N12-002

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

In the Matter of: Borrego Springs Bank, N.A. Borrego Springs, California	))))))	AA-WE-11-99

NOTICE OF CHARGES FOR AN ORDER TO CEASE AND DESIST

The Comptroller of the Currency of the United States of America ("Comptroller" or "OCC"), having reasonable cause to believe that Borrego Springs Bank, National Association, Borrego Springs, California ("Bank") has engaged in unsafe or unsound practices, hereby files this Notice of Charges for issuance of a Cease and Desist Order against the Bank pursuant to section 8(b)(1) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(b)(1).

TAKE NOTICE that a hearing will commence in San Diego, California pursuant to 12 U.S.C. § 1818(b) on a date to be set by the Administrative Law Judge concerning the charges set forth herein to determine whether a Cease and Desist Order should be issued against the Bank, requiring the Bank to cease and desist from the unsafe or unsound practices specified herein and, further, to take affirmative action to correct the conditions resulting from such practices. The hearing shall be open to the public unless the Comptroller, in the Comptroller's discretion, determines that an open hearing would be contrary to the public interest.

In support of this Notice of Charges, the Comptroller charges the following.

ARTICLE I

Jurisdiction

At all times relevant to the charges set forth below:

(1) The Bank was 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 Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(b).

(3) The OCC is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q)(1) and for the purposes of 12 U.S.C. § 1818(b) to initiate an enforcement proceeding against a national banking association.

ARTICLE II

Background

(4) The Bank was formed in 1982 in Borrego Springs, California. The Bank currently operates three branches in Borrego Springs, La Mesa, and Alpine, California. The Bank is wholly-owned by American Heritage Holdings, a bank holding company in La Mesa, California. As of September 30, 2011, the Bank had approximately $134 million in total assets.

(5) In 1993, the Bank began underwriting loans to small businesses under the U.S. Small Business Administration's ("SBA") 7(a) program. Under the SBA 7(a) program, the government guarantees repayment of 75 to 90 percent of the loan amount in the event of loss. Around 2006, the Bank also began making loans under the U.S. Department of Agriculture's ("USDA") Business & Industry guaranteed loan program, which carries a government guarantee of up to 80 percent for rural development loans. The Bank's current business model is based upon the origination and sale of these SBA and USDA guaranteed loans.

(6) Until around 2008, the Bank was generally able to sell the guaranteed portion of the SBA and USDA loans, as well as 80 percent of the unguaranteed portion.[1] However,

[1] An SBA lender is required to keep a minimum of five percent of the loan.

following the financial crisis of 2008, the Bank has generally been unable to sell the unguaranteed portion. The Bank's inability to sell the unguaranteed, and thus far riskier, portion of the SBA and USDA loans resulted in a significant increase in the Bank's risk profile and deterioration in the Bank's asset quality. At present, approximately 87 percent of the Bank's total classified assets are unguaranteed portions of SBA and USDA loans.

(7) The Bank stated in its most recent strategic plan, approved by the board in November 2011, that it earns "virtually all of its revenue" from SBA and USDA loans. The Bank acknowledges that "from 2003 through 2008, the Bank was able to sell … 80% of the unguaranteed portion [of these loans]." The Bank explicitly recognized that a market for the sale of the unguaranteed portion of these loans is "critical to the success of all community bank SBA lenders." The Bank further acknowledged that this admittedly critical "market for unguaranteed loans dried up in 2008 as an indirect result of the financial crisis." The Bank further noted that its' "loan related losses did not increase significantly until 2009."

2010 Examination

(8) In November 2010, the OCC conducted an examination of the Bank ("2010 Examination"). The OCC reviewed the Bank's financial information as of September 30, 2010 to determine the Bank's ratings under the Uniform Financial Institutions Rating System ("UFIRS"). UFIRS consists of nine components, eight of which are rated numerically on a scale of "1" to "5," and one of which is rated adjectively. The eight numerically rated components are "capital," "asset quality," "management," "earnings," "liquidity," "sensitivity to market risk," "information technology," and "consumer compliance."[2] These components are commonly referred to as "CAMELSICC" or "CAMELS." The Bank also receives a composite rating based on an

[2] The one adjectively rated component is "Community Reinvestment Act compliance."

evaluation of all nine components. Any component rated “3” or greater is considered less than satisfactory. The same is true of the Bank’s composite rating. The 2010 Examination was primarily conducted off-site, with a targeted on-site examination focusing on asset quality.

(9) As a result of the OCC’s findings during the 2010 Examination, the OCC retained the Bank’s composite rating of “2,” but downgraded asset quality from “2” to “3.” Asset quality had deteriorated, with the level of classified assets increasing from 43 percent of tier 1 capital plus the allowance for loan and lease losses as of December 31, 2009, to 56 percent as of September 30, 2010. The OCC assessed the Bank’s credit risk as high and increasing due to the high number of loans with stale or insufficient financial information and the increasing trends in special mention and classified assets, nonaccrual loans, and net losses. The OCC also retained the Bank’s less-than-satisfactory rating for capital. The Bank’s ratio of tier 1 capital to adjusted average assets was 7.52, and the ratio of total risk-based capital to risk-weighted assets was 13.07. These ratios were less than satisfactory to support the Bank’s increasing risk profile.

(10) On or about December 6, 2010, the OCC delivered to the Bank a report of examination (“2010 ROE”), which informed the Bank of the downgrade in asset quality from “2” to “3.” The 2010 ROE also warned the Bank that “[t]his is a less-than-satisfactory rating[s] for purposes of 12 U.S.C. § 1818(b)(8). Failure to correct these deficiencies may result in the bank being deemed to be engaged in statutorily ‘unsafe or unsound practices’ within the meaning of 12 U.S.C. § 1818(b)(1).”

<u>2011 Examination</u>

(11) On July 25, 2011, the OCC commenced a full scope on-site examination of the Bank (“2011 Examination”), using financial information as of June 30, 2011. Loan data was as

of July 12, 2011. At this examination, the OCC determined that the Bank's overall condition had deteriorated.

(12) Asset quality at the 2011 Examination showed further deterioration, with classified assets at 65 percent of tier 1 capital plus the allowance for loan and lease losses, compared to 56 percent at the 2010 Examination. The Bank's concentration of loans secured by commercial real estate ("CRE"), as defined for purposes of the Consolidated Reports of Condition and Income ("Call Report"), was 637 percent of risk-based capital. This was twice the national peer average, according to the Bank's Uniform Bank Performance Report. The Bank's ratio of nonaccrual loans to gross loans (net of all guarantees) was 4.49 percent, compared to 2.75 percent as of December 31, 2009.

(13) In addition to the deterioration in asset quality, the examination uncovered evidence of weak credit risk management. For example, 15 percent of the loans in the sample examined by the OCC were incorrectly rated for credit risk by the Bank and required downgrading. Furthermore, 37 percent of the loans sampled by the OCC had stale or insufficient financial information. As a result of the weak credit risk management and deterioration in asset quality, the OCC retained the Bank's less-than-satisfactory rating for asset quality at "3."

(14) Capital levels as of June 30, 2011 were 8.52 percent for tier 1 capital to adjusted average assets, and 13.45 percent for total risk-based capital to risk-weighted assets. These amounts were less than satisfactory to support the Bank's elevated risk profile. Capital planning was inadequate because it depended primarily on retained earnings from loan sales, with no identified external sources of capital. The Bank's board of directors declared a dividend during the third quarter of 2011, but rescinded it after the OCC expressed concern for the need to preserve capital. The Bank's primary shareholder indicated that it did not intend to inject capital.

As a result of the above factors, the OCC maintained the Bank's less-than-satisfactory rating for capital at "3."

(15) At the time of the examination management had yet to formalize a strategic and capital plan to replace the plan that expired at the end of 2011. The board and management had changed the Bank's funding strategy and pursued a lending strategy that resulted in an abnormally high overall concentration of loans collateralized by CRE. The Bank failed to set effective limits for concentrations of CRE in the aggregate as well as sub-limits by industry type and geography. In addition, the Bank continued with its production-driven compensation model, whereby business development officers and the President received commissions based on the sale and volume of loans, without consideration of longer-term measures, despite the Bank's deteriorating condition. The Bank paid over $3.2 million for production commissions and other compensation in 2010, with an average of almost $400,000 for each business development officer. The Bank's high level of financial statement exceptions, weaknesses in the outsourced loan review, and weak liquidity and credit risk management practices were further causes of concern. As a result of the above factors, the OCC downgraded the Bank's management rating from "2" to "3."

(16) Earnings were 1.03 percent return on average assets ("ROAA") as of June 30, 2011. Furthermore, when earnings were adjusted to account for non-recurring income of $302,000 related to fair value accounting adjustments on SBA loan sales, the ROAA was 0.60 percent. Projected earnings (adjusted for nonrecurring items) through December 31, 2011 were lower still at 0.40 ROAA. The reduced earnings were partly due to the Bank's excessive compensation program, with the top five business development officers receiving between $294,000 and $887,000 each in 2010, the last full calendar year for which compensation

information is available. The Bank's overhead expenses were 10.01 percent of average assets, which placed the Bank in the 99th percentile of its national peers for overhead costs. As a result of the above factors, the OCC downgraded the Bank's earnings rating from "2" to "3."

(17) Liquidity risk at the 2011 Examination had increased due to a shift in the Bank's deposit mix away from shareholder deposits and toward higher-cost retail certificate of deposits, which are potentially more volatile. Asset liquidity was a moderate 10.5 percent of total assets, but the OCC was concerned that this could decline to unsafe or unsound levels if used to maintain a sufficient amount of capital. As a result of the above concerns, the OCC downgraded the Bank's liquidity rating from "2" to "3." A decline in asset liquidity in fact happened at the end of August 2011, when the Bank chose to fund the maturity of certain volatile deposits with the reduction of liquid assets, resulting in an unsafe or unsound 7.1 percent of liquid assets to total assets.

(18) Based on the above less-than-satisfactory ratings in capital, asset quality, management, earnings, and liquidity, the OCC downgraded the Bank's overall composite rating for the 2011 Examination from "2" to "3." The OCC notified the Bank of the results of the 2011 Examination in a report of examination ("2011 ROE") delivered to the Bank on November 9, 2011.

(19) The 2011 ROE also identified ten problems that required the board's immediate attention, specified as Matters Requiring Attention ("MRA"). An MRA is a matter that deviates from sound fundamental banking principles, internal controls or risk management. If not corrected by the Bank, an MRA is likely to result in financial harm or substantive violations of law, as well as expose the Bank's earnings and capital to risk. When the OCC communicates an MRA to a bank, the MRA serves as notification in writing of a deficiency, and requires a bank's

board of directors to take immediate corrective action. The ten MRAs addressed the areas of (i) strategic and capital planning, (ii) the compensation program, (iii) financial statement exceptions, (iv) concentration risk management, (v) timely and accurate risk identification, (vi) cash flow analysis, (vii) independent loan review, (viii) the OREO program, (ix) liquidity planning and the contingency funding plan, and (x) business continuity planning. The MRAs describe necessary actions that the Bank must take in order to remedy or correct the unsafe or unsound practices and to cure the unsafe or unsound condition described in the 2011 ROE.

(20) The strategic and capital planning MRA concerned the Bank's unsustainable loan growth over the past 18 months without a documented long-term strategic plan that extended past 2011 indicating how the Bank will address the need for increased capital and increasing CRE concentrations. The Bank's deteriorating asset quality required significant provisions to the allowance for loan and lease losses, which hindered sufficient capital growth through retained earnings.

(21) The compensation program MRA addressed the Bank's compensation program being driven by the production of loans without incorporating longer-term measures such as problem loan levels . Commissions did not give proper consideration to the Bank's size, high risk exposure from the unguaranteed loan portfolio, and increasing credit deterioration.

(22) The financial statement exceptions MRA addressed the Bank's lack of current financial information on borrowers. Because the borrowers do not maintain a traditional banking relationship with the Bank, and because SBA guidelines limit a bank's leverage over borrowers to obtain updated annual financial information, there is often limited cooperation from borrowers following loan origination. Additionally, the Bank did not sufficiently supplement its information using other means such as site visits and follow-up calls.

(23) The concentration risk management MRA concerned the Bank's unsafe or unsound overall concentration of CRE loans, without commensurate risk management for the elevated risk posed by this unsafe or unsound concentration, and without a plan for reducing the concentration. Left uncorrected this concentration could lead to increased credit risk and loss exposure.

(24) The timely and accurate risk identification MRA concerned six lending relationships that the OCC identified as requiring a downgrade in risk rating (15 percent of the loan sample), and one substandard loan that the Bank did not downgrade in a timely manner.

(25) The cash flow analysis MRA concerned the high level of credit administration exceptions (31 percent) identified by the OCC in its loan sample. The majority of these exceptions were due to inadequate cash flow analyses, which were a result of insufficient training of new employees and the lack of a process for checking accuracy.

(26) The independent loan review MRA addressed the external loan review's failure to identify three risk rating downgrades, and inadequate documentation in the external loan review. The frequency of loan review was also inadequate given the Bank's increased credit risk, with 18 months lapsing between reviews.

(27) The OREO program MRA addressed the Bank's insufficient and informal monitoring of other real estate owned ("OREO"). The Bank's OREO policy does not provide comprehensive guidance for OREO management and compliance with laws and regulations pertaining to OREO.

(28) The liquidity planning and contingency funding plan MRA concerned the Bank's decision to fund the maturity of certain volatile deposits at the end of August 2011 with the reduction of liquid assets. This resulted in liquid assets falling to an unsafe or unsound level of

only 7.1 percent of total assets. In addition, the Bank's contingency funding plan did not include liquidity stress scenarios of increasing severity or measure the impact of such liquidity events on the balance sheet.

(29) The business continuity MRA concerned the Bank's lack of a comprehensive business impact analysis and vulnerability risk assessment. The Bank had not fully utilized its newly purchased software program due to other priorities.

(30) Finally, the 2011 ROE deemed the Bank to be engaging in unsafe or unsound practices, stating "this Report of Examination is the second consecutive report in which the bank's asset quality rating has been rated '3' or worse, a less-than-satisfactory rating within the meaning of 12 U.S.C. § 1818(b)(8). Pursuant to 12 U.S.C. § 1818(b)(8), such a record means the bank is deemed to be engaged in statutorily 'unsafe or unsound practices' within the meaning of 12 U.S.C. § 1818(b)(1)."

Individual Minimum Capital Ratios

(31) In response to the Bank's continuing deteriorated condition as identified at the 2011 Examination, the OCC designated the Bank to be in "troubled condition," which the OCC notified the Bank of on August 9, 2011. In a separate notice also dated August 9, 2011, the OCC further notified the Bank of the OCC's intent to establish individual minimum capital ratios ("IMCR") pursuant to its authority under 12 U.S.C. § 3907(a)(2) and 12 C.F.R. Part 3 Subpart C. The minimum capital ratios of 12 C.F.R. Part 3 are intended to protect the safety and soundness of national banks, and the OCC may in its discretion impose higher capital ratios for an individual bank in light of the particular circumstances of that bank. During the 2011 Examination, the OCC determined that higher capital ratios were immediately necessary due to the continued deterioration of the Bank's asset portfolio, credit risk management deficiencies,

and concentration risk. The OCC intended to raise the minimum ratio of tier 1 capital to adjusted total assets to nine percent (9.0%), and raise the ratio of total risk-based capital to risk-weighted assets to twelve percent (12.0%). The notice further provided the Bank with an opportunity to respond or object to the proposed IMCR.

(32) On September 12, 2011, after considering the Bank's response, the OCC notified the Bank of its decision to establish an IMCR for the Bank in the same amounts proposed in the OCC's August 9, 2011 notice: nine percent (9.0%) for tier 1 capital to adjusted total assets, and twelve percent (12.0%) for total risk-based capital to risk-weighted assets. The OCC reiterated its concerns over the Bank's deteriorated condition, and the need to maintain higher capital levels to reduce the Bank's elevated risk profile.

(33) On November 15, 2011, the OCC notified the Bank of its intent to amend and increase the IMCR established on September 12, 2011. Following the establishment of the IMCR on September 12, 2011, the OCC completed the 2011 ROE, which gave rise to heightened concerns over the safety and soundness of the Bank's business model. The Bank's business model depended upon the sale of SBA and USDA guaranteed loans for revenue. The Bank's general inability to sell the unguaranteed portions of these loans resulted in the Bank retaining an increasing concentration of the unguaranteed portions of these loans, thereby significantly increasing the Bank's risk profile. Furthermore, the Bank's risk management had proven deficient, with six out of 41 credit relationships requiring downgrading, ineffective concentration limits, and insufficient financial information for 37 percent of loans in the loan sample for the 2011 Examination. Based on these findings, the OCC notified the Bank of its intent to raise the IMCR to ten percent (10.0%) for tier 1 capital to adjusted total assets, and thirteen percent (13.0%) for total risk-based capital to risk-weighted assets. On or about December 5, 2011, the

Bank submitted its response to the OCC's notice to amend the IMCR. On January 13, 2012, after considering the Bank's response, the OCC notified the Bank of its decision to amend the IMCR in the same amounts proposed in the OCC's November 15, 2011 notice: ten percent (10.0%) for tier 1 capital to adjusted total assets, and 13 percent (13.0%) for total risk based capital to risk weighted assets.

ARTICLE III

Statutory Unsafe or Unsound Practices

(34) In support of the allegations in this Article III, the OCC reasserts the allegations in Article II and alleges as follows:

(35) Pursuant to 12 U.S.C. § 1818(b)(8), the OCC may deem a bank to be engaging in an unsafe or unsound practice if the bank receives a less-than-satisfactory component rating in the areas of asset quality, management, earnings, or liquidity:

> If an insured depository institution receives, in its most recent report of examination, a less-than-satisfactory rating for asset quality, management, earnings, or liquidity, the appropriate Federal banking agency may (if the deficiency is not corrected) deem the institution to be engaging in an unsafe or unsound practice for purposes of this subsection.

Under the plain meaning of this provision, a less-than-satisfactory rating (i.e. "3" or greater) for any one of the four components that is not corrected is sufficient to support the Comptroller's determination that the Bank is engaging in an unsafe or unsound practice.

(36) In the 2010 ROE dated December 6, 2010, the Bank received a less-than-satisfactory rating for asset quality. In the 2011 ROE dated July 25, 2011, the Bank again received a less-than-satisfactory rating for asset quality. The 2011 ROE explicitly informed the Bank that because this was the second consecutive report in which the Bank's asset quality was less-than-satisfactory the Bank is deemed to be engaged in "unsafe or unsound practices" within

the meaning of 12 U.S.C. § 1818(b)(8). In the 2011 ROE, the Bank also received a less-than-satisfactory rating in management, earnings and liquidity.

ARTICLE IV

Unsafe or Unsound Business Model

(37) In support of the allegations in this Article IV, the OCC reasserts the allegations in Articles II and III and alleges as follows:

(38) The Bank's business model, which primarily focuses on originating and selling government guaranteed loans, carries unique and inherent risks. The Bank's persistence in this model, without additional safeguards, is an unsafe or unsound practice that threatens the long-term viability of the Bank for the reasons described in paragraphs (39) to (42).

(39) The unguaranteed portions of SBA loans carry elevated risk. SBA guaranteed loans are only available to small business borrowers who have difficulty accessing other financing on reasonable terms. Consequently, these loans typically exhibit higher than average risk. The Bank has experienced a rate of loss on the loan portfolio of 1.70 percent as of September 30, 2011, which is more than twice the national peer average for net loss to average total loans of 0.69 percent. Generally, this elevated risk to the Bank is counterbalanced by the SBA's guarantee of up to 90 percent of the loan. However, when the Bank sells the guaranteed portion of the loan yet retains the unguaranteed portion, there is no counterbalance to this elevated risk. Following the financial crisis of 2008, the Bank has generally been unable to sell the unguaranteed portions of its loans, thus increasing the Bank's risk profile. The ratio of unguaranteed loans to tier 1 capital plus the Allowance for Loan and Lease Losses ("ALLL") increased from 84% in December 31, 2007 to 249% in December 31, 2008. This ratio of unguaranteed loans to tier 1 capital plus ALLL continued to deteriorate each year, and reached

415% in September 30, 2011. This increase in the Bank's risk profile, absent additional capital and other safeguards, constitutes an unsafe or unsound condition. The Bank's persistence in this business model without the necessary additional capital and other controls and safeguards detailed in the MRAs is an unsafe and unsound practice. The elevated risk is exacerbated by the fact that the Bank is a national SBA lender, thus it is less able to timely and accurately identify risk than banks who lend only to borrowers in their community. The vast majority of the Bank's classified assets, approximately 87 percent, are comprised of unguaranteed portions of SBA and USDA loans.

(40) Because the Bank's business model focuses almost entirely on SBA and USDA loans, which are typically secured by commercial real estate, the Bank holds an unsafe or unsound amount of CRE loans. As of the 2011 Examination, CRE loans represented 637 percent of the Bank's risk-based capital, which is twice that of its peers. OCC Guidance on Concentrations in Commercial Real Estate Lending, 71 Fed. Reg. 74,580 (Dec. 12, 2006) makes clear that concentrations of credit exposures add a dimension of risk that compounds the risk inherent in individual loans. The Bank does not limit its overall concentration of CRE loans, nor does the Bank limit concentrations of sub-categories of CRE loans based on geography or industry type, such as multi-use CRE buildings, gas stations and convenience stores, and hotels and motels. The Bank's failure to limit concentration of CRE loans is an unsafe and unsound practice that threatens the long term viability of the Bank.

(41) In order to generate more loans and loan sales, the Bank employs a production-based compensation program that does not properly balance risk and reward, and is not compatible with effective risk-management controls, as directed by OCC Guidance on Sound Incentive Compensation Policies, 75 Fed. Reg. 36,395 (June 25, 2010). Business development

officers and the President receive commissions based on the sales premiums and volume of loans made. Because the commissions are paid at loan origination, and do not consider the long-term performance of the loans generated, the compensation program does not properly balance risk and reward. The commissions are substantial: in 2010, each business development officer received an average of almost $400,000. The large commissions that result from this compensation program contribute to the Bank's high overhead costs of 10.37 percent of average assets as of September 30, 2011, which places the Bank in the 99th percentile of its national peers for overhead costs. Yet earnings coverage was only 2.17 times net losses as of September 30, 2011, compared to the peer average of 7.91 times. In fact, earnings have been rated less-than-satisfactory for most of the last 14 years.

(42) Because the Bank is now forced to keep the unguaranteed portions of the SBA and USDA loans it generates, the Bank must constantly grow in order to cover overhead and provide for anticipated loan losses. This is because the Bank's primary source of revenue (approximately 64 percent in 2010) is from premiums on the sale of the guaranteed portions of SBA and USDA loans, and a large percentage of those premiums (15 to 38 percent) are paid as commissions. The result is an ever-growing concentration of unguaranteed SBA and USDA loans, for which financial information is difficult to obtain, and for which the Bank has little capacity to respond if a larger-than-expected amount of these loans default as they season. The Bank's persistence in accumulating unguaranteed portions of SBA and USDA loans without additional capital and safeguards is an unsafe or unsound practice that threatens the viability of the Bank.

(43) The Bank's pursuit of its business plan constitutes an unsafe or unsound practice that threatens the long-term viability of the Bank, and cannot be sustained without the addition of certain safeguards and capital.

ARTICLE V

Unsafe or Unsound Risk Management

(44) In support of the allegations in this Article V, the OCC reasserts the allegations in Articles II, III, and IV, and alleges as follows:

(45) The Bank's risk management program does not sufficiently identify, measure, monitor, or control the unique and inherent risks that arise from the Bank's undiversified business model. The Bank failed to downgrade six out of 41 credit relationships at the 2011 Examination. The Bank has failed to maintain current financial information for many of its unguaranteed SBA and USDA loans, as demonstrated by the fact that 37 percent of loans sampled by the OCC during the 2011 Examination had stale or insufficient financial information. This failure to obtain current financial information impedes the Bank's ability to accurately risk-rate such loans, monitor their health, and take timely corrective action. The Bank's external loan review is infrequent and insufficient, with three risk rating downgrades missed during the May 2011 external loan review. The Bank's inaccurate risk rating and inadequate loan review result in a faulty ALLL methodology, which particularly in the context of the Bank's high and increasing risk profile, constitutes an unsafe or unsound practice that could result in an inappropriate ALLL balance or call report violation. The Bank places no limit on the concentration of total CRE loans, nor does the Bank recognize that its high concentration of CRE loans poses an increased risk to the Bank. The Bank further places no limits on sub-groups of CRE loans based on geography or industry type. In addition, the cash flow analysis that supports

the Bank's credit risk rating is frequently inadequate, with exceptions noted by the OCC for 31 percent of loans sampled in the 2011 Examination, a majority of which were due to inadequate cash flow analysis. These risk management deficiencies constitute an unsafe or unsound practice, especially in light of the Bank's elevated risk profile due to its undiversified business model.

(46) By reason of the foregoing conduct, the Bank, the Bank's board of directors and/or the Bank's management engaged in unsafe or unsound banking practices.

OPPORTUNITY FOR HEARING

The Bank is directed to file an answer to this Notice of Charges within twenty (20) days from the date of service of this Notice of Charges in accordance with 12 C.F.R. § 19.19. The answer shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, Virginia 22226-3500. The Bank is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice of Charges and shall, upon the Comptroller's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice of Charges to be as alleged and to issue an appropriate order.

PRAYER FOR RELIEF

The Comptroller prays for relief in the form of the issuance of a Cease and Desist Order that is substantially similar to the Proposed Cease and Desist Order attached hereto as Exhibit A, requiring the Bank to cease and desist from the unsafe or unsound practices set forth in this Notice of Charges and, further, to take affirmative action to correct the conditions resulting from such practices.

The Comptroller, by his duly authorized designee, issues this Notice of Charges on this

12th day of January, 2012.

/s/Kay E. Kowitt

Kay E. Kowitt
Deputy Comptroller
Western District Office