

AGREEMENT BY AND BETWEEN  
Calnet Business Bank, National Association  
Sacramento, CA  
and  
The Office of the Comptroller of the Currency

Calnet Business Bank, National Association, Sacramento, California (“Bank”) and the Acting Comptroller of the Currency of the United States of America (“Comptroller”) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules and regulations.

The Comptroller has found unsafe and unsound banking practices related to the Bank’s Automated Clearing House (“ACH”) and Draft Management Programs as well as the Bank’s credit administration practices.

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (“Board”), and the Comptroller, through her authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

Article I

JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(4) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(5) This Agreement shall cause the Bank not to be designated as an “eligible bank” for purposes of 12 C.F.R. § 5.3(g), unless otherwise informed in writing by the Comptroller.

(6) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Agreement shall be forwarded to the:

Assistant Deputy Comptroller  
San Francisco Field Office  
One Front Street, Suite 1000  
San Francisco, CA 94111

## Article II

### COMPLIANCE COMMITTEE

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Agreement.

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

(3) On at least a monthly basis, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results of those actions.

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

### Article III

#### BOARD AND MANAGEMENT SUPERVISION

(1) Within thirty (30) days, the Board shall employ one or more independent outside management consultants to assess what needs to be done to improve Board and management supervision of the Bank.

(2) Prior to the appointment or employment of any consultant(s) or entering into any contract with a consultant(s), the Board shall submit the name and qualifications of the proposed consultant(s) and the proposed terms of employment to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection.

(3) Within sixty (60) days from the date the Assistant Deputy Comptroller informs the Bank he has no supervisory objection to the proposed Consultant(s), the Consultant(s) shall complete a study detailing the Consultants' assessment of what needs to be done to improve Board and management supervision of the Bank. The Consultants' findings and recommendations shall be set forth in a written report to the Board. At a minimum, the report shall contain:

- (a) the identification of procedures needed to ensure the Board is involved in the planning process for any new or significantly modified product or service. The procedures shall include a clear definition of what constitutes such a product or service and shall also assure that appropriate due

diligence is performed and that appropriate risk controls are established with regard to such product or service;

- (b) the identification of actions needed to enhance the Bank's control environment to ensure compliance with policies and procedures governing approvals and authorizations for transactions and activities;
- (c) the identification of procedures needed to ensure an appropriate separation of duties;
- (d) the identification of procedures to ensure development of ACH risk tolerances and a process to measure Bank compliance with established risk benchmarks;
- (e) a description of management information and risk-monitoring systems appropriate for the Bank's ACH operations, including, but limited to:
  - (i) enhanced ACH management information systems ("MIS") with such risk-based information as an ongoing profile of the customer base, details on specific higher-risk customers, return activity, and fraud monitoring; and
  - (ii) ACH reporting on item and dollar processing trends, customer profiles, system capacity, sales efforts, industry and competition information and similar topics; and
- (f) recommendations to correct or eliminate any other deficiencies in the Board and management supervision of the Bank.

(4) Within thirty (30) days of completion of this study, the Board shall develop a written plan, with specific time frames, that will correct any deficiencies that are noted in the study.

(5) 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.

(6) Copies of the Board's written plan and the Consultant's study 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 Agreement. In the event the Assistant Deputy Comptroller recommends changes to the written plan, the Board shall immediately incorporate those changes into the written plan. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement and ensure Bank compliance to the written plan. 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 IV

##### AUTOMATED CLEARING HOUSE AND DRAFT MANAGEMENT PROGRAMS

(1) Within forty-five (45) days, the Board shall develop, implement, and thereafter ensure Bank adherence to, a written risk control program that is commensurate with the level of risk represented by the Bank's ACH operations. The program shall include, but not be limited to:

- (a) a thorough risk analysis of the Bank's ACH activity, including but not limited to, the definition and identification of higher risk originators and transaction activity;
- (b) additional monitoring controls commensurate with risk to ensure higher risk originators and third-party senders comply with the Bank's requirements;
- (c) development and implementation of an ongoing, risk-based due diligence process, including fraud detection and prevention practices;
- (d) development and implementation of a process to ensure that customers, including third-party senders, have appropriate policies and procedures to comply with NACHA's rules for WEB-initiated transactions;
- (e) development and implementation of an effective complaint response system to track and record complaints and resolution efforts related to both ACH operations and the Bank's Draft Management Program;
- (f) development and implementation of procedures to ensure review of ACH and Draft Management Program transactions for suspicious activity and the filing of Suspicious Activity Reports where required;
- (g) development and implementation of procedures to ensure the Bank's reserves are adequate to cover potential unauthorized ACH and Draft Management Program returns; and
- (h) obtaining a written legal risk analysis (Legal Risk Analysis) of the Bank's ACH and Demand Management Program activities, prepared by competent legal counsel who has reviewed such Bank documentation,

agreements, and related transactions as counsel believes necessary or appropriate. Within thirty (30) days, the Board shall submit to the Assistant Deputy Comptroller an engagement letter from counsel specifying the scope of the Legal Risk Analysis. The Board shall require counsel to complete the Legal Risk Analysis within thirty (30) days of receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller and shall ensure the Legal Risk Analysis considers all factual and legal matters set forth in the engagement letter.

(2) Upon completion, the Bank shall forward a copy of the written program to the Assistant Deputy Comptroller. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement, and ensure Bank adherence to, 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 V

### AUTOMATED CLEARING HOUSE AUDIT PROGRAM

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to, a written audit control program that is commensurate with the level of risk represented by the Bank's ACH operations. The program shall include, but not be limited to:

- (a) revisions to the Bank's ACH Audit Policy to require the use of a risk-based audit approach;

- (b) development and implementation of criteria to ensure auditor independence, experience, and training;
- (c) development and implementation of procedures to ensure Bank auditors establish effective testing and sampling criteria;
- (d) development and implementation of a process to ensure Bank auditors monitor ACH activities between audits with a focus on higher risk ACH activity and new products and services;
- (e) designation of a knowledgeable management official who is independent of the day-to-day operations of the ACH program to act as a liaison with outside auditors and to closely review their work; and
- (f) development and implementation of procedures to ensure information technology-related ACH audits include an in-depth review of the Bank's systems and development activities.

(2) Upon completion, the Bank shall forward a copy of the written program to the Assistant Deputy Comptroller. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement, and ensure Bank adherence to, 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 VI

### RISK MANAGEMENT

- (1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written risk management program to include, at a minimum, the following:
- (a) identification of existing credit, interest rate, liquidity, transaction, compliance, strategic, and reputation risks, and a written analysis of those risks;
  - (b) action plans and time frames to reduce risks where exposure is high;
  - (c) policies, procedures or standards which limit the degree of risk the Board is willing to incur, consistent with the Bank's strategic plan and financial condition. This includes analyzing and limiting the risks associated with any new lines of business that the Board undertakes. The procedures shall ensure that strategic direction and risk tolerances are effectively communicated and followed throughout the Bank and shall describe the actions to be taken where noncompliance with risk policies is identified;
  - (d) systems to measure and control risks within the Bank. Measurement systems shall provide timely and accurate risk reports by customer, by department or division, and bank-wide as appropriate; and
  - (e) procedures to ensure that Bank employees have the necessary skills to supervise effectively the current and the new business risks within the Bank, and procedures to describe the actions to be taken to address deficiencies in staff levels and skills.

The risk management program shall be consistent with the “Bank Supervision Process” booklet, EP-Sup, of the Comptroller's Handbook.

(2) 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.

(3) Upon completion, the Bank shall forward a copy of the written program to the Assistant Deputy Comptroller. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement, and require the Bank to adhere to, the program.

## Article VII

### CAPITAL MINIMUMS

(1) Within thirty (30) days, the Bank shall achieve and thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

(a) Tier 1 capital at least equal to eleven percent (11 %) of risk-weighted assets; and

(b) Tier 1 capital at least equal to eight percent (8 %) of adjusted total assets.

(2) The requirement in this Agreement 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).

## Article VIII

### NEW PRODUCTS AND SERVICES

(1) Within sixty (60) days, the Board shall prepare a written analysis of the Bank's Automated Clearing House program that assesses the risks and benefits of this line of business. This analysis shall include an assessment of the Bank's controls, procedures, MIS and management of the operation, and shall tie directly to the Bank's strategic plan as revised in accordance with Article IX of this Agreement.

(2) Prior to the Bank offering any new product or service, significantly modifying any existing product or service, or re-engaging any previously discontinued 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;
- (c) an evaluation of the adequacy of the Bank's organizational structure, staffing, MIS, internal controls and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
- (d) a profitability analysis, including growth projections and interest rate risk.

(3) Prior to the Bank offering the new product or service, a copy of the analysis shall be submitted to the Assistant Deputy Comptroller. The Bank shall not offer the new product or

service until it receives a written determination of no supervisory objection from the Assistant Deputy Comptroller.

## Article IX

### DEVIATION IN OPERATING PLAN

(1) At least sixty (60) days prior to any proposed significant deviation or change in the Bank's operating plan, the Board shall prepare a written analysis of said deviation or change.

The analysis shall, at a minimum, include the following:

- (a) an assessment of the risks and benefits of the deviation or change to the Bank; and
- (b) an explanation of how the deviation or change is consistent with the Bank's strategic plan.

(2) Prior to the Bank's implementation of any proposed significant deviation or change to its operating plan, a copy of the analysis shall be submitted to the Assistant Deputy Comptroller. The Bank shall not implement the proposed deviation or change to its operating plan until it receives a written determination of no supervisory objection from the Assistant Deputy Comptroller.

(3) Within ten (10) days, the Board shall submit a revised 2005 budget to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

(4) Within sixty (60) days, the Board shall submit the Bank's proposed 2006 budget and the Bank's revised three-year strategic plan to the Assistant Deputy Comptroller for a written determination of no supervisory objection.

(5) Upon the Bank's receipt of a written determination of no supervisory objection from the Assistant Deputy Comptroller to the Bank's revised 2005 budget, the proposed 2006 budget and the Bank's revised three-year strategic plan, the budgets and strategic plan shall constitute the framework on which the Bank's day-to-day business shall be operated and its products and services shall be offered and shall, taken as a whole, form the operating plan of the Bank. Thereafter, the Board shall immediately implement and ensure Bank adherence to the Bank's operating plan. The Bank shall not deviate from that operating plan except in accordance with the provisions of paragraphs one (1) and two (2) of this Article.

(6) The Board shall submit to the Assistant Deputy Comptroller a new proposed budget for each subsequent year this Agreement remains in effect by September 30 of the year preceding the year covered by that proposed budget for a written determination of no supervisory objection. Upon the Bank's receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection, the proposed budget shall become part of the Bank's operating plan.

(7) The Bank shall not significantly deviate from its current operations until the Board has implemented and ensured Bank adherence to the operating plan referenced in paragraph five (5) of this Article.

## Article X

### ASSET/LIABILITY MANAGEMENT POLICY

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written liquidity, asset and liability management policy. In formulating this policy, the Board shall refer to the Comptroller's Handbook for National Bank Examiners, Section 405. The policy shall provide for a coordinated asset/liability management strategy and, at a minimum, address:

- (a) development of a liquidity contingency plan;
- (b) adequate management reports that enable the Board and management to monitor the Bank's liquidity position and maintain liquidity at an adequate level;
- (c) limits on concentrations of funding sources; and
- (d) periodic review of the Bank's adherence to the policy.

(2) 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.

(3) Upon completion, the Bank shall forward a copy of the written policy to the Assistant Deputy Comptroller. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement, and require the Bank to adhere to, the policy.

## Article XI

### LOAN PORTFOLIO MANAGEMENT

(1) Within sixty (60) 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:

- (a) procedures to ensure satisfactory and perfected collateral documentation;
- (b) procedures 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) procedures to ensure conformance with loan approval requirements;
- (d) a system to track and analyze exceptions; and
- (e) procedures to ensure the accuracy of internal management information systems.

(2) Upon completion, a copy of the program shall be forwarded to the Assistant Deputy Comptroller. Upon receiving a written determination of no supervisory objection from the Assistant Deputy Comptroller, the Board shall immediately implement, and require the Bank to adhere to, the program.

(3) Beginning August 31, 2005, management will provide the Board with written reports on a monthly basis including, at a minimum, the following information:

- (a) credit and collateral documentation exceptions;
- (b) the identification and status of credit related violations of law, rule or regulation;
- (c) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (a) through (d) of this Article and Paragraph; and
- (d) the identification of loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(4) 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 XII

### PROGRESS REPORTING - QUARTERLY

- (1) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller. These reports shall set forth in detail:
  - (a) actions taken since the prior progress report to comply with each Article of the Agreement;
  - (b) results of those actions; and
  - (c) a description of the actions needed to achieve full compliance with each Article of this Agreement.
- (2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the Report of Examination or in any future Report of Examination.
- (3) The first progress report shall be submitted for the period ending September 30, 2005, and will be due within thirty (30) days of that date. Thereafter, progress reports will be due within thirty (30) days after the end of each subsequent calendar quarter running from September 30, 2005.

## Article XIII

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

- (1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank, or requires an extension of any timeframe within this Agreement, 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 Agreement. 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 XIV

#### CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or approval, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(4) In each instance in this Agreement 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 Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action to be taken in a timely manner of any non-compliance with such actions.

(5) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. 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(b)(1), 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. 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. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

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

Signed

7/21/05

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Brian J. Quade  
Assistant Deputy Comptroller  
Comptroller of the Currency

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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

7/21/05

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William Allen

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Date

Signed

7/21/05

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Michael Bozich

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Date

Signed

7/21/05

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James Cordano, III

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Date

Signed

7/21/05

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Ronald A. Johnson

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Date

Signed

7-21-05

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William McClintock

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Date

Signed

7/21/05

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Richard Miller

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Date

Signed

7/21/05

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Robert Naylor

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Date

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Signed

Peter Raffetto

Signed

Michael B. Stuart

Signed

Hilton Williams

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7/21/05

Date

7/21/05

Date

7/21/05

Date

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