

**#2009-215**

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

**In the Matter of:** )  
Bay Cities National Bank )  
Redondo Beach, California )

**AA-EC-09-55**

**CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has supervisory authority over Bay Cities National Bank, Redondo Beach, California (“Bank”);

**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 (“Stipulation and Consent”), dated November 18, 2009, that is accepted by the Comptroller;

**WHEREAS**, by this Stipulation and Consent, which is incorporated by reference, the Bank, without admitting or denying any wrongdoing, has consented to the issuance of this Consent Order (“Order”) by the Comptroller; and

**NOW, THEREFORE**, the Comptroller, acting by and through his designated representative and by virtue of the authority conferred by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), **HEREBY ORDERS THAT:**

**ARTICLE I**

**COMPLIANCE COMMITTEE**

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least three (3) directors, none of whom shall be employees or controlling shareholders 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 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 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 actions needed to achieve full 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, to the Director within ten (10) days of receiving such report.

(5) All reports or plans which the Bank or Board has agreed to submit to the Director pursuant to this Order shall be forwarded, by overnight mail or via email, to the following:

Director for Special Supervision  
Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 7-4  
Washington, DC 20219

*with a copy to:*  
Southern California North Field Office  
Comptroller of the Currency  
550 North Brand Blvd., Suite 500  
Glendale, CA 91203

(6) The Board shall ensure that the Bank has sufficient processes, personnel, and control systems to effectively implement and adhere to all provisions of this Order, and that Bank personnel have sufficient training and authority to execute their duties and responsibilities under this Order.

## ARTICLE II

### STRATEGIC PLAN

(1) Within sixty (60) days, the Board shall forward to the Director for his review, pursuant to paragraph (6) of this Article, a written Strategic Plan for the Bank that is acceptable to the Director. At the next Board meeting following receipt of the Director's written determination of no supervisory objection, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to the Strategic Plan.

(2) If the Board's Strategic Plan under paragraph (1) of this Article is a sale or merger of the Bank, the Strategic Plan shall, at a minimum, address the steps that will be taken and the associated timeline for the sale or merger.

(3) With the exception of a Strategic Plan submitted under paragraph (2) of this Article, the Strategic Plan shall cover a three year period, and establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and shall, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) a description of the Bank's targeted market(s) and an assessment of the current and projected risks and competitive factors in its identified target market(s);
- (c) the strategic goals and objectives to be accomplished;
- (d) specific actions to improve Bank earnings and accomplish the identified strategic goals and objectives;

- (e) identification of Bank personnel to be responsible and accountable for achieving each goal and objective of the Strategic Plan, including specific time frames;
- (f) a financial forecast, to include projections for major balance sheet and income statement accounts, targeted financial ratios, and growth projections over the period covered by the Strategic Plan;
- (g) a description of the assumptions used to determine financial projections and growth targets;
- (h) an identification and risk assessment of the Bank's present and planned future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in the Strategic Plan, with the requirement that the risk assessment of new product lines must be completed prior to the offering of such product lines;
- (i) a description of control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's markets;
- (j) 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 established in the Strategic Plan;
- (k) a management employment and succession program to promote the retention and continuity of capable management;
- (l) assigned responsibilities and accountability for the strategic planning process, new products, growth goals, and proposed changes in the Bank's operating environment; and

(m) a description of systems to monitor the Bank's progress in meeting the Strategic Plan's goals and objectives.

(4) With the exception of a Strategic Plan submitted under paragraph (2) of this Article, at least monthly, the Board shall review financial reports and earnings analyses prepared by the Bank that evaluate the Bank's performance against the goals and objectives established in the Strategic Plan, as well as the Bank's written explanation of significant differences between actual and projected balance sheet, income statement, and expense accounts, including descriptions of extraordinary and/or nonrecurring items. Within ten (10) days of the completion of its review, the Board shall submit a copy of the reports to the Director.

(5) With the exception of a Strategic Plan submitted under paragraph (2) of this Article, at least quarterly, the Board shall prepare a written evaluation of the Bank's performance against the Strategic Plan, based on the Bank's monthly reports, analyses, and written explanations of any differences between actual performance and the Bank's strategic goals and objectives, and shall include a description of the actions the Board will require the Bank to take to address any shortcomings, which shall be documented in the Board meeting minutes. For a Strategic Plan submitted under paragraph (2) of this Article, the Board shall prepare a written evaluation of the Bank's performance against the Strategic Plan, based on the steps and the associated timeline submitted under paragraph (2) of this Article, and shall include a description of the actions the Board will require the Bank to take to address any shortcomings, which shall be documented in the Board meeting minutes. Within ten (10) days of completing its evaluation, the Board shall submit a copy to the Director.

(6) Prior to adoption by the Board, a copy of the Strategic Plan, and any subsequent amendments or revisions, shall be forwarded to the Director for review and prior written determination of no supervisory objection. Upon receiving a written determination of no

supervisory objection from the Director, the Board shall adopt and the Bank shall immediately implement and adhere to the Strategic Plan.

(7) The Bank may not initiate any action that deviates significantly from the Board-approved Strategic Plan without a written determination of no supervisory objection from the Director. The Board must give the Director advance, written notice of its intent to deviate significantly from the Strategic Plan, and, with the exception of a Strategic Plan submitted under paragraph (2) of this Article, include 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.

(8) For the purposes of this Article, with the exception of a Strategic Plan submitted under paragraph (2) 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, marketing partners, underwriting practices and standards, credit administration, account management, collection strategies or operations, fee structure or pricing, 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. For purposes of this paragraph, "personnel" shall include the president, chief executive officer, chief operating officer, chief financial officer, chief credit officer, chief compliance officer, risk manager, auditor, member of the Bank's board of directors, or any other position subsequently identified in writing by the Director.

## ARTICLE III

### CAPITAL PLAN AND HIGHER MINIMUMS

- (1) The Bank shall within ninety (90) days achieve and thereafter maintain the following minimum capital ratios (as defined in 12 C.F.R. Part 3)<sup>1</sup>:
- (a) Total capital at least equal to twelve percent (12%) of risk-weighted assets;
  - (b) Tier 1 capital at least equal to eight percent (8%) of adjusted total assets.<sup>2</sup>
- (2) Within sixty (60) days, the Board shall forward to the Director for his review, pursuant to paragraph (6) of this Article, a written Capital Plan for the Bank. At the next Board meeting following receipt of the Director's written determination of no supervisory objection, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to the Capital Plan.
- (3) In the event the Bank submits a Strategic Plan under paragraph (2) of Article II, the Strategic Plan shall be deemed to be the Capital Plan required by paragraph (2) of this Article, and that Plan shall include a description of how the sale or merger of the Bank will result in the Bank achieving and maintaining adequate capital, which may in no event be less than the requirements of subparagraphs (a) and (b) of paragraph (1) of this Article. The non-objection to such a Plan pursuant to paragraph (6) of this Article shall amend the date for achieving the required minimum capital levels contained in paragraph (1) of this Article.
- (4) Unless the Bank submits a Strategic Plan under paragraph (2) of Article II, the written Capital Plan shall cover at least a three-year period and shall include:

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<sup>1</sup> 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).

<sup>2</sup> 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.

- (a) specific plans for the achievement and maintenance of adequate capital, which may in no event be less than the requirements of paragraph (1) of this Article;
  - (b) projections for growth and capital requirements, based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
  - (c) projections of the sources and timing of additional capital to meet the Bank's future needs, as set forth in the Strategic Plan;
  - (d) identification of the primary sources from which the Bank will maintain an appropriate capital structure to meet the Bank's future needs, as set forth in the Strategic Plan;
  - (e) specific plans detailing how the Bank will comply with restrictions or requirements set forth in this Order and with 12 U.S.C. § 1831o, including the restrictions against brokered deposits in 12 C.F.R. § 337.6;
  - (f) contingency plans that identify alternative methods to strengthen capital, should the primary source(s) under paragraph (d) of this Article not be available; and
  - (g) a prohibition on the payment of director fees unless the Bank is in compliance with the minimum capital ratios identified in paragraph (1).
- (5) The Bank may pay a dividend or make a capital distribution only:
- (a) when the Bank is in compliance with its approved Capital Plan and would remain in compliance with its approved Capital Plan immediately following the payment of any dividend;
  - (b) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and

(c) following the prior written determination of no supervisory objection by the Director.

(6) Prior to adoption by the Board, a copy of the Capital Plan shall be submitted to the Director for a prior written determination of no supervisory objection. Upon receiving a written determination of no supervisory objection from the Director, the Board shall adopt and the Bank shall immediately implement and adhere to the Capital Plan. The Board shall review and update the Bank's Capital Plan at least annually and more frequently if necessary or if requested by the Director. Revisions to the Bank's Capital Plan shall be submitted to the Director for a prior written determination of no supervisory objection.

(7) If the Director determines, in his sole judgment, that the Bank has failed to submit an acceptable Capital Plan as required by paragraph (2) of this Article, or has failed to implement or adhere to a Capital Plan to which the Director has taken no supervisory objection pursuant to paragraph (6) of this Article; then within thirty (30) days of receiving written notice from the Director of such a determination, the Bank shall develop and shall submit to the Director for his review and prior written determination of no supervisory objection a Disposition Plan that shall detail the Board's proposal to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181.

(8) In the event that the Disposition Plan submitted by the Bank's Board outlines a sale or merger of the Bank, the Disposition Plan shall, at a minimum, address the steps that will be taken and the associated timeline to ensure that a definitive agreement for the sale or merger is executed not later than ninety (90) days after the receipt of the Director's written determination of no supervisory objection to the Disposition Plan. If the Disposition Plan outlines a liquidation of the Bank, the Disposition Plan shall detail the actions and steps necessary to accomplish the liquidation in conformance with 12 U.S.C. §§ 181 and 182, and the dates by which each step of the liquidation shall be completed, including the date by which the Bank will terminate the

national bank charter. In the event of liquidation, the Bank shall hold a shareholder vote, pursuant to 12 U.S.C. § 181, and commence liquidation within thirty (30) days of receiving the Director's written determination of no supervisory objection to the Disposition Plan.

(9) After the Director has advised the Bank in writing that he does not take supervisory objection to the Disposition Plan, the Board shall immediately adopt and implement, and shall thereafter ensure adherence to, the terms of the Disposition Plan. Failure to submit a timely, acceptable Disposition Plan, or failure to implement and adhere to the Disposition Plan after the Board obtains a written determination of no supervisory objection from the Director, may be deemed a violation of this Order, in the exercise of the Director's sole discretion.

#### ARTICLE IV

##### BOARD TO ENSURE COMPETENT MANAGEMENT

(1) The Board shall ensure that the Bank has competent management in place on a full-time basis in all executive officer positions to carry out the Board's policies; ensure compliance with this Order; ensure compliance with applicable laws, rules, and regulations; and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Unless the Bank submits a Strategic Plan under paragraph (2) of Article II, within one hundred twenty (120) days, the Board (with the exception of any Bank executive officers) shall prepare a written assessment of the capabilities of the Bank's executive officers, with particular emphasis on their proposed responsibilities to execute the Strategic Plan, correct the concerns raised in the Report of Examination, and comply with this Order. Upon completion, a copy of the written assessment shall be submitted to the Director.

(3) Unless the Bank submits a Strategic Plan under paragraph (2) of Article II, if the Board determines that an officer's performance, skills or abilities needs improvement, the Board will, within thirty (30) days following its determination, require the Bank to develop and

implement a written program, with specific time frames, to improve the officer's performance, skills and abilities. Upon completion, a copy of the written program shall be submitted to the Director.

(4) Unless the Bank submits a Strategic Plan under paragraph (2) of Article II, if the Board determines that an officer will not continue in his/her position, the Board shall document the reasons for this decision in its assessment performed pursuant to paragraph (2) of this Article, and shall within sixty (60) days of such vacancy identify and provide notice to the Director, pursuant to paragraph (5) of this Article, of a qualified and capable candidate for 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 functions within the scope of that position's responsibility.

(5) Prior to the appointment of any individual to an executive officer position, the Board shall submit to the Director written notice, as required by 12 C.F.R. § 5.51 and in accordance with the Comptroller's Licensing Manual. The Director shall have the power to disapprove the appointment of the proposed executive officer. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed officer. The requirement to submit information and the prior disapproval provisions of this Article are based upon the authority of 12 U.S.C. § 1818(b) and do not require the Comptroller or the Director to complete his review and act on any such information or authority within ninety (90) days.

(6) The Board shall perform, at least annually, a written performance appraisal for each Bank executive officer that establishes objectives by which the officer's effectiveness will be measured, evaluates performance according to the position's description and responsibilities, and assesses accountability for action plans to remedy issues raised in Reports of Examination or audit reports. Upon completion, copies of the performance appraisals shall be submitted to the

Director. The Board shall ensure that the Bank addresses any identified deficiencies in a manner consistent with paragraphs (3) and (4) of this Article.

## ARTICLE V

### RECOGNITION OF OTHER-THAN-TEMPORARY IMPAIRMENT

(1) Within thirty (30) days, the Bank shall retain the services of a qualified and independent person(s) or firm to provide a review of the Bank's ongoing quarterly other-than-temporary impairment ("OTTI") analysis. Such a review shall ensure that OTTI is identified and measured in accordance with GAAP and supervisory guidance, including OCC Bulletin 2009-11 dated April 17, 2009, "Other-than-Temporary Impairment Accounting" and Call Report Instructions. A written report shall be filed with the Board after each quarterly review. The review shall include an initial review for the third quarter of 2009 prior to the filing of the Consolidated Reports of Condition and Income and then subsequent reviews at least once each calendar quarter prior to the filing of the Consolidated Reports of Condition and Income.

(2) The Board shall evaluate the independent OTTI report(s) and shall ensure that immediate, adequate, and continuing remedial action is taken upon all findings noted in the report(s). Within thirty (30) days, the Board shall cause the Bank to refile amended Reports of Condition and Income based on any deficiencies identified in the initial review.

(3) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to address the findings noted in the report(s) shall be preserved in the Bank.

## ARTICLE VI

### CREDIT RISK RATINGS AND NONACCRUAL RECOGNITION

(1) Within ninety (90) days, the Board shall develop a program to ensure that the risk associated with the Bank's loans is properly reflected and accounted for on the Bank's books and records to include, at a minimum, provisions requiring that:

- (a) The Bank's loans and other assets are appropriately and timely risk rated and charged-off by the lending officers using a loan grading system that based upon current facts, existing repayment terms and that is consistent with the guidelines set forth in Rating Credit Risk, A-RCR, of the *Comptroller's Handbook*;
- (b) The Bank's loans and other assets are timely placed on nonaccrual by the lending officers in accordance with the guidelines set forth in the Call Report; and
- (c) Loan officers are held accountable in periodic performance reviews and compensation for any failures to appropriately and timely risk rate and/or place loans on nonaccrual.

## ARTICLE VII

### CONCENTRATIONS

(1) Within sixty (60) days, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to a written concentration management program consistent with the guidelines in OCC Bulletin 2006-46.

The program shall include (but not be limited to) the following:

- (a) policy guidelines addressing the level and nature of exposures acceptable to the institution and setting concentration limits;
- (b) procedures to identify and quantify the nature and level of risk presented by concentrations, including review of reports describing changes in conditions in the Bank's markets;

- (c) procedures to periodically review and revise, as appropriate, risk exposure limits and sub-limits to conform to any changes in the institution's strategies and to respond to changes in market conditions;
- (d) periodic portfolio-level stress tests or sensitivity analysis to quantify the impact of changing economic conditions on asset quality, earnings, and capital;
- (e) appropriate strategies for managing concentration levels, including a contingency plan to reduce or mitigate concentrations in the event of adverse market conditions; and
- (f) periodic reports to the Board, to include the following, as appropriate:
  - (i) a summary of concentration levels, by type and subtype;
  - (ii) a synopsis of the Bank's market analysis;
  - (iii) a discussion of recommended strategy when concentrations approach or exceed Board-approved limits;
  - (iv) a synopsis of changes in risk levels by concentration type and subtype, with discussion of recommended changes in credit administration procedures (for example, underwriting practices, risk rating, monitoring, and training)

(2) The Board shall forward a copy of the program required in paragraph (1) above, and any concentration reports, studies, or analyses to the Director.

## ARTICLE VIII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) The Board shall immediately require and the Bank shall implement and thereafter adhere to a program for the maintenance of an adequate Allowance for Loan and Lease Losses

("ALLL"). The program shall be consistent with the comments on maintaining a proper ALLL found in the Interagency Policy Statement on the ALLL contained in OCC Bulletin 2006-47 (December 13, 2006) and with "Allowance for Loan and Lease Losses," booklet A-ALLL of the *Comptroller's Handbook*, and shall incorporate the following:

- (a) internal risk ratings of loans;
- (b) results of the Bank's independent loan review;
- (c) criteria for determining which loans will be reviewed under Financial Accounting Standard ("FAS") 114, how impairment will be determined, and procedures to ensure that the analysis of loans complies with FAS 114 requirements;
- (d) criteria for determining FAS 5 loan pools and an analysis of those loan pools;
- (e) recognition of non-accrual loans in conformance with generally accepted accounting principles ("GAAP") and regulatory guidance;
- (f) loan loss experience;
- (g) trends of delinquent and non-accrual loans;
- (h) concentrations of credit in the Bank; and
- (i) present and projected economic and market conditions.

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

(3) A copy of the Board's ALLL program, and any subsequent revisions to the program, shall be submitted to the Director for review.

## ARTICLE IX

### CRITICIZED ASSETS

(1) Within sixty (60) days, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to a written program designed to protect the Bank's interest in those assets criticized in the most recent Report of Examination ("ROE"), in any subsequent ROE, by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination as "doubtful," "substandard," or "special mention." The program shall include the development of Criticized Asset Reports ("CARs") identifying all credit relationships and other assets totaling in aggregate five hundred thousand dollars (\$500,000) or more, criticized as "doubtful," "substandard," or "special mention." The CARs must be updated and submitted to the Board and the Director monthly. Each CAR shall cover an entire credit relationship and include, at a minimum, analysis and documentation of the following:

- (a) the origination date and any renewal or extension dates, amount, purpose of the loan, and the originating and current loan officer(s);
- (b) the expected primary and secondary sources of repayment, and an analysis of the adequacy of the repayment source;
- (c) the appraised value of supporting collateral and the position of the Bank's lien on such collateral, where applicable, as well as other necessary documentation to support the current collateral valuation;
- (d) an analysis of current and complete credit information, including cash flow analysis where loans are to be repaid from operations;

- (e) results of any FAS 114 impairment analysis;
- (f) significant developments, including a discussion of changes since the prior CAR, if any; and
- (g) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment, including an appropriate exit strategy.

(2) The Bank may not extend credit, directly or indirectly, including renewals, modifications or extensions, to a borrower whose loans or other extensions of credit are criticized in any ROE, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination, unless and until each of the following conditions is met:

- (a) the Board, or a designated committee thereof, finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, modifying or extending any additional credit, a majority of the full Board (or designated committee) approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank. A copy of the findings and approval of the Board or designated committee shall be maintained in the credit file of the affected borrower and made available for review by National Bank Examiners;
- (b) the Bank performs a written credit and collateral analysis as required by paragraph (1)(d) of this Article and, if necessary, the proposed action referred to in paragraph (1)(g) of this Article is revised, as appropriate; and
- (c) the Board's formal plan to collect or strengthen the criticized asset will not be compromised by the extension of additional credit.

## ARTICLE X

### CONTINGENCY FUNDING PLAN

(1) Within ninety (90) days, the Board shall prepare a written contingency funding plan (“Contingency Funding Plan”) that ensures the Bank maintains adequate short-term and long-term liquidity to withstand any anticipated or extraordinary demand against its funding base. The Contingency Funding Plan shall include, at a minimum:

- (a) a cash flow analysis that includes reasonable assumptions, identifies all anticipated funding needs and the sources to meet those needs, considers the level and maturity of any brokered deposits, and addresses any contingent liabilities; and
- (b) identification of alternative funding sources in order to meet extraordinary demands or to provide liquidity in the event the sources identified in this Section are insufficient. Such alternative funding sources must consider, at a minimum, the selling of assets, obtaining lines of credit from correspondent banks and recovering charged-off assets.

(2) Within ninety (90) days, the Board shall ensure that Management reviews and prepares a monthly analysis of the Bank’s liquidity that assesses the Bank’s compliance with its liquidity policies and procedures and the Contingency Funding Plan. The liquidity review shall evaluate and consider:

- (a) a maturity schedule of certificates of deposit, including large uninsured deposits;
- (b) the volatility of demand deposits;
- (c) the amount and type of loan commitments and standby letters of credit;

- (d) an analysis of the continuing availability and volatility of present funding sources;
- (e) an analysis of the impact of decreased cash flow from the Bank's loan portfolio resulting from delinquent and non-performing loans and from the Bank's securities portfolio resulting from securities on which there has been a payment default; and
- (f) an analysis of the impact of decreased cash flow from the sale of loans or loan participations and from the sale of securities.

(3) The Board shall submit a copy of the Contingency Funding Plan, along with the analyses required by this Article, to the Director for review.

## ARTICLE XI

### VIOLATION OF LAW AND CALL REPORT ACCURACY

(1) The Board shall require and the Bank shall immediately take all necessary steps to correct each violation of law, rule, or regulation cited in the most recent ROE, any subsequent Report, or brought to the Board's or Bank's attention in writing by management, regulators, auditors, loan review, or other compliance efforts. Within sixty (60) days after the violation is cited or brought to the Board's attention, the Bank shall provide to the Board 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) The Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall continue to implement and thereafter ensure adherence to:

- (a) specific procedures to prevent a future violation as cited in the most recent ROE; and

(b) general procedures addressing compliance management that incorporate internal control systems and education of employees regarding laws, rules, and regulations applicable to their areas of responsibility.

(3) Within thirty (30) days, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to 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.

(4) The Board shall include in its progress reports to the Director under Article I hereof, a written assessment setting forth in detail, a description of the actions taken to comply with the requirements of this Article and the results and status of those actions.

## ARTICLE XII

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank 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 and that require an extension of a timeframe within this Order.

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

## ARTICLE XIII

### OTHER PROVISIONS

(1) Although the Bank is required to submit certain proposed actions and programs for the review or prior written 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 signature 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 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) 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 18th day of November, 2009.

/s/

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Henry Fleming  
Director  
Special Supervision Division

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

In the Matter of: )  
Bay Cities National Bank )  
Redondo Beach, California )

**AA-EC-09-55**

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

The Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate cease and desist proceedings against Bay Cities National Bank, Redondo Beach, California (“Bank”), pursuant to 12 U.S.C. § 1818(b), through the issuance of a Notice of Charges, for unsafe and unsound banking practices relating to supervision of the Bank.

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated November 18, 2009 (“Order”).

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

**ARTICLE I**

**JURISDICTION**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank, pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) As a result of this Order:

- (a) the Bank is not an “eligible bank” pursuant to 12 C.F.R. § 5.3(g)(4) for the purposes of 12 C.F.R. Part 5 regarding rules, policies and procedures for corporate activities, unless otherwise informed in writing by the OCC;
- (b) the Bank is subject to the limitation of 12 C.F.R. § 5.51(c)(6)(ii) for the purposes of 12 C.F.R. § 5.51 requiring OCC approval of a change in directors and senior executive officers, unless otherwise informed in writing by the OCC; and
- (c) the Bank is subject to the limitation on golden parachute and indemnification payments provided by 12 C.F.R. § 359.1(f)(1)(ii)(C) and 12 C.F.R. § 5.51(c)(6)(ii), unless otherwise informed in writing by the OCC.

## 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 Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his 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 Comptroller 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.

ARTICLE III

WAIVERS

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
  - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) or 12 C.F.R. Part 19;
  - (d) all rights to seek any type of administrative or judicial review of the Order; and
  - (e) 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, the Comptroller 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/  
Henry Fleming  
Director, Special Supervision Division

11-18-2009  
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/  
Dwight Breeden

11/16/2009  
Date

/s/  
Ronald F. Day

11/16/2009  
Date

/s/  
Robert G. Funari

11/16/2009  
Date

/s/  
Cathy L. Hendrickson

11/16/2009  
Date

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Victoria V. Schoenfeld

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Date