

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	
VERMONT STATE BANK	)	NOTICE OF CHARGES
VERMONT, ILLINOIS	)	AND OF HEARING
	)	
	)	FDIC-23-0004b
(INSURED STATE NONMEMBER BANK)	)	
	)	

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The Federal Deposit Insurance Corporation (FDIC), having reasonable cause to believe that Vermont State Bank, Vermont, Illinois (Bank), has engaged in unsafe or unsound practices and violated laws and regulations including the Bank Secrecy Act, 21 U.S.C. § 5311 *et seq.*, 12 U.S.C. § 1829(b), 12 U.S.C. § 1951-1959 and 12 U.S.C. § 1818(s) and its implementing regulations, 31 C.F.R. Chapter X, 12 C.F.R. § 326.8, 12 C.F.R. § 326.8, and 12 C.F.R part 33 (collectively the “BSA”) and other statutes and regulations, institutes this proceeding seeking an appropriate ORDER against the Bank under the provisions of 12 U.S.C. § 1818(s) and 1818(b).1).

The FDIC hereby issues this NOTICE OF CHARGES AND OF HEARING (NOTICE) pursuant to the provisions of 12 U.S.C. § 1818-1831aa, and 12 C.F.R. Part 308, and alleges as follows:

JURISDICTION

1. The Bank is, and at all times relevant to this proceeding, has been, a corporation existing and doing business under the laws of the State of Illinois and has its principal place of business in Vermont, Illinois.

2. The Bank is, and at all times pertinent to this proceeding has been, a state chartered nonmember bank within the meaning of 12 U.S.C. § 1813(e)(2), an insured depository

institution within the meaning of 12 U.S.C. § 1813(c)(2), and subject to 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III (Rules), and the laws of the State of Illinois.

3. The FDIC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q)(2), with respect to the Bank, and the FDIC has jurisdiction over the Bank, the “institution-affiliated parties” of the Bank as that term is defined in 12 U.S.C. § 1813(u), and the subject matter of this proceeding.

4. If, in the opinion of the FDIC, an insured depository institution is engaging or has engaged in an unsafe or unsound practice in conducting the business of such depository institution or is violating or has violated any law, rule, or regulation, the FDIC may issue and serve upon the depository institution a NOTICE for the purposes of determining whether a CEASE AND DESIST ORDER (ORDER) should be entered against the insured depository institution pursuant to 12 U.S.C. § 1818(b).

5. As provided in 12 U.S.C. § 1818(s)(3), when the FDIC determines that an insured depository institution has failed to establish and maintain procedures to ensure a bank’s compliance with the monetary transaction recordkeeping and reporting requirements of the BSA or failed to correct any problem with the procedures previously reported to the insured depository institution by the FDIC, then the FDIC shall issue an ORDER against the insured depository institution as set forth in 12 U.S.C. § 1818(b).

#### THE FDIC’S SAFETY AND SOUNDNESS 2022 EXAMINATION FINDINGS

6. The FDIC commenced a safety and soundness examination of the Bank on August 1, 2022 (2022 Examination) utilizing Bank information as of June 30, 2022.

7. The findings of the 2022 Examination are reflected in the FDIC Report of Examination that was transmitted to the Bank on March 15, 2023 (2022 ROE).

8. The 2022 Examination included an examination of the Bank's compliance with the BSA and related laws and regulations.

9. The Bank's "cash management program" includes remote deposit capture (RDC) and remotely created check (RCC) services.

10. RDC enables bank customers to deposit items from remote locations by allowing a financial institution to receive digital information from deposit documents captured remotely.

11. An RCC is a check authorized by a bank customer remotely, by telephone or online, and does not bear the customer's handwritten signature.

12. RDC and RCC may expose financial institutions to various risks including money laundering, fraud, information security, and illicit transactions, which result in the need for AML/CFT policies that should be appropriately implemented, documented, and validated to address those risks.

13. The Bank began offering RDC and RCC services at the direction of its Executive Committee (EC).

14. The EC was comprised of the Bank's 100% owner and Director Francois Legendre, Bank President Thomas Haley, and Chairman of the Board Arthur (Gary) Rever.

15. As set forth in the 2022 ROE, the Bank's BSA compliance program regarding its cash management program was deemed to be inadequate by the FDIC, in violation of 12 C.F.R. § 326.8, and Chapter X of the Department of Treasury Regulations, 31 C.F.R. Chapter X.

12 C.F.R. § 326.8 – BSA COMPLIANCE PROGRAM: COMPONENT VIOLATIONS

16. 12 C.F.R. § 326.8(a), requires insured depository institutions, such as the Bank, to

establish and maintain procedures reasonably designed to assure and monitor their compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, 31 U.S.C. § 5311 et. seq., and the implementing regulations issued by the Department of Treasury at 31 Code of Federal Regulations Chapter X, 31 C.F.R. Chapter X.

17. To comply with section 326.8(a), the Bank is required to develop and administer a written, board-approved Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program (AML/CFT Program) that must have, at a minimum, the following four components: (1) provides for a system of internal controls to assure ongoing compliance; (2) provides for independent testing for compliance conducted by bank personnel or an outside party; (3) designates an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) provides training for appropriate personnel. 12 C.F.R. §§ 326.8(b), 326.8(c)(1)-(4).

18. The Bank has violated three of the four components and, as a result, has failed to provide for the continued administration of an AML/CFT Program reasonably designed to assure and monitor compliance with the BSA, in violation 12 C.F.R. § 326.8(b), and as described further in paragraphs 19 through 21 below.

#### ***The Bank's System of Internal Controls***

19. The Bank failed to establish an adequate system of internal controls consisting of effective policies, procedures, and processes to assure ongoing compliance with its AML/CFT Program, in violation of 12 C.F.R. § 326.8(c)(1), as follows:

- (a) The Bank failed to accurately assess the risk profile of its RDC and RCC services and develop a program to limit and control the risks posed by these services that the Bank began offering in October 2021.

- (b) Despite the elevated risks that RDC and RCC programs present, the Bank failed to establish and maintain adequate policies for its RDC and RCC programs.
- (c) At the time of the 2022 Examination, the Bank's RDC and RCC programs consisted of two customer relationships comprised of seven legal entities located in St. Petersburg, Florida. At the time of the 2022 Examination, the RDC and RCC programs constituted 9.65% of the Bank's revenue.
- (d) The Bank failed to conduct adequate initial and ongoing customer due diligence in assessing the risk of illicit activities for certain RDC and RCC customers, including that the Bank failed to correct or complete documentation reflecting initial and ongoing customer due diligence for the Bank's RDC and RCC customers.
- (e) The Bank failed to establish a system of internal controls that allows bank personnel to adequately identify, monitor, and report suspicious activity, including:
  - (i) The Bank's Board-approved Bank Secrecy Act/Anti-Money Laundering Policy (BSA Policy) is deficient because:
    - a. The BSA Policy outlines a risk assessment of customer risk related to AML/CFT under which customers are assigned a risk rating of high-, medium-, or low-risk, partially based on the level of customer activity. However, the Bank's policy does not contain any

definitions or criteria to assign high- and medium-risk activity ratings. As a result, the risk assessment does not accurately capture the risk; and

- b. The BSA Policy includes procedures for reviewing and reporting suspicious account activity identified through report analysis to determine if the activity is truly suspicious and if a Suspicious Activity Report (SAR) must be filed in accordance with 12 C.F.R. Part 353. Examiners identified instances of unusual or suspicious activity that do not appear to have been reviewed in accordance with the procedures provided for in the BSA Policy or to determine whether a SAR filing was required because there was no documentation. The unusual activity identified by examiners includes transaction descriptions referencing unrelated entities and financial transactions in excess of estimates disclosed in government filings.

(ii) The Bank's Board-approved Merchant Underwriting and Risk Management Policy (MURM Policy) is deficient because:

- a. The MURM Policy does not document the underwriting method used for the RDC and RCC customers. The MURM Policy does not provide for underwriting to

account for risks associated with RDC and RCC customers; and

- b. The MURM Policy requires review of business financial statements for account activity that exceeds \$500,000 per month. However, the Bank's management did not provide any support to justify setting the threshold at \$500,000 when the activity of the current RDC and RCC customers is below that level. There was no basis provided for setting the manual review amount at a level that is unlikely to be triggered.

**The Bank's BSA Team**

20. The Bank failed to designate an individual or individuals who has or have adequately coordinated and monitored day-to-day compliance with the BSA, in violation of 12 C.F.R. § 326.8(c)(3), as follows:

- (a) As of the 2022 Examination, the Bank appointed three individuals as co-BSA Officers.
- (b) When the Bank appointed the co-BSA Officers, it failed to appoint knowledgeable, experienced, and trained BSA Officers:
  - i. None of the co-BSA Officers have received formal, documented training to serve as BSA Officers;
  - ii. Aside from maintaining documents, none of the co-BSA Officers is involved in the RCC due diligence process;

- iii. The co-BSA Officers demonstrated limited knowledge regarding RCC activities;
  - iv. None of the co-BSA Officers have independent responsibility for or authority to oversee the RDC and RCC programs.
- (c) The EC alone oversees all aspects of AML/CFT compliance for RDC and RCC customers.
  - (d) None of the co-BSA Officers are members of the EC.
  - (e) No member of the EC has received formal, documented training specific to initial and ongoing monitoring of RDC and RCC customers or to serve as a BSA Officer.
  - (f) The EC retains exclusive decision-making authority related to AML/CFT compliance for RDC and RCC customers, and the BSA Officers are not involved in the due diligence process relating to RDC and RCC customers.

**The Bank's AML/CFT Training**

21. The Bank failed to provide adequate AML/CFT training, in violation of 12 C.F.R. § 326.8(c)(4), as follows:

- (a) As of the 2022 Examination Date, the Bank failed to provide formal, documented training specific to the AML/CFT risks associated with RDC and RCC activity to employees and management, including the co-BSA Officers and EC, involved in the implementation of the Bank's RDC and RCC programs;
- (b) AML/CFT training was not tailored to employee positions or job functions and did not address the risks associated with RCC and RDC products; and

- (c) The Bank's training logs, which record the training taken by Bank employees and management, are inaccurate and cannot be relied upon to demonstrate that the Bank provides adequate AML/CFT training.

31 C.F.R. CHAPTER X – DEPARTMENT OF THE TREASURY VIOLATIONS

22. 12 U.S.C. § 5318(h) requires financial institutions to establish anti-money laundering and countering the financing of terrorism programs. The implementing regulation at 31 C.F.R. § 1020.210 identifies components of a program that satisfy the requirements of 12 U.S.C. § 5318(h), including that a financial institution's AML/CFT program shall include appropriate risk-based procedures for conducting ongoing customer due diligence that enable the institution to understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile. 31 C.F.R. § 1020.210(a)(2)(v)(A).

23. A financial institution's AML/CFT program shall include appropriate risk-based procedures for conducting ongoing customer due diligence that enables the institution to conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. 31 C.F.R. § 1020.210(a)(2)(v)(B).

24. The Bank failed to institute appropriate risk-based procedures for conducting ongoing customer due diligence to understand the nature and purpose of its RDC and RCC customers in order to develop a customer risk profile in violation of 31 C.F.R. § 1020.210(a)(2)(v)(A).

25. The Bank failed to institute appropriate risk-based procedures for conducting ongoing customer due diligence of its RDC and RCC customers to conduct ongoing monitoring to identify and report suspicious transactions and maintain and update customer information on a risk basis in violation of 31 C.F.R. § 1020.210(a)(2)(v)(B).

## EARNINGS

26. The 2022 Examination found that the Bank's earnings are deficient, and the Bank received a less-than-satisfactory rating for earnings in the 2022 ROE.

27. Earnings are insufficient to adequately support operations, augment capital, and fund an adequate allowance for loan and lease losses, for the following non-exclusive reasons:

- (a) The Bank has not been profitable since 2018 and has suffered operational losses for four consecutive years;
- (b) As of June 30, 2022, the Bank experienced a net operating loss of \$193,000, resulting in a Return on Average Assets of negative 1.40%;
- (c) As of June 30, 2022, the Bank's Net Interest Margin, which is net interest income to average earning assets, was 3.14%;
- (d) Non-Interest Expense to Average Assets Ratio has increased over time and was 4.17% as of June 30, 2022 because of increased operational expenses and a decline in average assets;
- (e) The Bank's budgeting process is less than satisfactory and projections of revenue from the Bank's RDC and RCC programs were not met as of the 2022 Examination;
- (f) The Bank's profit plan is ineffective as evidenced by declining earnings performance and lack of documentation on earnings performance in relation to the budget; and
- (g) The Bank's strategic plan has not been updated to include the implementation of the RDC and RCC programs as a means by which to increase non-interest income and improve earnings.

### PRAYER FOR RELIEF

28. By virtue of each of the paragraphs set forth above, the FDIC has determined that the Bank has engaged in violations of law or regulation and unsafe or unsound banking practices, and prays that an appropriate ORDER be issued against the Bank pursuant to the provisions of 12 U.S.C. § 1818(b)(1) in the form attached hereto and incorporated by reference as EXHIBIT A.

### PROCEEDING

Notice is hereby given that a hearing will be held at Springfield, Illinois, commencing 60 days from the date of service of this NOTICE on the Bank, for the purpose of taking evidence on the charges herein before specified in order to determine: Whether an appropriate ORDER should be issued under the 12 U.S.C. § 1818(b) requiring the Bank to (1) to cease and desist from violations of law or regulation herein specified and (2) to take affirmative action to correct the conditions resulting from such violations.

The hearing will be held before an Administrative Law Judge to be assigned by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The hearing will be public, and in all respects will be conducted in accordance with 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and 12 C.F.R. Part 308, subparts A and B.

The Bank is hereby directed to file an Answer to this NOTICE within 20 days from the date of service of this NOTICE on the Bank, as provided by 12 C.F.R. § 308.19. The original and one copy of all papers to be filed or served in this proceeding shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, Virginia, 22226-3500, pursuant to 12 C.F.R. § 308.10. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at [ofia@fdic.gov](mailto:ofia@fdic.gov).

Copies of all papers filed or served in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; Seth Rosebrock, Assistant General Counsel, Enforcement Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; and Monica M. Tynan, Regional Counsel, Federal Deposit Insurance Corporation, 300 South Riverside Plaza, Suite 1700, Chicago, Illinois 60606.

Pursuant to delegated authority.

Dated at Chicago, Illinois, this 20th day of July, 2023.

/s/  
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Larisa M. Collado  
Acting Deputy Regional Director  
Division of Risk Management Supervision