

**#2004-132**  
**Amends #2004-17**

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

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**In the Matter of:**

New York National Bank  
Bronx, New York

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**AMENDED CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has examined New York National Bank, Bronx, New York (“Bank”), and his findings are contained in the Report of Examination for the examination that commenced on May 24, 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 an Amended Consent Order,” dated October 22, 2004, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Amended Consent Order (“Amended Order”) by the Comptroller and is agreed upon by and between the Bank and the Comptroller.

This Amended Order, through the Stipulation and Consent, supplements and amends the Consent Order dated February 18, 2004, which, except for Article XII, remains in full force and effect as if fully set forth herein. Article XII of the Order is supplanted by the terms of this Amended Order.

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

### MINIMUM CAPITAL RATIOS AND CONTINGENCY PLAN

- (1) The Bank shall achieve by December 31, 2004 and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):
  - (a) Tier 1 capital at least equal to thirteen percent (13%) of risk-weighted assets;
  - (b) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets.
- (2) If the OCC determines, in its sole discretion, that the Bank is in non-compliance with paragraph 1 of this Article, the Bank shall, within thirty (30) days of receiving written notice from the OCC of such fact, develop and submit to the OCC for its review and prior written determination of no supervisory objection a Contingency Plan, which shall detail the Board's proposal to either: (i) sell or merge the Bank; or (ii) to liquidate the Bank in conformance with 12 U.S.C. § 181, and in a manner that will result in no loss or cost to the Federal Deposit Insurance Corporation. In order to be deemed acceptable, the contingency plan must, at a minimum, call for the execution of a definitive agreement to sell or merge the Bank or a shareholder vote to enter into liquidation under 12 U.S.C. § 181 within ninety (90) days of receipt of the OCC's supervisory non-objection. The Bank agrees that it will not schedule a vote of its shareholders so as to seek their approval to liquidate the Bank prior to securing the OCC's written determination of no supervisory objection to the Contingency Plan. After the OCC has advised the Bank in writing that it does not take supervisory objection to the Contingency Plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the Contingency Plan. Failure to submit a timely, acceptable Contingency Plan may be deemed by the OCC, in the exercise of its discretion, to constitute a violation of this Order.

## ARTICLE II

### CHIEF OPERATING OFFICER

(1) By December 31, 2004, the Board shall identify, and submit for supervisory review, a capable Chief Operating Officer who 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 to the Chief Operating Officer position, the Board shall submit to the Assistant Deputy Comptroller 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 Assistant Deputy Comptroller shall have the power to disapprove the appointment of the individual. However, the lack of disapproval of an individual shall not constitute an approval or endorsement of the proposed officer.

(4) The requirement to submit information and the prior disapproval provisions of this Article are based on the authority of 12 U.S.C. § 1818(b) and do not require the Comptroller or the Assistant Deputy Comptroller to complete his/her review and act on any such information or authority within ninety (90) days.

(5) If the OCC determines, in its sole discretion, that the Bank is in non-compliance with paragraph 1 of this Article, the Bank shall, within thirty (30) days of receiving written notice from the OCC of such fact, develop and submit to the OCC for its review and prior written determination of no supervisory objection a Contingency Plan, which shall detail the Board's proposal to either: (i) sell or merge the Bank; or (ii) to liquidate the Bank in conformance with 12 U.S.C. § 181, and in a manner that will result in no loss or cost to the Federal Deposit Insurance Corporation. In order to be deemed acceptable, the contingency plan must, at a minimum, call for the execution of a definitive agreement to sell or merge the Bank or a shareholder vote to enter into liquidation under 12 U.S.C. § 181 within ninety (90) days of receipt of the OCC's supervisory non-objection. The Bank agrees that it will not schedule a vote of its shareholders so as to seek their approval to liquidate the Bank prior to securing the OCC's written determination of no supervisory objection to the Contingency Plan. After the OCC has advised the Bank in writing that it does not take supervisory objection to the Contingency Plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the Contingency Plan. Failure to submit a timely, acceptable Contingency Plan may be deemed by the OCC, in the exercise of its discretion, to constitute a violation of this Order.

#### ARTICLE IV

##### CLOSING

(1) The Board has the ultimate responsibility for proper and sound management of the Bank.

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

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

(3) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his/her 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.

(4) 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.

(5) 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 22<sup>nd</sup> day of October, 2004.

*/s/ Kristin A. Kiefer*

*10/22/04*

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Kristin A. Kiefer  
Assistant Deputy Comptroller  
New York Metro 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.

Signed	10-22-04
Antenor Adam	Date
Signed	10/22/04
Aida De Soto	Date
Signed	10-25-04
Irving Klein	Date
Signed	11-03-04
Serafin Mariel	Date
Signed	10/28/04
Harriet R. Michel	Date
Signed	10/26/04
Samuel Munroe, Jr.	Date
Signed	10/22/04
Emilio Serrano	Date
Signed	10-22-04
Andrew Velez	Date
Signed	10/22/04
Keith Darcy	Date
	Date

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

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**In the Matter of:**  
New York National Bank  
Bronx, New York

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**STIPULATION AND CONSENT TO THE ISSUANCE  
OF AN AMENDED CONSENT ORDER**

Whereas, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate proceedings in accordance with 12 U.S.C. § 1818(i)(1) to enforce the Consent Order entered into with New York National Bank, Bronx, New York (“Bank”) on February 18, 2004;

Whereas, the Comptroller intends to also initiate cease and desist proceedings pursuant to 12 U.S.C. § 1818(b) to redress newly identified unsafe or unsound practices outlined in the May 24, 2004 Report of Examination of the Bank;

Therefore, the Bank, in the interest of compliance and cooperation, consents to the issuance of an Amended Consent Order, dated October 22, 2004 (“Order”), that supplements and amends the Consent Order entered into by the Bank on February 18, 2004;

In consideration of the above premises, the Comptroller, through his/her 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 an Amended 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.



(4) The Bank further expressly acknowledges that the Consent Order entered into on February 18, 2004 remains in full force and effect, except as supplemented and amended by the Amended Order entered into on October 22, 2004.

### ARTICLE III

#### WAIVERS

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

### ARTICLE IV

#### OTHER ACTION

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/she 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/ Kristin A. Kiefer*

10/22/04

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Kristin A. Kiefer  
Assistant Deputy Comptroller  
New York Metro 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.

Signed	10-2-04
Antenor Adam	Date
Signed	10/22/04
Aida De Soto	Date
Signed	10-25-04
Irving Klein	Date
Signed	11-03-04
Serafin Mariel	Date
Signed	10/28/04
Harriet R. Michel	Date
Signed	10/26/04
Samuel Munroe, Jr.	Date
Signed	10/22/04
Emilio Serrano	Date
Signed	10-22-04
Andrew Velez	Date
Signed	10/22/04
Keith Darcy	Date
	Date