

**#2006-47**

AGREEMENT BY AND BETWEEN  
**bcp**bank, N.A.  
Newark, New Jersey  
and  
The Comptroller of the Currency

**bcp**bank, N.A., Newark, New Jersey (“Bank”) and the 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, through his National Bank Examiner, has examined the Bank and his/her findings are contained in the Report of Examination (“ROE”) for the examination commenced on October 24, 2005.

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 his 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) 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:

Kristin A. Kiefer  
Assistant Deputy Comptroller  
New York Metro West Field Office  
343 Thornall Street, Suite 610  
Edison, New Jersey 08837

## Article II

### COMPLIANCE COMMITTEE

(1) Within fifteen (15) days of the date of this Agreement, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee or controlling shareholder 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 and, in the event of a change of the membership, the name of any new member 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) Within thirty days (30) of the appointment of the Compliance Committee and quarterly 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 Agreement;
  - (b) the results and status of those actions; and;
  - (c) a description of the actions needed to achieve full compliance with each Article of this Agreement.
- (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 ninety (90) days, the Board and management shall strengthen supervision presently being provided to the Bank by assessing the Board of Director's effectiveness in light of the Bank's present condition. At a minimum, the Board and management shall assess:
- (a) The Board's strengths and weaknesses, including an analysis of the necessary qualifications and skills for individual members to serve as effective directors and properly supervise the bank's affairs;
  - (b) Individual members qualifications and skills compared to necessary qualifications and skills to properly supervise the bank's affairs;
  - (c) Whether Board members are receiving adequate information on the operation of the Bank to enable them to fulfill their fiduciary responsibilities and other responsibilities under law;
  - (d) The effectiveness of the Board and Management changes committed to in the 2005 Report of Examination, Board and Management Supervision Matters Requiring Attention; and

(e) The effectiveness of the risk management program, specifically audit and loan review, to identify potential deficiencies and to ensure corrective action to remedy weaknesses.

(2) Within ninety (90) days, the Board shall ensure that the Bank has competent management in place on a full-time basis in its Chief Executive Officer; Chief Financial Officer; Compliance Officer; Chief Retail Officer; and Senior Credit Officer positions to carry out the Board's policies, ensure compliance with this Agreement, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(3) Within seventy-five (75) days, the Board shall review the capabilities of the Bank's management to perform present and anticipated duties and the Board will determine whether management changes will be made, including the need for additions to or deletions from current management.

(4) Within seventy-five (75) days, the Board shall evaluate the current lines of authority, reporting responsibilities, and delegation of duties for all officers, including identification of any overlapping duties or responsibilities.

(5) For incumbent officers in the positions mentioned in Paragraph (2) of this Article, the Board shall within seventy-five (75) days assess each of these officers' experience, other qualifications and performance compared to the position's description, duties and responsibilities.

(6) If the Board determines that an officer will continue in his/her position but that the officer's depth of skills needs improvement, the Board will within thirty (30) days from the completion of the review completed pursuant to Paragraph 5 of Article III, develop and

implement a written program, with specific time frames, to improve the officer's supervision and management of the Bank. At a minimum the written program shall include:

- (a) an education program designed to ensure that the officer has skills and abilities necessary to supervise effectively;
- (b) a program 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.

Upon completion, a copy of the written program shall be submitted to the Assistant Deputy Comptroller.

(7) For the Chief Financial Officer and Compliance Officer positions or any other positions mentioned in Paragraph (2) of this Article that become vacant in the future, including if the Board realigns an existing officer's responsibilities and a position mentioned in Paragraph (2) of this Article becomes vacant, the Board shall within sixty (60) days of such vacancy identify a capable person to the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Agreement and the safe and sound operation of functions within the scope of that position's responsibility.

(8) Prior to the appointment of any individual to an executive officer position, the Board shall submit to the Assistant Deputy Comptroller the following information:

- (a) the information sought in the "Changes in Directors and Senior Executive Officers" and "Background Investigations" booklets of the Comptroller's

Licensing 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 Assistant Deputy Comptroller shall have the power to disapprove the appointment of the proposed new officer. However, the lack of disapproval of such individual shall not constitute an approval or endorsement of the proposed officer.

(10) The requirement to submit information and the prior written determination of no supervisory objection provisions of this Article are based on the authority of 12 U.S.C.

§ 1818(b)(6)(E) and do not require the Comptroller to complete his/her review and act on any such information or authority within ninety (90) days.

#### Article IV

#### RISK MANAGEMENT

(1) Within one hundred twenty (120) 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, reputation risks, and a written analysis of those risks;

(b) action plans and time frames to reduce risks where exposure is high and/or increasing, particularly with regard to credit risk, which impacts directly on

liquidity, compliance, strategic, and reputation risks, as more fully discussed in the ROE;

(c) policies, procedures or standards which describe and implement the limits on the risk that the Bank is willing to incur, consistent with the strategic plan and the Bank's 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 bankwide 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 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.

## Article V

### LOAN PORTFOLIO MANAGEMENT

(1) Within one hundred twenty (120) 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) Establishing the appropriate organizational structure, including management and staff with the requisite level of expertise.
- (b) Strengthening management of the financial credit analysis function to ensure that each borrower's financial condition is thoroughly reviewed and analyzed before credit is extended and that updated borrower financial information is reviewed and analyzed in a timely manner upon receipt.
- (c) Ensuring that all credit files contain all pertinent information that supports the current condition of the credit.
- (d) Ensuring that management fully understands the internal risk rating process and that management complies with regulatory guidelines for proper and timely risk rating of all credit facilities. This includes appropriately risk rating consumer loans and appropriately assigning non-accrual designation to problem credits.
- (e) Revising the loan policy to include more specific guidance in a number of areas, as detailed on page 49 and 50 of the Report of Examination. The revised policy will be submitted to the Board for approval and to ensure it is effectively implemented.



- (f) Expanding criticized and classified reports to include more specific workout strategies and timeframes for completing the recommended actions. The reports should clearly identify the expected repayment source and alternative strategies for exiting the credit if the primary strategy is not feasible.
- (g) Performing more aggressive tactics and processes to obtain late or missing financial statement and documenting the efforts made in each credit file.
- (h) Documenting in each credit file as necessary the reason an annual account review was not performed timely.
- (i) Amending policies to include the frequency and type (e.g. compilation, review, or CPA audited) of financial statements required based on the loan size and risk. Also, clarify interim financial statement requirements.
- (j) Ensuring an effective process is in place to obtain the necessary documentation to perfect the bank's collateral position.
- (k) Developing and implementing a policy exception tracking system, including appropriate management reports which enable the Board and management to determine the extent to which the Bank has extended credit not in conformance with the policy. Exceptions should be tracked by loan type and originating officer.
- (l) Developing adequate procedures to obtain independent appraisals and/or valuations, including liquidation values with sales and marketing costs deducted, for collateral on problem loans;

(m) Establishing and monitoring meaningful credit concentration limits to determine their impact on the credit quality of the bank's loan and lease portfolio.

This would include the bank's risk exposure to related entities.

(n) Clearly defining the duties and responsibilities of the loan and credit administration committees.

(o) Expanding loan committee minutes to better document active discussion among members regarding particular credits.

(p) Developing reasonable and appropriate combined "individual" loan approval limits that protect the bank against unwarranted risk.

(q) Documenting in each applicable credit file the analysis performed to assess the bank's compliance with 12 U.S.C. § 84.

(r) Reporting consumer loan exceptions to the Board more frequently, including periodic trend analysis including, but not limited to portfolio performance, vintage analysis, and credit scores.

(2) The Board shall submit a copy of the program to the Assistant Deputy Comptroller.

(3) Beginning with the first Board meeting following the effective date of this Agreement, and quarterly thereafter, 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 Article and Paragraph;
- (f) an analysis of concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios;
- (g) the identification and amount of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (h) 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 VI

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within sixty (60) days, the Board shall develop and submit to the Assistant Deputy Comptroller for a prior written determination of no supervisory objection, a written program for the maintenance of an adequate Allowance for Loan and Lease Losses (ALLL). Following receipt of this written determination, the Board shall implement, and thereafter ensure Bank adherence to this program. This program shall be designed in light of the comments on maintaining a proper Allowance found in the "Allowance for Loan and Lease Losses" booklet of

the Comptroller's Handbook and in OCC Bulletin 2001-37 Policy statement on ALLL Methodologies and Documentation for Banks and Savings Institutions”.

- (2) The program shall focus particular attention on the following factors:
  - (a) Amending the ALLL policy to describe loans requiring impairment analyses; line officer/line management responsibilities for developing impairment calculations; and requirements for documentation supporting the basis of the impairment analyses.
  - (b) Including qualitative factors impacting the bank's credit quality and ALLL adequacy in the ALLL policy.
  - (c) Ensuring that the bank's ALLL methodology complies with Generally Accepted Accounting Principles (GAAP). More specifically, the ALLL must be well documented and contain clear explanations of the supporting analyses and rationale.
  - (d) Under GAAP, the methodology must also be periodically validated.

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

(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 VII

#### GROWTH RESTRICTIONS

(1) The Bank shall not acquire by purchase nor contract to lease facilities or other real estate for Bank premises without the prior written approval of the Comptroller.

(2) The Bank shall limit growth in the loan portfolio to an annualized rate of fifteen percent (15%), calculated using the actual outstanding loan portfolio in place as of the date of this Agreement, and using data as reported in the quarterly Reports of Condition thereafter.

#### Article VIII

#### EARNINGS

(1) Within sixty (60) days the Board shall develop an action plan to improve bank earnings and accomplish identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames.

Upon completion, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

Article IX

MATTERS REQUIRING ATTENTION

(1) Within ninety (90) days, the Board and management shall address the Matters Requiring Attention cited in the Report of Examination that relate to Compliance Management and High Risk Account Documentation.

Article X

CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Assistant Deputy Comptroller for review or prior written determination of no supervisory objection, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him/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. Such time requirements may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) 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.

(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 Comptroller or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his 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 Comptroller has any intention to enter into a contract. The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities. The terms of this Agreement, 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 TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

*Signed*  
\_\_\_\_\_  
Kristin A. Kiefer  
Assistant Deputy Comptroller  
New York Metro West

*May 18, 2006*  
\_\_\_\_\_  
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.

/s/  
\_\_\_\_\_  
Pedro Jose Belo

5-18-06  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Jack Brewer

May 18, 2006  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Jack Cussen

May 18, 2006  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Paul Kalamaras

5/18/06  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Witold Sulimirski

5/18/06  
\_\_\_\_\_  
Date

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