

**#2004-65 also Terminates  
#2003-12**

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

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**In the Matter of:** )  
Surety Bank, N.A. )  
Fort Worth, Texas )

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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 Surety Bank, N.A., Fort Worth, Texas (Bank), and his findings are contained in the Report of Examination for the examination that commenced on January 12, 2004 (ROE).

The Bank, by and through its duly elected and acting Board of Directors (Board), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated June 22, 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.

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 thirty (30) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which none shall be employees of the Bank. Upon appointment, the Board shall submit in writing the names of the Compliance Committee members to the Director

for Special Supervision (Director). 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 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 Order; and
- (b) the results of those actions.

(4) Within fifteen (15) days of receipt, the Board shall forward a copy of the Compliance Committee's progress report, with any additional comments by the Board, to the Director.

## Article II

### STRATEGIC PLAN

(1) Within sixty (60) days, the Board shall develop 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, reduction in the volume of non-performing assets, 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, including a determination of the Bank's overall risk profile;

- (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 subparagraph (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 subparagraph (1)(c) of this Article;
- (f) a management employment and succession program to promote the retention and continuity of capable management;
- (g) product line and market segments that the Bank intends to promote or develop;
- (h) an action plan to accomplish identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames;
- (i) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the three-year period covered by the strategic plan;
- (j) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (k) 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

(1) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Prior to adoption by the Board, a copy of the strategic plan, and any subsequent amendments or revisions, shall be forwarded to the Director for review and prior determination of no supervisory objection.

(3) Immediately upon receipt of a written determination of no supervisory objection, the Board shall adopt, implement and thereafter ensure compliance with the terms of the strategic plan developed pursuant to this Article.

(4) The Bank may not deviate significantly from the Board-approved strategic plan without a written determination of supervisory non-objection from the Director. The Board must give the Director at least sixty (60) days advance, written notice of its intent to deviate significantly from the strategic plan, along with an assessment of the impact of such change on the Bank's condition, including a profitability analysis and an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the change in the strategic plan.

(5) For the purposes of this Article, changes that may constitute a significant deviation from the strategic plan include, but are not limited to, any significant deviations from marketing strategies, marketing partners, or acquisition channels; underwriting practices and standards; credit administration; account management strategies and test programs; collection strategies, partners, or operations; fee structure, pricing, or fee application methods; accounting processes and practices; funding strategy; or any other changes in personnel, operations, or

external factors that may have a material impact on the Bank's operations or financial performance.

(6) If the Director determines, in his sole judgment, that the Bank has failed to submit an acceptable strategic plan as required by paragraph (1) of this Article, or fails to implement or adhere to a strategic plan for which the Director has taken no supervisory objection pursuant to paragraph (2) of this Article, then within thirty (30) days of receiving written notice (including an explanation of the reasons for such determination) pursuant to this paragraph (6) from the Director, the Bank shall develop and submit to the Director for his review and prior determination of no supervisory objection, a contingency plan, which shall detail the Board's proposal to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181 at no loss or cost to the Federal Deposit Insurance Fund. After the Director has advised the Bank that he does not take supervisory objection to the contingency plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the contingency plan, unless the Bank has received no supervisory objection from the Director to a revised strategic plan.

- (a) In order to be deemed acceptable, the contingency plan must at a minimum call for the execution of a definitive agreement to sell or merge the Bank or a shareholder vote to enter into liquidation under 12 U.S.C. § 181 within ninety (90) days of receipt of the Director's supervisory non-objection.
- (b) Failure to submit a timely, acceptable contingency plan may be deemed a violation of this Order, in the exercise of the Director's sole discretion.

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

### Article III

#### PROFIT PLAN

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure adherence to a written profit plan to improve and sustain the earnings of the Bank. This plan shall cover at least a three-year period, be consistent with the strategic plan developed pursuant to Article II, and shall include, at minimum, the following elements:

- (a) identification of the major areas 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 budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (d) a description of the operating assumptions that form the basis for major projected income and expense components.

(2) The Board shall submit the budgets and related documents required by paragraph (1) of this Article for the remainder of 2004 to the Director upon completion. Thereafter, prior to each new calendar year, the Board shall submit to the Director annual budgets as described in paragraph (1) of this Article .

(3) On a quarterly basis, the Board shall forward comparisons of its actual balance sheet and profit and loss statement to the profit plan projections to the Director.

(4) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to the plan developed pursuant to this Article.

#### Article IV

##### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall maintain the following minimum capital levels (as defined in 12 C.F.R. Part 3):

- (a) Tier 1 capital at least equal to twelve percent (12%) of risk-weighted assets;
- (b) Tier 1 capital at least equal to eight percent (8%) of actual adjusted total assets.<sup>1</sup>

(2) The requirement of paragraph (1) of this Article to meet and maintain a specific capital level means that the Bank cannot 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 sixty (60) days, the Board shall develop, implement, and thereafter ensure adherence to a three-year capital plan that is consistent with the strategic plan developed pursuant to Article II. The capital plan shall include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1) of this Article;
- (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;

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<sup>1</sup> As further noted in 12 C.F.R. § 3.2(a), the Comptroller reserves the right to require the Bank to compute and maintain its leverage ratio on the basis of actual, rather than average total assets.

- (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 sources to strengthen the Bank's capital structure should the primary source(s) under (d) of this paragraph be unavailable;
- (f) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital plan ;
  - (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 by the Director.

(4) Prior to implementation of the dividend policy referenced in paragraph (3)(f) of this Article, the Bank shall not declare or pay any cash or non-cash dividend, or any other distribution of the Bank's capital or paid in surplus.

(5) Upon completion, the Bank's capital plan shall be submitted to the Director for prior determination of no supervisory objection. Upon receiving a written determination of no supervisory objection from the Director, the Bank shall implement and ensure adherence to the capital plan. The Board shall review and update the Bank's capital plan on an annual basis or more frequently if necessary, or if requested by the Director. Revisions to the Bank's capital plan shall be submitted to the Director for prior determination of no supervisory objection.

(6) If the Director determines, in its sole judgment, that the Bank has failed to submit an acceptable capital plan as required by paragraph (3) of this Article, or that the Bank has failed



to implement or adhere to a capital plan for which the Director has taken no supervisory objection, then within thirty (30) days of receiving written notice (including an explanation of the reasons for such determination) pursuant to this paragraph (6) from the Director, the Bank shall develop and submit to the Director for his review and prior determination of no supervisory objection, a contingency plan, which shall detail the Board's proposal to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181 at no loss or cost to the Federal Deposit Insurance Fund. After the Director has advised the Bank that he does not take supervisory objection to the contingency plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the contingency plan, unless the Bank has received no supervisory objection from the Director to a revised capital plan.

- (a) In order to be deemed acceptable, the contingency plan must at a minimum call for the execution of a definitive agreement to sell or merge the Bank or a shareholder vote to enter into liquidation under 12 U.S.C. § 181 within ninety (90) days of receipt of the Director's supervisory non-objection.
- (b) Failure to submit a timely, acceptable contingency plan may be deemed a violation of this Order, in the exercise of the Director's sole discretion.

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

## Article V

### NEW SENIOR EXECUTIVE OFFICERS

(1) Within sixty (60) days, the Board shall identify a new capable President and a new capable Senior Loan Officer who, following review and no objection by the Director, shall

both be vested with sufficient executive authority to fulfill the duties and responsibilities of their positions and ensure the safe and sound operation of the Bank.

(2) Prior to the appointment of any individual as President or Senior Loan Officer, the Board shall submit to the Director 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 Director shall have the power of veto over the initial employment of the proposed President and the proposed Senior Loan Officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed President or of the proposed Senior Loan Officer.

(4) The requirement to submit information and the prior veto 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 review and act on any such information or authority within ninety (90) days. No proposed new President or Senior Loan Officer shall commence employment until receipt of written notice that the Director does not disapprove of the appointment of such individual.

(5) If the Director determines, in its sole judgment, that the Bank has failed to identify a new capable President and a new capable Senior Loan Officer, then within thirty (30) days of receiving written notice (including an explanation of the reasons for such determination) pursuant to this paragraph (5) from the Director, the Bank shall develop and submit to the Director for his

review and prior determination of no supervisory objection, a contingency plan, which shall detail the Board's proposal to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181 at no loss or cost to the Federal Deposit Insurance Fund. After the Director has advised the Bank that he does not take supervisory objection to the contingency plan, the Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the contingency plan, unless the Bank has received written correspondence from the Director indicating that the Bank has identified a new capable President and a new capable Senior Loan Officer.

- (a) In order to be deemed acceptable, the contingency plan must at a minimum call for the execution of a definitive agreement to sell or merge the Bank or a shareholder vote to enter into liquidation under 12 U.S.C. § 181 within ninety (90) days of receipt of the Director's supervisory non-objection.
- (b) Failure to submit a timely, acceptable contingency plan may be deemed a violation of this Order, in the exercise of the Director's sole discretion.

## Article VI

### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) In addition to the requirements of Article V, the Board shall ensure that the Bank hires and thereafter maintains competent management and staff to carry out the Board's policies, ensure compliance with this Order, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within one hundred twenty (120) days, the Board, or a designated committee shall conduct an analysis and prepare a written report which shall:

- (a) identify the skills and expertise needed by personnel to develop, market, administer and support the products identified in the strategic plan and otherwise operate the bank in a safe and sound manner;
- (b) identify position descriptions, duties and responsibilities for each officer position;
- (c) assess each current officer's experience; other qualifications and performance compared to the position's description, duties and responsibilities;
- (d) determine whether management changes should be made, including the need for additions to or deletions from current management.

(3) The written report required by paragraph (2) of this Article shall be provided to the Board, with a copy to the Director. Within thirty (30) days of receipt of the report, the Board shall begin implementing any changes necessary to provide the Bank with a management and staff that possesses the skills and expertise identified in the report.

(4) If the Board determines pursuant to paragraphs (2) and (3) of this Article that an officer will continue in his/her position but that the individual's skills need improvement, the Board, within thirty (30) days of its determination, shall, develop and implement a written program, with specific time frames, to improve the officer's skills. At a minimum, the written program with respect to such officer shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) specific additional steps necessary to improve the effectiveness of the officer;
- (c) objectives by which the officer's effectiveness will be measured; and

(d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

(5) If the analysis required by paragraph (2) of this Article results in an officer vacancy, including if the Board realigns an existing officer's responsibilities or if an officer position becomes vacant, the Board shall, within sixty (60) days of such vacancy, identify a capable person to fill the position who shall be vested with sufficient executive authority to ensure the safe and sound operation of functions within the scope of that position's responsibility.

(6) Within sixty (60) days of completing the analysis required by paragraph (2) of this Article, the Board shall implement an ongoing development program for Bank staff. The program, at a minimum, should provide for continuing education or other training designed to enhance and maintain the skills of the Bank staff.

(7) Upon completion, a copy of the written programs developed pursuant to paragraphs (4) and (6) of this Article shall be submitted to the Director.

(8) Unless otherwise advised in writing by the Director, prior to the appointment of any individual to a management position, the Board shall submit to the Director 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.

(9) The Director shall have the power of veto over the initial employment of the proposed officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer.

(10) The requirement to submit information and the prior veto 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 review and act on any such information or authority within ninety (90) days.

## Article VII

### LIQUIDITY

(1) The Board shall immediately take appropriate action to ensure that it maintains adequate sources of liquidity to meet the Bank's needs. Within sixty (60) days, the Board shall also establish a liquidity plan to ensure the maintenance of adequate liquidity to withstand any anticipated or extraordinary demand against its funding base. Such liquidity plan must include, at a minimum, the following:

- (a) identification of anticipated funding needs and the sources to meet those needs; and
- (b) identification of alternative funding sources in order to meet extraordinary demands or in the event the sources identified in subparagraph (1)(a) of this Article are insufficient. Such alternative funding sources must consider, at a minimum, the following:
  - (i) selling assets;
  - (ii) obtaining lines of credit from correspondent banks;
  - (iii) recovering charged-off assets; and

(iv) injecting additional equity capital.

(2) Upon completion, a copy of the liquidity plan required by this Article shall be forwarded to the Director for review.

(3) The Board shall ensure that management reviews the Bank's liquidity on a weekly basis. Such reviews shall consider:

- (a) a maturity schedule of certificates of deposit, including large uninsured deposits;
- (b) the volatility of demand deposits including escrow deposits;
- (c) the amount and type of loan commitments and standby letters of credit;
- (d) an analysis of the continuing availability and volatility of present funding sources;
- (e) an analysis of the impact of decreased cash flow from the Bank's loan portfolio resulting from delinquent and non-performing loans; and
- (f) an analysis of the impact of decreased cash flow from the sale of loans or loan participations.

(4) The Board shall develop a thorough and accurate report for the projection of sources and uses of funds. The Bank shall produce this report monthly and the report shall cover a minimum of a three (3) month window into the future.

(5) On a monthly basis, the Board shall forward a copy of the report required by paragraph (4) of this Article to the Director .

#### Article VIII

#### LOAN PORTFOLIO MANAGEMENT

(1) Within thirty (30) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to improve the Bank's loan portfolio management. The program shall include, but not be limited to, procedures and monitoring systems:

- (a) to ensure satisfactory and perfected collateral documentation;
- (b) to ensure that extensions of credit are granted, by renewal or otherwise, to any borrower only after obtaining and analyzing current and satisfactory credit information;
- (c) to ensure conformance with the Bank's lending policies and loan approval requirements;
- (d) to track and analyze exceptions to the Bank's lending policies;
- (e) to track and analyze previously charged-off assets and their recovery potential; and
- (f) to track and analyze concentrations of credit, volume of lending outside of the Bank's trade area, and significant economic factors and their impact on the credit quality of the Bank's loan and lease portfolios.

(2) Upon completion, a copy of the program required by paragraph (1) of this Article shall be forwarded to the Director.

(3) Within thirty (30) days, the Board shall develop, implement, and thereafter ensure adherence to a loan officer performance appraisal process, including performance appraisals, job descriptions, and incentive programs for loan officers, which adequately consider their performance relative to policy compliance, documentation standards, early identification of problem loans, accuracy in credit grading, and other loan administration matters.



- (4) On a monthly basis, management will provide the Board with written reports including, at a minimum, the following information:
- (a) the identification, type, rating, and amount of problem loans and leases;
  - (b) the identification and amount of delinquent loans and leases;
  - (c) credit and collateral documentation exceptions;
  - (d) the identification and status of credit related violations of law, rule or regulation;
  - (e) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (a) through (d) of this paragraph ;
  - (f) an analysis of concentrations of credit, significant economic factors, and general economic conditions and their impact on the credit quality of the Bank's loan and lease portfolios;
  - (g) the identification and amount of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank;
  - (h) the identification of loans and leases not in conformance with the Bank's lending and leasing policies, including approved exceptions to the Bank's lending and leasing policies; and
  - (i) the identification of all loans meeting the criteria for nonaccrual status.
- (5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program and systems developed pursuant to this Article.

## Article IX

### LOAN REVIEW

(1) The Board shall employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem loans and leases.

(2) Within thirty (30) days, the Board shall establish an effective, independent and on-going loan review system to review, at least quarterly, the Bank's loan and lease portfolios to assure the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the Comptroller's Handbook. Such reports shall, at a minimum, include:

- (a) conclusions regarding the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;
- (d) the identification of credit and collateral documentation exceptions;
- (e) the identification of loans meeting the criteria for nonaccrual status;
- (f) the identification and status of credit related violations of law, rule or regulation;
- (g) the identification of loans and leases not in conformance with the Bank's lending and leasing policies, including approved exceptions to the Bank's lending and leasing policies;
- (h) the identity of the loan officer who originated or is responsible for each loan reported in accordance with subparagraphs (b) through (g) of this paragraph ;
- (i) the identification of concentrations of credit; and

(j) the identification of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank.

(3) The Board shall evaluate the loan review report(s) and shall ensure that immediate, adequate, and continuing remedial action, if appropriate, is taken upon all findings noted in the report(s).

(4) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be preserved in the Bank.

(5) The Board shall ensure that the Bank has processes, personnel, and control systems sufficient to ensure implementation of and adherence to the loan review system developed pursuant to this Article.

## Article X

### CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent Report of Examination, by internal or external loan review, or in any correspondence or list provided to the Board or Bank management by the National Bank Examiners.

(2) The Board shall immediately adopt (in a format similar to Appendix A, attached hereto), implement, and thereafter ensure Bank adherence to a written program designed to eliminate the basis of criticism of assets criticized in the ROE, in any subsequent Report of Examination, or by any internal or external loan review, or in any correspondence or list provided to the Board or Bank management by the National Bank Examiners as "doubtful," "substandard," or "special mention." This program shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
- (b) the appraised value and net realizable liquidation value of supporting collateral and the position of the Bank's lien on such collateral where applicable;
- (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations; and
- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment.

(3) Upon adoption, a copy of the program for criticized assets equal to or exceeding fifty thousand dollars (\$50,000) shall be forwarded to the Director.

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

(5) The Board shall conduct a review on at least a monthly basis, to determine:

- (a) the status of each criticized asset;
- (b) management's adherence to the program adopted pursuant to this Article;
- (c) the status and effectiveness of the written program; and
- (d) the need to revise the program or take alternative action.

(6) A copy of each review for criticized assets equal to or exceeding fifty thousand dollars (\$50,000) shall be forwarded to the Director on a monthly basis (in a format similar to Appendix A, attached hereto).

(7) The Bank may extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower whose loans or other extensions of credit are

criticized in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination only if each of the following conditions is met:

- (a) the Board finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, extending or capitalizing any additional credit, a majority of the full Board approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank; and
- (b) a comparison to the written program adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(8) A copy of the approval of the Board, including documentation demonstrating consideration of the factors contained in paragraph (7) of this Article , shall be maintained in the file of the affected borrower.

## Article XI

### CREDIT AND COLLATERAL EXCEPTIONS

(1) Within thirty (30) days, the Board shall obtain current and satisfactory credit information on all loans identified as lacking such information, including those listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(2) Within thirty (30) days, the Board shall ensure proper collateral documentation is maintained on all loans identified as lacking such documentation and correct each collateral

exception listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination.

(3) Effective immediately, the Bank may grant, extend, renew, alter, or restructure any loan or other extension of credit only after:

- (a) documenting the specific reason or purpose for the extension of credit;
- (b) identifying the expected source of repayment in writing;
- (c) structuring the repayment terms to coincide with the expected source of repayment;
- (d) documenting, with adequate supporting material, the value of collateral and properly perfecting the Bank's lien on it where applicable; and
- (e) obtaining and analyzing current and satisfactory credit information, including cash flow analysis, where loans are to be repaid from operations.
  - (i) Failure to obtain the information described in subparagraph (3)(e) shall require a majority of the full Board (or a delegated committee thereof) to certify in writing the specific reasons why obtaining and analyzing the information described in subparagraph (3)(e) would be detrimental to the best interests of the Bank.
  - (ii) A copy of the required Board certification shall be maintained in the credit file of the affected borrower(s).

## Article XII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within thirty (30) days, the Board shall review the adequacy of the Bank's Allowance for Loan and Lease Losses (“Allowance”), and shall establish and adopt 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) results of the Bank's loan review;
- (b) inherent loss exposure in each significant credit;
- (c) loan loss experience;
- (d) trends of delinquent and nonaccrual loans;
- (e) concentrations of credit in the Bank;
- (f) present and prospective economic conditions;
- (g) capabilities of lending staff;
- (h) changes in loan volume and/or mix; and
- (i) the volume of out-of-area lending.

(2) The program developed according to paragraph (1) of this Article 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) Upon adoption, a copy of the Board's program shall be submitted to the Director.

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

### Article XIII

#### INTERNAL AND EXTERNAL AUDIT

(1) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program sufficient to:

- (a) detect irregularities in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) evaluate the Bank's adherence to established policies and procedures, with particular emphasis directed to the Bank's adherence to its loan policies concerning underwriting standards and problem loan identification and classification;
- (d) ensure adequate audit coverage in all areas;
- (e) ensure timely follow-up on identified deficiencies to ensure their correction; and
- (f) establish an annual audit plan using a risk-based approach sufficient to achieve these objectives.

(2) As part of the internal audit program, the Board, or a designated committee, shall evaluate the audit reports provided pursuant to paragraph (2)(g) of Article XVII, of any party



providing services to the Bank, and shall assess and document their discussion of the impact on the Bank of any audit deficiencies cited in such reports.

(3) The Board shall ensure that the internal and external audit function is supported by an adequately staffed department or outside firm, with respect to both the experience level and number of the individuals employed.

(4) The Board shall ensure that the audit program is independent. The person(s) responsible for implementing the internal audit program described above shall report directly to the Board, or a designated committee, who shall have the sole power to direct their activities. All reports prepared by the internal and external audit staff shall be filed directly with the Board and not through any intervening party.

(5) All internal and external audit reports shall be in writing. The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in internal and external audit reports, that management provides detailed explanations in those circumstances, if any, where the deficiencies cannot be remedied, and that internal auditors maintain a written record describing those actions. The Board shall provide for timely independent follow-up and obtain written confirmation of this.

(6) The audit staff shall have access to any records necessary for the proper conduct of its activities. The Bank shall ensure that national bank examiners have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(7) Upon adoption, a copy of the internal audit program shall be submitted to the Director.

(8) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to the program developed pursuant to this Article.

#### Article XIV

##### INTEREST RATE RISK POLICY

(1) Within ninety (90) days, the Board shall adopt, implement, and thereafter ensure adherence to a written interest rate risk policy, which is consistent with the Interest Rate Risk booklet, L-IRR, of the Comptroller's Handbook. The policy shall provide for a coordinated interest rate risk strategy and, at a minimum:

- (a) establish adequate management reports on which to base sound interest rate risk management decisions;
- (b) establish guidance regarding the Bank's strategic direction and tolerance for interest rate risk;
- (c) implement effective tools to measure and monitor the Bank's performance and overall interest rate risk profile;
- (d) set prudent limits on the nature and amount of interest rate risk that the Bank will assume; and
- (e) require periodic review of the Bank's adherence to the policy.

(2) Upon adoption, the Board shall forward a copy of the policy to the Director.

(3) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to the policy developed pursuant to this Article.

#### Article XV

## CONSUMER COMPLIANCE PROGRAM

(1) Within ninety (90) days, the Bank shall adopt, implement, and thereafter ensure adherence to a written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations.

This program shall include, but not be limited to:

- (a) a written description of the duties and responsibilities of the compliance officer;
  - (b) adequate internal controls to ensure compliance with consumer protection laws, rules, and regulations;
  - (c) a policies and procedures manual covering all consumer protection laws, rules and regulations for use by appropriate Bank personnel in the performance of their duties and responsibilities;
  - (d) semiannual updates of the written policies and procedures manual to ensure it remains current;
  - (e) an independent audit program to test for compliance with consumer protection laws, rules and regulations;
  - (f) procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel;
  - (g) the education and training of all appropriate Bank personnel in the requirements of all federal and state consumer protection laws, rules and regulations; and
  - (h) periodic reporting of the results of the consumer compliance audit to the Board or a committee thereof.
- (2) Upon adoption, the Board shall forward a copy of the program to the Director.

(3) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to the program developed pursuant to this Article.

#### Article XVI

##### BANK SECRECY ACT / OFFICE OF FOREIGN ASSETS CONTROL

(1) Within thirty (30) days, the Board shall appoint a capable officer of the Bank who shall be vested with sufficient authority and clear responsibility to monitor and ensure the Bank's compliance with the Bank Secrecy Act, 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 (collectively referred to herein as the Bank Secrecy Act), and the rules and regulations of the Office of Foreign Assets Control (OFAC). The Bank Secrecy Act officer shall report directly to the Board, or a designated 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).

(2) Within ninety (90) days, the Board shall develop, implement, and thereafter ensure 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 written description of the duties of the BSA Officer;
- (b) a system of internal controls and independent testing and auditing to ensure ongoing compliance with the Bank Secrecy Act;
- (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) 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 record-keeping requirements, and the reporting requirements associated with Suspicious Activity Reports (SARs) pursuant to 12 C.F.R. Part 21, Subpart B; and
  - (g) comprehensive guidelines, procedures, and systems for compliance with the rules and regulations of the Office of Foreign Assets Control (OFAC).
- (3) Upon completion, the Board shall forward a copy of the program to the Director.
- (4) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to the program developed pursuant to this Article.

## Article XVII

### ENGAGEMENT OF THIRD PARTIES

- (1) The Bank shall not renew or enter into new contracts or engagements exceeding an aggregate threshold of ten thousand dollars (\$10,000) on an annual basis with a third party

company, entity, or person (third party) to perform professional services for, or on behalf of, the Bank unless:

- (a) the Board reviews and approves a written analysis performed by the Bank that includes:
  - (i) a cost/benefit analysis for using a third party;
  - (ii) a description of the Bank's due diligence process for selecting the third party and the results of the due diligence review;
  - (iii) a determination that the contract or commitment is being conducted at arm's length on terms and conditions fair and reasonable to the Bank, including the ability of the parties to perform under the contract or commitment;
  - (iv) a disclosure of any affiliation with any present or past bank Insider or Related Interest of such Insider; and
  - (v) a determination that the contract is in the best interests of the Bank.
- (b) the written analysis required by paragraph (1)(a) of this Article is included in the Board minutes along with details of the deliberations and approval; and
- (c) the contract or engagement is in writing.

(2) The Board shall immediately forward any Board-approved, written contract, along with the written analysis and Board approval pursuant to paragraph (1)(b) of this Article, to the Director. Unless otherwise advised in writing by the Director, at a minimum, the contract must:

- (a) be made a part of the Bank's books and records, identify the third party, and specify all services to be provided;
- (b) define the rights, obligations, and responsibilities of all parties to the contract;

- (c) specify the beginning and ending dates of the contract, including any renewal options;
- (d) specify and itemize the price to be paid by the Bank for the services;
- (e) set standards for quality of services provided by the third party, as applicable, given the nature of the services to be provided;
- (f) provide the Bank appropriate remedies in the event of a default, failure of the third party to meet the quality standards, or failure of the third party to comply with any other material provision of the contract;
- (g) require the third party to provide the Bank with annual financial statements and audit reports if the viability of the third party is integral to the Bank's safe and sound operation;
- (h) require the third party to carry appropriate insurance, if applicable, given the nature of the contract;
- (i) require the third party to maintain reliable and accurate books, records, and management information systems as they relate to the services performed on behalf of the Bank; and
- (j) require the third party to grant the Bank, Bank auditors, and the Comptroller immediate access to the third party's books and records as they relate to services performed on behalf of the bank; however, this Article XVII does not negate the right to assert legally recognized privileges where applicable.

(3) The Board must ensure all existing third party relationships for the performance of professional services conform with paragraphs (1) and (2) of this Article, including the

execution of a written contract if the existing agreement or engagement is not in writing. The Bank shall not use the services of, or in any way compensate, any third party if the Board has determined that the relationship is not in the best interests of the Bank.

(4) The Bank must routinely monitor the performance of the third party to ensure that committed goods and services are received, and that the third party is in compliance with the written contract.

(5) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to this Article.

#### Article XVIII

##### PRODUCTS AND SERVICES – EXISTING OR NEW

(1) Prior to the Bank's involvement in any significant new product or service, or the significant expansion of any existing product or service, the Board shall prepare a written analysis of said 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 adopted pursuant to Article II;
- (c) an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
- (d) an analysis of profitability, including growth projections and interest rate risk.



(2) Prior to the Bank's involvement in the significant new product or service, or the significant expansion of any existing product or service, a copy of the analysis shall be submitted to the Director for review.

(3) For the purposes of this Article, "significant new product or service" shall be defined as one whose asset size exceeds or is projected to exceed ten percent (10%) of Tier 1 Capital, or whose gross earnings exceed or are projected to exceed two percent (2%) of annual gross revenue.

(4) For the purposes of this Article, "significant expansion" shall be defined as:

- (a) annualized asset growth, as calculated on the last date of each calendar quarter, of any existing product or service, greater than ten percent (10%), where that product or service exceeds ten percent (10%) of Total Assets, or
- (b) any increase in gross earnings from an existing product or service, as calculated on the last date of each calendar quarter, which exceeds ten percent (10%), where the gross earnings from that product or service constitutes ten percent (10%) or more of annual gross revenue.

(5) For purposes of this Article "gross revenue" shall equal total interest income plus total noninterest income as defined in the Consolidated Reports of Condition and Income.

#### Article XIX

#### CLOSING

(1) Although the Board by this Order has agreed to submit certain programs and reports to the Director for review, prior approval, or prior determination of no supervisory objection, 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) 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.

(4) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time requirements may be extended in writing by the Director for good cause upon written application by the Board.

(5) The provisions of this Order shall be 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.

(6) The Bank entered into a Formal Agreement dated February 18, 2003. This Order replaces that Formal Agreement in its entirety and therefore, the February 18, 2003 Formal Agreement is hereby terminated.

(7) 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.

(8) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 22<sup>nd</sup> day of June, 2004.

Ronald G. Schneck  
Ronald G. Schneck  
Director for Special Supervision  
Office of the Comptroller of the Currency

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

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**In the Matter of:** )  
Surety Bank, N.A. )  
Fort Worth, Texas )

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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 Surety Bank, N.A., Fort Worth, Texas (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 June 22, 2004 (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 OCC 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 OCC has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’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/she 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 his hand on behalf of the Comptroller.

Ronald G. Schneck  
Ronald G. Schneck  
Director for Special Supervision  
Office of the Comptroller of the Currency

June 22, 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.

<i>signed</i> _____ Richard Abrams	_____ June 22, 2004 Date
<i>Resigned</i> _____ Steve Brown	_____ Date
<i>signed</i> _____ Vicki Dickerson	_____ June 22, 2004 Date
<i>signed</i> _____ Glenn Forbes	_____ June 22, 2004 Date
<i>signed</i> _____ John Hernandez	_____ June 22, 2004 Date
<i>signed</i> _____ Steve Oeffner	_____ June 22, 2004 Date
<i>signed</i> _____ Tim Raso	_____ June 22, 2004 Date