

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

In the Matter of:)
)
First National Bank in Brookings)
Brookings, South Dakota)

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has examined First National Bank in Brookings, Brookings, South Dakota (“Bank”), to determine whether the Bank engaged in unsafe or unsound banking practices or failed to comply with certain laws, rules, or regulations;

WHEREAS, the Comptroller’s findings are contained in the Report of Examination for the safety and soundness examination that commenced on January 7, 2002 (“S&S ROE”), and the Report of Examination for the compliance examination that commenced on January 7, 2002 (“Compliance ROE”);

WHEREAS, the Comptroller intends to charge the Bank with unsafe or unsound banking practices and with violations of law, including reimbursable violations of section 5 of the Federal Trade Commission Act for deceptive practices in connection with the Bank’s marketing of credit cards; and with violations of the Truth-in-Lending Act and violations of the safety and soundness guidelines set forth in 12 C.F.R. Part 30, Appendix A, for failure to identify the source of repayment and to assess the borrower’s ability to repay the loan, in connection with short-term consumer loans originated in the name of or on behalf of the Bank (“Bank Payday Loans”);

WHEREAS, the Comptroller intends to initiate cease-and-desist proceedings against the Bank pursuant to 12 U.S.C. § 1818(b) and (s) through the issuance of a Notice of Charges;

WHEREAS, in the interest of cooperation, compromise, and settlement, and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and the Bank desire to enter into this Consent Order (“Order”);

NOW, THEREFORE, the Bank, by and through its duly elected and acting Board of Directors (“Board”), without admitting or denying any wrongdoing, has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated January 17, 2003, that is accepted by the Comptroller. By the Stipulation and Consent, which is incorporated by this reference, the Bank has consented to the issuance of this Order by the Comptroller. 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 AND QUARTERLY PROGRESS REPORTING

(1) Within thirty (30) days of the effective date of this Order, the Board shall appoint a Compliance Committee to be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order. The Compliance Committee shall comprise at least five (5) directors, of which no more than two (2) shall be employees of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Assistant Deputy Comptroller for supervisory non-objection.

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

(3) Within thirty (30) days of the appointment of the Compliance Committee and quarterly thereafter, the Compliance Committee shall submit a written report to the Board, setting forth in detail:

- (a) actions taken since the prior report (if any) to comply with each Article of the Order;
- (b) the results of those actions; and
- (c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Order.

(4) The Board shall submit quarterly progress reports to the Assistant Deputy Comptroller, Sioux Falls Field Office, 4900 South Minnesota Avenue, Suite 300, Sioux Falls, SD 57108-2865. These progress reports shall:

- (a) include the Compliance Committee's report to the Board for the applicable quarter, with any additional comments by the Board; and
- (b) describe any actions initiated by the Board or the Bank pursuant to the criticisms and comments in the S&S ROE, the Compliance ROE, or in any future Report of Examination.

(5) The first progress report shall be submitted by the Board for the period ending March 31, 2003, and shall be due by April 30, 2003. Thereafter, Board progress reports shall be due thirty (30) days after the end of the calendar quarter.

(6) For the purposes of this Order, "days" shall mean calendar days unless otherwise specified.

ARTICLE II

CREDIT CARDS—RESTITUTION AND RESERVE

(1) Within fourteen (14) days of the effective date of this Order, the Bank shall reserve or deposit into a segregated deposit account at the Bank an amount not less than six million dollars (\$6,000,000) as a reserve for the restitution required by this Article. Within ninety (90) days, the Bank shall also reserve or deposit into the segregated deposit account such additional amounts as are necessary to fund fully the restitution required by this Article.

(2) The Bank shall pay restitution to eligible consumers who applied for the Bank's credit card through the Converging Technologies ("C-Tech") program between November 1999 and April 2000 and whose applications were submitted over the telephone:

- (a) For the purposes of this paragraph, "eligible consumer" shall mean:
 - (i) any consumer who received a credit card and, within two (2) billing cycles after initiation of the credit card account, cancelled the account; or
 - (ii) any consumer whose credit card account is deemed to be in first-payment default as defined in paragraph 6 below; or
 - (iii) any consumer who paid an initial processing or activation fee but made no subsequent charges or payments.
- (b) The amount of restitution payable by the Bank to each eligible consumer described in this paragraph shall be the sum of cash payments on processing or activation fees and payments made on any and all Account-Related Charges, as defined in paragraph 7 below, reduced by any such amounts previously refunded, plus five percent (5%) interest earned on

those payments from the date the Bank (or its agent) received the payments to the effective date of this Order.

(3) The Bank shall pay restitution to eligible consumers who applied for the Bank's credit card through the U.S. Capital and Global 1 programs:

- (a) For the purposes of this paragraph, "eligible consumer" shall mean any consumer who, within sixty (60) days of receipt of the card, requested either cancellation of the account or a refund of payments, and who received a credit card through:
 - (i) any version of the U.S. Capital program that was marketed with an initial credit limit of \$300 or less, which the Bank has referred to as the "original" and "gray" versions;
 - (ii) any version of the U.S. Capital program that marketed initial credit limits of more than \$300 (e.g., programs that advertised "up to \$600" and "up to \$1000" credit limits, which the Bank has referred to as the "purple" and "green" versions), and who received initial available credit of \$50 or less, following the application of fees; or
 - (iii) any version of the Global 1 program.
- (b) The amount of restitution payable by the Bank to each eligible consumer described in this paragraph shall be the sum of cash payments on processing or activation fees and payments on any and all Account-Related Charges, as defined in paragraph 7 below, reduced by any such amounts previously refunded, plus five percent (5%) interest earned on

those payments from the date the Bank (or its agent) received the request from the consumer to the effective date of this Order.

- (c) For the purposes of this paragraph, a consumer shall be deemed to have requested cancellation of the account or a refund of payments within the eligibility period (regardless of whether the consumer complied with any additional Bank requirements, such as submitting the request in writing, and regardless of whether the account was closed) if the Bank's records with regard to that consumer contain an entry or other record, dated as occurring within the eligibility period, indicating that the consumer orally or in writing requested cancellation of the account or a refund of payments.

(4) The Bank shall pay restitution, as required by this Article, to eligible consumers who applied for the Bank's credit card through two versions of the Credit Link program between June 1998 and October 2001:

- (a) For the purposes of this paragraph, "eligible consumer" shall mean any consumer who received a credit card through the "Investor Card"-type program (which the Bank has referred to as "Fee structure C") or through the "Net1 Card"-type program (which the Bank has referred to as "Fee structure D"), and:
 - (i) whose initial available credit was \$50 or less and who cancelled the account within two (2) billing cycles after initiation of the credit card account; or

(ii) whose credit card account is deemed to be in first-payment default as defined in paragraph 6 below.

(b) The amount of restitution payable by the Bank to each eligible consumer described in this paragraph shall be the sum of cash payments into the collateral savings account(s) and payments on any and all Account-Related Charges, as defined in paragraph 7 below, reduced by any such amounts previously refunded, plus five percent (5%) interest earned on those payments from the date the Bank (or its agent) received the payments to the effective date of this Order.

(5) For the purposes of paragraphs (2) and (4) of this Article, a consumer shall be deemed to have cancelled the credit card account within the eligibility period (regardless of whether the consumer complied with any additional Bank requirements, such as submitting the request in writing) if the Bank's records with regard to that consumer:

- (a) contain an entry or other record, dated as occurring within the eligibility period, indicating that the consumer orally or in writing expressed an intention to cancel or close the credit card account; and
- (b) do not indicate that this intention was later withdrawn.

(6) A consumer's credit card account shall be deemed to be in "first-payment default" when the first billing statement indicates an account balance greater than zero and a minimum balance due greater than zero, and the cardholder fails to make any payment due on the first and subsequent billing statements.

(7) "Account-Related Charges" shall mean all charges to a credit card account other than purchases, charges for fee-based products, balance transfers, and cash advances initiated by

the consumer. “Account-Related Charges” includes all other charges, for example, processing fees, acceptance or activation fees, monthly membership or participation fees, credit line increase fees, account handling fees, late fees, over-limit fees, and fees for additional cards and co-applicants.

(8) “Billing cycle” has the same meaning as in Regulation Z, 12 C.F.R. Part 226.

(9) For the purposes of this Order, “credit card account” and “credit card” shall mean a credit card issued by the Bank, including credit cards issued on behalf of or through third parties.

(10) For the purposes of this Order, “credit line” shall mean the credit limit on a credit card account disclosed to consumer, and shall not include any tolerance applied by the Bank, whether or not such tolerance is disclosed to the consumer, before a fee may be imposed for exceeding the credit limit.

(11) For the purposes of this Order, “initial available credit” shall mean the available credit on the credit card account after all account holds; charges for application fees, monthly fees, and security savings deposit; and other charges related to the processing or opening of the account have been applied to the account.

ARTICLE III

CREDIT CARD RESTITUTION—METHOD OF PAYMENT

(1) The Bank shall make restitution or reimbursement payments required by Article II of this Order in conformity with this Article.

(2) Within ninety (90) days of the effective date of this Order, the Bank shall provide to the Certified Public Accountant (“CPA”) described in Article IV a list of consumers eligible to receive restitution pursuant to this Order (“Payment List”), including, for each consumer:

- (a) the name and address;
- (b) the credit card account number;
- (c) the amount of reimbursable charges and fees as determined under Article II;
- (d) any offset amount, pursuant to Paragraph 16 of this Article; and
- (e) the amount resulting from subtracting the offset amount from the restitution reimbursable charges and fees determined under Article II (“Net Restitution Due”).

(3) In compiling the Payment List, addresses for all eligible consumers should be updated through a standard address search using vendors licensed by the U.S. Postal Service’s (“USPS”) National Change of Address System (“NCOA”). If the most recent written Bank communication sent to the consumer’s last known address was returned as undeliverable, and the Bank is unable to obtain an updated address through the NCOA, then the consumer’s address on the Payment List should be designated “Subject to Confirmation.”

(4) Within ninety (90) days of the effective date of this Order, the Bank shall provide a restitution plan to the Assistant Deputy Comptroller for prior approval. The plan shall include the following:

- (a) the Payment List;
- (b) a description of the methods used to compile the information in the Payment List;
- (c) samples of all correspondence and envelopes to be sent to consumers for the purposes of address confirmation, payment transmittal, notification of

offset to payment, or any other purpose related to the provisions of Article II and this Article (*see* Appendices A, B, and C for model letters);

- (d) a description of the proposed procedures to account for the offset to the restitution payments, as required under this Order;
- (e) a description of the proposed procedures, in conformity with the provisions of this Article, for:
 - (i) making and tracking restitution payments, including the procedures for handling undeliverable and nonnegotiated restitution checks; and
 - (ii) handling address correction notices, including responses to the address confirmation letters and address correction notices from USPS; and
- (f) a written legal analysis of the applicability of South Dakota and other states' escheat laws to any and all amounts of Net Restitution Due to consumers under this Order but remaining unpaid to the consumer, the consumer's estate or the consumer's heirs 187 days after the payment checks are mailed ("Excess Funds"), as well as the name and a description of the not-for-profit charitable organization or not-for profit credit counseling service ("Charity") to receive the Excess Funds in the event that the analysis determines that consumers' state escheat laws do not apply to the Excess Funds.

(5) Any changes to or deviations from the approved plan shall be submitted in writing to the Assistant Deputy Comptroller for prior approval.

(6) Within seven (7) days of receipt of written approval of the restitution plan, the Bank shall mail address confirmation letters to consumers on the Payment List whose address is designated “Subject to Confirmation” (*see* Appendix A for model letter). If, within forty-five (45) days of the Bank’s receipt of written approval of the restitution plan, the Bank receives a completed Settlement Address Confirmation Form from a consumer or an address correction notice from USPS, the Bank shall remove the designation “Subject to Confirmation” from the consumer’s address and shall mail to the consumer a check or letters, as appropriate pursuant to Paragraph 7 of this Article.

(7) Within forty-five (45) days of receipt of written approval of the restitution plan, the Bank shall, in conformity with the approved restitution plan:

- (a) produce restitution payment checks for all consumers on the Payment List;
- (b) mail restitution checks to all eligible consumers (other than those whose address is designated “Subject to Confirmation”) whose net amount due, after offset, is one dollar (\$1) or more, with a payment transmittal letter explaining any offset amount (*see* Appendix B for model letter);
- (c) mail an offset notification letter to any eligible consumer whose net amount due, after offset, is less than one dollar (\$1), explaining why, even though the consumer made payment on reimbursable fees, the consumer did not receive a restitution check (*see* Appendix C for model letter);
- (d) conduct the approved accounting procedures relating to the offset; and
- (e) notify the appropriate credit reporting agencies of any relevant changes to prior adverse credit reports that were made in relation to any charge or fee described in Article II of this Order, including notification of any

reduction in charged-off amounts resulting from the accounting procedures related to the offset.

(8) All mailings shall be sent by USPS first-class mail, address correction service requested. The envelope shall contain no materials other than those specified in this Article.

(9) The Bank shall not use, sell, share, or otherwise disclose any information on a consumer that the Bank receives in response to the address confirmation letter, for any marketing or debt collection purpose.

(10) The face of each restitution check shall clearly and conspicuously state “VOID IF NOT NEGOTIATED WITHIN 180 DAYS.”

(11) If the Bank has information that the consumer is deceased, the Bank shall make reasonable efforts to deliver the payment check or the offset notification letter in a timely fashion to the consumer’s estate or heirs, as appropriate.

(12) One hundred eighty-seven (187) days after the payment checks are mailed, the Bank shall:

- (a) void all undeliverable checks and checks that have not been negotiated, and
- (b) update the Payment List to reflect, for each eligible consumer,
 - (i) the restitution check number;
 - (ii) the amount of the restitution check;
 - (iii) the date the restitution check was mailed;
 - (iv) the date on which the check was negotiated or the date on which the check was returned;
 - (v) the date on which any check was remailed, if applicable;

- (vi) the date on which any address confirmation letter was mailed;
- (vii) the date on which any address correction notice was received;
- (viii) the difference between the amount of restitution due as determined under Article II and the amount of restitution paid (“Remaining Amount Due”), which should equal the amount of any voided check plus any amounts of Net Restitution Due of less than one dollar (\$1).

(13) The total of the amounts of “Remaining Amount Due” across all consumers on the Payment List should equal the total amount of Excess Funds.

(14) If the written legal analysis of escheat law determines that such Excess Funds are payable to the consumers’ respective states, then, within seven (7) days of voiding all undeliverable checks, the Bank shall retain those funds as required by applicable state laws. If the analysis determines that such Excess Funds are not payable to the consumers’ respective states, then, within seven (7) days of voiding all undeliverable checks, the Bank shall give those funds to the Charity in the amount of the total of the Excess Funds.

(15) Within fourteen (14) days of voiding all undeliverable checks, the Bank shall provide to the CPA a summary report, including the following:

- (a) the Payment List updated in conformity with Paragraph 12 of this Article,
- (b) documentation of the Bank’s disposition of the Excess Funds, and
- (c) documentation of all notices sent to credit reporting agencies pursuant to this Article.

(16) Subject to Paragraph 16(b) of this Article, the Bank shall offset a restitution payment required to be paid to a consumer under Article II of this Order, as follows:

- (a) The Bank shall offset a restitution payment by any amounts that have been charged off against the consumer's credit card account and remain unpaid, subject to the limitations of this paragraph. Such offset shall be limited to uncollected charge-offs for the principal amount of charges for purchases, cash advances, and balance transfers, incurred by the consumer, and exclusive of finance charges or other Account-Related Charges, including any fees for the purchase of or enrollment in Bank fee-based products. For the purpose of determining the amount of offset, payments on the consumer's credit card account shall be treated as if those payments had been allocated first to pay fees and finance charges, then to pay charges for purchases, cash advances, and balance transfers.
- (b) If the Bank has sold a charged-off amount to a third party, the Bank shall not offset the restitution payment by this charged-off amount.

(17) For the purposes of this Article only, "clearly and conspicuously" shall mean in a size (at least 10 point) and style of typeface that is easily readable.

ARTICLE IV

CREDIT CARDS—MONITORING

(1) Within forty-five (45) days of the effective date of this Order, the Bank shall engage the services of an external, licensed Certified Public Accountant (firm or individual) ("CPA") to monitor the Bank's compliance with all provisions of this Order that require restitution or reimbursement payments to consumers. Prior to employment of the CPA, the name and the qualifications of the CPA considered for employment shall be submitted to the Assistant Deputy Comptroller, who shall have the power of veto over the employment of the proposed

CPA. However, failure to exercise such veto power shall not constitute approval or endorsement of the CPA.

- (2) The Bank shall require, as part of the engagement, that the CPA:
 - (a) Provide a report that evaluates the Bank's compliance with Paragraphs 2, 3, and 16 of Article III of this Order. The CPA shall provide this report to the Assistant Deputy Comptroller within a reasonable time after the CPA receives the Payment List from the Bank pursuant to Paragraph 2 of Article III.
 - (b) Provide a report that evaluates the Bank's compliance with Paragraphs 6 through 16 of Article III, including certification of the disposition of any Excess Funds in conformity with Paragraph 14 of Article III. The CPA shall provide this report to the Assistant Deputy Comptroller within a reasonable time after receiving the updated Payment List from the Bank pursuant to Paragraph 15 of Article III.

(3) The Bank shall make available to the CPA all records, reports, and other information necessary, in the judgment of the firm and under the direction of the Assistant Deputy Comptroller, to accomplish a full and complete evaluation of the Bank's compliance with all provisions of this Order that require restitution or reimbursement payments.

(4) The Bank shall be responsible for all expenses associated with the requirements of this Article, including, but not limited to, all professional fees to the CPA.

ARTICLE V

CREDIT CARDS—PROSPECTIVE RELIEF

(1) The Bank shall not market subprime credit cards to consumers who are not currently credit cards customers of the Bank without prior written approval from the Assistant Deputy Comptroller.

(2) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, in the materials used to solicit any consumer or in any other communication with any consumer, in connection with a credit card available from, or issued by, the Bank.

(3) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer regarding the amount of credit that would be available for use by the consumer at the opening of a credit card account.

(4) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer regarding the cost or any other aspect of a credit card issued by the Bank.

(5) If the Bank makes a solicitation or advertisement for a credit card account that discloses a range of credit lines, and if, as a consequence of being approved for a credit line smaller than the largest credit line offered, a consumer would receive a credit card account with little or no available credit at account opening, the Bank shall clearly and conspicuously disclose (in addition to any disclosures required by Regulation Z, 12 C.F.R. Part 226, or other applicable law) before the card is activated for the consumer's use, that:

- (a) due to amounts charged against the credit card account, the consumer's account will have little or no available credit at account opening; and

(b) the consumer must make payments to the Bank to free up available credit for the consumer's use before making purchases, cash advances, or other debits to the credit card account in excess of the available credit.

(6) If under a credit card program the Bank could approve a consumer for a card with little or no available credit at account opening, the Bank shall not represent, either expressly or by implication, that any consumer who applies may be able to employ the card for uses that require available credit, unless the Bank clearly and conspicuously discloses, in close proximity to any such representation, that the consumer may be approved for a card with little or no available credit upon account opening, and that in such circumstances the consumer may not be able to employ the card for these uses until the consumer makes additional payments on the credit card account.

(7) The Bank shall not advertise or market any credit card as having no annual fee or no annual membership fee if the customer is required to pay a fee in order to open or maintain a credit card account, or the consumer is required to pay a fee for any product, service, or membership associated with the account. The provisions of this paragraph shall not apply to optional products that are offered in conjunction with, or subsequent to the receipt of, a credit card, but that are not required to be purchased in order to open or maintain the credit card account. The provisions of this paragraph also shall not apply to one-time application or processing fees, provided such fees are clearly and conspicuously disclosed to the consumer.

(8) In connection with the Bank's current and future subprime credit card programs, the Bank's compliance officer or legal counsel shall, as appropriate, review the Bank's marketing and advertising materials and any consumer complaints to determine compliance with this Article, to make modifications or revisions to the marketing and advertising material, and to

ensure that appropriate responses are made to consumer complaints. The Bank's compliance officer or legal counsel shall report their findings and make any recommendations for modifications or revisions to the Board.

(9) "Available credit" shall mean the difference, in dollar terms, between the credit line and the outstanding balance on the credit card account. "Little or no available credit" shall mean available credit of \$50 or less.

(10) For the purposes of this Article, "clear and conspicuous" as applied to a disclosure shall mean that the disclosure is readable and reasonably understandable (or in the case of oral disclosures audible and reasonably understandable) and designed to call attention to the nature and significance of the information in the disclosure. For example, if a claim as to the cost or availability of a feature, benefit, or credit term is made in a written advertisement or solicitation, and there is any material limitation or condition to obtaining the feature, benefit, or credit term that is not disclosed in close proximity to the claim, this clear and conspicuous standard requires that:

- (a) The advertisement or solicitation shall contain a reference to the limitation, condition or cost disclosure in type of at least 10 point type size (other than on the outside of a direct mail envelope, where the text shall be in at least 8 point type size) either in close proximity to the claim or, if indicated by an asterisk affixed to the claim, on the page where the claim is stated;
- (b) The reference shall call attention to the fact that the disclosure contains limitation, condition, or cost information, by using the terms "limitation" or "condition" or "cost" or their substantial equivalents;

- (c) The reference shall direct the consumer to the location of the disclosure, which shall be in or with the advertisement or solicitation;
- (d) The actual disclosure of limitation, condition, or cost information shall itself be readable and reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. For example, if the specific disclosure of limitation, condition, or cost information is located within a written document that contains numerous provisions, the specific disclosure shall be presented in a manner that, through heading, format, and/or type size, is designed to call attention to the nature and significance of the specific disclosure.

These requirements would apply to situations where, for example, a claim is made regarding the cost or availability of a feature, benefit, or credit term, but such claim is subject to material conditions or limitations, or where a claim, explicitly or by implication, indicates that the consumer will receive the feature, benefit, or credit term, but there is a material limitation or condition on the consumer receiving the feature, benefit, or credit term.

(11) “Communication” shall include, unless the context indicates otherwise, communications in oral, written, or electronic form, including over the Internet.

(12) “Misleading” and “deceptive” shall mean deceptive as that term is interpreted under the Federal Trade Commission Act.

(13) For the purposes of this Order, “subprime” shall be defined in conformity with current guidance from the Office of the Comptroller of the Currency (“OCC”), such as OCC Bulletin 2001-6, titled *Expanded Guidance for Subprime Lending Programs*, or any future guidance from the OCC, on subprime lending.

(14) For the purposes of this Article, “written” shall include communications over the Internet.

ARTICLE VI

PAYDAY LENDING ACTIVITIES

(1) Within sixty (60) days of the effective date of this Order, and on an ongoing basis thereafter, the Bank, through its third-party vendors Cash America International (“Cash America”) and First American Holdings (“FAH”), shall notify all applicants seeking to originate, renew, or roll over any short-term consumer loans made in the name of or on behalf of the Bank (“Bank Payday Loans”) that, as of a date ninety (90) days after the effective date of this Order, Cash America and FAH will no longer provide services related to the origination, renewal, and rollover of Bank Payday Loans in any state or the District of Columbia.

(2) Within ninety (90) days of the effective date of this Order, the Bank shall cease all actions in connection with the origination, renewal, or rollover of Bank Payday Loans in all states and the District of Columbia.

(3) Notwithstanding Paragraphs 1 and 2 of this Article, FAH and Cash America may continue to provide services to the Bank related to the servicing or collection of Bank Payday Loans originated, renewed, or rolled over on or before a date ninety (90) days after the effective date of this Order, provided that the due date is not extended and no new funds are advanced on any such existing Bank Payday Loan after a date ninety (90) days after the effective date of this Order.

ARTICLE VII

CONFLICT OF INTEREST

(1) On or before March 31, 2003, the Board shall terminate the Bank's contractual relationship with First American Payment Systems ("FAPS") and thereafter shall ensure that the Bank does not rely upon FAPS for the performance of any services for the Bank, without receiving the prior supervisory non-objection of the Assistant Deputy Comptroller.

(2) On the effective date of this Order, the Board shall remove any and all decision-making authority with regard to the Bank's ongoing relationship with FAPS of any officer or employee with a current or previous financial interest in FAPS, and shall ensure that these individuals are recused from all discussions or decision making with regard to the Bank's relationship or transactions with FAPS.

(3) Within seven (7) days of the effective date of this Order, the Board shall ensure that all directors and members of executive management with an interest in FAPS have disclosed fully to the Bank, within thirty (30) days of the effective date of this Order, any and all financial interests each of them has had in or received from FAPS during 2001 and 2002, and any such interest they expect to receive in the future. These disclosures shall include all legal or beneficial ownership interests, compensation (including fees and automobile leases), dividends, direct or indirect loans, and all other financial interests or transactions.

(4) The Board shall ensure that all decisions made and actions taken with regard to the Bank's relationship with FAPS are in the best interests of the Bank, and shall maintain records documenting that each such decision or action is in the best interests of the Bank.

(5) Within thirty (30) days of the effective date of this Order, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written, comprehensive conflict of interest policy applicable to the Bank's and the Bank's holding company's directors, principal

shareholders, executive officers, affiliates, and employees (“Insiders”) and related interests of such Insiders. The policy, in addition to defining a conflict of interest, shall address:

- (a) Avoidance of conflicts of interest and breaches of fiduciary duty, and the appearance of conflicts of interest.
 - (b) Involvement in the decision-making process concerning any transaction involving the Bank by Insiders who may benefit directly or indirectly from the transaction.
 - (c) Written disclosure of actual and potential conflicts of interest to the Board, and at least annual written disclosure of related interests. Changes in disclosed information shall be promptly disclosed in writing to the Board and reflected in the Bank’s centralized records.
 - (d) Requirements for arms-length dealing in any transactions by Insiders, or their related organizations, involving the Bank's sale, purchase, or rental of property and services.
 - (e) Disclosure of any Insider’s interest in the business of a borrower, an applicant, other customer, or third-party service provider of the Bank.
 - (f) Restrictions on and disclosure of receipt of anything of value by Insiders, directly or indirectly, from borrowers, loan applicants, other customers, or suppliers or service providers of the Bank.
- (6) Upon adoption, a copy of this conflict of interest policy shall be forwarded to the Assistant Deputy Comptroller for review.
- (7) Within sixty (60) days of the effective date of this Order, the Board shall conduct a review of the Bank's existing relationships with its and its holding company’s directors,

executive officers, affiliates, principal shareholders, and their related interests for the purpose of identifying relationships not in conformity with the policy. The Board shall ensure that:

- (a) any nonconforming relationships are brought into conformity with the policy within thirty (30) days after identification; and
- (b) within thirty (30) days of notifying the affected Insider or Insider's related interest, the Bank is properly reimbursed for:
 - (i) any excess or improper payments to Insiders and their related interests; and
 - (ii) any excess or improper payments for services provided by Insiders and their related interests.

(8) Thereafter, the Board shall review all proposed transactions or modifications of existing relationships, between the Bank and any of its or its holding company's directors, executive officers, affiliates, principal shareholders, and their related interests. The Board shall maintain adequate, centralized records of these reviews and all related decisions made and actions taken, in a form and manner that will enable easy, independent review to determine whether such transactions or modifications serve the best interests of the Bank. These records shall identify all affected Insiders and their affected related interest, and shall also:

- (a) specify the names of the parties to the transaction other than the Bank,
- (b) state the relationship of the parties to the Bank,
- (c) provide a brief description of the transaction and its terms, and
- (d) provide a notation of the approval of the transaction by the Board, including the vote of each director and the bases for any dissenting or abstaining votes.

(9) If the Bank enters into a transaction with an Insider's related interest, the Board shall require full disclosure by the Insider of the Insider's financial involvement with the related interest, including ownership interests, compensation (including fees and services), dividends, direct or indirect loans, and all other financial interests or transactions.

(10) For the purposes of this Article, "related interest" shall have the same meaning as set forth in 12 C.F.R. § 215.2.

ARTICLE VIII

BOARD TO ENSURE COMPETENT MANAGEMENT

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

(2) To assist the Board in fulfilling its duty to ensure that the Bank has in place competent executive management, the Board shall, within forty-five (45) days of the effective date of this Order, employ an independent outside management consultant to complete a study of current executive management and Board supervision presently being provided to the Bank. Prior to employment of the consultant, the name and the qualifications of the consultant considered for employment shall be submitted to the Assistant Deputy Comptroller, who shall have the power of veto over the employment of the proposed consultant. However, failure to exercise such veto power shall not constitute approval or endorsement of the consultant.

(3) Within ninety (90) days of engagement, the consultant shall present findings and recommendations in a written report to the Board. At a minimum, the report shall contain:

- (a) an evaluation of the responsibility of current executive management and the Board for present weaknesses in the Bank's condition;
- (b) detailed written job descriptions for all executive officers;
- (c) an evaluation of current lines of authority, reporting responsibilities and delegation of duties for all officers, including identification of any overlapping duties or responsibilities;
- (d) a recommended organization chart that clearly reflects areas of responsibility and lines of authority for all officers;
- (e) an evaluation of each officer's qualifications and abilities and a determination of whether each of these individuals possesses the experience, independence, and other qualifications required to perform present and anticipated duties of his/her officer position;
- (f) recommendations as to whether management or staffing changes should be made, including the need for additions to or deletions from the current management team;
- (g) an assessment of the Board's strengths and weaknesses, including recommended changes, if any, to the composition of the Executive Committee;
- (h) an assessment of whether Board members are receiving adequate information on the operation of the Bank to enable them to fulfill their fiduciary responsibilities and other responsibilities under law;
- (i) an assessment of the scope, frequency and sufficiency of information provided to the Board by management; and

- (j) recommendations to correct or eliminate any other deficiencies in the supervision or organizational structure of the Bank.

(4) A copy of the consultant's study shall be forwarded to the Assistant Deputy Comptroller. The Assistant Deputy Comptroller shall retain the right to determine the adequacy of the study and its compliance with the terms of this Article.

(5) Within thirty (30) days of completion of this study, the Board shall develop a written plan, with specific time frames, designed to correct any deficiencies noted in the study.

(6) A copy of the Board's written plan to address the deficiencies noted in the consultant's study shall be forwarded to the Assistant Deputy Comptroller for supervisory non-objection prior to implementation. Upon receiving a determination of no supervisory objection to the Board's written plan, the Board shall ensure full implementation and adherence to the plan. In the event that the written plan, or any portion thereof, is not implemented, the Board shall immediately advise the Assistant Deputy Comptroller, in writing, of specific reasons for deviating from the plan.

(7) If, as a result of the consultant's study or at any other time, the Board determines that the skills and abilities of any member of executive management need improvement, the Board will, within thirty (30) days of making that determination, develop and implement a written program, with specific time frames, to improve the officer's supervision and management of the Bank. A copy of the written program shall be submitted to the Assistant Deputy Comptroller for review. At a minimum, the written program shall include:

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

- (c) objectives by which the officer's effectiveness will be measured; and
- (d) a performance appraisal program for evaluating performance according to the position's description and responsibilities and for measuring performance against the Bank's goals and objectives.

(8) If an executive management position is vacant as of the effective date of this Order or in the future, including if the Board realigns an existing officer's responsibilities so that an executive management position becomes vacant, or if the Board determines that it is in the best interest of the Bank to appoint additional members to the Executive Committee or additional department heads, the Board shall, within ninety (90) days of such vacancy, appoint a capable person to the vacant or new 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.

(9) Prior to the appointment of any individual to a position in executive management, 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.

(10) 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.

(11) "Executive management" shall mean all voting members of the organization's Executive Committee, as well as the department heads for Audit/Compliance, Administration, Technology, Credit, Human Resources, Product Delivery, Trust and Investment, and Finance.

ARTICLE IX

CAPITAL PLAN

(1) Within seventy-five (75) days of the effective date of this Order, the Board shall develop a three-year capital plan. The plan shall include:

- (a) specific plans for the maintenance of adequate capital to cause the Bank to remain "well capitalized" for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6;
- (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (e) contingency plans that identify alternative sources or methods, should the primary source(s) under (d) above not be available; 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;
 - (ii) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and

(iii) with the prior determination of no supervisory objection by the Assistant Deputy Comptroller.

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

(3) The Board shall review the Bank's capital plan at least quarterly and shall revise the plan, including capital levels, as needed in light of changes in the Bank's risk exposures. Copies of the reviews and revisions shall be submitted to the Assistant Deputy Comptroller as part of the progress reports required under Article I.

ARTICLE X

STRATEGIC PLAN

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written strategic plan for the Bank covering at least a three-year period. The strategic plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, and product lines and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives. The plan shall include, at a minimum:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) strategic goals and objectives to be accomplished over the short and long term;

- (c) a description of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in Paragraph 1(b) of this Article;
- (d) an evaluation of the Bank's internal operations, staffing requirements, management information systems, and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under Paragraph 1(b) of this Article;
- (e) a program to promote the retention and continuity of competent management;
- (f) product line development and market segments that the Bank intends to promote or develop;
- (g) an action plan to address bank earnings and accomplish identified strategic goals and objectives, addressing individual responsibilities and accountability, and providing specific time frames;
- (h) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the strategic plan;
- (i) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operations;
- (j) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operations; and

(k) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Upon adoption, a copy of the plan shall be forwarded to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

(3) The Board and management shall cease all efforts to develop or implement new consumer-directed products and to expand significantly any existing consumer-directed business lines until appropriate risk management systems are in place.

(4) Prior to the Bank's involvement in the development or implementation of any new consumer-directed product, the Board shall direct the Bank's Product Development Committee or the Compliance Committee to prepare a written analysis of the product. The analysis shall, at a minimum, include the following:

- (a) an assessment of the risks and benefits of the product to the Bank;
- (b) an explanation of how the product is consistent with the Bank's strategic plan, risk management plan, and capital 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;
- (d) an evaluation of the adequacy of the Bank's organizational structure, staffing, MIS, internal controls, and written policies and procedures to monitor and control any vendor providing services in connection with the product; and
- (e) a profitability analysis, including growth projections and interest rate risk.

(5) Prior to the Bank's involvement in a significant expansion of an existing consumer-directed product line, the Board shall direct the Bank's Product Development Committee or the Compliance Committee to prepare a written analysis of proposed changes that fully assesses the risks and benefits of expanding this line of business. The analysis shall, at a minimum,

- (a) include an assessment of the adequacy of the Bank's staffing (including management), MIS, internal controls, and written policies and procedures to (i) identify, measure, monitor, and control the risks associated with the expanded product and (ii) monitor and control any vendor providing services in connection with the product; and
- (b) tie the proposed changes directly to the Bank's strategic plan, risk management plan, and capital plan.

(6) The Board shall ensure that the Bank's Product Development Committee or the Compliance Committee, whichever is responsible for the evaluation of risks associated with new or expanded consumer directed products and the preparation of the required written analyses, have the necessary skills and expertise.

(7) Prior to the Bank's implementation of a new or significantly expanded consumer-directed product, a copy of the designated committee's written analysis, along with any additional comments by the Board, shall be submitted to the Assistant Deputy Comptroller for a prior determination of supervisory non-objection.

(8) For the purposes of this Article, "new consumer-directed product" shall include a significant change in the character of existing products.

(9) For the purposes of this Article, the “significant expansion” of any consumer-directed product (on- or off-balance sheet) shall mean:

- (a) an annualized asset growth rate greater than fifteen percent (15%), as calculated on the last date of each calendar quarter; or
- (b) any increase in the Bank’s gross revenue by more than twenty percent (20%), as calculated on the last date of each calendar quarter, in relation to any new product.

ARTICLE XI

RISK MANAGEMENT PLAN

(1) Within sixty (60) days of the effective date of this Order, the Board shall develop a written risk management plan to reduce the overall risk exposure of the Bank and to enhance the risk management culture of the Bank. The risk management plan shall include or provide for, at a minimum, the following:

- (a) a target risk profile with risk limits, consistent with the Bank’s overall strategic plan and financial condition, for the Bank as a whole, as well as for each of the Bank’s significant product types, considering credit, interest rate, liquidity, transaction, compliance, strategic, reputation, price, and foreign currency translation risks;
- (b) a written assessment of the Bank’s current risk exposures, including risk exposure associated with concentrations of credit in subprime lending;
- (c) a formal written plan to bring risk exposures into line with the target risk profile, including written action plans (with projected time lines for

significant events) to mitigate risk exposures deemed “high” by the Bank or by the OCC;

- (d) procedures for the Board to authorize exceptions or adjustments to risk limits, as warranted, which procedures shall include documentation of the impact of each authorized exception or adjustment on the Bank’s overall risk exposure and an explanation why the exception or adjustment is in the Bank’s best interest;
- (e) procedures to ensure the Bank’s compliance with present and future guidance from the OCC on vendor management;
- (f) identification or development of measures of risk and measurable risk-return benchmarks for each significant product type to allow management to monitor compliance of risk exposures with risk limits, which measures and benchmarks can be either quantitative or qualitative, but should allow for aggregation and should have sufficient predictive power to give management and the Board a reasonable amount of lead time to take mitigating action when risk limits are in danger of being exceeded;
- (g) management information systems (“MIS”) to allow for necessary measurement, monitoring, and timely reporting of risk measures and benchmarks, by department, product line, and bank wide, as appropriate;
- (h) revisions to the Bank’s performance management and compensation systems to reflect accountability for compliance with the Bank’s risk management objectives;

- (i) policies and procedures consistent with the Bank's target risk profile to identify, assess, manage, and monitor the Bank's risk exposures, including the risks associated with concentrations of credit and with any new or significantly expanded lines of business;
- (j) policies and procedures to ensure that strategic direction and risk tolerances are effectively communicated and followed throughout the Bank;
- (k) policies and procedures to ensure that appropriate actions are taken where noncompliance with risk policies is identified; and
- (l) independence of personnel responsible for implementing the risk management systems from management and other personnel involved in risk-taking activities.

(2) The plan shall provide for a risk manager position to be filled by an individual with demonstrated experience and skills in providing overall risk management to be appointed by the Board to implement the Bank's risk management program. This position shall report to the Board and shall be independent of other Bank operations. Prior to the appointment of an individual to this position, the Assistant Deputy Comptroller shall have the power of veto over the appointment of this person. However, the failure to exercise such veto power shall not constitute an approval or endorsement of the proposed individual.

(3) Upon completion, the Bank's risk management plan shall be submitted to the Assistant Deputy Comptroller for prior determination of supervisory non-objection. Upon receiving a determination of supervisory non-objection from the Assistant Deputy Comptroller, the Bank shall adopt, implement, and adhere to the risk management program. The Board shall

review and update the Bank's risk management plan on an annual basis, or more frequently if necessary. Copies of any reviews and updates shall be submitted to the Assistant Deputy Comptroller as part of the progress reports required under Article I.

(4) The Board shall ensure that Bank personnel responsible for evaluating and managing current and any new business risks within the Bank have the necessary training, skills, and expertise, and establish procedures to describe the actions to be taken to address deficiencies in staff levels and skills.

ARTICLE XII

COMPREHENSIVE COMPLIANCE AUDIT PROGRAM

(1) Within sixty (60) days of the effective date of this Order, the Board shall adopt a written comprehensive compliance audit program. At a minimum, the following actions by the Board are necessary to improve the Bank's internal compliance audit function:

- (a) ensure that the compliance audit scope development process is risk-based and includes all major functional areas of the Bank;
- (b) ensure that compliance audits are performed in conformity with the approved audit schedule;
- (c) employ only qualified and trained compliance auditors for compliance audits;
- (d) require timely and complete management response to adverse audit findings;
- (e) ensure timely review of all compliance audit reports, management responses, and follow-up audit reports and appropriate resolution of all identified deficiencies, which review may be delegated to a committee of

the Board, such as the Audit Committee or the Compliance Committee; however, review by the members of the existing Executive Committee alone is not sufficient; and

- (f) obtain prior Board (or designated committee) approval for any planned changes to or deviations from the approved audit schedule.

(2) The Board shall ensure that the compliance audit program is independent. The persons responsible for implementing the Bank's internal compliance audit program described above shall report directly to the Board (or designated committee), which shall have the sole power to direct the audit staff's activities. All reports prepared by the audit staff shall be filed directly with the Board (or designated committee) and not through any intervening party.

(3) All audit reports shall be in writing. The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(4) The audit staff shall have access to any records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(5) Upon adoption, a copy of the internal compliance audit program shall be promptly submitted to the Assistant Deputy Comptroller for review.

(6) Within sixty (60) days of the effective date of this Order, the Board shall engage an auditor to conduct a comprehensive external audit to assess the Bank's compliance with the Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 - 5330), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C (including, but not limited to, Currency Transaction Reports ("CTRs"), Suspicious Activity

Reports (“SARs”), and anti-money laundering procedures) (collectively referred to herein as the Bank Secrecy Act), and the rules and regulations of the Office of Foreign Assets Control.

ARTICLE XIII

COMPLIANCE AND AUDIT STAFFING PLAN

(1) Within thirty (30) days after the effective date of this Order, the Board shall direct management or an outside consultant to perform a staffing study of the compliance and audit departments, to be presented to the Board within sixty (60) days of the effective date of this Order. The study shall determine whether Bank personnel in the compliance and audit areas have sufficient numbers, time, skills, expertise, and independence to complete all required duties.

Those duties shall include:

- (a) correct violations cited at this examination and those identified by internal and external auditors;
- (b) provide ongoing annual and task-specific training to Bank personnel;
- (c) perform comprehensive monitoring to ensure that training remains effective between audit cycles;
- (d) complete compliance audits in accordance with the Board-approved audit schedule;
- (e) timely review management responses to audit reports;
- (f) conduct timely follow-up reviews of corrective actions;
- (g) issue timely and accurate reports to regulatory agencies;
- (h) update policies, procedures, and forms, as needed;
- (i) provide resources and information support to Bank staff;
- (j) review regulatory compliance for proposed products and services;

- (k) report periodically to the Board (or a designated committee thereof).
- (2) The Board shall forward the staffing study to the Assistant Deputy Comptroller for review.
- (3) Within thirty (30) days of receipt of the staffing study, the Board shall direct management to develop a staffing plan for the compliance and audit areas to ensure that the Bank has a sufficient number of adequately trained personnel to complete required duties, and to report to the Board within thirty (30) days. At a minimum, the plan shall consist of the following:
 - (a) identification of the time, skills, and expertise needed to complete required duties;
 - (b) identification of the number, skills, and expertise of the Bank's current compliance and audit personnel; and
 - (c) an action plan to hire new personnel, reassign or train existing personnel, or make other changes necessary to correct any deficiencies in the numbers, skills, or expertise of the compliance and audit staff.
- (4) Within thirty (30) days of the completion of the staffing plan, the Board shall implement and thereafter ensure adherence to the plan.
- (5) Within thirty (30) days of the completion of the staffing plan, the Board shall provide a copy of its staffing plan to the Assistant Deputy Comptroller for review.

ARTICLE XIV

COMPLIANCE TRAINING AND MONITORING PROGRAM

- (1) Within sixty (60) days of the effective date of this Order, the Bank shall adopt, implement, and thereafter ensure adherence to a written program designed to ensure that Bank

employees are receiving adequate training and are conducting assigned tasks in compliance with all applicable laws, rules, and regulations. This program shall include, but not be limited to:

- (a) policies and procedures covering all applicable laws, rules, and regulations for use by appropriate Bank personnel in the performance of their duties and responsibilities, with annual updates to ensure that the policies and procedures remain current;
- (b) a written description of the duties and responsibilities of the compliance officer(s) and other management in training and monitoring of employee compliance performance;
- (c) procedures to provide for incentives and accountability to encourage employees to comply with all applicable laws, rules, regulations, and Bank policies;
- (d) procedures to hold management accountable for the compliance of all employees with all applicable laws, rules, regulations, and Bank policies;
- (e) procedures to ensure that exceptions noted in audit reports are corrected and responded to by the appropriate Bank personnel;
- (f) function-specific compliance training for all Bank personnel as appropriate;
- (g) comprehensive ongoing and risk-based monitoring to assess the effectiveness of compliance training and to review continued corrective action for identified compliance violations; and
- (h) periodic reporting of the results of the compliance audit to the Board (or to a designated committee thereof).

(2) Upon adoption, a copy of the program shall be forwarded to the Assistant Deputy Comptroller for review.

ARTICLE XV

ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) Within thirty (30) days of the effective date of this Order, the Board shall review the adequacy of the Bank's methodology for calculating the Allowance for Loan and Lease Losses ("Allowance") for its subprime lending programs and shall establish a program for the maintenance of an adequate subprime Allowance. This review and program shall be designed in light of the comments in OCC Bulletin 2001-6, titled *Expanded Guidance for Subprime Lending Programs*.

(2) Upon approval by the Board, the written methodology for calculating the Allowance for the Bank's subprime programs shall be forwarded to the Assistant Deputy Comptroller for prior determination of no supervisory objection.

ARTICLE XVI

TRANSACTIONS BETWEEN AFFILIATES

(1) The Bank may originate loans to its non-bank affiliates (as defined in 12 U.S.C. §§ 221a and 371c), including allowing overdrafts on its affiliates' accounts at the Bank, only after:

- (a) the Board conducts an independent written review of the transaction; and
- (b) the Board has determined in writing that it is advantageous for the Bank to engage in such a transaction and that the transaction complies with all

applicable laws, rules, regulations, and Comptroller's issuances, including, but not limited to, 12 U.S.C. §§ 371c and 371c-1.

(2) Any reviews or written determinations shall be provided to the Assistant Deputy Comptroller as part of the progress reports required under Article I.

ARTICLE XVII

VIOLATIONS OF LAW

(1) With regard to the violation of 12 C.F.R. § 226.13(c)(2) cited in the Compliance ROE, within thirty (30) days of the effective date of this Order, the Bank shall notify any eligible credit card consumer of his or her right to request a refund of up to fifty dollars (\$50). For the purposes of this paragraph, "eligible consumer" shall include any holder of a credit card account in relation to which, since the last examination, the Bank charged back a disputed amount and the consumer filed a billing error notification in accordance with 12 C.F.R. § 226.13(c), and the Bank should have forfeited collection of the first fifty dollars (\$50) of a disputed amount because the dispute was not resolved within the required time frame, but failed to do so. The notification letter shall inform the eligible consumer of the incorrect charge and provide instructions for requesting a refund within sixty (60) days of the date of the letter.

(2) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule, or regulation cited in the S&S ROE and the Compliance ROE and in any subsequent Report of Examination. The progress reports required by Article I of this Order shall include the date and manner in which each correction has been effected during that reporting period.

(3) Within thirty (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the S&S ROE and the Compliance ROE.

(4) Within thirty (30) days of receipt of any subsequent Report of Examination which cites violations of law, rule, or regulation, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the Report of Examination.

(5) Upon adoption, a copy of these procedures shall be promptly forwarded to the Assistant Deputy Comptroller for review.

ARTICLE XVIII

SCOPE OF SETTLEMENT

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or approval of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) The requirement to submit information and the prior veto provisions of this Order are based on the authority of 12 U.S.C. § 1818(b) and (s) and do not require the Comptroller or his designee to complete his review and act on any such information or authority within ninety (90) days.

(3) 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.

(4) Unless otherwise specified, 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.

(5) 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.

(6) In each instance in this Order in which 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.

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

(8) 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 OCC or the United States.

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

IT IS SO ORDERED, this 17th day of January, 2003.

/s/ Christine A. Hartman

January 17, 2003

Christine A. Hartman
Assistant Deputy Comptroller
Sioux Falls Field Office

Date

Appendix A

Model Address Verification Letter

[Date]

[Name]

[Address]

[Credit card account number]

Re: Restitution Payment in connection with Government Settlement
with First National Bank in Brookings, South Dakota

Dear Consumer:

The Office of the Comptroller of the Currency of the United States of America (“OCC”) supervises and regulates the First National Bank in Brookings, South Dakota (“Bank”). The OCC has determined that certain consumers may have been harmed by the practices of the Bank in marketing its credit cards. The Bank has entered into a Consent Order as part of a settlement with the OCC. As a result of that settlement, the Bank agreed to make payments to certain consumers who may have been harmed by its practices. Under the terms of the Consent Order, you were identified as one of the consumers to whom the Bank may be required to make a restitution payment.

This letter has been sent to your last known address. However, the Bank has been unable to confirm that it has a correct address for you. In order to receive any restitution payment that may be due you, you must, within thirty (30) days of the date of this letter provide an address where you receive mail, by returning the form below. A pre-addressed postage-paid envelope is provided for this purpose. ***You will not receive a restitution payment from the settlement unless you complete and return the form within thirty (30) days of the date of this letter.***

Under the terms of the Consent Order, the Bank may use the information you provide **only** for the purpose of communicating with you about the settlement. The Bank has agreed **not** to use the information for marketing purposes or for debt collection.

If you would like to review the Consent Order, you will find it at www.occ.treas.gov. If you have any questions about this letter, please call the Bank at [**1-800 number**].

Sincerely,

[Representative of the Bank]



(complete form, detach, and mail in the enclosed postage-paid envelope)

SETTLEMENT ADDRESS CONFIRMATION FORM

Account Number: [preprinted]

Name: [preprinted]

My address is: _____

Signature: _____

Date:

This form must be completed and returned by [insert date 30 days after letter date] to be eligible to receive a settlement payment. Any payment due you will be mailed to the address provided on this form.

Appendix B

Model Payment Transmittal Letter

[Date]

[Name]

[Address]

[Credit card account number]

Re: Restitution Payment in connection with Government Settlement
with First National Bank in Brookings, South Dakota

Dear Consumer:

The enclosed check is a restitution payment from First National Bank in Brookings, South Dakota ("Bank"). Please cash this check as soon as possible. It will be void after 180 days from the date of the check.

The Office of the Comptroller of the Currency of the United States of America ("OCC") supervises and regulates the Bank. The OCC has determined that certain consumers may have been harmed by the practices of the Bank in marketing its credit cards. The Bank has entered into a Consent Order as part of a settlement with the OCC. As a result of that settlement, the Bank agreed to make payments to certain consumers who may have been harmed by its practices. Under the terms of the Consent Order, you were identified as one of the consumers to whom the Bank is required to make a restitution payment.

The amount of the restitution payment was determined as follows:

\$ _____	the sum of all payments made in connection with the credit card account that were applied to fees and other finance charges for which the Bank agreed to make restitution under the terms of the Consent Order,
- _____	less any unpaid amounts charged to the account for purchases, cash advances, or balance transfers that were recorded as losses to the Bank ("offset amount"),
\$ _____	equals the net amount of restitution due.

Under the terms of the Consent Order, the Bank has agreed to notify the appropriate credit reporting agencies of any relevant changes to prior adverse credit reports that were made about your credit card in relation to any charge for which the Bank agreed to make restitution, including reductions in any charged-off amounts previously reported.

If you would like to review the Consent Order, you will find it at www.occ.treas.gov. If you have any questions about this payment, please call the Bank at [1-800 number].

Sincerely,

[Representative of the Bank]

Appendix C

Model Offset Notification Letter

[Date]

[Name]

[Address]

[Credit card account number]

Re: Government Settlement with First National Bank in Brookings, South Dakota

Dear Consumer:

The Office of the Comptroller of the Currency of the United States of America (“OCC”) supervises and regulates the First National Bank in Brookings, South Dakota (“Bank”). The OCC has determined that certain consumers may have been harmed by the practices of the Bank in marketing its credit cards. The Bank has entered into a Consent Order as part of a settlement with the OCC. As a result of that settlement, the Bank agreed to make payments to certain consumers who may have been harmed by its practices. Under the terms of the Consent Order, you were identified as one of the consumers to whom the Bank may be required to make a restitution payment.

The amount of the restitution payment was determined as follows:

\$ _____	the sum of all payments made on your credit card account that were applied to fees and other finance charges for which the Bank agreed to make restitution under the terms of the Consent Order, plus interest,
- _____	less any unpaid amounts charged to the account for purchases, cash advances, or balance transfers that were recorded as losses to the Bank (“offset amount”),
\$ _____	equals the net amount of restitution due.

Because the net amount of restitution due to you is less than one dollar (\$1), the Bank is not required to send you a restitution check. However, under the terms of the Consent Order, the Bank has agreed to notify the appropriate credit reporting agencies of any relevant changes to prior adverse credit reports that were made about your credit card in relation to any charge for which the Bank agreed to make restitution, including reductions in any charged-off amounts previously reported.

If you would like to review the Consent Order, you will find it at www.occ.treas.gov. If you have any questions about this letter, please call the Bank at **[1-800 number]**.

Sincerely,

[Representative of the Bank]

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

In the Matter of:)
)
First National Bank in Brookings)
Brookings, South Dakota)

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

The Comptroller of the Currency of the United States of America (“Comptroller”) has initiated cease-and-desist proceedings against First National Bank in Brookings, Brookings, South Dakota (“Bank”) pursuant to 12 U.S.C. § 1818(b) and (s).

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated January 17, 2002 (“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” in relation to the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b) and (s).

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

ARTICLE II

AGREEMENT

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the 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 (“OCC”) has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the 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 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 her hand on behalf of the Comptroller.

/s/ Christine A. Hartman

January 17, 2003

Christine A. Hartman
Assistant Deputy Comptroller
Sioux Falls 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.

Signed	01-17-03
_____	_____
Dr. Sherwood O. Berg	Date
Signed	1/17/03
_____	_____
John E. Bibby	Date
Signed	1/17/03
_____	_____
DeVee E. Dykstra	Date
Signed	1-17-03
_____	_____
Robert E. Fishback	Date
Signed	1/17/03
_____	_____
Van D. Fishback	Date
Signed	1/17/03
_____	_____
Dr. Peggy Miller	Date
Signed	1-17-03
_____	_____
Gordon W. Ommen	Date
Signed	1/17/03
_____	_____
Dr. John E. Thompson	Date