

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

In the Matter of: )  
The Upstate National Bank )  
Lisbon, New York )

CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”), through her National Bank Examiner, has examined The Upstate National Bank, Lisbon, New York (“Bank”), and her findings are contained in the Report of Examination for the examination that commenced on November 6, 2003 (“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 4, 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. This Order replaces a Consent Order that the Bank entered into on March 22, 2002.

Pursuant to the authority vested in her 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 Bank shall maintain the following capital levels (as defined in 12 C.F.R. Part 3):
  - (a) Total Capital at least equal to eleven and one-half percent (11.50%) of risk-weighted assets;

- (b) Tier One Capital at least equal to ten and one-half percent (10.50%) of risk-weighted assets; and
- (c) Tier One Capital at least equal to nine and one-quarter percent (9.25%) of adjusted total assets.<sup>1</sup>

(2) The requirement in this Order to maintain a specific capital level means that the Bank may not be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(3) The Board has developed and implemented a three-year capital program as required by the March 22, 2002 Order. The program includes:

- (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:

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<sup>1</sup> Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets.

- (i) when the Bank is in compliance with its approved capital program and the requirements set forth in paragraph (1);
- (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
- (iii) with the prior written determination of no supervisory objection of the Assistant Deputy Comptroller.

(4) The Board shall ensure that the capital program remains consistent with the requirements outlined above and that the Bank continues to 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 II

### COMMUNITY REINVESTMENT ACT

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure adherence to a written program designed to improve the Bank's performance under the Community Reinvestment Act (CRA). The program shall be designed to substantially increase the Bank's lending activity in its Northern New York Assessment Area and to ensure satisfactory lending performance in each of the Bank's delineated Assessment Areas (AAs), and shall cover any AA the Bank may delineate in the future. The program shall include:

- (a) an analysis and determination of the credit needs of each AA based on borrower and geographic income demographics;
- (b) identification of the products and services that the Bank can provide in a safe and sound manner to meet each AA's credit needs;

- (c) marketing methods for the Bank's loan products that are designed to reach borrowers and geographic areas at all income levels in each AA;
- (d) quarterly monitoring and evaluation of the Bank's lending activity in each AA to determine any changes required to improve the Bank's performance in meeting the credit needs of the AA, including maintaining a reasonable balance between loans and deposits originated in the AA, and ensuring that loans are originated in reasonable proportion to the borrower and geographic income demographics of the AA;
- (e) identification of the process by which the changes identified in (d) will be implemented; and
- (f) a process to ensure that the majority of new loans made each year (both number and dollar amount) are made in the Bank's identified AAs.

(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 III

#### COMPLIANCE PROGRAM

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure the Bank's adherence to a revised consumer compliance program to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations. This program shall include:

- (a) development and implementation of a compliance management structure to effectively handle the bank's compliance needs, including anticipated growth plans;
- (b) development, implementation and adherence to a schedule for the performance of independent compliance reviews;
- (c) development and implementation of a tracking report for compliance deficiencies identified during the course of the reviews required in (b), and the method by which the Bank will ensure corrective measures have been taken.
- (d) compliance training that is targeted to Bank employees' specific job responsibilities and focused on the parts of laws and regulations relevant to employees respective job duties; and
- (e) semi-annual reviews of the Bank's compliance resource materials to ensure they remain current;

(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 programs developed pursuant to this Article.

#### Article IV

##### BANK SECRECY ACT/ANTI-MONEY LAUNDERING

(1) The Board shall ensure that the Bank's Bank Secrecy Act/Anti-Money Laundering (BSA/AML) program is subject to, on at least an annual basis, independent testing to

determine the adequacy of internal controls designed to ensure compliance with the provisions of the BSA and the regulations promulgated thereunder, and the rules and regulations of the Office of Foreign Assets Control (“OFAC”). The results of such independent testing shall be promptly reported directly to the Board. The Board shall ensure prompt management response and follow-up to all exceptions or other recommendations identified as a result of any independent testing, or as a result of any OCC review of the Bank’s compliance with the BSA and OFAC.

(2) Within thirty (30) days, the Board shall improve the Bank’s BSA/AML program by causing the Bank to:

- (a) develop and implement monitoring tools to better analyze customer cash activity over extended time periods (e.g., monthly, quarterly, semi-annually, annually) for suspicious or unusual activity; and
- (b) document its periodic review of wire transfer activity and cash sales of monetary instruments for suspicious or unusual activity.

(3) Within thirty (30) days, the Board shall cause the Bank to review and produce a written report on its manual monitoring systems for cash out transactions and OFAC compliance for the Board’s use in determining whether the Bank should institute automated versus manual monitoring tools. The report shall analyze the costs, benefits, efficiencies and risk factors of using manual versus automated systems, with particular consideration given to the Bank’s anticipated growth plans. Upon completion, a copy of the report shall be forwarded to the Assistant Deputy Comptroller for a written determination of no objection. Within thirty (30) days of the Board’s receipt of the report and the Assistant Deputy Comptroller’s non-objection, the Board shall communicate in writing to the Assistant Deputy Comptroller its determination of whether to institute automated systems and the reasons for its decision.

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

## Article V

### RISK MANAGEMENT

(1) The Board shall continue to implement measures to appropriately manage risk by ensuring the Bank's continued adherence to:

- (a) credit policies and procedures that require well documented financial, collateral and risk analysis based on current information;
- (b) a process to identify exceptions to credit policy, collateral and documentation requirements, and which outlines appropriate resolution methods;
- (c) a process for the timely identification of problem loans and the Bank's continued monitoring thereof, including the development of credit specific action plans to eliminate the basis of criticism in each problem loan;
- (d) timely and accurate loan risk rating systems and the continued independent review of the Bank's credit risk management process, including validation of the Bank's loan risk rating system;
- (e) a process to monitor market conditions and identify and control concentration risk;
- (f) a process for evaluating the adequacy of the Allowance for Loan and Lease Losses which is consistent with OCC Bulletin 2001-37, "Policy Statement on Allowance for Loan and Lease Losses Methodology and Documentation for Banks and Savings Institutions", and the Allowance

for Loan and Lease Losses booklet, A-ALLL, of the Comptroller's Handbook;

- (g) a liquidity risk management process that provides for continued liquidity risk monitoring through timely and appropriate management reports, and which identifies an appropriate contingency funding plan; and
- (h) a comprehensive risk-based internal audit function that identifies internal control weaknesses, policy and procedural exceptions, and noncompliance with laws, regulations and regulatory guidance, and which provides a process to ensure management takes corrective action to eliminate the basis of identified deficiencies.

#### Article VI

#### EARNINGS PERFORMANCE

(1) The Board shall continue to implement measures to improve the Bank's earnings performance by ensuring the Bank's continued adherence to:

- (a) a well-defined plan designed to achieve the continued shifting of the bank's funding base toward lower cost, less price sensitive non-maturity deposits;
- (b) a process to monitor the Bank's funding composition relative to projections identified in the Bank's strategic plan and budget, and the development of action plans to address inconsistencies between the Bank's planned and actual funding composition; and
- (c) a process to monitor the Bank's expenses relative to projections identified in the Bank's strategic plan and budget, and the development of action



plans to address inconsistencies between the Bank's planned and actual expenses.

## Article VII

### PRODUCTS AND SERVICES - EXISTING OR NEW

(1) Prior to the Bank's involvement in any new products or services, or the expansion of any existing products or services, the Board shall prepare a written analysis of the product or service. The analysis shall, at a minimum, include the following:

- (a) an assessment of the risks and benefits of the product or service to the Bank;
- (b) an explanation of how the product or service is consistent with the Bank's strategic plan;
- (c) an evaluation of the adequacy of the Bank's organizational structure, staffing, MIS, internal controls and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
- (d) a profitability analysis, including growth projections and interest rate risk.

(2) Prior to the Bank's involvement in the new product or service, a copy of the analysis required in (1) shall be submitted to the Assistant Deputy Comptroller for review and a written determination of no objection.

## Article VIII

### COMPLIANCE COMMITTEE

(1) Within five (5) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than two (2) 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 Agreement.

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

(3) Within thirty (30) days of the appointment of the Committee and every thirty (30) 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 Agreement; 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 IX

### 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 X

### 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 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) 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 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.

(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:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) 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.

(7) 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 4<sup>th</sup> day of November, 2004

/s/ James M. Gouldie

James M. Gouldie  
Assistant Deputy Comptroller  
Syracuse Field Office

November 4, 2004

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 Upstate National Bank )  
Lisbon, New York )

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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 Upstate National Bank, Lisbon, New York (“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 4, 2004 (“Order”);

In consideration of the above premises, the Comptroller, through 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 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, she deems it appropriate to do so to fulfill the responsibilities placed upon her by the several laws of the United States of America.

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

/s/ James M. Gouldie

James M. Gouldie  
Assistant Deputy Comptroller  
Syracuse Field Office

November 4, 2004

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.

_____ Preston C. Carlisle	_____ Date
_____ Signed	_____ 10/4/04
_____ Donald O. Chesworth	_____ Date
_____ Signed	_____ 11/4/04
_____ Richard A. DiVirgillio	_____ Date
_____ Signed	_____ 11/04/04
_____ Charles T. Fiandach	_____ Date
_____ Signed	_____ 11/4/04
_____ Richard D. Sanford	_____ Date
_____ Signed	_____ 11/04/04
_____ Thomas L. Smith, Jr.	_____ Date
_____ (initialed JMG)	_____ Date
_____ Signed	_____ 11/01/04
_____ Howard J. Zuckerman	_____ Date
_____	_____ Date
_____	_____ Date