

#2004-169
Amends #2003-58

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

In the Matter of:)
Americana National Bank)
Albert Lea, Minnesota)

AMENDED CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has examined Americana National Bank, Albert Lea, Minnesota (“Bank”), and his findings are contained in the Report of Examination for the examination that commenced on June 11, 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 2/17/04, 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 Consent Order (“Order”) by the Comptroller. This Stipulation and Consent amends and supplements the Consent Order and the Stipulation and Consent to the Issuance of a Consent Order, dated March 31, 2003. The March 31, 2003, Consent Order shall continue in full force and effect unless or until such provisions are excepted, waived, or terminated in writing 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 XVIII

CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by June 30, 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 ten percent (10%) of risk-weighted assets;
and

(b) Tier 1 capital at least equal to nine percent (9%) of adjusted total assets.¹

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

(3) Within thirty (30) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a three year capital program that, in addition to the requirements of Article XII of the March 31, 2003, Consent Order, shall include specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1).

(4) Upon completion, the Bank's capital program shall be submitted to the Assistant Deputy Comptroller for her 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.

(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.

¹ 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.

(6) If the OCC determines, in its sole judgment, that the Bank has failed to implement or adhere to a capital program which calls for the bank to reach the capital levels required by paragraph (1), then within fifteen (15) days of receiving written notice from the OCC of such fact, the Bank shall develop and shall submit to the OCC for its review and prior determination of no supervisory objection a capital contingency plan, which shall detail the Board's proposal (with specific time frames) to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181. In the event the capital contingency plan submitted by the Bank outlines a sale or merger of the Bank, the written plan, at a minimum, shall address the steps that will be taken to ensure that a definitive sale or merger agreement will be executed not later than September 30, 2004 after the issuance of the OCC's written determination of supervisory non-objection. After the OCC has advised the Bank that it does not take supervisory objection to the capital 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 a violation of this Order, in the exercise of the OCC's sole discretion.

ARTICLE XIX

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 XX

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.

(3) 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.

(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 17 day of February, 2004.

Sheila Van Ornum

Sheila Van Ornum
Assistant Deputy Comptroller
Minneapolis South Field Office

2/17/04

Date

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

In the Matter of:)
Americana National Bank)
Albert Lea, Minnesota)

**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 Americana National Bank, Albert Lea, Minnesota (“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 2/17/04 (“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 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 her hand on behalf of the Comptroller.

Sheila Van Ornum
Sheila Van Ornum
Assistant Deputy Comptroller
Minneapolis South Field Office

2/17/04
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.

<u>/s/</u> Gary Anderson	<u>2-11-04</u> Date
<u>/s/</u> Daniel R. Cartier	<u>2-16-04</u> Date
<u>/s/</u> Linda J. Lindeman	<u>Feb 6, 2004</u>
<u>/s/</u> Teresa Matheson	<u>02-06-2004</u> Date
<u>/s/</u> James Siegel	<u>2-6-2004</u> Date
<u>/s/</u> Patricia Tewes	<u>2-6-04</u> Date
<u>/s/</u> Adrienne Thorson	<u>2-16-04</u> Date
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