

#2006-41

Also terminates #2005-152

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

In the Matter of:

Terrabank National Association
Miami, Florida

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AA-EC-05-96

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiner, is currently examining Terrabank, N.A., Miami, Florida (“Bank”) and issued on December 13, 2005 a Notice of Charges pursuant to 12 U.S.C. § 1818(b); and

WHEREAS, in the interests of cooperation, 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 5-9-06, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference herein, the Bank, without admitting or denying any wrongdoing, has consented to the issuance of this Consent Order (“Order”) by the Comptroller; and

WHEREAS, in addition to settling the December 13, 2005 Notice of Charges, this Order replaces a Consent Order that the Comptroller issued on November 15, 2005.

NOW, THEREFORE, 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 from the effective date of this Order, the Board shall appoint a Compliance Committee of at least three (3) directors, none of whom shall be employees of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)). Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing 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 monthly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

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

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

Article II

STRATEGIC PLAN

(1) Within ninety (90) days from the effective date of this Order, the Board shall review and revise the Bank's written strategic plan to ensure compliance with the requirements set forth in this Article. The Board shall ensure that the strategic plan covers at least a three-year

period, establishes 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, includes:

- (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) a description 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 description of the actions to be taken by the Board to promote management employment and succession, and the retention and continuity of capable management;

- (g) the identification of product line and market segments that the Bank intends to promote or develop in addition to those identified pursuant to subparagraph (1)(d) above, if any;
- (h) a description of the Board's action plan to accomplish identified strategic goals and objectives, including individual responsibilities of Board members and management, 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) a description and assessment of the control systems to be implemented to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (k) a description of the Board's 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
- (l) a description of the actions to be taken by the Board and the systems utilized to monitor the Bank's progress in meeting the strategic plan's goals and objectives.

(2) Prior to adoption by the Board, a copy of the revised 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 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, a change in the Bank's marketing strategies and marketing partners or a change in the Bank's 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, or funding strategy, any of which, alone or in aggregate, may have a material impact on the Bank's operations or financial performance; 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) 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 ninety (90) days from the effective date of this Order, the Board shall develop, implement, and thereafter ensure adherence to a written profit plan to 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) realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
- (b) a budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections; and
- (c) 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 2006 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 capital levels (as defined in 12 C.F.R. Part 3)¹:
 - (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
- (2) Within ninety (90) days from the effective date of this Order, the Board shall develop and thereafter ensure Bank adherence to a three-year capital plan that is consistent with the strategic plan developed pursuant to Article II, and shall include, at minimum:
 - (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);
 - (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
 - (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
 - (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
 - (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available;

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

² Adjusted total assets is defined in 12 C.F.R. § 3.2(a) as the average total asset figure used for Call Report purposes minus end-of-quarter intangible assets.

- (f) specific plans detailing how the Bank will comply with the restrictions or requirements set forth in this Order and 12 U.S.C. § 1831o, including the restrictions against brokered deposits in 12 C.F.R. § 337.6;
- (g) 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 determination of no supervisory objection by the Director.

(3) Upon completion, the Bank's capital plan shall be submitted to the Director for prior determination of no supervisory objection. Upon receiving a determination of no supervisory objection from the Director, the Bank shall implement and adhere 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.

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

Article V

BOARD COMPOSITION, TRAINING AND COMMITTEE STRUCTURE

(1) Within ninety (90) days from the effective date of this Order, the Compliance Committee shall conduct and complete a review of the Board's composition and committee structure. The review shall include:

- (a) a detailed description of the responsibilities currently assigned to the existing committees, the composition of each committee, and the technical expertise (if any) which the Board currently requires for members of each committee;
- (b) a detailed evaluation of the performance of the existing committee structure;
- (c) specific recommendations to improve the performance of each committee, the technical expertise of committee members, and the committee structure as a whole, including a detailed program for director education and training; and
- (d) specific plans to enhance and expand the Board with individuals possessing skills and expertise that will contribute to the supervision of the Bank, achieving the goals of the strategic plan, and operating the Bank in a safe and sound manner.

(2) Within thirty (30) days of its completion, the Board shall forward a copy of the results of the foregoing review to the Director along with a copy of the Board's action plan and timetable to implement the recommendations and plans contained in the review.

Article VI

NEW SENIOR EXECUTIVE OFFICER

(1) Within thirty (30) days from the effective date of this Order, the Board shall identify a new capable and permanent candidate for President of the Bank who, following review and no objection by the Director, shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and ensure the safe and sound operation of the Bank.

(2) Prior to the employment of any individual as President, 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. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed 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.

Article VII

BOARD TO ENSURE COMPETENT MANAGEMENT

(1) The Board shall ensure that the Bank has competent management in place on a full-time basis in its senior management positions capable of carrying out the Board’s policies, ensuring compliance with this Order, applicable laws, rules and regulations, and managing the day-to-day operations of the Bank in a safe and sound manner.

(2) Within thirty (30) days from the development of the strategic plan as required by Article II, the Board shall identify a new, proper, management structure and necessary senior management positions for the Bank that are consistent with the Bank’s strategic plan adopted pursuant to Article II, the size and characteristics of the Bank, and safe and sound banking practices.

(3) Within sixty (60) days from the development of the strategic plan as required by Article II, the Board, or a designated committee thereof, shall conduct an analysis and prepare a written report which shall:

- (a) identify the skills and expertise needed by Bank 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 senior management position identified pursuant to paragraph 2 of this Article;
- (c) assess the experience, qualifications and performance of each incumbent senior management officer and compare it to the position's description, duties and responsibilities; and
- (d) determine the management and staff changes necessary to conform to the new management structure and the skills identified under (a) above.

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

(5) If the Board determines pursuant to paragraphs (3) and (4) 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.

(6) If the analysis required by paragraph (3) 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.

(7) Within sixty (60) days of completing the analysis required by paragraph (3) 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.

(8) Unless otherwise advised in writing by the Director, prior to the appointment of any individual to a senior 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 VIII

PRESERVATION OF BOOKS AND RECORDS

(1) Within sixty (60) days from the effective date of this Order the Board shall review and revise, as necessary, and submit to the Director, for his review and supervisory non-objection, a copy of the Bank's written records retention and destruction program. The Board shall continue to ensure that no Bank documents, books, or records are destroyed, altered or removed from the Bank's premises until receipt of written non-objection to the Bank's records retention and destruction program. Following receipt of non-objection to the Bank's records retention and destruction program, the Board shall ensure ongoing Bank compliance with the records retention and destruction program. For purposes of this paragraph, "documents, books and records" shall have the broadest possible meaning reasonably imaginable and shall include, without limitation, paper and electronic records of all kinds, reports, notes, calendars, phone logs, e-mails, voice-mails, financial instruments, and tapes. Provided, however, that documents, books and records catalogued and stored in safe locations owned or leased by the Bank need not

be maintained on the Bank's premises, if, and only if, the documents, books and records are available to the Comptroller's representatives during their normal working hours, or are delivered to Bank premises within one day of a request by the Comptroller's representative.

(2) The Bank shall provide OCC personnel with prompt and unrestricted access to the books, records, directors, officers, and staff of the Bank.

(3) The Bank shall provide full and complete details of the purpose of transactions by and between the Bank and any of its customers to OCC personnel upon inquiry.

(4) The Bank shall not directly or indirectly conceal transactions from the OCC, or hinder or obstruct the OCC examination process.

Article IX

FORENSIC AUDIT TO VERIFY ACCURACY AND COMPLETENESS OF BOOKS AND RECORDS

(1) Within thirty (30) days of receipt of written notice from the Director that additional specific accounts, relationships, or other Bank activities shall be reviewed, the Bank shall retain the services of a forensic auditor acceptable to the Director to verify the accuracy and completeness of the Bank's books and records with regard to such accounts, relationships or activities. Such additional forensic audits must be completed within sixty (60) days of receipt of the Director's written notice.

Article X

REVIEW OF AGREEMENTS

(1) If the Board becomes aware of any agreement, guarantee, contract, or other financial commitment or obligation that was not documented on the Bank's books and records as of the effective date of this Order, it shall retain the services of independent legal counsel ("Legal Counsel") acceptable to the Director and shall, with the assistance of Legal Counsel, determine

within ninety (90) days of the date on which the undocumented agreement, guarantee, contract, or other financial commitment or obligation was brought to the Board's attention whether such undocumented contract, guarantee, agreement or other financial commitment or obligation is in compliance with all applicable law. Upon completion of each such review, the Bank shall provide a copy of its conclusions to the Director.

(2) Prior to recording on the Bank's books and records any obligation of the Bank, which obligation arose as a result of a contract, guarantee, agreement, or other financial commitment or obligation, that was not documented on the Bank's books and records as of the effective date of this Order, the Board shall:

- (a) acquire a legal opinion that the obligation complies with all applicable law;
- (b) determine that it is in the best interest of the Bank to honor such obligation; and
- (c) provide the Director with at least 20 days prior notice of the Bank's recordation of any such obligation on the Bank's books and records, the Bank's honoring of any commitments or obligations in such instruments, and/or the Bank making any payments related to such instruments.

Article XI

PAYMENTS ONLY IF LAWFULLY ON BANK'S BOOKS AND RECORDS

(1) The Bank shall not make any payment of any kind to any person, company, entity or other party, other than withdrawal of deposits, unless the funds paid out are documented in the books and records of the Bank and are paid out pursuant to the Bank's internal written policies or written agreements, guarantees or contracts that are documented in the books and records of the

Bank which demonstrate that the payments, contracts, guarantees or agreements are in compliance with all applicable law and the applicable policies and procedures duly promulgated and approved by the Board, and are consistent with safe and sound banking practices.

(2) 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 XII

CLAIMS

(1) The Bank shall have a continuing obligation, as new material facts and/or evidence become known to the Board, to evaluate and determine, with the assistance of Legal Counsel, whether it has any claims for damages, restitution, indemnification, or other monetary claims against any current or former officer or director, or third party arising out of or relating to any agreement, guarantee, contract, or other financial commitment or obligation that was not documented on the Bank's books and records as of the effective date of this Order. The Bank shall take all actions necessary to exercise its rights and claims relating to such agreements, guarantees, contracts, or other financial commitments or obligations, including but not limited to, the filing of appropriate insurance claims, and appropriate declaratory and/or damage claims. Upon completion, the Bank shall provide a copy of such determination to the Director, along with a report detailing the steps the Bank intends to take to file claims and/or seek recoveries from appropriate parties.

Article XIII

LENDING

(1) The Board shall ensure that all loans, loan extensions, loan renewals, or other extensions of credit (collectively “loan” and “loans”) are properly recorded on the Bank’s books and records, including the general ledger and any subsidiary ledgers, as loans.

(2) The Bank shall cease and desist from making any loan that exceeds twenty-five thousand dollars (\$25,000) unless:

- (a) a written loan presentation package is created by the loan officer. Such loan presentation package shall include, at a minimum, the following:
 - (i) the name of the borrower;
 - (ii) the amount of the loan;
 - (iii) the specific purpose of the loan, including a specific and accurate description of the borrower’s planned use of the loan proceeds;
 - (iv) the expected source of repayment;
 - (v) the repayment terms, which shall coincide with the expected source of repayment;
 - (vi) a full credit analysis of each borrower and any guarantor(s);
 - (vii) current and satisfactory credit information, including a cash flow analysis where loans are to be repaid from operations; and
 - (viii) the value of collateral and the Bank's lien position, where applicable.
- (b) the Board verifies that all of the items specified in paragraph (2)(a) of this Article are included in the loan presentation package.

- (c) the loan is approved by a majority of the disinterested Board members prior to disbursement. Board approval shall be documented and include the name and vote of each Board member.
- (3) The Bank shall cease and desist from funding any loan from any suspense account.

Article XIV

OVERDRAFTS

(1) The Bank shall cease and desist from permitting any overdraft over ten thousand dollars (\$10,000) unless the requirements detailed in Article XIII, Paragraph (2) are satisfied, which may include Board approval, on at least an annual basis, of an internal guidance line for each customer establishing a maximum allowed overdraft total.

(2) Under no circumstances shall the Bank accept, as a loan payment on any loan held by the Bank, a transfer of funds from a Bank account that results in or increases an overdraft.

(3) Under no circumstances shall an overdraft in any Bank account be reduced with a transfer of funds from another Bank account that results in or increases an overdraft.

(4) The Board shall implement and ensure Bank adherence to a written policy concerning the extension of overdrafts that shall include, at a minimum:

- (a) the requirements set forth in Paragraphs (1), (2), and (3) above;
- (b) conditions and circumstances under which overdrafts will be allowed;
- (c) charges that will be levied against depositors using overdrafts;
- (d) conditions and circumstances under which overdrafts will be permitted to executive officers, directors, principal shareholders or their related interests (as that term is defined in 12 C.F.R. Part 215);

- (e) procedures to identify in writing all customers who are repeatedly overdrawn as defined in 12 C.F.R § 229.13(d)(1) and (2);
 - (f) procedures which prohibit the availability of funds from a deposit prior to verification that such deposit constitutes collected funds for those customers identified in subparagraph (e), except where the Board determines in writing that there is no cause to doubt the collectibility of the deposit; and
 - (g) conditions and circumstances under which overdrafts will be charged off.
- (5) A copy of this policy shall be forwarded to the Director.
- (6) 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.

Article XV

LOAN POLICY

- (1) Within ninety (90) days from the effective date of this Order, the Board shall review and revise the Bank's written loan policy, consistent with applicable OCC guidance including, but not limited to, the Loan Portfolio Management booklet, A-LPM, of the Comptroller's Handbook. Revisions to the policy shall incorporate, but not necessarily be limited to, the following, to the extent not already incorporated in the Bank's policy:
- (a) that current and satisfactory credit information will be obtained on each borrower, including specific policy requirements on the types of financial statements required in relation to the size and purpose of the loan;
 - (b) maturity scheduling related to the anticipated source of repayment, the purpose of the loan, and the useful life of the collateral;

- (c) specific requirements which prohibit loan proceeds from being transferred or distributed by the Bank, to another individual or entity unless consistent with the specified purpose of the loan, or for purposes other than those specifically identified in writing by the borrower as part of the application for the loan;
- (d) maximum ratio of loan value to appraised value or acquisition costs of collateral securing the loan;
- (e) a risk-based pricing policy that takes into consideration costs, general overhead, and potential for loss, while providing for a reasonable margin of profit;
- (f) guidelines for loans to insiders, including a requirement that such loans will not be granted on terms more favorable than those offered to similar outside borrowers;
- (g) collection procedures, to include follow-up efforts, that are systematically and progressively stronger;
- (h) charge-off guidelines, by type of loan or other asset, including Other Real Estate Owned, addressing the circumstances under which a charge-off would be appropriate and ensuring the recognition of losses within the quarter of discovery;
- (i) specific requirements addressing the re-booking of charged off loans that are consistent with regulatory policy and guidance;

- (j) guidelines setting forth the criteria for extending of loans, consistent with Banking Circular 255 – Troubled Loan Workouts and Loans to Borrowers in Troubled Industries, dated July 30, 1991;
- (k) guidelines to address legal lending limit and appraisal requirements;
- (l) guidelines on granting and monitoring revolving credit facilities; and
- (m) guidelines which address the specific circumstances where capitalization of interest is appropriate;

(2) Upon completion of the review required by paragraph (1), the Board shall direct the Bank to implement the policy as amended, and the Board shall, thereafter, ensure Bank adherence to the policy. The Board shall also forward a copy of the revised policy to the Director.

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

Article XVI

LOAN PORTFOLIO MANAGEMENT

(1) Within sixty (60) days from the effective date of this Order, 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 ensure that management information systems accurately identify all account relationships associated with a particular borrower.
- (f) to ensure the timely identification and rating of problem loans and leases based on lending officer submissions; and
- (g) to track and analyze previously charged-off assets, collection efforts, and recovery potential.

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

(3) Within ninety (90) days from the effective date of this Order, 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 considers 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 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
- (h) 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 XVII

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 from the effective date of this Order, 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 XVIII

CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the June 30, 2004 Report of Examination ("ROE"), in any subsequent Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination subsequent to the date of this Order.

(2) Within thirty (30) days from the effective date of this Order, the Board shall adopt, 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 list provided to management by the National Bank Examiners during any examination subsequent to the date of this Order 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 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; if, however, the Bank is unable to obtain current credit information on a criticized asset, the efforts made to obtain the information should be fully documented in the credit file; and
- (d) the proposed action to eliminate the basis of criticism and the anticipated time frame for its accomplishment.

(3) Upon adoption, a copy of the program for all criticized assets equal to or exceeding twenty-five thousand dollars (\$25,000) shall be forwarded to the Director.

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

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

- (a) the status of each criticized asset or criticized portion thereof that equals or exceeds twenty-five thousand dollars (\$25,000);
- (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 required by paragraph (5) shall be forwarded to the Director on a monthly basis.

(7) The Bank shall not extend credit, directly or indirectly, including renewals, guarantees to third parties that benefit directly or indirectly the borrower, extensions or

capitalization of accrued interest to a borrower whose loans or other extensions of credit are criticized in any Report of Examination, in any internal or external loan review, or in any list subsequently provided to management by the National Bank Examiners during any examination unless each of the following conditions is met:

- (a) the Board, or designated committee finds that the extension of additional credit is necessary to promote the best interests of the Bank and that such additional extension of credit is in compliance with all applicable law and is a safe and sound banking practice;
- (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; and
- (c) that prior to extending such additional credit, a majority of the disinterested Board members approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank, is in compliance with all applicable law and is consistent with safe and sound banking practices.

(8) A copy of the Board's approval required by paragraph (7)(c) shall be maintained in the file of the affected borrower.

Article XIX

CREDIT AND COLLATERAL EXCEPTIONS

(1) Within sixty (60) days from the effective date of this Order, 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 subsequent listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination. At the expiration of the sixty (60) day period, the Board shall provide the Director with a list of all loans for which it was unable to obtain such information, the reasons why such information has not been obtained and plans to obtain such information by a specified time.

(2) Within sixty (60) days from the effective date of this Order, the Board shall ensure that proper collateral documentation is maintained by the Bank on all secured loans and shall correct each collateral exception listed in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any subsequent listings of loans lacking such information provided to management by the National Bank Examiners at the conclusion of an examination. At the expiration of the sixty (60) day period, the Board shall provide the Director with a list of all loans for which it was unable to obtain such documentation, the reasons why such documentation has not been obtained and plans to obtain such documentation by a specific time.

(3) Effective immediately, the Bank is prohibited from granting, extending, renewing, altering or restructuring any loan or other extension of credit unless the Bank has:

- (a) documented in writing the specific reason or purpose for the extension of credit;
- (b) identified the expected source of repayment in writing;
- (c) structured the repayment terms to coincide with the expected source of repayment;

- (d) obtained and analyzed in writing current and satisfactory credit information, including a cash flow analysis where loans are to be repaid from operations; and
- (e) documented, with adequate supporting material, the value of collateral and properly perfected the Bank's lien on it where applicable.

Article XX

ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) The Board shall review the adequacy of the Bank's Allowance for Loan and Lease Losses (“Allowance”) and shall establish a program for the maintenance of an adequate Allowance. This review and program shall be designed in light of the comments on maintaining a proper Allowance found in the Allowance for Loan and Lease Losses booklet, A-ALLL, of the Comptroller’s Handbook, and shall focus particular attention on the following factors:

- (a) results of the Bank's loan review;
- (b) loan loss experience;
- (c) trends of delinquent and nonaccrual loans;
- (d) concentrations of credit in the Bank; and
- (e) present and prospective economic conditions.

(2) The program shall provide for a review of the adequacy of the Allowance by the Board at least once each calendar quarter. The program shall require that any deficiency in the Allowance be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions from earnings. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the Allowance.

(3) A copy of the Board's program shall be submitted to the Director.

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

Article XXI

BANK SECRECY ACT PROGRAM

(1) Within one hundred and twenty (120) days from the effective date of this Order, the Board shall review, revise and strengthen its existing program to ensure that it incorporates a comprehensive system of internal controls, independent testing, and audit to ensure ongoing compliance with the Bank Secrecy Act ("BSA") and anti-money laundering ("AML") safeguards, is risk-based and addresses all lines of business, including domestic and international operations. In addition, the Board shall review and revise its existing program to ensure that it includes the following:

- (a) a system of internal controls and independent testing and auditing to ensure ongoing compliance with the Bank Secrecy Act;
- (b) a comprehensive, written assessment of bank-wide BSA/AML risks performed on at least an annual basis;
- (c) operating procedures for performing effective due diligence prior to opening new accounts;
- (d) adequate controls and procedures to ensure that all accounts are diligently monitored;

- (e) adequate controls and procedures to identify suspicious transactions in all areas of the Bank, regardless of perceived risk, and to report these transactions to appropriate personnel, within required time frames;
- (f) adequate controls and procedures to perform transaction testing on all accounts to detect suspicious activity;
- (g) adequate controls and transactional testing procedures over all accounts to ensure that:
 - (i) account profiles include documentation on the purpose of the account and how it is to be used; and
 - (ii) transactions outside of the profiles are documented, investigated, and appropriate action is taken by the Bank.
- (h) a qualified and independent officer who will be responsible for coordinating and monitoring compliance with the Bank's BSA program, including filing Suspicious Activity Reports ("SARs"); and
- (i) a comprehensive training program for all appropriate operational and supervisory personnel to ensure that they:
 - (i) understand the requirements of the BSA, USA Patriot Act, and Office of Foreign Assets Control ("OFAC") regulations, including the reporting requirements for SARs pursuant to 12 C.F.R. Part 21, Subpart B;
 - (ii) demonstrate sufficient knowledge of how to monitor accounts for suspicious activity using automated reports and other resources; and
 - (iii) recognize and report suspicious activity in accounts.

(2) A copy of the revised BSA program shall be submitted to the Director for review. In the event the Director recommends changes to the program, the Board shall incorporate those changes into the program at the next meeting of the Board. 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) Within one hundred and twenty (120) days from the effective date of this Order, the Board shall review and revise as needed its customer due diligence and USA Patriot Act compliance processes to ensure that account files contain complete and accurate due diligence information. Within thirty (30) days, the Board shall submit a plan acceptable to the Director setting forth the Bank's plan to review accounts to determine whether they contain complete and accurate due diligence information.

(4) The Board shall determine, in consultation with Legal Counsel as needed, whether it should exit from existing relationships with "high-risk" customers or investors. Such determination shall be fully documented and in writing.

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

Article XXII

BANK SECRECY ACT- CONSULTANT

(1) Within thirty (30) days from the effective date of this Order the Board shall retain the services of a qualified independent Consultant acceptable to the Director to develop, within sixty (60) days after engagement and annually thereafter, findings, observations and recommendations on the Bank's internal controls covering compliance with the Bank Secrecy Act, 12 C.F.R. Part 21, Subpart B (including the SAR requirements) and the rules and

regulations of OFAC, including related regulatory reporting on those subjects. These findings, observations and recommendations, along with the Bank's response to any such concerns, shall be reviewed by the independent Consultant on an annual basis for the term of this Order. The findings shall include:

- (a) a review of the Bank's BSA oversight infrastructure (including management and staffing), the market structure, information on products and services offered, types of transactions, transactions linked to geographies of concern, and characteristics of customers' business activities;
- (b) a review of the BSA Officer's reporting structure and independence from line management;
- (c) a review of the BSA Officer's capability to monitor and ensure the Bank's compliance with BSA, including (1) risk-based internal controls; (2) ability to effect corrective action for identified deficiencies; and (3) ability to ensure that management implements systems and controls to identify and surface potentially suspicious transactions;
- (d) an assessment of current risk levels and means by which to identify and control unwarranted risk; and
- (e) a method for fully documenting the legitimate business purpose of transactions in order to prevent the Bank from being used to facilitate illegal or inappropriate activities.

Article XXIII

SUSPICIOUS ACTIVITY REPORTS

(1) Within one hundred and twenty (120) days from the effective date of this Order, the Board shall review, revise and strengthen the Bank's written program establishing a system of internal controls and processes to ensure compliance with the requirements to file SARs set forth in 12 C.F.R. § 21.11, as amended. At a minimum, this written program shall:

- (a) assign responsibility to a qualified individual to manage the program;
- (b) establish procedures for identifying and reporting known or suspected violations of Federal law, violations of the BSA, or suspicious transactions related to money laundering activity, including suspicious activity relating to the opening of new accounts, the monitoring of current accounts, and the transfer of funds through the Bank; and
- (c) require adequate follow-up on accounts on which the Bank files SARs to ensure that the suspicious activity has ceased, or is not occurring by the same customers through other accounts.

(2) The Bank shall file any SARs pursuant to 12 C.F.R. § 21.11 for any previously unreported suspicious activity identified in the ROE, or in any audit, or in any future examination or audit, and advise the Board in writing of all SAR filings.

(3) A copy of this program shall be submitted to the Director for review. In the event the Director recommends changes to the program, the Board shall incorporate those changes into the program at the next meeting of the Board.

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

Article XXIV

BANK SECRECY ACT – AUDIT

- (1) The Board shall ensure that the Bank strengthens and maintains a comprehensive audit program that on an annual basis uses a risk-based approach to require:
- (a) sufficient coverage to evaluate the adequacy of internal controls designed to ensure compliance with the provisions of the BSA;
 - (b) transactional testing of 100% of high risk accounts to include verification and testing of all account activity over a minimum period of at least ninety (90) days;
 - (c) review of a minimum of twenty-five percent (25%) of accounts internally rated medium risk, and ten percent (10%) of accounts internally rated low risk to determine whether the ratings are appropriate;
 - (d) validation of know-your-customer profiles to determine whether profiles were established consistent with Bank policy, that profiles were reviewed and approved by Bank management, and that the Bank's compliance function effectively ensures that accounts comply with Bank policy and regulations;
 - (e) evaluation of the BSA Officer's performance to monitor and ensure the Bank's compliance with BSA, including (1) risk-based internal controls; (2) ability to effect corrective action for identified deficiencies, and (3) ability to ensure that Bank management implements systems and controls to detect potentially suspicious transactions;

- (f) an evaluation of whether the Bank's controls, procedures and staff are adequate for the level of BSA/AML risk at the Bank;
- (g) adherence to the Bank's audit schedule;
- (h) prompt management responses and follow-up to all audit exceptions or other recommendations of the Bank's auditors; and
- (i) that the BSA Officer is authorized to refer accounts to the BSA auditor for further review.

(2) The audit program described in this Article shall function independently of the Bank's BSA compliance program, and those performing this audit function shall operate independently of the Bank's BSA compliance program.

(3) Audit reports shall be prepared and provided directly to the Board or a committee thereof. The Board shall ensure, and hold Bank management accountable for, timely implementation of corrective actions to audit deficiencies and recommendations.

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

Article XXV

INTERNAL AND EXTERNAL AUDIT

(1) Within thirty (30) days from the effective date of this Order, the Board shall 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;

- (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 continue to evaluate the audit reports of any party providing services to the Bank, and shall continue to 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 continue to 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) The Board shall continue to ensure that all internal and external audit reports are 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 written follow-up for any unremedied deficiencies.

(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) 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 XXVI

VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the ROE, any subsequent Report of Examination, or brought to their attention in writing by management, regulators, auditors, loan review, or other compliance efforts. Within ninety (90) days after the violation is cited or brought to the Board's attention, the Bank shall provide to the Director a list of any violations that have not been corrected. This list shall include an explanation of the actions taken to correct the violation, the reasons why the violation has not yet been corrected, and a plan to correct the violation by a specified time.

(2) To the extent not already in place or otherwise required in this Order, within sixty (60) days from the effective date of this Order, the Board shall adopt, implement, and thereafter ensure adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(3) Within sixty (60) days from the effective date of this Order, the Board shall adopt and cause the Bank to implement policies and procedures, in accordance with the Instructions for Preparation of Consolidated Reports of Condition and Income, to ensure that all official and regulatory reports filed by the Bank accurately reflect the Bank's condition as of the date that such reports are submitted. Thereafter the Board shall ensure Bank adherence to the policies and procedures adopted pursuant to this Article.

(4) Upon adoption, the Board shall forward a copy of these policies and procedures to the Director.

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

Article XXVII

ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank contends that compliance with any provision of this Order would cause undue hardship to the Bank, or requires an extension of any timeframe within this Order, the Board shall submit a written request to the Director asking for relief. 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 a provision, that require the Director to exempt the Bank from a provision, or that require an extension of a timeframe within this Order.

(2) All such requests shall be accompanied by relevant supporting documentation, and to the extent requested by the Director, a sworn affidavit or affidavits setting forth any other facts upon which the Bank relies. The Director's decision concerning a request is final and not subject to further review.

Article XXVIII

NOTICES AND REQUESTS

(1) All notices and requests pursuant to this Order shall be submitted, via overnight mail, to the Director for Special Supervision, 250 E Street SW, Washington, DC 20219.

Article XXIX

CLOSING

(1) Although the Bank is required to submit certain proposed actions and programs for the review or prior determination of no supervisory objection of the Director, the Board has the ultimate responsibility for proper and sound management of the Bank and the completeness and accuracy of the Bank's books and records.

(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) Except as otherwise expressly provided herein, any time limitations imposed by this Order shall begin to run from the effective date of this Order.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Order in which the Bank or the Board is required to ensure implementation of, adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) Authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) Require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) Follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) Require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) The Bank entered into a Consent Order dated November 15, 2005. This Order replaces that Consent Order in its entirety and therefore, the November 15, 2005 Consent Order 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.

IN WITNESS WHEREOF, my hand given at Washington, D.C. this 9th day of May 2006.

Signed

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**

In the Matter of:)
Terrabank, National Association)
Miami, Florida)

AA-EC-05-96

**STIPULATION AND CONSENT TO THE ISSUANCE
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America ("Comptroller") initiated on December 13, 2005, through the service of a Notice of Charges, a cease and desist proceeding against Terrabank, National Association, Miami, Florida ("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 5-9-06 ("Order") for the purpose of settling the Comptroller's cease and desist proceeding. The Order also replaces the November 15, 2005 Consent 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 Office of the Comptroller of the Currency ("OCC") 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 United States Department of the Treasury, 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) any and all procedural rights available in connection with the issuance of the Order;
 - (b) all rights to seek any type of administrative or judicial review of the Order; and

(c) any and all rights to challenge or contest the validity of the Order.

Article IV

OTHER ACTION

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

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

Signed

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

5-9-06

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

Alejandro J. Aguirre

5-8-06

Date

signed

Fernando C. Alonso

5-8-06

Date

signed

Francisco J. Martinez

5-8-06

Date

signed

Marcelo Montalvan

5-8-06

Date

signed

Ramiro N. Ortiz

5-8-06

Date

signed

Carla Ortiz de Martinez

5-8-06

Date