



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision 2006-01
January 2006

November 22, 2005

Joseph G. Passaic, Jr., Esq.
Patton Boggs, LLP
2550 M Street NW
Washington, DC 20037

Re: Change in Bank Control Act Notice submitted by Bippy Siegal to acquire control of
Excel Bank, National Association, New York, New York.

Control Number: 2005-NE-11-0002
Charter Number: 16629

Dear Mr. Passaic:

The Comptroller of the Currency (OCC) has reviewed and evaluated the subject Change in Bank Control Notice (Notice) involving Excel Bank, National Association, New York, New York. This letter is to convey our intent to not to disapprove the proposed change in bank control.¹ The OCC has determined the regulatory factors it is required to consider under the Change in Bank Control Act are consistent with this decision.

Our decision was based upon a through review of all information available, including representations and commitments made in the Notice and subsequent correspondence and communications, and Agreements with Bippy Siegal and his representatives, both written and verbal.

The date of consummation of this change in control must be provided to the Northeastern District Office Licensing Division within 10 days after consummation. The transaction must be consummated as proposed in the Notice. If any of the terms, conditions, or parties to the transaction described in the Notice change, the OCC must be informed in writing prior to consummation to determine if any additional action/reconsideration is required. In such situations, the OCC reserves the right to require submission of an amended or new Notice of Change in Bank Control.

In addition, unless an extension is granted, the transaction must be consummated within six months of the date of this letter. Failure to consummate within six months or an approved

¹ Based on a review of the facts of record and the representations and commitments made by Mr. Siegal, the OCC has determined that the Notice is technically complete.

Joseph G. Passaic, Jr., Esq.
Patton Boggs, LLP
Page 2

extended time period granted by the OCC will cause our decision to lapse and require the filing of a new notice by the acquiring party and the appropriate filing fee if the acquirer wishes to proceed with the change in bank control.

You are reminded that the OCC requires pushdown purchase accounting for a change in control of at least 95 percent of the voting stock of a bank. Under pushdown accounting, when a bank is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired bank are restated to their fair values as of the acquisition date. Those values, including any goodwill, are reflected in the financial statement of the parent and the acquired bank.

This decision and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable laws and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence regarding this Notice should reference the application control number. If you have any questions concerning this letter, please contact Senior Licensing Analyst Sandya Reddy in our Northeastern District Office at (212) 790-4055 or Senior Licensing Analyst Greg Parvin in the Washington DC Headquarter Office at (202) 874-5060.

Sincerely,

/s/ Stephen A. Lybarger

Stephen A. Lybarger
Director for Licensing Activities

AGREEMENT BY AND BETWEEN

**Mr. Bippy M. Siegal
and
The Office of the Comptroller of the Currency**

WHEREAS, pursuant to 12 C.F.R. § 5.50, any person seeking to acquire control of a national bank shall provide 60 days' prior notice of a change in control to the Office of the Comptroller of the Currency ("OCC");

WHEREAS, Bippy M. Siegal ("Mr. Siegal"), submitted a notice ("Change in Control Notice") to the OCC to acquire control of Excel Bank, National Association, New York, New York, to be renamed Modern Bank, National Association, New York, New York (the "Bank"), a national bank chartered by the OCC;

WHEREAS, Mr. Siegal intends to become the Bank's largest shareholder by acquiring more than thirty-nine percent (39%) of the issued and outstanding common shares of the Bank, thereby acquiring control of the Bank;

WHEREAS, Mr. Siegal and the OCC seek to ensure that the Bank, and each company that from time to time is an operating subsidiary of the Bank, will operate in a safe and sound manner and in accordance with all applicable laws, rules and regulations; and

WHEREAS, Mr. Siegal and the OCC seek to enter into an agreement outlining the measures that Mr. Siegal will take to ensure that the Bank, and each company that from time to time is an operating subsidiary of the Bank, will operate in a safe and sound manner and in accordance with all applicable laws, rules and regulations.

NOW, THEREFORE, in consideration of the above premises, the OCC and Mr. Siegal, agree as follows ("Agreement"):

Article I

JURISDICTION

(1) Mr. Siegal is an “institution-affiliated party” (“IAP”) of the Bank within the meaning of 12 U.S.C. § 1813(u)(1).

(2) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(3) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1).

(5) This Agreement shall not be construed to be a “written agreement” within the meaning of 12 C.F.R. § 6.4.

Article II

CORRESPONDENCE AND NOTICES

(1) All correspondence related to this Agreement, and any information, documentation, reports, plans and/or other written submissions that Mr. Siegal has agreed to submit pursuant to this Agreement shall be forwarded, by overnight mail, to:

Ronald G. Schneck
Director for Special Supervision
Office of the Comptroller of the Currency
Mail Stop 6-4
250 E. Street, S.W.
Washington, DC 20219

with copies sent by overnight mail to:

Betty Lane Bowman
Assistant Deputy Comptroller
New York Metro-East Field Office
343 Thornall Street
Suite 610
Edison, NJ 08837

(2) The OCC may, by written notice, change the OCC's designated recipients listed in paragraph (1) of this Article.

Article III

OPERATING AGREEMENT

(1) No later than one (1) business day after Mr. Siegal acquires control of the Bank, Mr. Siegal shall cause the Bank to enter into a written agreement with the OCC ("Operating Agreement"), in the form attached hereto as Appendix A. After the Bank enters into the Operating Agreement with the OCC, Mr. Siegal shall take all necessary actions to ensure the Bank's continual compliance with the Operating Agreement.

Article IV

CONCLUDING PROVISIONS

(1) 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 Mr. Siegal or the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(2) This Agreement shall become effective on the date executed by the parties ("Effective Date"), and shall remain in full force and effect until such time as: (i) Mr. Siegal ceases to control the Bank for the purposes of 12 C.F.R. § 5.50; (ii) Mr. Siegal ceases to be an

IAP of the Bank pursuant to 12 U.S.C. § 1813(u)(1); or (iii) the OCC, in a written notice to Mr. Siegal, terminates the Agreement.

(3) Any time limitations imposed by this Agreement shall begin to run from the Effective Date of this Agreement, unless otherwise specified in the Agreement. Such time limitations may be extended in writing by the Comptroller or his duly authorized representative for good cause upon written application by Mr. Siegal.

(4) This Agreement is intended, and shall be construed to be a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States of America. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by Mr. Siegal under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. Mr. Siegal expressly acknowledges that neither Mr. Siegal nor the OCC has any intention to enter into a contract. Mr. Siegal also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States of America, the United States 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 OCC’s exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

(6) This Agreement may be executed in counterparts, each of which shall be considered an original and all of which together shall constitute one and the same instrument.

Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means.

(7) The headings and section references contained herein are included solely for ease of reference and in no way shall limit, expand or otherwise affect either the substance or construction of the terms and conditions of this Agreement or the intent of the parties hereto.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

Signed

Ronald G. Schneck
Director for Special Supervision

11/21/05

Date

IN TESTIMONY WHEREOF, the undersigned, Mr. Bippy M. Siegal, has hereunto set his hand.

/s/

Bippy M. Siegal

11/21/05

Date

OPERATING AGREEMENT

Between
Modern Bank, N.A., New York, New York
and
The Office of the Comptroller of the Currency

WHEREAS, pursuant to 12 C.F.R. § 5.50, any person seeking to acquire control of a national bank shall provide sixty (60) days prior notice of a change in control to the Office of the Comptroller of the Currency (“OCC”);

WHEREAS, Bippy M. Siegal (“Mr. Siegal”), submitted a notice (“Change in Control Notice”) to the OCC to acquire control of Excel Bank, National Association, New York, New York, to be renamed Modern Bank, National Association, New York, New York (the “Bank”), a national bank chartered by the OCC;

WHEREAS, the Bank and the OCC seek to ensure that the Bank operates in a safe and sound manner, in accordance with all applicable laws, rules, and regulations;

WHEREAS, Mr. Siegal committed to certain undertakings memorialized in an agreement entered into between Mr. Siegal and the OCC on or about November 21, 2005;

WHEREAS, those undertakings specified, inter alia, that after Mr. Siegal had acquired the Bank, Mr. Siegal would cause the Bank to enter into this Operating Agreement with the OCC;

WHEREAS, on or about November 22, 2005, the OCC issued its non-objection to the Change in Control Notice; and

WHEREAS, Mr. Siegal acquired more than thirty-nine percent (39%) of the issued and outstanding common shares of the Bank, thereby acquiring control of the Bank.

NOW THEREFORE, in consideration of the above premises, the OCC, by and through its authorized representative, and the Bank, by and through its duly elected Board of Directors (“Board”), agree as follows (“Agreement”):

Article I

JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. §§ 1818(e) and 1818(i)(2).

(3) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1).

(4) This Agreement shall not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4.

Article II

COMPLIANCE REPORTS AND REQUIRED CORRESPONDENCE

(1) The Bank expressly acknowledges that the OCC reserves the right to require periodic reports, in addition to any reports required by this Agreement, evidencing compliance with each Article of this Agreement.

(2) The Bank shall provide the Director for Special Supervision (“Director”), on a monthly basis:

- (a) reports detailing new accounts, new loans, a month-end balance sheet and income statement used by executive management;

- (b) monthly risk management reports;
- (c) the Board package, including all attachments; and
- (d) Board and Audit Committee minutes, including all attachments.

(3) All correspondence related to this Agreement, and any information, documentation, reports, plans and/or other written submissions that the Bank or the Board have agreed to submit pursuant to this Agreement shall be forwarded, by overnight mail, to:

Ronald G. Schneck
Director for Special Supervision
Office of the Comptroller of the Currency
Mail Stop 6-4
250 E. Street, S.W.
Washington, DC 20219

with copies sent by overnight mail to:

Betty Lane Bowman
Assistant Deputy Comptroller
New York Metro-East Field Office
343 Thornall Street
Suite 610
Edison, NJ 08837

(4) The OCC may, by written notice, change the OCC's designated recipients listed in paragraph (3) of this Article.

Article III

BUSINESS PLAN

(1) The Board shall ensure Bank compliance with the Business Plan submitted with the Change in Control Notice or with any updated Business Plan for which the Bank has received a written determination of no supervisory objection from the Director pursuant to this Article ("Business Plan").

(2) The Business Plan shall cover at least a three (3) year period and include, at a minimum:

- (a) a mission statement;
- (b) a detailed analysis of the Bank's current financial condition;
- (c) a detailed analysis of the Bank's position in its marketplace;
- (d) a list of the Bank's short and long-term strategic goals, and the present and future market segments and business and product lines that the Bank will promote to achieve those goals;
- (e) a financial forecast for the 3-year period covered by the Business Plan, broken down on a monthly basis for the first year of the budget and annually for the remaining budget periods, to include projections for major balance sheet and income statement accounts, capital ratios, cash flow statements, specific earnings and profit goals, and the timeframes needed to achieve them (collectively, "Operating Budget");
- (f) provisions for maintenance and growth of the Bank's earnings, capital and liquidity;
- (g) provisions for annual Board review and assessment of the Bank's capital and liquidity positions;
- (h) specific business assumptions, and how Bank management will, through the year, track and address changes to those assumptions;
- (i) an analysis of the Bank's proposed acquisitions and/or mergers; and

- (j) provisions for an annual Board review of the adequacy of the Bank's (i) fidelity bond insurance and (ii) errors and omissions insurance for its directors, officers, and employees.

(3) The Board shall review the Business Plan annually and submit to the Director an Operating Budget covering the next three year period. If as a result of this review or other determination by the Board that there is a need to change or update the Business Plan, prior to adopting and implementing any updated Business Plan, the Bank shall first receive a written determination of no supervisory objection to the updated Business Plan from the Director. After receipt of a written non-objection to the updated Business Plan, the Board shall immediately implement and shall thereafter ensure Bank adherence to the updated Business Plan.

(4) The Bank shall not deviate significantly ("significant deviation") from the Business Plan adopted pursuant to this Article without receiving the prior written determination of no supervisory objection from the Director.

(5) For purposes of this Article, the term "significant deviation" shall mean, consistent with the description in PPM 5400-9, Appendix B:

- (a) material deviations or changes in the bank's projected growth, strategy or philosophy, lines of business, funding sources, scope of activities, asset mix, deposit structure, or any other changes in personnel or operations that may have a material impact on the Bank's operations or financial performance; and/or
- (b) failure to maintain projected capital levels contained in the Business Plan or Operating Budget submitted pursuant to this Agreement.

Article IV

REMEDIAL ACTION AND CONTINGENCY PLANS

(1) If the OCC determines that the Bank has: (i) failed to comply with the Business Plan and Operating Budget as required by Article III of this Agreement; (ii) failed to submit an acceptable updated Business Plan or Operating Budget as required by Article III of this Agreement; (iii) failed to implement or adhere to the Bank's specific, measurable, and verifiable objectives included in the Business Plan, including but not limited to asset mix, deposit structure, earnings, and capital, to which the OCC has taken no supervisory objection pursuant to Article III; (iv) significantly deviated from, or materially changed the Business Plan and/or the Operating Budget without first securing the OCC's written determination of no supervisory objection to that deviation or change; or (v) otherwise engaged in any material violation of this Agreement, then, in addition to any other remedies available to the OCC, within fifteen (15) days of receiving written notice from the OCC of such fact, the Bank's Board shall submit, at the option of the Bank: (i) a Remedial Action Plan, or (ii) a Contingency Plan, to the OCC for the agency's review and prior written determination of no supervisory objection.

(2) If the Bank elects to submit a Remedial Action Plan, such Plan shall detail the following as a minimum:

- (a) The objective(s) that is/are to be reached by the Remedial Action Plan;
- (b) The action(s) that the Bank will take under the Remedial Action Plan to reach the objective(s); and
- (c) The date(s) by which the objective(s) will be met under the Remedial Action Plan.

(3) Promptly upon being informed that the OCC does not take supervisory objection to the Bank's Remedial Action Plan, the Bank's Board shall ensure the Bank's implementation of and adherence to the Remedial Action Plan.

(4) If the OCC determines that:

- (a) it objects to the Remedial Action Plan, and within fifteen (15) days the Bank is unable to amend the Plan or resolve the supervisory objections to the OCC's satisfaction; or
- (b) after the Bank's receipt of the OCC's written determination of no supervisory objection to the Remedial Action Plan, the Bank has failed to promptly implement and thereafter adhere to the Remedial Action Plan, or that the Remedial Action Plan has failed to achieve its stated objectives within its stated timeframes, then, within thirty (30) days of receipt of that determination from the OCC, the Bank's Board shall develop and submit to the OCC for its review and prior written determination of no supervisory objection a Contingency Plan.

(5) The Contingency Plan shall detail in writing the Bank Board's proposal to sell, merge, and/or liquidate the Bank's operations. In order to be deemed acceptable, the Contingency Plan must at a minimum call for the execution of a definitive agreement to sell or merge the Bank or a shareholder vote to enter into liquidation under 12 U.S.C. § 181 within ninety (90) days of receipt of the Director's supervisory non-objection. If the Contingency Plan outlines a liquidation of the Bank, the Contingency Plan shall detail the actions and steps necessary to accomplish the liquidation without loss or cost to the Federal Deposit Insurance

Corporation or the Bank Insurance Fund, and the dates by which each step of the liquidation shall be completed, including the date by which the Bank will terminate its national bank charter.

(6) After the OCC has advised the Bank in writing that it does not take supervisory objection to the Contingency Plan, the Bank's Board shall immediately implement, and shall thereafter ensure adherence to, the terms of the Contingency Plan.

Article V

MANAGEMENT

(1) The Board shall ensure that the Bank continues to have competent management in place on a full-time basis in its senior management positions to carry out the Board's policies and the Business Plan, ensure compliance with applicable laws, rules and regulations, and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) The Bank shall not appoint any individual to a director or senior management position without the prior, written non-objection of the Director. In connection with each proposed appointment of an individual to a director or senior management position, the Board shall submit to the Director 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 individual; and
- (c) if the position is in senior management, a written description of the proposed officer's duties and responsibilities.

(3) A written objection from the Director shall have the effect of veto over the proposed appointment or employment of the individual. However, a written non-objection to the appointment or employment of the individual shall not constitute an approval or endorsement of the individual.

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

Article VI

COMPLIANCE, CRA AND BSA PROGRAM

(1) The Board shall ensure that the Officers responsible for Compliance, Community Reinvestment Act (“CRA”), and the Bank Secrecy Act (“BSA”) have sufficient training, authority, independence, and skill to perform assigned responsibilities, including the implementation and adherence to a written risk-based compliance program designed to ensure that the Bank is operating at all times in compliance with all applicable consumer protection, CRA, and BSA laws, rules and regulations.

(2) The compliance program shall include, but not be limited to:

- (a) a written description of the duties and responsibilities of the Compliance, CRA and BSA officers;
- (b) adequate internal controls to ensure compliance with consumer protection and BSA laws, rules, and regulations;
- (c) the preparation and implementation of policies and procedures covering all applicable consumer protection and BSA laws, rules and regulations

for use by appropriate Bank personnel in the performance of their duties and responsibilities;

- (d) semiannual updates to the written policies and procedures to ensure they remain current and are commensurate with the risk level associated with the products, services, customers and geographies serviced by the Bank;
- (e) an independent audit program to test for compliance with BSA, CRA, and consumer protection laws, rules and regulations;
- (f) procedures to ensure that exceptions noted in the audit reports are promptly corrected, to ensure that appropriate Bank personnel are informed of the exceptions, and to ensure that the same or similar exceptions do not recur;
- (g) the education and training of all appropriate Bank personnel in the requirements of all applicable consumer protection laws, rules and regulations; and
- (h) regular periodic reporting of the results of the BSA and consumer compliance audits to the Board or a committee thereof.

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

Article VII

ENGAGEMENT OF THIRD PARTIES

(1) The Bank shall not renew or enter into new contracts or engagements with a third party company, entity, or person (“Third Party”) to perform professional services for, or on

behalf of, the Bank unless the Board reviews and approves a written analysis performed by the Bank that includes:

- (a) a cost/benefit analysis for using a Third Party;
- (b) a description of the Bank's due diligence process for selecting the Third Party and the results of the due diligence review;
- (c) a determination that the contract or commitment is being conducted at arm's length on terms and conditions fair and reasonable to the Bank, including the ability of the parties to perform under the contract or commitment;
- (d) a disclosure of any affiliation or conflicts of interest with any present or past "Insider" (as that term is defined at 12 C.F.R. § 215.2(h)) or any "Related Interest" (as that term is defined at 12 C.F.R. § 215.2(n)) of such Insider;
- (e) a determination that the contract is in the best interests of the Bank;
- (f) the written analysis required by paragraph (1)(a) of this Article is included in the Board minutes along with details of the deliberations and approval;
and
- (g) the contract or engagement is in writing.

(2) The Board shall immediately forward any Board-approved, written contract, along with the written analysis and Board approval pursuant to paragraph (1) of this Article, to the Director. Unless otherwise advised in writing by the Director, the contract must, at a minimum:

- (a) be made a part of the Bank's books and records, identify the Third Party, and specify all services to be provided;
- (b) define the rights, obligations, and responsibilities of all parties to the contract;
- (c) specify the beginning and ending dates of the contract, including any renewal options;
- (d) specify and itemize the price to be paid by the Bank for the services;
- (e) set standards for quality of services provided by the Third Party, as applicable, given the nature of the services to be provided;
- (f) provide the Bank appropriate remedies in the event of a default, failure of the Third Party to meet the quality standards, or failure of the Third Party to comply with any other material provision of the contract;
- (g) require the Third Party to provide the Bank with annual financial statements and audit reports if the viability of the Third Party is integral to the Bank's safe and sound operation;
- (h) require the Third Party to carry appropriate insurance, if applicable, given the nature of the contract;
- (i) require the Third Party to maintain reliable and accurate books, records, and management information systems as they relate to the services performed on behalf of the Bank; and
- (j) require the Third Party to grant the Bank, Bank auditors, and the Comptroller immediate access to the Third Party's books and records as they relate to services performed on behalf of the Bank; however, this requirement does not negate the right to assert legally recognized privileges where applicable.

(3) The Board shall ensure that all existing Third Party relationships for the performance of professional services conform with paragraphs (1) and (2) of this Article, including the execution of a written contract if the existing agreement or engagement is not in writing. The Bank shall not use the services of, or in any way compensate, any Third Party if the Board has determined that the relationship is not in the best interests of the Bank.

(4) The Bank shall routinely monitor the performance of the Third Party to ensure that committed goods and services are received, and that the Third Party is in compliance with the written contract.

(5) The Board shall ensure that the Bank develops and thereafter maintains processes, personnel, and control systems sufficient to ensure implementation of and adherence to this Article.

Article VIII

LIQUIDITY CONTINGENCY PLANNING

(1) The Bank shall maintain adequate sources of liquidity to meet its needs and shall establish within ninety (90) days a written liquidity contingency plan to withstand any unanticipated or extraordinary demand against its funding base, or address any inability to meet deposit growth projections contained in the Bank's Business Plan.

Article IX

FIDUCIARY POWERS

(1) With regard to the asset management services proposed in the Bank's Business Plan, which involve referring, for a fee, customers to third party investment advisors, the Bank shall not:

- (a) act as an investment advisor, including selecting the advisor for the customer among several third party investment advisors;

- (b) provide investment advice for a fee;
- (c) possess or exercise investment discretion on behalf of another; or
- (d) act in any other similar capacity that the OCC has authorized pursuant to 12 U.S.C. § 92a;

without first obtaining Trust Powers pursuant to 12 C.F.R. Part 9, and adopting, implementing, and thereafter ensuring Bank adherence to written policies and procedures for proper trust asset administration.

Article X

INFORMATION TECHNOLOGY

(1) Prior to outsourcing information technology activities, the Board shall develop, implement, and thereafter adhere to a written program to oversee and manage risks associated with outsourcing technology services to third party servicers, including technology service providers and vendors. This third party management program shall be consistent with OCC Bulletin 2001-47, “Third Party Relationships,” dated November 1, 2001, and OCC Advisory Letter 2000-12, “Risk Management of Outsourcing Technology Services” dated November 28, 2000.

(2) The Board shall ensure that the Bank has a competent Security Officer, whose duties and responsibilities are clearly delineated in writing.

(3) The Board shall also develop and implement a formal enterprise-wide business continuity process that complies with the requirements set forth in the “Business Continuity Planning” booklet of the FFIEC Information Technology Examination Handbook. At a minimum, the business continuity process shall include:

- (a) a business impact analysis that includes:

- (i) the identification of the potential impact of uncontrolled, non-specific events on the institution's business processes and its customers; and
 - (ii) an estimation of the maximum allowable downtime and acceptable levels of data, operations, and financial losses.
- (b) a risk assessment process that includes:
- (i) the prioritization of potential business disruptions based upon severity and likelihood of occurrence;
 - (ii) a gap analysis comparing the institution's existing business resumption plans, if any, to what is necessary to achieve recovery time and point objectives; and
 - (iii) an analysis of threats based upon the impact on the institution, its customers, and the financial markets, not just the nature of the threat.
- (c) a risk management process that includes the development of a written, enterprise-wide business continuity plan (BCP); and
- (d) a risk monitoring process that includes:
- (i) testing of the BCP on at least an annual basis;
 - (ii) independent audit and review of the BCP; and
 - (iii) updating the BCP based upon changes to personnel and the internal and external environments.

Article XI

CONCLUDING PROVISIONS

(1) 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 Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(2) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Comptroller or his duly authorized representative for good cause upon written application by the Board.

(3) The provisions of this Agreement shall be effective upon execution by the parties hereto (the Effective Date), and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller or his duly authorized representative.

(4) To the extent that any of the provisions of this Agreement conflict with the terms found in any pre-existing agreement between the Comptroller and the Bank, the provisions of this Agreement shall control.

(5) In each instance in this Agreement in which the Bank's Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Bank's Board shall: (i) 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 Agreement; (ii) require the timely reporting by Bank management of such actions directed by the Bank's Board to be taken under the terms of this Agreement; (iii) follow-up on any non-

compliance with such actions in a timely and appropriate manner; and (iv) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) This Agreement is intended, and shall be construed to be a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1) and a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. §§ 1818(e) and 1818(i)(2), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States of America. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States of America, the United States 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 OCC’s exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

/s/ Ronald G. Schneck
Ronald G. Schneck
Director for Special Supervision

12/30/05
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
Issac Applbaum

December 27, 2005
Date

Signed
Leslie Bains

December 27, 2005
Date

Signed
Anthony Burke

December 27, 2005
Date

Signed
David House

December 27, 2005
Date

Signed
Leonard Lieberman

December 27, 2005
Date

Signed
Joseph Melillo

December 27, 2005
Date

Signed
Joseph Montana, Jr.

December 27, 2005
Date

Signed
Stefan Reyniak

December 27, 2005
Date

Signed
Bippy Siegal

December 27, 2005
Date