank's lending function;
- (b) a system to track and analyze policy exceptions;
- (c) adequacy of credit and collateral documentation; and
- (d) concentrations of credit.

(4) On a quarterly basis, management shall provide the Board with a written report including the identification of loans not in conformance with the Bank's lending policies, and exceptions to the Bank's lending policy and underwriting standards.

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

(6) Upon completion, the Board shall submit a copy of the program to the Assistant Deputy Comptroller for review.

### ARTICLE XIII

#### LOAN REVIEW CONSULTANT

(1) The Board shall employ a qualified consultant to perform an ongoing 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) By December 31, 2004, the loan review shall be expanded to provide sufficient coverage of all loan types, including the retail portfolio.

(3) The loan review shall include appropriate documentation to support findings and conclusions.

(4) Prior to the appointment or employment of such consultant, or entering into any contract with such consultant, the Board shall submit the name and qualifications of the proposed consultant and the proposed terms of employment to the Assistant Deputy Comptroller for a prior determination of no supervisory objection.

(5) 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.

(6) The requirement to submit information and the provisions for 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 to complete his review and act on any such information or authority within ninety (90) days.

#### ARTICLE XIV

##### PARTICIPATIONS PURCHASED

(1) The Bank may grant, purchase, assume or acquire in any manner, directly or indirectly, or as a fiduciary or nominee, any loan, loan participation, loan obligation or other asset, as long as such grant, purchase, assumption, or acquisition is consistent with safe and sound banking practices, the guidelines set forth in Banking Circular 181 (Revised), dated August 2, 1984, and the requirements of 12 C.F.R. Part 34.

#### ARTICLE XV

##### BANK SECRECY ACT - AUDIT FUNCTION

(1) Within ninety (90) days, the Board shall expand the Bank's existing audit procedures to include:

- (a) a program to test the adequacy of internal controls that is 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.

(2) Within ninety (90) days, the Board shall retain the services of a qualified independent Consultant to develop findings, observations and recommendations on the Bank's internal controls addressing compliance with the Bank Secrecy Act, 12 C.F.R. Part 21, Subpart B (including the Suspicious Activity Report requirements) and the rules and regulations of the Office of Foreign Assets Control, including related regulatory reporting on those subjects. These findings, observations and recommendations, along with the Bank's response to any such concerns, shall be reviewed by the independent Consultant on an annual basis for the term of this Order.

(3) A copy of the Bank's proposed "Engagement Letter" with this 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 XVI

### BANK SECRECY ACT OFFICER

(1) The Board shall immediately 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, 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 (collectively referred

to herein as the Bank Secrecy Act), and the rules and regulations of the Office of Foreign Assets Control (OFAC). 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) Prior to the appointment or employment of any individual as the compliance officer, the Board shall submit the name and qualifications of the proposed officer to the Assistant Deputy Comptroller for a prior determination of no supervisory objection.

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

## ARTICLE XVII

### BANK SECRECY ACT - INTERNAL CONTROLS

(1) Within ninety (90) 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, 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 (collectively referred to as 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; and
  - (v) receipt and disbursement of currency or monetary instruments when they are inconsistent with the customer's business;
- (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); and
- (h) 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 XVIII

### CONSUMER COMPLIANCE PROGRAM

(1) Within one hundred twenty (120) 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) semiannual 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 XIX

### FINANCIAL REPORTS ACCURACY

(1) Within ninety (90) days, the Board shall adopt and cause the Bank to implement policies and procedures, in accordance with the Instructions for Preparation of Consolidated Reports of Condition and Income, to ensure that all official and regulatory reports filed by the Bank accurately reflect the Bank's condition as of the date that such reports are submitted. Thereafter the Board shall ensure Bank adherence to the policies and procedures adopted pursuant to this Article.

(2) Upon completion of the policies, the Board shall submit a copy of the policies to the Assistant Deputy Comptroller.

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

## ARTICLE XX

### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by November 30, 2004, and thereafter maintain through March 31, 2005, Tier 1 capital at least equal to eight percent (8%) of adjusted total assets (as defined in 12 C.F.R. Part 3);

(2) The Bank shall achieve by March 31, 2005, and thereafter maintain Tier 1 capital at least equal to nine percent (9%) of adjusted total assets (as defined in 12 C.F.R. Part 3):

(3) The requirement in this Order to meet and 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).

(4) Within thirty (30) 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) 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 (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 program;
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (iii) with the prior written approval from the Assistant Deputy Comptroller, which shall be granted or denied within thirty (30) days of the receipt of a dividend request from the Bank.

(5) 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.

## ARTICLE XXI

### 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 XXII

### 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 eighteenth day of November, 2004.

*/s/ Karen M. Boehler*

*11/18/04*

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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**

\_\_\_\_\_  
IN THE MATTER OF: )  
THE FIRST NATIONAL BANK OF PAONIA )  
PAONIA, COLORADO )  
\_\_\_\_\_

**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 First National Bank of Paonia, Paonia, Colorado (“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 November 18, 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 representative, has hereunto set his/her hand on behalf of the Comptroller.

*/s/ Karen M. Boehler*

*11/18/04*

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Karen M. Boehler  
Assistant Deputy Comptroller  
Western District

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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.

Signed Gerald E. Anderson	18 Nov 04 Date
Signed Ervin W. Berg	11-18-04 Date
Signed John L. Blair	11/18/04 Date
Signed John S. Blair	11/18/04 Date
Signed Jack G. Lengemann	11/18/04 Date
Signed Kenneth G. Mitchell	11/18/04 Date
_____	_____