

#2009-036

Amends #2008-057

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

In the Matter of:)
)
Upstate National Bank)
Lisbon, New York)

AMENDED CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”), through his staff, has examined Upstate National Bank, Lisbon, New York, and his findings are contained in the Report of Examination for the examination that commenced on May 27, 2008 (“ROE”).

The Bank, by and through its Board of Directors, has executed a “Stipulation and Consent to the Issuance of an Amended Consent Order,” dated February 12, 2009 that is accepted by the Comptroller. Without admitting or denying any of the explicit or implicit factual predicates or legal conclusions contained in this Amended Consent Order, by this Stipulation and Consent, (incorporated by reference herein), the Bank has consented to the issuance of this Amended Order by the Comptroller.

This Amended Order, through the Stipulation and Consent, supersedes the Consent Order entered into between the Comptroller and the Bank dated June 24, 2008 (OCC 2008-057).

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 of the date of this Amended Order, the Board shall appoint a Compliance Committee of at least five (5) 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 Order.

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

(3) Within thirty (30) days of the date of this Order and every thirty (30) days thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the action needed to achieve compliance with each Article of this Order;
- (b) actions taken to comply with each Article of this Order; and
- (c) the results and status of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, as well as, monthly Board packages and Criticized Asset Review Forms (CARF) to the Assistant Deputy Comptroller within ten (10) days of receiving such report.

ARTICLE II

ACH TRANSACTIONS

(1) Effective immediately, the Bank shall cease and desist from processing ACH transactions for merchants until such time as the Bank has developed and the Board has adopted and implemented, risk management systems, written policies and procedures, and a Bank Secrecy Act/Anti-Money Laundering program, in accordance with 12 C.F.R. § 21.21, that will result in due diligence on the Bank's customers, their lines of business, the parties to whom their customers are providing services through the Bank and those customers' lines of business, and the effective monitoring, detection, and reporting of suspicious activities in the processing of ACH transactions.

(2) Immediately after their adoption, but prior to their implementation, the Board approved risk management systems and policies and procedures shall be submitted to the Assistant Deputy Comptroller for review and prior written determination of no objection. In the event the Assistant Deputy Comptroller recommends changes to the system or policies and procedures, the Board shall immediately incorporate those changes as directed.

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

ARTICLE III

REMOTE DEPOSIT CAPTURE TRANSACTIONS

(1) Effective immediately, the Bank shall cease and desist from processing Remote Deposit Capture (“RDC”) transactions for money service businesses until such time as the Bank has developed and the Board has adopted and implemented, risk management systems, written policies and procedures, and a Bank Secrecy Act/Anti-Money Laundering program, in accordance with 12 C.F.R. § 21.21, that will result in due diligence on the Bank’s customers, their lines of business, the parties to whom their customers are providing services through the Bank and those customers’ lines of business, and the effective monitoring, detection, and reporting of suspicious activities in the processing of RDC transactions.

(2) Immediately after their adoption, but prior to their implementation, the Board approved risk management systems and policies and procedures shall be submitted to the Assistant Deputy Comptroller for review and prior written determination of no objection. In the event the Assistant Deputy Comptroller recommends changes to the system or policies and procedures, the Board shall immediately incorporate those changes as directed.

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

ARTICLE IV

NEW PRODUCTS AND SERVICES

(1) Prior to the Bank's involvement in any new products or services 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.

(2) Prior to the Bank's involvement in the new product or service, a copy of the analysis shall be submitted to the Assistant Deputy Comptroller, whose prior determination of no supervisory objection must be provided before the Bank may engage in or offer the new product or service. The Assistant Deputy Comptroller shall review and provide such determination within thirty (30) days of the Bank's submittal.

ARTICLE V

BOARD TO ENSURE COMPETENT MANAGEMENT

(1) Within sixty (60) days of the date of this Amended Order, the Board shall make a written assessment of the Chief Executive Officer's/President's, Chief Financial Officer's, and Senior Lender's experience, qualifications, and performance, as compared to the position's description, duties and responsibilities. The written assessment shall include the Board's conclusions regarding the officers' ability to perform present and anticipated duties in light of the Bank's current condition, including an assessment of their ability to ensure compliance with the terms of this Order. The Board must determine whether management changes should be made, including the need for additions to or deletions from current management.

(2) If the Board identifies weaknesses in an officer's skills and performance, but determines that an officer will continue in his/her position, the Board will, within ninety (90) days, document in writing the basis for its decision to retain the officer 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 officer's effectiveness;
- (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, objectives and condition.

(3) Upon completion, a copy of the Board's written assessment of each officer, and if applicable, the Board's decision to retain the officer and the program required in (2) shall be submitted to the Assistant Deputy Comptroller.

(4) Within one hundred twenty (120) days, the Board shall ensure that the Bank has competent management in place on a full-time basis in its Chief Executive Officer/President; Chief Financial Officer; and Senior Lending positions to carry out the Board's policies, ensure compliance with this Order, applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(5) If a position mentioned in Paragraphs (1) and (4) of this Article is vacant now or in the future, including if the Board realigns an existing officer's responsibilities and a position mentioned in Paragraphs (1) and (4) of this Article becomes vacant, the Board shall within thirty (30) days of such vacancy appoint a capable person to the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Order and the safe and sound operation of Bank functions within the scope of that position's responsibility.

(6) 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" 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.

(7) The Assistant Deputy Comptroller shall have the power of veto over the employment of the proposed executive officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer

(8) 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 Assistant Deputy Comptroller to complete his review and act on any such information or authority within ninety (90) days. Although not anticipated, should the Assistant Deputy Comptroller require more than ninety (90) days to complete his review, then the time period within which the Board must comply with paragraph (1) shall be extended accordingly.

ARTICLE VI

STRATEGIC PLANNING

(1) Within thirty (30) days, the Board shall engage a capable, external consultant to review the Bank's current activities and products and make recommendations on strategic options to enhance the bank's performance and profitability.

(2) Prior to the engagement of the external party, the Board shall provide a copy of the individual's resume and any other pertinent information to the Assistant Deputy Comptroller who retains the right to veto the engagement.

(3) Within ninety (90) days, and with the assistance of the consultant retained in accordance with Paragraph (1) of this Article, the Board shall revise the Bank's written strategic plan, which must cover at least a three year period, to establish objectives for the

Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital and liquidity adequacy, reduction in the volume of nonperforming assets, product line development and market segments that the Bank intends to promote or develop, consistent with the other requirements of this Order, together with strategies to achieve those objectives. At a minimum, the plan shall include:

- (a) identification of the markets, branches and products the Bank can successfully compete in and market, with detailed market and business line strategies and specific quantifiable action plans to accomplish identified strategic goals and objectives and improve Bank earnings;
- (b) identification of the markets, branches, and products the Bank should discontinue, including an outline such implementation and an assessment of how the discontinuation would impact the Bank's earnings;
- (c) the development of strategic goals and objectives to be accomplished over the short and long term, including an assessment of whether the sale, merger, or liquidation of the Bank is in the best interests of the Bank, its shareholders, and its depositors;
- (d) the assignment of management responsibility (consistent with Board's determinations required in Article V) to carry out the Bank's strategic plan, with specific time frames for performance and specific accountability measures;
- (e) a management employment and succession program to promote the retention and continuity of capable management;

- (f) a financial forecast which includes projections for major balance sheet and income statement accounts and desired financial ratios, consistent with the other requirements of this Order, over the period covered by the strategic plan;
- (g) control systems to mitigate risks associated with planned new products, current product lines, growth, or any proposed changes in the Bank's operating environment;
- (h) systems to monitor the Bank's progress in meeting the plan's goals and objectives; and
- (i) the appointment of an individual responsible for monitoring the Bank's progress in meeting the plan's goals and objectives, identifying proposed changes in the Bank's operating environment, and providing quarterly status reports to the Board.

(4) Prior to adoption of the revised strategic plan, the Board shall provide a copy to the Assistant Deputy Comptroller who shall retain the right to determine whether the plan complies with requirements of this article. Upon written notice of no supervisory objection, the Board shall adopt and thereafter ensure Bank adherence to the plan. The Board shall provide written notice to the Assistant Deputy Comptroller prior to making any changes or modifications to the plan.

(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.

ARTICLE VII

PROFIT PLANNING

(1) Within ninety (90) days of the approval of the consultant referenced in Article VI, and with the assistance of said consultant, the Board shall develop, implement, and thereafter ensure Bank adherence to a written profit plan to improve and sustain the earnings of the Bank. This plan shall include, at minimum, the following elements:

- (a) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;
 - (b) realistic and comprehensive budgets, including projected balance sheets and year-end income statements;
 - (c) a budget review process to monitor both the Bank's income and expenses, and to compare actual figures with budgetary projections;
- and

(2) a description of the operating assumptions that form the basis for major projected income and expense components, including non-interest income, loan originations, lending product introductions, runoff and pricing and changes to the bank's deposit mix, deposit product offerings and pricing strategies.

(3) The Board shall submit to the Assistant Deputy Comptroller annual budgets as described in paragraph (1) above for each year this Amended Consent Order remains in effect. The budget for each year shall be submitted on or before November 30, of the preceding year.

The Board shall forward comparisons of its balance sheet and profit and loss statement to the profit plan projections to the Assistant Deputy Comptroller on a quarterly basis.

ARTICLE VIII

CAPITAL PLAN AND HIGHER MINIMUMS

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

- (a) Total Capital at least equal to eleven percent (11%) of risk-weighted assets;
- (b) Tier One Capital at least equal to ten (10%) of risk-weighted assets;
and
- (c) Tier One Capital at least equal to eight and one half percent (8.5%) of adjusted total assets.¹

(2) The requirement in this Agreement to 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).

(3) Within ninety (90) days of approval of the consultant referenced in Article VI, and with the assistance of said consultant, the Board must also develop and implement a three-year capital program to include the following:

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

¹ 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.

- (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, including maintaining liquidity at a level that is sufficient to sustain the Bank's current operations and to withstand any anticipated or extraordinary demand against its funding base;
- (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, including the sale, merger, or liquidation of the Bank; and
- (f) a dividend policy that permits the declaration of a dividend only:
 - (i) when the Bank is in compliance with its approved capital program and the requirements set forth in paragraph (1);
 - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
 - (iii) with the prior written determination of no supervisory objection of the Assistant Deputy Comptroller.

(4) The Board shall ensure that the capital program remains consistent with the requirements outlined above and that the Bank continues to adhere to the capital program. The Board shall review and update the Bank's capital program on an annual basis, or more

frequently if necessary. Copies of the reviews and updates shall be submitted to the Assistant Deputy Comptroller.

ARTICLE IX

CLOSING

(1) Although the Bank, through its Board, is required to submit proposed actions and programs for the review or prior written determination of no objection to the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank as well as compliance with all of the provisions contained in this Order.

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

(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 the Board is required to ensure adherence to, and undertake to perform certain obligations of the Branch, 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) 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.

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

IT IS SO ORDERED, this 12th day of February, 2009.

/s/

Daniel L. Bailey
Assistant Deputy Comptroller
Syracuse Field Office

2/12/2009

Date

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

In the Matter of:)
)
Upstate National Bank)
Lisbon, New York)

**STIPULATION AND CONSENT TO THE ISSUANCE
OF AN AMENDED CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) has initiated cease and desist proceedings against Upstate National Bank, Lisbon, New York (“Bank”), pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consented to the issuance of a Consent Order, dated June 24, 2008 (“Order”);

The Comptroller intends to also initiate cease and desist proceedings pursuant to 12 U.S.C. § 1818(b) to redress additional unsafe and unsound practices outlined in the May 27, 2008 Report of Examination of the Bank;

Therefore, the Bank, in the interest of compliance and cooperation, and without admitting or denying any of the explicit or implicit factual predicates or legal conclusions contained in this Amended Consent Order, consents to the issuance of an Amended Consent Order, dated February 12, 2009 (“Order”), which supersedes the Consent Order entered into by the Bank on June 24, 2008 (OCC 2008-057);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, by and through its Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

JURISDICTION

- (1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*
- (2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

ARTICLE II

AGREEMENT

- (1) The Bank, without admitting or denying any wrongdoing, hereby consent and agree to the issuance of an Amended Order by the Comptroller. 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 consent and agree 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).
- (2) 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 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 Comptroller has any intention to enter into a contract.

(3) 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 its supervisory responsibilities.

(4) The Comptroller and the Bank further expressly acknowledge that the Consent Order entered into on June 24, 2008 is hereby superseded by the Amended Consent Order entered into on February 12, 2009.

ARTICLE III

WAIVERS

- (1) The Bank, by signing this Stipulation and Consent, hereby waive:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
 - (b) any and all procedural rights available in connection with the issuance of the Order ;
 - (c) all rights to seek any type of administrative or judicial review of the Order; and
 - (d) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

OTHER ACTION

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he 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.

/s/

2/12/2009

Daniel L. Bailey
Assistant Deputy Comptroller
Syracuse Field Office

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/

2/13/2009

Preston C. Carlisle

Date

/s/

2/2/2009

Donald O. Chesworth

Date

/s/

2/20/2009

Bruce Dan

Date

/s/

2/12/2009

Richard A. DiVirgilio

Date

/s/

2/12/2009

Charles T. Fiandach

Date

/s/

2/12/2009

Richard D. Sanford

Date

/s/

2/12/2009

Howard J. Zuckerman

Date
