

**#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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**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 27, 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 2/18/04, 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.

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

**ARTICLE I**

**COMPLIANCE COMMITTEE**

(1) Within fifteen (15) days, the Board shall appoint a Compliance Committee of at least four (4) directors, of which none shall be employees of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person.

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

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

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

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

(b) the results of those actions.

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

## ARTICLE II

### STRATEGIC PLAN

(1) Within one hundred eighty (180) days, and utilizing the results of the Staffing Review and Board and Management Study required by Article VIII, the review of Consultant Contracts performed pursuant to Article IX, the Profit Plan developed in accordance with Article X, and the Capital Plan adopted in accordance with Article XI, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written strategic plan for the Bank covering at least a three-year period. The strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, product line development and market segments that the Bank intends to

promote or develop, together with strategies to achieve those objectives and, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's present and future operating environment;
- (c) the development of strategic goals and objectives to be accomplished over the short and long term;
- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(c) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line development and market segments that the Bank intends to promote or develop;
- (h) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (i) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;

- (j) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and
- (k) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Upon adoption, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for review and prior determination of no supervisory objection.

(3) 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.

### ARTICLE III

#### APPOINTMENT OF NEW DIRECTORS

(1) The Board shall, within sixty (60) days, identify and submit to the OCC for review, the name of at least one new, independent director who has recent experience as a bank director or as an executive officer of an insured depository institution. The term "independent director" means a person who is not an officer or employee of the Bank, and who is not a director, officer or employee of any of the current directors' related interests and who is not a relative of any of the existing Board members.

(2) Prior to appointing any new director, the Bank must provide the Assistant Deputy Comptroller with written notice as required by 12 C.F.R. § 5.51 (notice forms and instructions are in the "Changes in Directors and Senior Executive Officers" booklet of the Comptroller's Corporate Manual).

(3) The Assistant Deputy Comptroller shall have the power to disapprove the appointment of the proposed new director. However, the lack of disapproval of such individual shall not constitute an approval or endorsement of the proposed director.

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

(5) If the Board is unable to identify any qualified director candidates within sixty (60) days, the Board shall document its efforts to locate such candidates, and notify the Assistant Deputy Comptroller in writing. Thereafter, the Board shall provide monthly reports to the Assistant Deputy Comptroller summarizing its continuing efforts to locate such candidates.

(6) If the OCC disapproves the appointment of a prospective director, the Board must identify and submit for review another qualified individual within thirty (30) days of the notice of disapproval.

#### ARTICLE IV

##### NEW CHIEF FINANCIAL OFFICER

(1) Within ninety (90) days, the Board shall identify, and submit for supervisory review, a new, capable Chief Financial 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 Financial 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 proposed new senior executive officer. However, the lack of disapproval of such 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.

## ARTICLE V

### NEW COMPLIANCE OFFICER

(1) Within ninety (90) days, the Board shall identify, and submit for supervisory review, a new, capable Compliance 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 Compliance 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 proposed new senior executive officer. However, the lack of disapproval of such 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.

## ARTICLE VI

### EMPLOYMENT AND CONSULTING CONTRACTS

(1) The Board shall immediately terminate its consulting contract and renegotiate its employment contract with the Bank’s President, and it shall negotiate a new employment contract with the President in accordance with the terms of this article.

(2) In accordance with 12 C.F.R. Part 30, Appendix A, prior to entering into any contract for the payment of any salary, consulting fee, expense reimbursement, or other type of compensation, including Bank-owned or key-man life insurance, to any Insider, as defined by 12

C.F.R. § 215.2(h), the Board shall, at a minimum and in writing, determine that such remuneration:

- (a) is reasonable;
- (b) has a direct relationship to, and is based solely upon, the fair value of goods and services received by the Bank;
- (c) is performance based;
- (d) is in the best interests of the Bank and serves the present needs of the institution; and
- (e) compensates the individual only for providing goods and services which meet the legitimate needs of the Bank.

(3) Within thirty (30) days, the Board, or a designated committee thereof, shall review all employment contracts to ensure they comply with Paragraph 2 of this Article, and it shall memorialize its analysis of such contracts.

(4) All documentation supporting the payment of any salary, consulting fee, expense reimbursement, or other type of compensation to an Individual shall be preserved in the Bank.

## ARTICLE VII

### BANK SECRECY ACT OVERSIGHT

The Board shall immediately limit and define the duties of Chief Operating Officer Milagros Lora to preclude her oversight of the Bank Secrecy Act and Anti-Money Laundering functions of the Bank.



## ARTICLE VIII

### CONFLICT OF INTEREST POLICY

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written, comprehensive conflict of interest policy applicable to the Bank's directors, principal shareholders, executive officers, affiliates, and employees (collectively, 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, including a blanket proscription on participation of executive officers in bank sponsored or administered contests;
- (b) a proscription on the forgiveness of interest or fees on extensions of credit to Insiders, unless done so pursuant to a widely available employment benefit or compensation program;
- (c) parameters for the reimbursement of expenses claimed by executive officers or directors, including a requirement that expenses in excess of five hundred dollars (\$500) be approved in advance by the Board of Directors, or a specifically designated committee thereof;
- (d) parameters on charitable contributions, including the following:
  - (i) contributions must be paid directly by the Bank;
  - (ii) can be paid only from retained earnings;
  - (iii) must be reported to the Board on a quarterly basis; and

- (iv) contributions in excess of five hundred dollars (\$500), either in a single act of donation or, in the aggregate, to the same charitable organization in a fiscal year, may be paid only with the prior approval of the Board of Directors;
- (e) policies and procedures on the use of Bank guaranteed or Bank issued credit cards for use by Insiders, including a proscription on the use of such cards for expenses unrelated to the Bank or for non-Insiders;
- (f) involvement in the loan approval process of Insiders who may benefit directly or indirectly from the decision to grant credit;
- (g) disclosure of actual and potential conflicts of interest to the Board, including conflicts arising from charitable contributions, and periodic disclosure of "related interests" as defined by 12 C.F.R. Part 215;
- (h) requirements for arms-length dealing in any transactions by Insiders, or their related organizations, involving the Bank's sale, purchase, or rental of property and services;
- (i) policies and procedures on the administration of bank sponsored contests;
- (j) disclosure of any Insider's material interest in the business of a borrower, an applicant, or other customer of the Bank; and
- (k) 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.

(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 ninety (90) days, the Compliance Committee shall conduct a review of the Bank's existing relationships with its 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) that within thirty (30) 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 directors, executive officers, affiliates, principal shareholders, employees and their related interests. Documentation supporting these reviews shall be in writing and preserved in the Bank.

## ARTICLE IX

### STAFFING REVIEW AND MANAGEMENT STUDY

(1) Within thirty (30) days, the Board shall formally assess the competency of the Bank's President and its Chief Operating Officer, ascertain their responsibility for the current

weak condition of the Bank and the deficiencies outlined in the ROE, assess whether these individuals possess the experience and other qualifications required to correct the deficiencies, determine whether staffing changes should be made to these positions, and outline the manner in which the Board will hold the parties accountable for correcting these deficiencies and improving the condition of the Bank. The findings and recommendations of the Board shall be set forth in a written report, which shall be provided to the OCC immediately upon its completion, but no later than forty-five days from the execution of this Order.

(2) Within sixty (60) days, the Board shall formally assess the quality of the remaining members of the Bank's management team, the Bank's management structure, and its staffing requirements in light of the Bank's present condition. The findings and recommendations of the Board shall be set forth in a written report, which shall be provided to the OCC immediately upon its completion. At a minimum, the report shall contain:

- (a) the identification of present and future management and staffing requirements of each area of the Bank, with particular emphasis given to executive and financial management and operations areas;
- (b) detailed written job descriptions for all executive officers;
- (c) an evaluation of each officer's and director'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;
- (d) recommendations as to whether management or staffing changes should be made, including the need for additions to or deletions from the current management team and the Board of Directors;

- (e) recommendations to eliminate staffing redundancies;
- (f) objectives by which management's effectiveness will be measured;
- (g) a training program to address identified weaknesses in the skills and abilities of the Bank's staff and management team;
- (h) an evaluation of current lines of authority, reporting responsibilities and delegation of duties for all officers, including identification of any overlapping duties or responsibilities;
- (i) an assessment of the effectiveness and benefits of existing consulting arrangements;
- (j) a recommended organization chart that clearly reflects areas of responsibility and lines of authority for all officers, including the Bank's president and chief executive officer;
- (k) an assessment of the Board's strengths and weaknesses along with a director education program designed to strengthen identified weaknesses;
- (l) 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;
- (m) recommendations to expand the scope, frequency and sufficiency of information provided to the Board by management;
- (n) an evaluation of the extent of responsibility of current management and/or the Board for the present weaknesses in the Bank's condition; and
- (o) recommendations to correct or eliminate any other deficiencies in the supervision or organization structure of the Bank.

(3) Within thirty (30) days of completion of the study conducted in Paragraph 2 of this Article, the Board shall develop, implement, and thereafter ensure Bank adherence to a written plan, with specific time frames, that will correct the deficiencies noted in 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) The Copies of the Board's written plan shall be forwarded to the Assistant Deputy Comptroller. The Assistant Deputy Comptroller shall retain the right to determine the adequacy of the report and its compliance 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 X

### CONSULTING CONTRACTS

(1) Within sixty days (60) days, the Board or a designated committee thereof shall determine whether the Bank requires consulting services, including the continuation of existing consulting relationships. In making the determination, the following factors, at a minimum, shall be considered:

- (a) the benefits derived from any consulting services;
- (b) the cost effectiveness of employing one or more consultants; and
- (c) the delegation of any consultant's responsibilities to a permanent Bank employee.

(2) The Board, or a designated committee thereof, shall set forth its final determination that either justifies maintaining existing consulting services or recommends altering or terminating such services, and the supporting reasons, in a written report to be approved by the entire Board. After it is approved, the written report shall be forwarded to the Assistant Deputy Comptroller.

(3) If the Board determines that the Bank requires a consultant's services, the Bank shall require, at a minimum, the following:

- (a) competitive bids from at least three separate consultants;
- (b) submission of a written proposal detailing the services to be performed by the consultant;
- (c) submission of biographical information setting forth the applicant's credentials and experience in the areas of banking and consulting;
- (d) full disclosure to the Board of all relationships between the consultant and any Bank executive officer, director or principal shareholder or their related interests (as those terms are defined in 12 C.F.R. Part 215);
- (e) that the Board vote to approve any consultant's employment but any director whose relationship with the consultant could be perceived as causing a conflict of interest shall abstain from voting; and
- (f) execution of a written contract between the Bank and consultant based upon arms-length negotiations. Any such contract shall, at a minimum, provide for the following:
  - (i) the duration of the contract; and

- (ii) the precise terms governing remuneration including any salaries, benefits or expense reimbursements that the consultant would receive.

(4) The Bank shall immediately renegotiate any consulting contracts or arrangements that do not conform to the requirements set forth above in paragraph 3.

(5) Prior to paying salaries or reimbursing expenses to any new or currently employed consultant, the Board shall ensure the following:

- (a) that the Bank document all services rendered by the consultant and any reimbursable expenses;
- (b) that the Bank maintain records indicating the day and time periods during which the consultant's services were performed;
- (c) that the Bank receive expense vouchers and receipts for all reimbursable expenses; and
- (d) that the Board analyze the consultant's services to ensure that the Bank has received the full benefit to which it is entitled.

(6) The Board, or a delegated committee thereof, shall review any consultant's performance on a semi-annual basis for new consultants and annually for existing consultants. A report, signed by the entire Board, shall be prepared detailing the review and setting forth whether the Bank continues to require the consultant's services. Upon completion, a copy of the report shall be forwarded to the Assistant Deputy Comptroller.



## ARTICLE XI

### PROFIT PLAN

(1) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written profit plan to improve and sustain the earnings of the Bank. This plan shall take into consideration the results of the studies completed in accordance with Articles VIII and IX of this Order and shall include, at minimum, the following elements:

- (a) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;
- (b) realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
- (c) a branch-by-branch review of operational costs and an assessment of the attendant benefits to the Bank for the continued operation of each branch;
- (d) a review of employee and executive officer compensation;
- (e) staffing redundancies;
- (f) a budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (g) a description of the operating assumptions that form the basis for major projected income and expense components.

(2) The budgets and related documents required in paragraph 1 above for 2004 shall be submitted to the Assistant Deputy Comptroller upon completion. The Board shall submit to the Assistant Deputy Comptroller annual budgets as described in paragraph 1 above for each

year this Order remains in effect. The budget for each year shall be submitted on or before November 30, of the preceding year.

(3) The Board shall forward comparisons of its balance sheet and profit and loss statement to the profit plan projections to the Assistant Deputy Comptroller on a quarterly basis.

(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.

## ARTICLE XII

### CAPITAL PLAN AND HIGHER MINIMUMS

(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) 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 ninety (90) 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, including the sale, merger, or liquidation of the Bank; 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; and
  - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60;

(4) 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.

(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 XIII

### CREDIT RISK MANAGEMENT

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to reduce the level of credit risk in the Bank. The program shall include:

- (a) a plan to strengthen credit underwriting and administration in the commercial and industrial, commercial real estate and retail loan portfolios.
- (b) a plan to ensure uniform and comprehensive credit analysis, to include full disclosure of all significant aspects of any proposed credit and an assessment of the risks involved, prior to extending the credit, directly or indirectly, or renewing or extending credit, as part of the bank's ongoing monitoring of significant credits.
- (c) a plan to strengthen management of lending operations and to obtain and maintain an adequate number of qualified staff in all functional lending areas;
- (d) a plan to ensure that all credit files contain all pertinent information that supports the current condition of the credit;
- (e) procedures to ensure that management fully understands the internal risk rating process and that management complies with regulatory guidelines for proper and timely risk rating of all credit facilities;, including retail credits;
- (f) formulation of a process to ensure timely and comprehensive criticized loan action reports, for all non-performing, classified and special mention loans with an aggregate outstanding balance of one hundred thousand dollars

(\$100,000) or more to include, at a minimum;

- (i) identification and analysis of all expected sources of repayment, both primary and secondary;
- (ii) identification of the appraised value of supporting collateral and the position of the bank's lien on such collateral, as well as an assessment of all salient facts regarding, the nature, status and marketability of same;
- (iii) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations;
- (iv) the proposed action to eliminate the basis of the criticism, including specific workout strategies, tactical measures and the expected timeframe for its accomplishment;
- (v) contingency plans or alternative courses of action available should the primary course prove to be unfeasible; and
- (vi) specific time and even sensitive reclassification triggers.

(g) development of a process whereby the Board, or a designated committee, shall conduct a review, on at least a quarterly basis, to determine:

- (i) the status of each criticized credit that equals or exceeds one hundred thousand dollars (\$100,000);
- (ii) management's adherence to the program adopted pursuant to this Article;
- (iii) the status and effectiveness of the written workout program; and
- (iv) the need to revise the program or take alternative action.

(2) Upon adoption, a copy of the written program for all criticized assets equal to or exceeding one hundred thousand dollars (\$100,000) shall be forwarded to the Assistant Deputy Comptroller

(3) On a quarterly basis, a copy of each written action plan for every criticized asset equal to or exceeding one hundred thousand dollars (\$100,000) 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.

#### ARTICLE XIV

##### 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 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) properly supporting the basis for the various components used in the existing methodology. This includes multiples applied against the adjusted historical loss percentage; negative adjustments made to collateral values; and adjusted historical loss percentages derived from the analysis of qualitative adjustment factors;

- (b) specifically defining those conditions under which the bank will deviate from its adopted methodology and use percentages more in line with industry standards (rule of thumb principle);
- (c) ensuring that, when specific allocations are used on special mention and classified loans, they accurately reflect the overall level of risk in those loans and are properly documented through a narrative analysis of the risk-to-loss on each credit that is performed by the assigned account officer;
- (d) formulating loss factors on pass loan pools which reflect the increased level of risk as evidenced in the elevated levels of net loan losses and delinquent loans;
- (e) properly reflecting the potential for increased risk of loss in the overall loan portfolio relating to the bank's historically weak credit administration practices.

(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 XV

### CALL REPORTS

(1) Within sixty (60) days, the Board shall adopt 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 XVI

### BANK SECRECY ACT - COMPLIANCE OFFICER

Effective immediately, the compliance officer shall report directly to the Board's audit committee and shall be completely independent of the Bank's management. 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).

## ARTICLE XVII

### STUDY OF BANK SECRECY ACT COMPLIANCE

(1) Within sixty (60) days of the date of this Order, the Board, or a designated committee thereof, shall formally assess the levels of risk for compliance with addressing compliance with the Bank Secrecy Act (“BSA”), 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, including amendments from the USA PATRIOT ACT, and the rules and regulations of the Office of Foreign Assets Control (“OFAC”) (collectively referred to as the “Bank Secrecy Act” or “BSA”) throughout the Bank, including risks for all accounts, customers, products, and services. At a minimum, the report shall address the following issues:

- (a) the level and scope of responsibilities of the BSA Officer;
- (b) the level and scope of responsibilities of the BSA Officer’s supporting staff, including recommendations for additional staffing;
- (c) the capability and competence of the BSA Officer and staff to monitor and ensure the Bank’s compliance with the Bank Secrecy Act, including:
  - (i) establishing risk-based internal controls;
  - (ii) ensuring that Bank management implements systems and controls to identify potentially suspicious transactions;
  - (iii) education and training focused on bank operations;

- (iv) knowledge of the process and systems for monitoring suspicious activities;
  - (v) expertise in the laws and regulations of the United States for the Bank Secrecy Act, anti-money laundering, and OFAC;
  - (vi) experience in fraud control and compliance monitoring;
  - (vii) willingness to correct identified deficiencies; and
  - (viii) adequacy of the tools, particularly technology, necessary to monitor and ensure BSA compliance throughout the Bank.
- (d) the Bank's methods of collecting, maintaining, and recalling information related to transactions that pose greater than normal risks for compliance with the Bank Secrecy Act; and
- (e) an evaluation of the types of the transactions, including accounts, customers, products, and services that pose greater than normal risks for compliance with the Bank Secrecy Act, including money remitters, supermarkets, check cashers, and bodegas.

(2) Upon completion, a copy of this report shall be submitted to the Assistant Deputy Comptroller for review. In the event the Assistant Deputy Comptroller recommends changes to the scope or content of the report, the Board shall immediately incorporate those changes into the report.

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

## ARTICLE XVIII

### 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. 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, including an integrated system to link related accounts across all business lines to evaluate patterns of activity;
- (b) definitions and guidance for identification of high risk accounts;
- (c) operating procedures for both the opening of new accounts and the monitoring of high risk accounts;
- (d) 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;
- (e) procedures to ensure that records are maintained on monetary instrument transactions and funds transfers, as required by the Bank Secrecy Act;
- (f) comprehensive procedures to identify and report to appropriate management personnel, through an integrated system linking related accounts across product lines within the Bank:

- (i) frequent or large volume cash deposits or wire transfers or book entry transfers to or from offshore or domestic entities or individuals;
- (ii) wire transfers or book entry transfers that are deposited into several accounts;
- (iii) receipt and disbursement of wire transfers or book entry transfers without an apparent business reason;
- (iv) receipt and disbursement of wire transfers or book entry transfers when they are inconsistent with the customer's business;
- (v) receipt and disbursement of currency or monetary instruments when they are inconsistent with the customer's business; and
- (vi) bank accounts opened in the name of a casa de cambio (money exchange house) or any "financial institution" as defined in 31 C.F.R. § 103.11(n) (bank, broker/dealer, currency dealer or exchanger, issuer or seller or redeemer of traveler's checks or money orders, transmitter of funds, telegraph company, casino, etc.);
- (g) 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;

- (h) an officer who will be responsible for filing Currency Transaction Reports (CTRs), Reports of International Transportation of Currency or Monetary Instruments (CMIRs), and Reports of Foreign Bank and Financial Accounts (FBARs); and
- (i) 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 XIX

### BANK SECRECY ACT - AUDIT FUNCTION

(1) Within sixty (60) days, the Board, or a designated committee thereof, shall review and evaluate the level of service and ability of the BSA audit function currently being provided by its audit firm. Such an assessment, which must be in writing, should include the Board's expectations of how its audit firm can assist in ensuring the Bank's compliance with the Bank Secrecy Act.

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

- (a) development of a program to test the adequacy of internal controls designed to ensure compliance with the provisions of the Bank Secrecy Act, including a review employees' compliance with BSA policies and the reporting of suspicious activities and testing and verification of accuracy of information reported;
- (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 across all of the bank's lines of business, products, and services.

(3) Within one hundred twenty (120) days, the Board should ensure that the auditor for BSA matters has performed the following activities:

- (a) developed findings, observations and recommendations on the Bank's internal controls addressing compliance with OFAC and the Bank Secrecy Act, including related regulatory reporting on those subjects; and
- (b) reviewed prior account activity at the Bank, including deposit accounts, loan transactions, wire activity, certified check activity, Currency Transaction Report activity (including structuring) and traveler's check activity, for accounts that pose greater than normal risks for compliance with the Bank Secrecy Act, in order to ascertain any unusual or suspicious

transactions that may have occurred at the Bank during this period and to test the accuracy of information reported by the Bank.

(4) Upon completion of this review, the Board's findings and a copy of the expanded audit procedures shall be provided to the Assistant Deputy Comptroller. The Bank shall immediately file Suspicious Activity Reports, in accordance with 12 C.F.R. § 21.11, for any previously unreported suspicious activity identified during this review, and it shall supplement any previously filed Suspicious Activity Report as appropriate.

## ARTICLE XX

### SUSPICIOUS ACTIVITY REPORTS

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to establish a system of internal controls and processes to ensure compliance with the requirements to file Suspicious Activity Reports set forth in 12 C.F.R. § 21.11, as amended. At a minimum, this written program shall establish procedures for identifying and reporting known or suspected violations of Federal law, violations of the Bank Secrecy Act, or suspicious transactions related to money laundering activity, including suspicious activity relating to the opening of new accounts, the monitoring of current accounts, and the transfer of funds through the Bank.

(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 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/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 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.

(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 18<sup>th</sup> day of Feb, 2004.

*/S/ Kristin A. Kiefer*

*2/18/04*

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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	2-18-04
_____ Antenor Adam	_____ Date
Signed	02/18/04
_____ Aida De Soto	_____ Date
Signed	2-19-04
_____ Irving Klein	_____ Date
Signed	Feb. 18, 2004
_____ Serafin Mariel	_____ Date
Signed	2/18/2004
_____ Harriet R. Michel	_____ Date
Signed	2/23/04
_____ Samuel Munroe, Jr.	_____ Date
Signed	2/18/04
_____ Emilio Serrano	_____ Date
Signed	2-18-04
_____ Andrew Velez	_____ Date
_____	_____ 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 A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) has initiated cease and desist proceedings against New York National Bank, Bronx, 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 2/18/04 (“Order”);

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 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

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*

*2/18/04*

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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

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Antenor Adam

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Date

Signed

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Aida De Soto

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Date

Signed

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Irving Klein

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Date

Signed

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Serafin Mariel

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Date

Signed

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Harriet R. Michel

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Date

Signed

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Samuel Munroe, Jr.

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Date

Signed

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Emilio Serrano

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Date

Signed

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Andrew Velez

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Date

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Date

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Date