

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

In the Matter of:)	
Ezequiel Edmond Nasser,)	
Controlling Stockholder,)	AA-EC-
Excel Bank, N.A., New York, New York)	
)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) has informed Ezequiel Edmond Nasser (“Respondent”) that he intends to initiate a prohibition action against Respondent pursuant to 12 U.S.C. § 1818(e) (as amended); and

WHEREAS, in the interest of cooperation and to avoid the costs associated with administrative and judicial proceedings with respect to the above matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (“Order”);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

**ARTICLE I
JURISDICTION**

(1) Excel Bank, N.A., New York, New York, (“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.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is a controlling stockholder of the Bank and a person who has filed a Change in Bank Control Act notice under 12 U.S.C. § 1817(j) with respect to the Bank. Accordingly, Respondent is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C.

§ 1813(u), having acted in such capacities within six (6) years from the date hereof (*see* 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain enforcement proceedings against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain a prohibition action against him pursuant to 12 U.S.C. § 1818(e).

ARTICLE II **PROHIBITION**

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, and without admitting or denying any wrongdoing, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q) (as amended); or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u) (as amended).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);
- (c) any insured credit union under the Federal Credit Union Act;

- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any “appropriate Federal depository institution regulatory agency” as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended); and
- (f) the Federal Housing Finance Board and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall not prohibit Respondent from selling or negotiating the sale of his shares of stock of the Bank, or from voting his shares of stock of the Bank as necessary to sell or merge the Bank.

(4) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(5) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(e), (i), (j), and (h) (as amended).

ARTICLE III

WAIVERS & AGREEMENTS

(1) By executing this Order, Respondent waives, with respect to the contemplated prohibition action only, and not with respect to any other enforcement action(s) by the Comptroller against Respondent:

- (a) the right to the issuance of a Notice under 12 U.S.C. § 1818(e);
- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) and 12 C.F.R. Part 19;
- (c) all rights to seek judicial review of this Order;

- (d) all rights in any way to contest the validity of this Order;
- (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any payment of any legal (or other professional) expense relative to the negotiation and issuance of this Order; and, in accordance with 12 C.F.R. § 7.2014, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that, except as provided in paragraph (5) of this Article, the provisions of this Order shall constitute a release and settlement of all claims the Comptroller has or may have against Respondent arising from any act or omission by Respondent relating to the affairs of the Bank up to and including the date of this Order.

(5) If a definitive agreement to sell not less than ninety percent (90%) of the shares of voting stock of the Bank is not executed and provided to the Comptroller by March 31, 2004, or if such agreement is not approved and consummated in accordance with applicable law, including, but not limited to, the Change in Bank Control Act, 12 U.S.C. § 1817(j) (as amended), the provisions of

paragraph (4) of this Article shall be null and void, with no further force or effect, but all other provisions of this Order shall survive, and the Comptroller may take further enforcement action(s) against Respondent. For the purposes of this paragraph, a “definitive agreement” shall mean a legally binding agreement as to all material aspects of the transaction. Notwithstanding the foregoing, the Comptroller may, in his sole discretion, extend the March 31, 2004 date for execution and delivery of such definitive agreement, but no extension shall be valid for the purposes of this paragraph unless provided to Respondent in writing by an authorized representative of the Comptroller.

(6) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent 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.

(7) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ Ronald G. Schneck
Ronald G. Schneck
Director, Special Supervision Division
Office of the Comptroller of the Currency

2/20/04
Date

Signed
Ezequiel Edmond Nasser

Feb. 4, 2004
Date