

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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

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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. § 1829b, 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 AMENDED NOTICE OF CHARGES AND OF HEARING (AMENDED NOTICE) pursuant to the provisions of 12 U.S.C. §§ 1811-1831aa, 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 an AMENDED 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" included remotely created check (RCC) services.

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

11. RCC may expose financial institutions to various risks including money laundering, fraud, information security, and other illicit transactions, which result in the need for an AML/CFT program that includes policies and procedures that are appropriately implemented.

12. 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.

### **THE FDIC'S SAFETY AND SOUNDNESS 2023 EXAMINATION FINDINGS**

13. The FDIC commenced a safety and soundness examination of the Bank on November 13, 2023 (2023 Examination) utilizing Bank information as of June 30, 2023.

14. The findings of the 2023 Examination are reflected in the FDIC Report of Examination that was transmitted to the Bank on March 26, 2024 (2023 ROE).

15. The 2023 Examination included an examination of the Bank's compliance with the BSA and related laws and regulations.

16. As of the 2023 Examination, the cash management program was known as the Bank's merchant services program. The merchant services program included RCC and merchant

credit card processing (MCC).

17. In November 2022, the Bank began offering MCC processing services. As of November 30, 2023, the Bank processed credit card transactions for approximately 95 merchants comprising a total of 149 accounts.

18. MCC processing involves a variety of inherent risk types that need to be assessed to ensure appropriate internal controls are in place and that the Bank's board of directors fully understands the risk accepted.

19. Since the 2022 Examination, the Bank had opened additional accounts for its RCC customer, resulting in 11 accounts using RCC services as of November 30, 2023.

20. The RCC and MCC customers are a combination of brick and mortar and online-only stores.

21. RCC and MCC customers are located outside of the Bank's defined trade area and few of the RCC and MCC customers maintain deposit accounts at the institution.

22. For December 2023, the Bank processed \$1,635,000 in RCC deposits and \$5,513,000 in net MCC sales. Combined, these items represent 126.18% of Tier 1 Capital as of December 31, 2023.

23. Like RCC, MCC may expose financial institutions to various risks including money laundering, fraud, information security, and other illicit transactions, which result in the need for an AML/CFT program that includes policies and procedures that are appropriately implemented.

24. As set forth in the 2023 ROE, the Bank's BSA compliance program regarding its merchant services 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**

25. 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.

26. 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).

27. The Bank was advised in the 2022 ROE that the Bank's AML/CFT Program was inadequate and with respect to multiple components, including a failure to provide for a system of internal controls, a failure to designate an individual responsible for coordinating day-to-day compliance, and a failure to provide training for appropriate personnel. The Bank did not address many of these issues prior to the 2023 Examination.

28. Based on the 2023 Examination, the Bank has violated three of the four components of 12 C.F.R. § 326.8(b) by failing to provide for the continued administration of an AML/CFT Program reasonably designed to assure and monitor compliance with the BSA, as described further in paragraphs 28 through 33 below.

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

29. Based on the 2023 Examination, 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's Risk Assessment failed to appropriately identify the risks associated with the RCC and MCC programs that the Bank began offering in October 2021 and November 2022 and failed to develop a program to mitigate the risks posed by these services.
- (b) Despite the elevated risks that RCC and MCC programs present, the Bank failed to establish and maintain adequate policies for its RCC and MCC programs.
- (c) The Bank failed to conduct adequate initial and ongoing customer due diligence in assessing the risk of illicit activities for certain RCC and MCC customers, including that the Bank failed to correct or complete documentation reflecting initial and ongoing customer due diligence for the Bank's RCC and MCC customers.
- (d) 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, explain the reasoning behind the assumptions used in developing a risk rating, or ensure that standards are prudent and can be consistently applied; 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 provides a list of documents that may be obtained during the establishment or review of a merchant account. However, the policy still does not establish which documents are optional and which are required. The policy continues to state that a personal guaranty may be obtained from an owner of the business; however, it does not establish under what circumstance a guaranty would be required.
  - b. The MURM Policy does not document the underwriting method used for the RCC and MCC customers. The MURM Policy does not provide for underwriting to account for risks associated with RCC and MCC customers; and
  - c. 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 that amount. Further, the activity of the most of the current RCC and MCC customers is below that threshold at a level that is unlikely to be triggered. In one instance in which activity levels reached the threshold, management had not conducted a review of financial statements.

- (iii) The Bank's Merchant Processing Regulatory Compliance Policy (MPRC) requires a compliance officer to oversee the merchant client card acceptance activities, but as of the 2023 Examination, the Bank's Board had not appointed a compliance officer to oversee those activities.
- (iv) The Bank's automated monitoring systems were not used properly, as management could not provide support or approval of the rules or established thresholds used in the systems. In addition, a system validation has not occurred, and proper processes to govern system parameter changes for both of the automated monitoring systems in use have not been implemented. Without these important controls in place, the automated monitoring systems may not operate as intended or be effective at detecting suspicious activity and risk rating customers.

**The Bank's BSA Officer**

30. The 2022 Examination found the Bank failed to designate an individual or individuals who adequately coordinated and monitored day-to-day AML/CFT compliance, in apparent violation of 12 C.F.R. § 326.8(c)(3). The 2022 ROE advised the Bank to appoint a qualified BSA Officer responsible for overseeing the AML/CFT program, particularly as to the RCC program.

31. Based on the 2023 Examination, 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) In September 2023, the Bank hired a new individual who was named the BSA Officer at the September 25, 2023 meeting of the Bank’s Board. An outside consultant provided training to Bank staff, including the new BSA Officer, in November 2023. This appointment did not permit the newly hired individual to demonstrate the responsibility for coordinating and monitoring compliance with the BSA.
- (b) There is no evidence that the BSA Officer was responsible for coordinating and monitoring compliance with the BSA. For example, the Bank’s Merchant Review Analyst Team (MRAT) is responsible for ongoing monitoring of RCC and MCC merchant activity. The Bank’s Board had appointed members to the MRAT, but did not include the new BSA Officer. It was not until the 2023 Examination that management invited the new BSA Officer to attend weekly meetings of the MRAT.

**The Bank’s Independent Testing**

32. The Bank failed to conduct adequate independent testing, in violation of section 326.8(c)(2) of the Rules and Regulations of the FDIC, 12 C.F.R. § 326.8(c)(2).

33. The 2022 ROE noted that the Bank had engaged a company to perform the 2022 independent review but that merchant services activity, including RCC, was not included in the scope of the AML/CFT review. The 2022 ROE stated “To ensure appropriate internal controls and suspicious activity monitoring systems are in place, management should expand the independent review scope to include the RCC program.”

34. Based on the 2023 Examination, no independent testing had occurred since West & Company completed an independent review with a report dated September 15, 2022. While

the Bank engaged West & Company to perform an independent review in 2023, (a) the review was scheduled for 20.5 hours in November 2023 and (b) merchant services activity is not included in the scope of the independent review. The Bank's engagement with West & Company states that three months of account activity and the Bank's most recent high -risk account reviews will be reviewed for a sample of high-risk customers; however, as of the 2023 Examination, the Bank currently rates no RCC or MCC customer as high risk. As a result, the 2023 independent review is insufficient to meet the standards of 12 C.F.R. § 326.8(c)(2). The 2023 ROE found the Bank in violation of 12 C.F.R. § 326.8(c)(2) and advised the Bank that "To ensure appropriate internal controls and suspicious activity monitoring systems are in place, management should expand the independent review scope to include the entire merchant services program." The 2023 ROE also advised "To be considered an adequate independent review under this section, management must ensure that RCC and MCC customer activity is appropriately included in the scope and that procedures performed adequately assess a sampling of the activity of customers in these business lines. To accomplish this, management should ensure that appropriate time is allocated for the review. Management should also assess and document auditor qualifications to review this type of activity."

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

35. 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).

36. 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).

37. Based on the 2023 Examination, the Bank failed to institute appropriate risk-based procedures for conducting ongoing customer due diligence to understand the nature and purpose of its RCC and MCC customers in order to develop a customer risk profile in violation of 31 C.F.R. § 1020.210(a)(2)(v)(A).

38. Based on the 2023 Examination, the Bank failed to institute appropriate risk-based procedures for conducting ongoing customer due diligence of its RCC and MCC 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**

39. The 2022 Examination found that the Bank's earnings were deficient, and the Bank received a deficient rating for earnings in the 2022 ROE.

40. The 2023 Examination found that the Bank's earnings are deficient, and the Bank received a deficient rating for earnings in the 2023 ROE.

41. As detailed in the 2023 ROE, the Bank's 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 five consecutive years;

- (b) As of June 30, 2023, the Bank's negative earnings continued, resulting in a Return on Average Assets of negative 2.62%;
- (c) As of June 30, 2023, the Bank's Net Interest Margin, which is net interest income to average earning assets, was 3.42%, a slight increase over June 30, 2022 due to temporary increase based on funds held in a Federal funds account;
- (d) As of December 31, 2023, the Bank's Income Statement showed a net loss of \$487,000;
- (e) Non-Interest Expense to Average Assets Ratio has increased over time and was 9.75% as of June 30, 2023;
- (f) The Bank management and Board focused on non-interest income for earnings enhancement, as non-interest income totaled 5.27% of average assets as of June 30, 2023, but higher personnel costs, data processing, and other costs associated with these activities reduced profitability;
- (g) The Bank's budgeting process is less than satisfactory as management did not completely analyze or document the estimated profitability derived from merchant service activities, failed to incorporate the additional personnel, data processing, and other costs associated with these activities, and did not project income and expenses specifically related to merchant services activities, or any new products and services, when preparing the budget. In addition, Bank management had not prepared the 2024 budget as of December 2023.

### **PRAYER FOR RELIEF**

42. 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 on a date selected by the Administrative Law Judge, 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 AMENDED NOTICE within 20 days from the date of service of this AMENDED 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.

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 18th day of June, 2024.

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

**CERTIFICATE OF SERVICE**

I certify that on June 18, 2024, a copy of this Amended Notice of Charges and Hearing was served via electronic mail on the following:

Hon. C. Scott Maravilla  
Administrative Law Judge  
Office of Financial Institution Adjudication  
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/s/ \_\_\_\_\_

John A. Libra

EXHIBIT A

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

AND

STATE OF ILLINOIS

DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

DIVISION OF BANKING

SPRINGFIELD, ILLINOIS

_____ )	
In the Matter of )	ORDER TO
VERMONT STATE BANK )	CEASE & DESIST
VERMONT, ILLINOIS )	FDIC-23-0004b
(Insured State Nonmember Bank) )	2023-DB Sup-02
_____ )	

The Federal Deposit Insurance Corporation (FDIC) is the appropriate Federal banking agency for Vermont State Bank, Vermont, Illinois (Bank), under Section 3(q) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1813(q).

IT IS ORDERED that the Bank, its directors, officers, employees, agents, and other institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors, and assigns, cease and desist from violations of law and unsafe or unsound banking practices related to the Bank Secrecy Act, 31 U.S.C. §§ 5311-5330, and regulations implementing the Bank Secrecy Act, including 12 C.F.R. Part 326, Subpart B, and 31 C.F.R. Chapter X (hereinafter collectively, the “Bank Secrecy Act” or “BSA”).

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns take affirmative action as follows:

## **WRITTEN AML/CFT COMPLIANCE PROGRAM**

1. Within sixty (60) days from the effective date of this ORDER, the Bank's Board of Directors (Board) shall develop, adopt, and implement a revised written AML/CFT program (Revised AML/CFT Program), which fully meets all applicable requirements of 12 C.F.R. § 326.8, and which is designed to, among other things, assure and maintain full compliance with the BSA and the rules and regulations issued pursuant thereto. The Board shall provide the Regional Director of the FDIC's Chicago Regional Office (Regional Director) and the Division with a copy of the revised written AML/CFT Program for review. Thereafter, the revised program and its implementation shall be conducted in a manner acceptable to the Division and the Regional Director, as determined at subsequent examinations and/or visitations of the Bank. At a minimum, the revised program shall:

(a) Require the Bank to develop, adopt, and implement a revised, effective written policy designed to ensure full compliance with all provisions of the AML and FinCEN Regulations;

(b) Require the Bank to develop a revised system of internal controls to assure full compliance with the AML/CFT rules and regulations issued pursuant thereto, including policies and procedures to detect and monitor all transactions to assure the identification and proper reporting of all known or suspicious criminal activity, money laundering activity, or violations of the AML/CFT regulations;

(c) Designate a senior bank official to be responsible for overall AML/CFT compliance (BSA Officer). The BSA Officer shall be in a position, and have the authority, to make and enforce policies with respect to AML/CFT compliance, and to assure that full and complete corrective action is taken regarding previously identified violations and deficiencies. The BSA Officer shall have the necessary knowledge and expertise to effectively oversee the

Bank's program commensurate with the level of risk in the Bank's operations. The BSA Officer shall have direct access to the Board for reporting on AML/CFT compliance;

(d) Provide for revised, written and detailed guidelines regarding the administration of new business account activity, including the solicitation, opening, initial risk assessment, and ongoing monitoring of all such accounts for suspicious activity and the filing of all required reports resulting therefrom;

(e) Establish revised due diligence practices and written guidelines for all customers that are commensurate with the level of money laundering and terrorist financing risk posed by each customer;

(f) Establish revised due diligence practices and written guidelines for monitoring internally rated medium and high risk business accounts that fully address all deficiencies and recommendations noted in the August 1, 2022 FDIC Report of Examination and identified in the November 2023 Examination; and

(g) Provide for accurate and comprehensive risk assessment for money laundering/terrorist financing and Office of Foreign Assets Control (OFAC) compliance procedures, which fully take into account the nature of the Bank's operations including, but not limited to types of customers, products, services, and geographical location.

### **CUSTOMER DUE DILIGENCE PROGRAM**

2. Within ninety (90) days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a revised, written Customer Due Diligence (CDD) program. The revised CDD program and its implementation shall be prepared and conducted in a manner acceptable to the Regional Director and the Division as determined at subsequent examinations and/or visitations of the Bank. The revised CDD program shall, at a minimum, provide for:

(a) A risk-focused assessment of the Bank's customer base and records to determine the appropriate level of ongoing monitoring required. The CDD procedures shall ensure that personnel can reasonably detect suspicious activity and determine which customers require additional due diligence necessary for those bank-identified medium- and high-risk customers;

(b) Assignment of a risk rating of the Bank's customers based on the potential risk posed by the customer's activities, with consideration given to the purpose of the account, the anticipated type and volume of account activity, types of products and services offered, and locations and markets served by the customers;

(c) Obtaining, analyzing, documenting, and maintaining sufficient effective suspicious activity monitoring, including documentation of normal and expected transactions of the customers;

(d) Documenting the analysis conducted under the CDD process, including guidance for resolving issues when insufficient or inaccurate information is obtained;

(e) Monitoring procedures required for each category under the risk ratings and periodic, risk-based monitoring of customer relationships to determine whether the original risk profile remains the accurate; and

(f) Providing guidelines to reasonably assure the identification and timely, accurate reporting of known or suspected criminal activity, as required by the suspicious activity reporting provision of 12 C.F.R. § 353.

### **ACCOUNT TRANSACTION MONITORING**

3. (a) Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall establish an effective system for identifying, verifying, monitoring, and determining the appropriateness of transactions in the accounts with remotely created checks

(RCC) and Merchant Credit Card (MCC) activity. Documentation supporting the review of accounts and determinations made shall be retained in the Bank's records.

(b) Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall develop and implement internal control procedures requiring the regular periodic comparison of actual activity in each account identified under paragraph (a) above against expected or anticipated activity. Such internal control procedures shall include procedures for identifying and documenting significant variances between anticipated and actual activity along with procedures for reporting variances to the Board and filing a SAR when necessary.

#### **QUALIFIED AML/CFT MANAGEMENT**

4. (a) During the life of this ORDER and thereafter, the Bank shall have and retain management qualified to oversee all aspects of the Bank's AML/CFT Program and to ensure compliance with all applicable laws and regulations related thereto. Each member of management with responsibilities relating to Section 326.8 of the FDIC Rules and Regulations, 12 C.F.R. § 326.8, or the Treasury Department's Financial Recordkeeping Regulations, 31 C.F.R. Chapter X, shall have the qualifications commensurate with his or her duties and responsibilities under those regulations.

(b) Within forty-five (45) days from the effective date of this ORDER, the Bank shall provide for qualified staff for AML/CFT compliance, including provision for the succession of AML/CFT responsibilities. The staff responsible for AML/CFT compliance shall be evaluated to determine whether these individuals possess the ability, experience, training, and other necessary qualifications required to perform present and anticipated duties, including adherence to the Bank's AML/CFT Program, the requirements of the outstanding regulations, and the provisions of this ORDER.

(c) The Board shall ensure that the Bank's BSA Officer and all personnel with AML/CFT responsibilities be provided the written authority and the necessary training, time, and resources to fully implement and comply with all requirements of this ORDER.

### **INDEPENDENT TESTING**

5. (a) Within ninety (90) days from the effective date of this ORDER, the Bank shall establish and maintain an independent testing program for compliance by the Bank with the BSA and its implementing rules and regulations to be conducted by a qualified outside party with the requisite ability to perform such tests and analysis; and

(b) Such tests shall be conducted on an annual basis. The independent tests shall, at a minimum:

(i) Test the Bank's internal procedures for monitoring compliance with the BSA and its implementing rules and regulations, including interviews of employees who handle cash transactions;

(ii) Sample large currency transactions followed by a review of the Currency Transactions Report (CTR) filings;

(iii) Test the validity and reasonableness of the customer exemptions granted by the Bank;

(iv) Test the Bank's recordkeeping system for compliance with the BSA and its implementing rules and regulations, including, but not limited to:

(1) Tests to ensure all reportable transactions have been identified;

(2) Tests to ensure Bank personnel are reviewing all applicable reports, including monitoring reports for structuring activities; and

- (3) Tests to ensure compliance with OFAC provisions.
- (v) Test the Bank's Customer Identification Procedures (CIP);
- (vi) Test the adequacy of the Bank's Training program
- (vii) Document the scope of the testing procedures performed and the

findings of the tests. The results of each independent test, as well as any apparent exceptions noted during the tests, shall be presented to the Board. The Board shall record the steps taken to correct any exceptions noted and address any recommendations made during each independent test in the minutes of the Board meeting, or applicable committee meeting.

#### **SUSPICIOUS ACTIVITY REPORTING**

6. Within one hundred eighty (180) days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a revised written program for monitoring and reporting suspicious activity, which fully meets all applicable requirements of section 353 of the FDIC Rules, 12 C.F.R. § 353, and is designed to, among other things, assure and maintain full compliance by the Bank with FDIC Rules regarding monitoring and reporting suspicious activity.

(a) The written procedures shall address, at a minimum, the following: reports, logs, and other records used to monitor suspicious account activity, such as, automated reports (cash aggregation, large fluctuations of account balances, insufficient and overdrawn accounts, kiting suspect), funds transfers (domestic and international), monetary instrument sales, subpoenas, FINCEN 314(a) requests, and all SARs and CTRs that have been filed.

(b) The revised procedures shall require that responsible BSA personnel review all current and expanded reports on an established, fixed time period. Secondary reviews should be conducted and determinations made within a fixed, reasonable time period, and the

dates on which the review and determination were made shall be documented, including decisions not to file a SAR. All SARs shall be filed within thirty (30) days of the determination being made and shall be completed with sufficient detail in the narrative and completion of all items (a) through (m) in Section V of the form.

### **CORRECTION OF VIOLATIONS**

7. Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall take all steps necessary to eliminate or correct all violations of law and regulations as detailed in the August 1, 2022 Report of Examination issued by the FDIC and identified in the November 2023 examination. In addition, the Bank shall adopt procedures to ensure future compliance with all applicable laws, rules, and regulations.

### **OTHER AML/CFT WEAKNESSES**

8. Within ninety (90) days from the effective date of this ORDER, the Bank shall correct all AML/CFT weaknesses identified in the November 2023 ROE.

### **NEW LINES OF BUSINESS**

9. While this ORDER remains in effect, the Bank shall not enter into any new lines of business or offer any new products or services without obtaining prior approval from the Regional Director and the Division. The Board shall assure that appropriate documentation is maintained evidencing that the due diligence of any new lines of business, at a minimum, addressed the following:

- (a) A cost-benefit analysis of the proposed activity;
- (b) Assurance that adequate policies and procedures have been established;
- (c) Assurance that appropriate staff are adequately trained; and
- (d) Assurance that adequate controls are in place to mitigate risks associated with the proposed activity.

## **LOOK BACK REVIEW**

10. (a) Within sixty (60) days of the effective date of this ORDER, the Bank shall develop a written plan detailing how it will conduct, through an independent and qualified third party consultant (Reviewer), a review of deposit account and transaction activity for all customers internally rated medium and high, including those utilizing RCC/MCC for the time period beginning July 1, 2021, through the effective date of this ORDER, to ensure that all suspicious activity involving any accounts of, or transactions through, the Bank were properly identified and reported in accordance with all applicable AML/CFT reporting requirements (Look Back Review).

(b) The plan for the Look Back Review, and the subsequent contract or engagement letter entered into with the Reviewer performing the Look Back Review, shall include, at a minimum:

(i) The scope of the review to be conducted, which shall specify the types of account and transactions to be reviewed;

(ii) The methodology for conducting the Look Back Review, including any sampling procedures to be followed;

(iii) The resources and expertise to be dedicated to the Look Back Review;

(iv) The anticipated date of completion of the Look Back Review;

(v) A provision for unrestricted examiner access to Reviewer workpapers; and

(vi) A provision that the reviewer will present its findings from the Look Back Review directly to both the Bank's Audit Committee and the Board.

(c) The plan for the Look Back Review, and the subsequent modifications thereof, shall be prepared and implemented in a manner acceptable to the Regional Director and the Division. For this purpose, the draft plan shall be submitted to the Regional Director and the Division for review and comment prior to implementation. After consideration of all such comments, and an adoption of any recommended changes, the Board shall approve the plan, which approval shall be recorded in the minutes of the Board meeting at which approved.

(d) Within thirty (30) days of receipt of written notice from the Regional Director and the Division indicating acceptance of the plan, the Bank shall implement the plan and commence the Look Back Review.

(e) Within thirty (30) days of implementing the plan and commencing the Look Back Review and thereafter by the tenth (10th) day of each month while the Look Back Review is being conducted, the Bank shall provide to the Regional Director and the Division a written report detailing the actions taken under the Look Back Review and the results obtained since commencing the Look Back Review or since the prior monthly report, whichever is applicable.

(f) Within thirty (30) days of completion of the Look Back Review, the Bank shall provide a copy of the Look Back Review report to the Regional Director and the Division, including a list, specifying all outstanding matters or transactions identified by the Look Back Review that have yet to be appropriately addressed, and detailing how and when these matters will be resolved in accordance with applicable law and regulation.

(g) Within sixty (60) days of the Bank's receipt of the Look Back Review, the Bank shall ensure that all matters or transactions identified as requiring further resolution are in fact resolved in accordance with applicable laws and regulations.

### **STRATEGIC/PROFIT PLAN**

11. (a) Within sixty (60) days from the effective date of this ORDER, the Board must develop and submit to the Regional Director and the Division for review and non-objection, a written strategic and profit plan (Strategic/Profit Plan) that:

- (i) Establishes the future direction of the Bank;
- (ii) Sets objectives to meet the Board-approved future direction;
- (iii) Is designed to improve sustainable earnings; and
- (iv) Is supported by a comprehensive operating budget addressing all categories of income and expense with formal goals and strategies consistent with sound banking practices, and taking into account the Bank's other written plans, policies, or actions as required by this ORDER.

(b) Within forty-five (45) days following the end of each calendar quarter, the Board must evaluate the Bank's actual performance in relation to the Strategic/Profit Plan required by this provision, record the results of the evaluation, and note any actions taken by the Bank in the minutes of the Board meeting at which such evaluation is undertaken.

(c) The plan identified in paragraph (a) must be submitted to the Regional Director and the Division for review and non-objection each calendar year no later than September 15, beginning 2023.

### **BOARD OVERSIGHT**

12. During the life of this ORDER and thereafter, the Board shall improve oversight activities of the Bank and reduce reliance on the Executive Committee to make material and strategic decisions. Board minutes should document its review of the Executive Committee minutes.

**REMOTELY CREATED CHECKS  
AND MERCHANT CREDIT CARD PROGRAMS**

13. Within sixty (60) days from the date of this ORDER, the Bank shall develop written procedures that govern RCC and MCC activities. These procedures shall detail specific roles and responsibilities for the following:

- (a) Program execution and oversight;
- (b) Initial and ongoing CDD requirements;
- (c) Risk limits;
- (d) Reporting and monitoring programs with actionable risk metrics (for example, RCC /MCC volume/trend, return rates level/trend, exceeding soft/hard RCC/ MCC limits, and RCC/MCC losses); and
- (e) Guidelines for establishing and maintaining reserve accounts.

**MINIMUM CAPITAL REQUIREMENTS**

14. While this Order is in effect, the Bank shall have and maintain its Tier 1 Capital Ratio at a minimum of nine percent (9%) and its Total Capital Ratio at a minimum of twelve percent (12%). For the purposes of this Order, the Tier 1 Capital Ratio and Total Capital Ratio shall be calculated in accordance with Part 324 of the FDIC Rules and Regulations, 12 C.F.R. Part 324. If either ratio is less than these stated minimums as of March 31, June 30, September 30, or December 31, of each calendar year while this Order is in effect, the Bank shall, within 30 days of such dates, present to the Regional Director and to the Division a plan to augment the capital accounts of the Bank, or other measures, to restore the ratios to the minimum levels stated above.

### **INFORMATION TECHNOLOGY**

15. Within sixty (60) days from the date of this ORDER, the Bank shall amend and improve Information Technology audit programs to include MCC and RCC.

### **PROGRESS REPORTS**

16. Within forty-five (45) days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall furnish to the Regional Director and the Division written progress reports signed by each member of the Bank's board of directors, detailing the actions taken to secure compliance with the ORDER and the results thereof.

### **CLOSING PARAGRAPHS**

The effective date of this ORDER shall be the date of its issuance by the FDIC and the Division. The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER do not bar, estop, inhibit, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties. The provisions of this ORDER will remain effective and enforceable except to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the FDIC.

This ORDER is issued and thus effective this \_\_\_\_ day of \_\_\_\_\_, 202\_

Issued pursuant to delegated authority.