

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION

TALLAHASSEE, FLORIDA

In the Matter of)	
)	
HELM BANK USA)	CONSENT ORDER
MIAMI, FLORIDA)	
)	FDIC-12-363b
)	OFR Admin #0935-FI-08/12
(Insured State Nonmember Bank))	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Helm Bank USA, Miami, Florida (“Bank”), under 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation to the Issuance of a Consent Order” (“STIPULATION”), dated October 17, 2012, with a representative of the Legal Division of the Federal Deposit Insurance Corporation (“FDIC”) and the Interim Commissioner (“Commissioner”) of the Florida Office of Financial Regulation (“OFR”) (collectively, “Supervisory Authorities”), that is accepted by the FDIC and the OFR. The OFR may issue an order pursuant to Chapter 120 and Sections 655.033 and 655.50, Florida Statutes (2012).

With this Stipulation, the Bank has consented, without admitting or denying any

charges of violations of law or regulation including those relating to its Bank Secrecy Act (“BSA”) program or unsafe or unsound banking practices relating to asset quality, earnings, and sensitivity to market risk, to the issuance of this Consent Order (“ORDER”) by the FDIC and the OFR.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and under Chapter 120 and Sections 655.033 and 655.50, Florida Statutes have been satisfied, the FDIC and the Commissioner therefore, accepted the CONSENT AGREEMENT and hereby order as follows:

BSA COMPLIANCE PLAN

1. (a) Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt, and implement a written plan (“Compliance Plan”) for administration of a program reasonably designed to ensure and maintain compliance with the law and regulations related to the BSA, subchapter II of Chapter 53 of Title 31 of the United States Code, and its implementing rules issued by the U.S. Department of Treasury, 31 C.F.R. Chapter X; the regulations of the Office of Foreign Asset Control (“OFAC”), 31 C.F.R. Part 500; the FDIC’s BSA compliance regulations, 12 C.F.R. § 326.8, Section 655.50, Florida Statutes, Florida Control of Money Laundering in Financial Institutions Act, and the FDIC’s suspicious activity report regulations, 12 C.F.R. Part 353 (“Part 353”) (collectively, “BSA Rules”). The Compliance Plan should address the deficiencies and recommendations enumerated in the Report of Examination dated as of April 30, 2012 (“Report”). The Bank shall submit the Compliance Plan to the Supervisory Authorities for review and comment. Upon receipt of the Supervisory Authorities’ comments, if any, the Board shall review, approve, and implement the Compliance Plan.

After the Board has approved the Compliance Plan, the review and approval shall be recorded in the minutes of the Board. Thereafter, the Board shall take appropriate action to enable the Bank to comply with the BSA Rules. At a minimum, the Compliance Plan shall require:

- (i) A system of internal controls, including policies and procedures to detect and monitor all transactions to ensure compliance with the BSA Rules. Such controls shall specifically address the opening and monitoring of accounts with frequent wire and check activity, and the monitoring of high-risk and suspicious activities for all types of accounts, products, services, and geographic areas;
- (ii) Procedures for the Bank's Customer Identification Program ("CIP") and account opening procedures as further required by paragraph 2 including, but not limited to: policies and procedures with respect to high-risk accounts and customers, including the adequacy of methods for identifying and conducting due diligence on high-risk accounts and customers at account opening and thereafter, and for monitoring high-risk customer relationships on a transaction basis as well as by account and customer. The Bank shall assess and update its forms for conducting review of high-risk accounts. The Bank shall assess all existing accounts to determine whether the accounts are appropriately risk-rated. The Bank shall perform sufficient due diligence prior to opening new accounts that provides for collecting customers' identifying information, verifying customers' identification, maintaining identification records, and

documenting and evaluating the BSA risk profile. The Compliance Plan shall establish standards for documentation of new accounts to capture sufficient data for customer due diligence, with specification of the time and responsibility for obtaining missing documentation;

(iii) Policies, procedures, and systems for identifying, evaluating, monitoring, investigating, and reporting suspicious activity, particularly including transactions involving high-risk customers or accounts, and/or high-risk jurisdictions, and the appropriateness of the Bank's criteria for designating an account as high-risk and assessing the Bank's procedures and systems for identifying and monitoring customer transactions in accordance with the BSA Rules. The Compliance Plan shall provide for comprehensive monitoring of high-risk accounts, with full utilization of account monitoring software;

(iv) Policies and procedures regarding the identification, verification, monitoring, and reporting cash and wire transactions;

(v) Policies for the review of financial information and verifications of the source of funds and wealth of high-risk customers and transactions, including cross-border transactions;

(vi) Policies and procedures for a review consistent with the *Guidance on Enhanced Scrutiny for Transactions That May Involve the Proceeds of Foreign Official Corruption*, FIL-6-2001, January 22, 2001, for politically exposed persons, including embassy accounts classified as politically

exposed persons accounts, at least annually, as well as periodic monitoring of such accounts;

(vii) Policies and procedures that establish appropriate risk management practices for the Bank's Foreign Correspondent Banking Program in accordance with 31 C.F.R. Chapter X;

(viii) Policies regarding trending reviews and the escalation procedures concerning customers with multiple suspicious activity report ("SAR") filings or protracted periods of suspicious activity that include a formal written account closing policy. The Compliance Plan shall provide for adequate systems for account aggregation to ensure sufficient data to determine whether SARs and Currency Transaction Reports ("CTRs") should be filed;

(ix) Policies and procedures that provide for appropriate oversight of the Bank's Foreign Representative Offices;

(x) The designation of a qualified senior Bank official ("BSA Officer") responsible for coordinating and monitoring day-to-day compliance with the BSA Rules, and adequate, qualified staffing in the BSA area;

(xi) The Compliance Plan shall include a formal evaluation of the knowledge, capabilities, performance, and the sufficiency of the Bank's BSA staff for identifying transactions that pose greater than normal risk for compliance with BSA Rules, taking into account the findings of the

Report, and factoring in the BSA staff performance, experience, and qualifications compared to their position descriptions, duties, and responsibilities. The evaluation shall be reviewed and approved by the Board;

- (xii) Implementation of the recommendations in the Report for sufficient, qualified staff to assure compliance with the BSA Rules;
- (xiii) Independent annual testing for compliance with the BSA Rules in accordance with the procedures described in 12 C.F.R. § 326.8;
- (xiv) Methods of enforcing the Bank's BSA, AML ("Anti-Money Laundering"), and OFAC policies, procedures, and practices with consequences specified for noncompliance; and
- (xv) Implementation of a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of the BSA Rules, including the reporting requirements associated with SARs, pursuant to Part 353, regardless of the size of the relationship or type of customer involved.

(b) The Bank shall at all times provide for the continued administration of the Compliance Plan designed to assure and monitor compliance with the BSA Rules.

CUSTOMER IDENTIFICATION PROGRAM

2. Within 60 days from the effective date of this ORDER, the Bank shall review, enhance, and implement its written CIP as required by 31 C.F.R. § 1010.100 - § 1010220, 31 C.F.R. §1020.220 & 12 C.F.R. §326.8, which shall be appropriate for the Bank's size and type of business, consistent with the requirements of the BSA Rules and which addresses the deficiencies and recommendations regarding the CIP enumerated in the Report. The Bank shall submit the CIP to the Supervisory Authorities for review and comment. Upon receipt of the Supervisory Authorities' comments, if any, the Board shall review and approve the CIP. After the Board has approved the CIP, the review and approval shall be recorded in the minutes of the Board. Thereafter, the Bank shall implement the CIP.

RISK ASSESSMENT

3. Within 60 days from the effective date of this ORDER, the Board shall update the Bank's overall BSA risk assessment of the Bank's compliance with the BSA Rules to consider all major risks, including but not limited to products, services, types of customers, and geographic locations, with analysis of the major risk categories. The Board shall specify in the Compliance Plan how frequently the risk assessment will be updated or reassessed. The risk assessment should address the deficiencies and recommendations regarding risk assessment enumerated in the Report.

BSA, AML, AND OFAC POLICIES

4. Within 90 days from the effective date of this ORDER, the Board shall revise its BSA, AML, and OFAC policies, procedures, and practices to provide for:

- (a) Methods of determining, reviewing, and validating risk ratings of customers, with standards for periodic reassessments;
- (b) Comprehensive monitoring of high-risk accounts and full utilization of account monitoring software for all high-risk accounts;
- (c) Adequate systems for account aggregation to ensure sufficient data to determine if SARs and CTRs should be filed;
- (d) Standards for documentation of new accounts to capture sufficient data for customer due diligence, with specification of the time and responsibility for obtaining missing documentation; and
- (e) Methods of enforcing the Bank's BSA, AML, and OFAC policies, procedures, and practices with consequences specified for noncompliance.

DUE DILIGENCE PROGRAM

5. Within 90 days from the effective date of this ORDER, the Bank shall review, enhance, and implement a written customer due diligence program ("Due Diligence Program"). The Due Diligence Program should address the deficiencies and recommendations regarding due diligence enumerated in the Report. At a minimum, the customer Due Diligence Program shall provide for a risk focused assessment of the customer base of the Bank to determine the appropriate level of Enhanced Due Diligence ("EDD") necessary for those categories of customers that the Bank has reason to believe pose a heightened risk of illicit activities at or through the Bank.

- (a) The Due Diligence Program shall provide for, at a minimum:

- (i) Time limits for Bank personnel to respond to account activity exceptions;
 - (ii) Time limits for determining if exceptions require a SAR;
 - (iii) Development of an adequate risk-rating system. The Bank shall assess all existing accounts to determine whether the accounts are appropriately risk-rated; and
 - (iv) Identification of customers requiring site visitations and frequency of visitations.
- (b) EDD shall include the following procedures:
- (i) Determination of the appropriate documentation necessary to confirm the identity and business activity of the customer, including for the Bank's foreign correspondent customers;
 - (ii) Understanding of the normal and expected transactions of the customer; and
 - (iii) Reasonably ensuring the identification and timely, accurate, and complete reporting of known or suspected criminal activity against or involving the Bank to law enforcement and the Supervisory Authorities, as required by the suspicious activity reporting provisions of 12 C.F.R. Part 353.

INTERNAL CONTROLS

6. Within 60 days from the effective date of this ORDER, and as acceptable to the Supervisory Authorities as determined at subsequent examinations, the Bank shall revise, adopt, and implement an enhanced system of internal routine and controls to enable the Bank to comply with the BSA Rules including, but not limited to, the monitoring of high-risk and suspicious activities for all types of accounts, customer products, services, and geographic areas.

TRAINING

7. Within 90 days from the effective date of this ORDER, the Bank shall implement a comprehensive training program that shall have a general component for all directors and staff with specific components that are tailored to the needs of specific positions, departments, and personnel. The training program shall provide for both initial and periodic refresher training, and shall specify who is responsible for dissemination of changes in BSA, AML, and OFAC requirements and in what media and time notifications of changes are to be made. The training program shall require documentation of attendance at training with full explanations of absences with notation of when absentees will be trained. The comprehensive training program shall be approved by the Board and forwarded to the Supervisory Authorities with the progress report required by this ORDER that is next due following the Board's approval.

BSA STAFF

8. Within 60 days from the effective date of this ORDER, the Bank shall identify staff positions and personnel whose duties, assignments, and responsibilities call for

knowledge of the compliance requirements for BSA, AML, and OFAC regulations. Such personnel shall include, but not necessarily be limited to, executive officers, department heads, supervisors, loan officers, loan operations staff, tellers, bookkeepers, couriers, proof operators, information technology staff, and wire-transfer staff. This assessment shall identify the number and type of positions for the Bank's BSA Department and shall identify the appropriate experience and qualifications of staff members. In accordance with the assessment, the Bank shall have the appropriate number and type of personnel. The Board shall evaluate this assessment annually and recommend any further adjustments.

BSA OFFICER

9. Within 30 days from the effective date of this ORDER, the Board shall designate a qualified officer responsible for managing, coordinating, and monitoring the Bank's BSA Program. The BSA Officer shall have the responsibility and necessary authority to ensure the Bank's compliance with the BSA Rules and related matters, including, without limitation, the identification of timely, accurate, and complete reporting to law enforcement and supervisory authorities of unusual or suspicious activity, or known or suspected criminal activity perpetrated against or involving the Bank. The BSA Officer shall report directly to the Board. The Board shall ensure the BSA Officer has the necessary authority to implement all aspects of the Compliance Plan. The BSA Officer shall provide monthly comprehensive written reports to the Board and the Directors' Committee regarding the Bank's adherence to the Compliance Plan and this ORDER.

SARs, CTRs, and FORENSIC REVIEW

10. (a) Within 60 days from the effective date of this ORDER, the Bank shall implement monitoring and reporting procedures for SARs and CTRs to ensure that all appropriate Bank employees are aware of the procedures, including accurate recordkeeping, form completion, and the detection and reporting of known and/or suspected criminal activity, and their responsibilities in implementing the procedures. These procedures shall ensure the timely filing of SARs and CTRs.

(b) Within 30 days from the effective date of this ORDER, the Bank shall contract with an independent auditor to conduct a detailed review of all high-risk accounts and high-risk transactions from January 1, 2011, to the effective date of this ORDER and determine whether SARs and CTRs should be filed. This detailed review shall be completed within 180 days of the effective date of this ORDER and the written report provided to the Board and the Supervisory Authorities. Within 60 days after completion of the detailed review, the BSA Officer shall prepare and file any additional SARs and CTRs necessary based upon the review, and ensure the closing of accounts pursuant the Bank's formal written account closing policy. Documentation supporting any determination made pursuant to this paragraph shall be retained in the Bank's records for such period of time as may be required by any applicable rules and regulations.

(c) Upon completion of the reviews required pursuant to the subparagraph above, the Bank shall submit the findings of the review and retain copies of any additional SARs and CTRs filed and any other actions taken on the account for review by the Supervisory Authorities at the initial review and at subsequent examinations and/or visitations.

BSA DIRECTORS' COMMITTEE

11. Within 30 days from the effective date of this ORDER, the Board shall establish a Board committee (“BSA Directors’ Committee”), consisting of at least three members, to oversee the Bank’s compliance with the BSA Rules and the Compliance Plan. The BSA Directors’ committee shall be composed solely of independent directors. The BSA Directors’ Committee shall receive from Bank management monthly reports detailing the Bank’s actions with respect to compliance with the Compliance Plan. The BSA Directors’ Committee shall present a report detailing the Bank’s adherence to the Compliance Plan to the Board at each regularly scheduled Board meeting. Such report shall be recorded in the appropriate minutes of the Board’s meeting and shall be retained in the Bank’s records. Establishment of this committee does not in any way diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

VIOLATIONS OF LAW, REGULATION, AND POLICY

12. Within 60 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of laws, regulations, and/or contraventions of statements of policy noted in the Report, and shall adopt and implement appropriate procedures to ensure future compliance with all such applicable federal and state laws, regulations, and/or statements of policy.

WRITTEN STRATEGIC PLAN

13. (a) Within 60 days from the effective date of this ORDER, the Bank shall review and revise its written business/strategic plan covering the overall operation of the Bank. This plan should address the criticisms of the Bank's strategic plan noted in the Report. At a minimum the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial, and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

- (i) Goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;
- (ii) Goals for the composition of the deposit base by country; and
- (iii) Plans for effective risk management and collection practices.

(b) The Board shall approve the business/strategic plan, which approval shall be recorded in the Board meeting minutes for the meeting at which the business/strategic plan was approved.

ALLOWANCE FOR LOAN AND LEASE LOSSES

14. Within 60 days from the effective date of this ORDER, the Board shall review the adequacy of the Allowance for Loan and Lease Losses ("ALLL") and establish a comprehensive policy for determining the adequacy of the ALLL. For the purpose of this

determination, the adequacy of the ALLL shall be determined after the charge-off of all loans or other items classified "Loss". The policy shall provide for a review of the ALLL at least once each calendar quarter. Said review shall be completed in time to properly report the ALLL in the quarterly Consolidated Reports of Condition and Income and amend if necessary. The review shall focus on the results of the Bank's internal loan review, loan and lease loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure of significant credits, concentrations of credit, and present and prospective economic conditions. The review should include a review of compliance with ASC 450 (Topic 450, "Contingencies") and ASC 310-10-35 (Section 35, "Subsequent Measurement General", of Subtopic 310-10). The policy shall adhere to the guidance set forth in the *Interagency Policy Statement on the Allowance for Loan and Lease Losses*, FIL-105-2006 (Dec. 13, 2006). A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the next Consolidated Report of Condition and Income, by a charge to current operating earnings. The Board meeting minutes for the meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the ALLL and its implementation shall be satisfactory to the Supervisory Authorities as determined at the initial review and at subsequent examinations and/or visitations.

INTEREST RATE RISK

15. Within 60 days from the effective date of this ORDER, the Bank shall develop and implement a written policy for managing interest rate risk in a manner that is appropriate to the size of the Bank and the complexity of its assets. The policy shall comply with the *Joint Agency Policy Statement on Interest Rate Risk*, FIL-52-96 (July 12,

1996), and the *FFIEC Advisory on Interest Rate Management*, FIL-2-2010 (Jan. 20, 2010), and shall be consistent with the comments and recommendations detailed in the Report. The policy shall include guidelines governing the means by which the interest rate risk position will be monitored, the establishment of risk parameters, and periodic reporting to management and the Board regarding interest rate risk with adequate information provided to assess the level of risk. Such policy and its implementation shall be acceptable to the Supervisory Authorities at the initial review and at subsequent examinations and/or visitations.

CONCENTRATIONS

16. Within 60 days from the effective date of this ORDER, the Bank shall develop and submit to the Supervisory Authorities a written plan to incorporate limits and portfolio segmentation for concentrations of credit identified in the Report to an amount which is commensurate with the Bank's business strategy, management expertise, size, and customer's location ("Concentration Plan"). The Board shall approve the Concentration Plan, which approval shall be recorded in the Board meeting minutes. Thereafter, the Bank shall fully implement the Concentration Plan. The Concentration Plan shall be acceptable to the Supervisory Authorities at the initial review and at subsequent examinations and/or visitations.

CREDIT ADMINISTRATION

17. Within 60 days from the effective date of this ORDER, the Board shall implement its written lending and collection policy to provide effective guidance and control over

the Bank's credit administration functions, which implementation shall include the resolution of those exceptions enumerated in the Report.

Such implementation shall be in a form and manner acceptable to the Supervisory Authorities at the initial review and at subsequent examinations and/or visitations.

PROGRESS REPORTS

18. Within 45 days from the end of the first quarter following the effective date of this ORDER, and within 45 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Reports of Condition and Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the appropriate Board meeting.

DISCLOSURE

19. Following the issuance of this ORDER, the Bank shall provide to its shareholders or otherwise furnish a description of this ORDER (i) in conjunction with the Bank's next shareholder communication or (ii) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Division of Risk Management Supervision, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room MB-5073,

The Commissioner of the OFR having duly approved the foregoing ORDER, and the Bank, through its Board, agree that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and to the same legal effect that such ORDER would be binding if the OFR had issued a separate ORDER that included and incorporated all of the provisions of the foregoing ORDER, pursuant to Chapters 120, 655, and 658, Florida Statutes (2012), including specifically Sections 655.033 and 655.041, Florida Statutes.

Dated this 19th of October, 2012.

/s/

Linda B. Charity
Interim Commissioner
Florida Office of Financial Regulation