

THE SUPERINTENDENT OF BANKS OF THE  
STATE OF NEW YORK

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In the Matter of  
  
ISRAEL DISCOUNT BANK OF NEW YORK  
NEW YORK, NEW YORK

ORDER TO CEASE AND DESIST  
PURSUANT TO SECTION 39  
OF THE NEW YORK BANKING  
LAW ISSUED UPON CONSENT

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WHEREAS, in recognition of their common goals to ensure compliance with all applicable federal and state laws, rules and regulations by the Israel Discount Bank of New York ("IDBNY" or "Bank"), a state chartered institution, the deposits of which are insured by the Federal Deposit Insurance Corporation ("FDIC"), and to effectively manage the legal, reputational and compliance risks of IDBNY, the New York State Banking Department (the "Department") and IDBNY have mutually agreed to enter into this Order to Cease and Desist Issued Upon Consent (the "ORDER");

WHEREAS, during the course of an examination of IDBNY, the Department has determined that the Bank must take immediate action to correct certain apparent violations and deficiencies, to wit:

- (a) Operating without effective management supervision and board of directors' ("Board") oversight to prevent unsafe or unsound practices and violations of the Bank Secrecy Act ("BSA"), 31 U.S.C. §§ 5311-5330, the Department of Treasury Rules and Regulations ("Treasury Rules and Regulations"), 31 C.F.R. Part 103, Federal Deposit Insurance Corporation Rules and Regulations ("FDIC Rules and Regulations"), 12 C.F.R. Section 326.8 and Part 353 (collectively "BSA Rules"), and 3 N.Y.C.R.R. Part 300.
- (b) Operating in violation of the USA PATRIOT Act ("PATRIOT Act"), 31 U.S.C § 5318(i)(1), and Treasury Rules and Regulations, section 103.181, for failure to adopt appropriate policies and procedures for identifying and monitoring high-risk correspondent accounts and

failure to detect and report instances of potential money laundering, including for accounts of its subsidiary correspondent bank, Discount Bank Latin America.

- (c) Operating in violation of FDIC Rules and Regulations, sections 353.3(a) (4) (i) and (iii), Treasury Rules and Regulations, section 103.18, 31 U.S.C. Section 5318(g), and 3 N.Y.C.R.R. Part 300, for failure to file Suspicious Activity Reports ("SARs").
- (d) Operating in violation of New York Banking Law ("NYBL"), Art. XIII-D, Section 672(1).

**WHEREAS**, on December 15<sup>th</sup>, 2005, the board of directors of IDBNY ("Board", at a duly constituted meeting, adopted a resolution:

1. Authorizing and directing Mr. Arie Mientkavich, Chairman of the Board of IDBNY to enter into this Order on behalf of the Bank, and to consent to compliance on behalf of the Bank with each and every provision of this Order;
2. Waiving the Bank's right to notice and a hearing for the purpose of taking evidence on any and all matters set forth in this Order;
3. Waiving any and all rights to judicial review of this Order; and
4. Waiving any and all rights to challenge or contest the validity, effectiveness, terms or enforceability of the provisions of this Order.

**NOW, THEREFORE**, before the taking of testimony or the making of any findings of fact or conclusions of law, and without this Order constituting an admission of wrongdoing or an adoption, approval or admission of any allegation made by the Department in connection with this proceeding, and solely for the purpose of settling the instant proceeding without protracted or extended hearings, and pursuant to the aforesaid resolution:

**IT IS HEREBY ORDERED THAT** the Bank shall cease and desist from committing any further violations of the nature described above, and shall take the following affirmative actions to correct the deficiencies described above:

## REVIEW OF MANAGEMENT ACTIONS WRITTEN REPORTS TO REGULATORS

1. The Board shall:

(a) within 60 days from the effective date of this ORDER, contract for an independent third party review of the actions taken or not taken by senior management personnel in response to prior criticism by regulators of the Bank's BSA compliance deficiencies, including criticism contained in examination reports issued since 2001, and to inquiries communicated to the Bank by law enforcement suggesting deficiencies in such compliance. Based upon conclusions drawn from such review, the Board shall determine whether disciplinary action should be taken against responsible officers or employees; and

(b) within 180 days from the effective date of this ORDER, submit to the FDIC New York Regional Director ("Regional Director") and the Superintendent of the New York State Banking Department ("Superintendent") a written report detailing (i) the scope of its review, (ii) the measures undertaken to perform such review, and (iii) its factual findings and the conclusions drawn, including a description of actions to be taken, if any.

## BSA PLAN IN RESPONSE TO EXAMINATION FINDINGS

2. Within 60 days from the effective date of this ORDER, the Bank shall establish and submit to the Regional Director and the Superintendent an acceptable written Bank Secrecy Act Plan ("BSA Plan") designed to ensure compliance with the BSA as defined above, and to address the BSA program deficiencies contained in the New York State Banking Department's Report of Examination that commenced February 22, 2005.

3. The Board shall provide a copy of the BSA Plan to the Regional Director and the Superintendent promptly upon adoption of the BSA Plan, for their review and non-objection.

4. The BSA Plan shall, at a minimum, include the requirements set out in section 326.8(c) of the FDIC Rules and Regulations, 12 C.F.R. § 326.8(c), and shall comply with the specific requirements described in paragraphs 5 through 9 of this ORDER.

## DESIGNATION OF A BSA OFFICER

5. The BSA Plan shall provide for the designation of a qualified individual or individuals ("BSA Officer") responsible for coordinating and monitoring day-to-day compliance with the BSA pursuant to FDIC's Rules and Regulations section 326.8. The BSA Officer shall: (i) have sufficient executive authority to monitor and ensure compliance with BSA and FDIC Rules and Regulations, section 326.8; (ii) be responsible for determining the adequacy of Bank Secrecy Act-Anti-Money Laundering ("BSA-AML") staffing and for supervising such staff in complying with BSA laws and regulations; (iii) report directly to the Board, the committee established pursuant to paragraph 16 of this ORDER, or the Chief Executive Officer; (iv) report to the Bank's Audit Committee on a regular basis, not less than quarterly, with respect to BSA-AML matters; and (v) be responsible for assuring the proper filing of Currency Transaction Reports ("CTRs"), Reports of International Transportation of Currency or Monetary Instruments, and SARs relating to the BSA.

## SYSTEM OF INTERNAL CONTROLS

6. The Bank shall develop, adopt, and implement an enhanced system of internal controls to ensure compliance with the BSA, including, but not limited to, the monitoring of high-risk and suspicious activities for all types of accounts, customers, products, services, and geographic areas. At a minimum, such enhanced system of internal controls shall include:

(a) procedures for conducting a risk-based assessment of the Bank's customer base to identify the categories of customers whose transactions and banking activities are routine and usual; and determine the appropriate level of enhanced due diligence necessary for those categories of customers whose transactions and banking activities are not routine and/or usual ("high-risk accounts");

(b) policies and procedures with respect to high-risk accounts and customers identified through the risk assessment conducted pursuant to subparagraph (a), including the adoption of adequate methods for conducting enhanced due diligence on high-risk accounts and customers at account opening and on an ongoing basis, and for monitoring high-risk client relationships on a transaction basis as well as by account and customer;

(c) policies, procedures, and systems for identifying, evaluating, monitoring, investigating, and reporting suspicious activity in the Bank's products, accounts, customers, services, and geographic areas, including:

- (i) establishment of meaningful thresholds for identifying accounts and customers for further monitoring, review and analyses;
- (ii) periodic testing and monitoring of such thresholds for their appropriateness to the Bank's products, customers, accounts, services, and geographic areas;
- (iii) review of existing systems to ensure adequate referral of information about potentially suspicious activity through appropriate levels of management, including a policy for determining action to be taken in the event of multiple filings of SARs on the same customer, or in the event a correspondent or other customer fails to provide due diligence information. Such procedures shall describe the circumstances under which an account should be closed and the processes and procedures to be followed in doing so;
- (iv) procedures and/or systems for each subsidiary and business area of the Bank to produce periodic reports designed to identify unusual or suspicious activity, to monitor and evaluate unusual or suspicious activity, and to maintain accurate information needed to produce these reports, with the following features:
  - (A) the Bank's procedures and/or systems should be able to identify related accounts, countries of origin, location of the customer's businesses and residences to evaluate patterns of activity; and
  - (B) the periodic reports should cover a broad range of timeframes, including individual days, a number of days, and a number of months, as appropriate, and should segregate transactions that pose a greater than normal risk for non-compliance with BSA;

- (v) documentation of management's decisions to file or not to file a SAR; and
  - (vi) systems to ensure the timely, accurate and complete filing of required SARs and any other similar or related reports required by law; and
- (d) development and maintenance of policies and procedures with respect to wire transfer recordkeeping, including requirements for complete information on beneficiaries and senders, as required by Treasury Rules and Regulations 31 C.F.R. 103.33.

### ANNUAL ACCOUNT REVIEW

7. The BSA Plan shall require periodic review, by business line, not less than each calendar year, of all account documentation for all high-risk accounts and all other related accounts of those customers at the Bank to determine whether the account activity is consistent with the customer's business and the stated purpose of the account.

### INDEPENDENT TESTING

8. The Bank shall establish an independent testing program for compliance with the BSA Rules, to be performed on no less than an annual basis. The scope of the testing procedures to be performed, and testing results, shall be documented in writing and approved by the Board or its designee. The testing program, at a minimum, should provide the following:

- (a) compliance testing for all appropriate business lines conducted by qualified staff who are independent of the Bank's compliance function;
- (b) formal, documented testing programs, including adequately detailed reports and workpapers;
- (c) review of independent testing results by senior management;
- (d) procedures to ensure that senior management institutes appropriate actions in response to independent testing results;
- (e) direct lines of reporting between the independent testing function and the Board or its designee;

(f) a program to test the adequacy of internal controls designed to ensure compliance with the provisions of the BSA;

(g) a program to test the adequacy of the Bank's Training Program, as that term is defined in paragraph 9; and

(h) a risk-based approach that includes transactional testing and verification of data for higher risk accounts.

## TRAINING

9. The Bank shall provide an effective training program for management and staff on all relevant aspects of laws, regulations, and Insured Institution policies and procedures relating to the BSA compliance program ("Training Program"). This training shall ensure that all appropriate personnel are aware of, and can comply with, the requirements of the BSA including the currency and monetary instruments reporting requirements and the reporting requirements associated with SARs. The Training Program shall also cover:

(a) the Bank's BSA/AML policies and procedures, and new rules and requirements as they arise;

(b) a requirement that the Board will fully document the training of each employee, including the designated BSA Compliance Officer; and

(c) a requirement that training shall be conducted no less frequently than annually.

## AUDIT PROGRAM

10. Within 30 days from the effective date of this ORDER, the Bank shall amend its audit policies, procedures, and practices, and those of its subsidiaries, both with regard to internal audits and with regard to external audits, so that the Bank periodically reviews compliance with the BSA, FDIC Rules and Regulations sections 326.8 and 353, and Treasury Rules and Regulations as part of the Bank's routine auditing. As long as this ORDER shall remain in effect, the Bank's internal and external audits shall include review of these areas, with significant exceptions reported directly to the Bank's Audit Committee and the Board.

11. The Bank shall provide periodic reports to the Audit Committee of the Board setting forth any law enforcement inquiry that relates in any way to any topic covered by the BSA Plan and any criminal subpoena received by the Bank and any action taken on such account.

### THIRD PARTY REVIEW OF BSA-AML PROGRAM

12. Within 180 days of adoption of the BSA Plan, an independent third party, engaged by the Bank, shall complete a comprehensive review ("Review") of the BSA-AML Program for the Bank and its subsidiaries. At a minimum, this Review shall include the Bank's compliance with the BSA Plan and the provisions of this ORDER. The independent third party shall prepare and submit a written report of the Review to the Regional Director and the Superintendent within 200 days of the adoption of the BSA Plan.

### UPDATE BSA PLAN IN RESPONSE TO INDEPENDENT REVIEW FINDINGS – PRESENT NEW PLAN TO REGULATORS

13. (a) Within 30 days of receipt of the Review findings, the Board shall update its written BSA Plan to comply in all material respects with the BSA, FDIC Rules and Regulations, sections 326.8 and 353, Treasury Rules and Regulations and 3 N.Y.C.R.R. Part 300.

(b) The Board shall provide a copy of the Review and the updated BSA Plan to the Regional Director and the Superintendent. If the Board fails to adopt any of the Review recommendations, it shall provide to the Regional Director and the Superintendent a comprehensive explanation of its rationale for failing to do so.

### THIRD PARTY LOOK BACK REVIEW

14. (a) Within 20 days from the effective date of this ORDER, the Bank shall engage a qualified independent firm ("Consultant") acceptable to the Regional Director and the Superintendent to conduct a review of account and transaction activity for the time period beginning January 1, 2003 through the effective date of this ORDER to determine whether suspicious activity involving accounts or transactions at, by, or through the Bank was properly identified and reported in accordance with the applicable suspicious activity reporting requirements ("SAR Review").

(b) Within 10 days of the engagement of the Consultant, but prior to the commencement of the SAR Review, the Bank shall submit to the Regional Director and Superintendent for approval an engagement letter that sets forth:

- (i) the scope of the SAR Review, including the types of accounts and transactions to be reviewed;



- (ii) the methodology for conducting the SAR Review, including any sampling procedures to be followed;
- (iii) the expertise and resources to be dedicated to the SAR Review; and
- (iv) the anticipated date of the completion of the SAR Review.

(c) Upon completion of the SAR Review, the Consultant shall provide a copy of its report detailing the findings of the SAR Review to the Regional Director and Superintendent at the same time the report is provided to the Bank.

(d) Within 30 days of receipt of the SAR Review, the Bank shall ensure that all matters or transactions required to be reported, that have not previously been reported, are reported in accordance with applicable laws and regulations.

#### REVIEW OF CERTAIN ACCOUNTS INVOLVING MONEY TRANSMITTERS

15. The Bank shall:

(a) Immediately upon the effective date of this ORDER, the Bank shall commence an account review in order to determine whether its customers, particularly foreign money transmitters, are accurately described on the Bank's books and records, and are licensed or otherwise authorized by applicable law to engage in the type of money transmission activities that are reflected in the Bank's books and records or which should be reflected in such books and records.

(b) The Bank shall immediately cease and desist from conducting any further business with accounts of customers that the Bank now knows, or determines under (a) or otherwise, are not authorized by applicable law to engage in the type of money transmission activities that are reflected in the Bank's books and records or which should be reflected in such books and records.

(c) With respect to any other Bank customers conducting business in the United States with illegal foreign money transmitters, the Bank shall immediately cease and desist from conducting any further business with such customers.

(d) With respect to accounts maintained by the Insured Institution on behalf of other foreign money transmitters that operate legally in foreign countries, the Insured Institution shall perform enhanced due diligence procedures with respect to such accounts.

#### COMPLIANCE COMMITTEE

16. Within 30 days from the effective date of this ORDER, the Board shall appoint a committee ("Compliance Committee") composed of at least three directors who are not now, and have never been, involved in the daily operations of the Bank, and whose composition is acceptable to the Regional Director and the Superintendent, to monitor the Bank's compliance with this ORDER, including the BSA Plan. Within 30 days from the effective date of this ORDER, and at monthly intervals thereafter, such Compliance Committee shall prepare and present to the Board a written report of its findings, detailing the form, content, and manner of any action taken to ensure compliance with this ORDER and the results thereof, and any recommendations with respect to such compliance. Such progress reports shall be included in the minutes of the Board's meetings. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

#### PROGRESS REPORTS

17. By the 30<sup>th</sup> day after the end of the calendar quarter following the effective date of this ORDER, and by the 15<sup>th</sup> day after the end of every calendar quarter thereafter, the Bank shall furnish written progress reports to the Regional Director and Superintendent detailing the form, content, and manner of any actions taken to secure compliance with this ORDER, and the results thereof.

#### BOOKS AND RECORDS

18. For purposes of this paragraph, the terms "documents, books and records" shall have the broadest possible meaning and shall include, without limitation, paper and electronic records of all kinds, reports, notes, emails, calendars, phone logs, financial instruments, computer tapes and discs and digital recording and storage media. The Bank shall:

(a) not destroy, alter, or remove any documents, books and records until further written notice from the Regional Director and/or the Superintendent.

(b) maintain and, upon request, immediately make available to the Regional Director and the Superintendent all documents, books and records maintained by the Insured Institution and its subsidiaries.

#### OTHER ACTIONS

19. It is expressly and clearly understood that if, at any time, the Regional Director or the Superintendent shall deem it appropriate in fulfilling the responsibilities placed upon either of them under applicable law to undertake any further action affecting the Bank, nothing in this ORDER shall in any way inhibit, estop, bar or otherwise prevent either of them from doing so, including, but not limited to, the imposition of civil money penalties.

20. It is expressly and clearly understood that nothing herein shall preclude any proceedings brought by the Regional Director or the Superintendent to enforce the terms of this ORDER, and that nothing herein constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, or any other representatives of the State of New York or any other agencies thereof, including any prosecutorial agencies, to bring other actions deemed appropriate.

21. The effective date of this ORDER shall be immediately upon the date of issuance.

22. The provisions of this ORDER shall be binding upon the Bank, its directors, officers, employees, agents, successors and assigns.

#### NOTICES

23. All communications regarding this ORDER shall be sent to:

Mr. Manuel Kursky  
New York State Banking Department  
1 State Street Plaza  
New York, New York 10004

#### MISCELLANEOUS

24. The provisions of this ORDER shall be binding on the Bank and each of its successors and assigns.

25. Each provision of this ORDER shall remain effective and enforceable until stayed, modified, terminated or suspended in writing by the Department.

26. Notwithstanding any provision of this ORDER, the Department may, in its sole discretion, grant extensions of time for the Bank to comply with any provision of this ORDER.

By ORDER of the Superintendent of Banks of the State of New York,  
effective this 15<sup>th</sup> of December, 2005.

NEW YORK STATE BANKING  
DEPARTMENT

ISRAEL DISCOUNT BANK  
OF NEW YORK

By: \_\_\_\_\_  
Diana L. Taylor  
Superintendent of Banks

By: Arie Mientkavich