

THE SUPERINTENDENT OF BANKS OF THE  
STATE OF NEW YORK

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In The Matter of  
USA BANK

Port Chester, New York

Order to Cease and  
Desist 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 USA Bank ("Bank"), a New York-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 the Bank, the New York State Banking Department (the "Department") and the Bank have mutually agreed to enter into this Order to Cease and Desist Issued Upon Consent (the "ORDER");

WHEREAS, after the performance of an examination, the Department has determined that the Bank must take immediate action to correct apparent violations and deficiencies, as more fully described below;

WHEREAS, on October 9, 2007, the board of directors of the Bank, at a duly constituted meeting, adopted a resolution:

RONALD J. GENTILE  
PRES/CEO

1. Authorizing and directing Mr. \_\_\_\_\_, \_\_\_\_\_ 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 engaging in the unsafe or unsound banking practices and committing the violations of law and/or regulation specified below:

(a) operating with inadequate management supervision and oversight by the Board to prevent unsafe or unsound practices and violations of law and regulation;

(b) operating with inadequate management supervision and oversight by the Board to ensure compliance with certain written conditions imposed by the FDIC in its August 10, 2005 order approving the Bank's application for deposit insurance;

(c) operating without a current, comprehensive written business/strategic plan and budget;

(d) operating with staff not properly qualified to perform present and anticipated duties;

(e) operating with inadequate training programs for the Board, management and staff;

(f) operating with inadequate audit policies, processes and procedures;

(g) violating 31 U.S.C. § 5318 and its implementing regulation, 12 C.F.R. Part 353;

(h) violating the Equal Credit Opportunity Act, 15 U.S.C. § 1601 *et seq.* and its implementing regulation, Regulation B, 12 C.F.R. Part 202, of the Rules and Regulations of the Board of Governors of the Federal Reserve System ("FRB's Rules and Regulations"), the Real Estate Settlement Procedures Act, 12 U.S.C. § 2601 *et seq.* and its implementing regulation,

Regulation X, 24 C.F.R. § 3500, of the Rules and Regulations of the Department of Housing and Urban Development, the Federal Truth in Lending Act, 15 U.S.C. § 1601 *et seq.* and its implementing regulation, Regulation Z, 12 C.F.R. Part 226, of the FRB's Rules and Regulations, the Expedited Funds Availability Act, 12 U.S.C. §§ 4001- 4010 and its implementing regulation, Regulation CC, 12 C.F.R. Part 229, of the FRB's Rules and Regulations, the Truth in Savings Act of 1991, 12 U.S.C. § 4300 *et seq.* and its implementing regulation, Regulation DD, 12 C.F.R. Part 230, of the FRB's Rules and Regulations, the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* and the FDIC's Advertisement of Membership provisions, 12 C.F.R. Part 328 of the FDIC's Rules and Regulations (collectively referred to as "CPS");

(i) operating with an inadequate compliance management system ("CMS") to monitor and ensure compliance with the federal consumer protection statutes and regulations;

(j) operating with inadequate information technology policies, processes and procedures;

(k) operating with inadequate policies, procedures and processes to ensure compliance with the information security standards established by the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 and 6805(b), and implemented by the FDIC in Appendix B to Part 364 of the FDIC's Rules and Regulations, 12 C.F.R. Part 364, Appendix B.

IT IS FURTHER ORDERED that the Bank and its successors and assigns, shall take affirmative action as follows:

ASSESSMENT OF MANAGEMENT AND STAFF

1. (a) Within 30 days from the effective date of this ORDER, the Board shall engage an independent third party, acceptable to the Superintendent of Banks of the State of New York ("Superintendent"), with the appropriate expertise and qualifications to analyze and assess the Bank's management and staffing needs and the performance of the Bank's chairman of the Board, directors and "Senior Executive Officers" (as that term is defined in 12 C.F.R. 103.101(b)), as well as the appropriateness of all current and deferred compensation paid to each director and each Senior Executive Officer in light of each respective director's and Senior Executive Officer's competence, responsibilities and performance, with a comparison of such compensation to that of institutions of comparable size and complexity, and, based on the foregoing analyses and comparisons, to identify an appropriate level of compensation for each director and Senior Executive Officer. The engagement shall require that this analysis and assessment be summarized in a written report to the Board ("Management Report"), with a copy simultaneously delivered to the Superintendent. At a minimum, the Management Report shall:

(i) with respect to the position of chairman of the board, giving appropriate consideration to the size and complexity of the Bank, (a) identify the authorities, responsibilities and accountabilities appropriate to the position, (b) present a clear and concise description of the relevant knowledge, skills, abilities and experience necessary for the position, and (c) present a recommendation as to appropriate compensation, if any;

(ii) identify the type and number of Senior Executive Officers and other officer positions needed to manage and supervise the affairs of the Bank, detailing any vacancies and additional needs with appropriate consideration to the size and complexity of the Bank, and recommend with respect to each such position an appropriate base salary level and bonus range, if any;

(iii) identify the type and number of staff positions needed to implement the plans, policies, procedures and processes required by this ORDER, detailing any vacancies and additional needs;

(iv) identify the authorities, responsibilities, and accountabilities attributable to each position, as well as the appropriateness of the authorities, responsibilities, and accountabilities, giving due consideration to the relevant knowledge, skills, abilities, and experience of the incumbent (if any) and the existing or proposed compensation;

(v) present a clear and concise description of the relevant knowledge, skills, abilities, and experience necessary for each position, including delegations of authority and performance objectives;

(vi) evaluate the current and past performance of all existing directors (including the chairman of the Board), Senior Executive Officers and staff members of the Bank, indicating whether the individuals are competent and qualified to perform present and anticipated duties, adhere to the Bank's established plans, policies, procedures and processes, and operate the Bank in a safe and sound manner;

(vii) recommend a plan to recruit and retain qualified directors (including a chairman of the board), Senior Executive Officers and personnel consistent with the independent third party's analysis and assessment of the Bank's management and staffing needs;

(viii) recommend any additional training and development needs of the Bank not specifically identified and required by this ORDER, as well as a plan to provide such training and development to the appropriate personnel; and

(ix) recommend procedures to periodically review and update the Management Plan required by paragraph (c) below and assess the performance of each Senior Executive Officer and staff member.

(b) The Board shall provide the Superintendent with a copy of the proposed engagement letter or contract with the third party for review before it is executed. The contract or engagement letter shall, at a minimum, include:

(i) a description of the work to be performed under the contract or engagement letter, the fees for each significant element of the engagement, and the aggregate fee;

(ii) the responsibilities of the firm or individual;

(iii) identification of the professional standards covering the work to be performed;

(iv) identification of the specific procedures to be used when carrying out the work to be performed;

(v) the qualifications of the employees of the independent third party who are to perform the work;

(vi) the time frame for completion of the work;

(vii) any restrictions on the use of the reported findings;

(viii) a provision for unrestricted access to work papers of the third party by the Department; and

(ix) a certification that the third party firm or individual is not affiliated in any manner with, or a current or former

employee of, the Bank, or any of its Executive Officers or directors (current or former).

(c) Within 30 days of receipt of the Management Report, the Board will develop a written plan of action (the "Management Plan") in response to each recommendation contained in the Management Report and a time frame for completing each action. A copy of the Management Plan and any subsequent modification thereto shall be submitted to the Superintendent for review and comment. Within 30 days from receipt of any comment, and after consideration of such comment, the Board shall approve the Management Plan which approval shall be recorded in the minutes of the Board meeting in which it is approved. Thereafter, the Bank and its directors, officers and employees shall implement and follow the Management Plan and any modifications thereto. It shall remain the responsibility of the Board to fully implement the Management Plan within the specified time frames. In the event the Management Plan, or any portion thereof, is not implemented, the Board shall immediately advise the Superintendent in writing of the specific reasons for deviating from the Management Plan. The Superintendent must approve any such deviation.

(d) While this ORDER is in effect, the Board shall provide written notification to the Superintendent of the resignations or terminations of any of its Senior Executive Officers or Board members within fifteen days of the event. The Bank shall also establish procedures to ensure compliance

with section 32 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. Part 303. In addition, the Board shall provide written notification to the Superintendent of any proposed new Senior Executive Officer or Board member at least 30 days prior to the date such proposed officer or Board member is to begin service; such notification shall include a description of the background and experience of the proposed officer or Board member. Such changes will only be effective upon receipt of the Superintendent's approval.

#### CORPORATE GOVERNANCE REVIEW

2. (a) Within 120 days of the effective date of this ORDER, a qualified law firm acceptable to the Superintendent, engaged by the Bank, shall complete a comprehensive review of the Bank's corporate governance process, including an investigation into the issues raised in the August 12, 2006, August 15, 2007 and August 21, 2006 memoranda from former Director Cornacchia to the Board and a review of the Bank's compliance with the operational, corporate governance and reporting requirements imposed upon a publicly traded company, including, but not limited to, the requirements of the Sarbanes-Oxley Act of 2002, ("Corporate Governance Review") from December 22, 2005 through the effective date of

this ORDER. The independent third party shall prepare and submit a written report of its findings (the "CG Review Report") simultaneously to the Board and the Superintendent upon completion of the Review.

(b) Within 30 days of receipt of the CG Review Report, the Board shall appropriately establish, amend or enhance its policies, procedures and processes to implement any recommendations made in the CG Review Report and address any concerns or deficiencies noted in the CG Review Report.

(c) Within 45 days of receipt of the CG Review Report, the Board shall provide a written response to the CG Review Report to the Superintendent outlining the steps it has taken to implement the recommendations made in the CG Review Report, and address any concerns or deficiencies noted in the CG Review Report. If the Board fails to implement any of the CG Review Report's recommendations or address any concerns or deficiencies noted in the CG Review Report, it shall provide to the Superintendent in its response a comprehensive explanation of its rationale for not implementing such recommendations or addressing any such concerns or deficiencies.

### PARTICIPATION

3. Immediately upon the effective date of this ORDER, the Board shall increase its participation in the affairs of the Bank, which shall

specifically include meeting no less frequently than monthly. The Board shall establish specific procedures designed to ensure that it is fully informed of all matters regarding the management, operation, and financial condition of the Bank at regular intervals and in a consistent format. The Board shall prepare in advance and shall follow a detailed written agenda during each meeting, during which, at a minimum, the following matters shall be reviewed and approved: reports of income and expenses; loan reports, including new, overdue, renewed, extended, restructured, insider, non-accrual, charged-off, and recovered loans; investment activity; asset/liability and funds management reports; operating policies; training reports, personnel actions; audit and supervisory reports; and the minutes summarizing individual committee meetings and actions. Participation shall also require the assumption of full responsibility for the approval of significant new and/or enhanced policies, plans and programs including those specifically required by this ORDER and the Safety and Soundness Report of Examination ("S&S ROE") dated December 18, 2006, the IT Report of Examination ("IT ROE") incorporated therein, and the Compliance Report of Examination ("Compliance ROE") dated February 20, 2007, along with any other policies, procedures and processes necessary to operate the Bank in a safe and sound manner. Board minutes shall be detailed, maintained and recorded on a timely basis and shall document reviews and any related actions, including the names of any dissenting directors. Nothing in this paragraph shall

preclude the Board from considering matters other than those contained in the agenda.

#### REVIEW OF FEES & PAYMENTS

4. (a) Within 90 days of the effective date of this ORDER, the Board shall engage a qualified independent consultant acceptable to the Superintendent to review the appropriateness of all fee and/or expense payment arrangements the Bank has or had with its directors, Senior Executive Officers, organizers, advisory board members and any of their related interests ("Insiders"). This review shall address issues raised in the S&S ROE with respect to fees and payments made by the Bank to Insiders. The engagement shall require that this analysis and assessment shall be summarized in a written report to the Board ("Expense Report"), with a copy simultaneously delivered to the Superintendent for review and comment.

(b) Within 30 days of receipt of any comments from the Superintendent and after consideration of all such comments, the Board shall develop a plan to address the comments of the Superintendent and to seek reimbursement for any compensation, fees or expense payments determined to be inappropriate (the "Reimbursement Plan"). The Board shall

implement and fully comply with the Reimbursement Plan after completion of the requirements of this paragraph.

### STRATEGIC PLAN

5. (a) Within 120 days from the effective date of this ORDER, the Board shall formulate a comprehensive written business/strategic plan covering an operating period of at least three years for the Bank ("Strategic Plan"). The Strategic Plan shall contain an assessment of the Bank's current financial condition and market area along with a description of the operating assumptions that form the basis for major projected income and expense components of the assessment.

(b) The Strategic Plan shall include short term goals and operating plans to comply with the terms of this ORDER and correct all regulatory criticisms, intermediate goals and project plans, and long-range goals and project plans. Additionally, the Strategic Plan shall, at a minimum, include:

(i) strategies for pricing policies and asset/liability management;

(ii) anticipated average maturity and average yield on loans and securities, average maturity and average cost of deposits,

the level of earning assets as a percentage of total assets and the ratio of net interest income to average earning assets;

(iii) dollar volume of total loans, total investment securities and total deposits;

(iv) plans for sustaining adequate liquidity, including back-up lines of credit to meet any unanticipated deposit withdrawals;

(v) financial goals including pro forma statements for asset growth, capital adequacy and earnings; and

(vi) formulation of a mission statement and the development of a strategy to carry out that mission.

(c) The Board shall submit the Strategic Plan to the Superintendent for review and comment. Within 30 days from receipt of any comment from the Superintendent, and after due consideration of any recommended changes, the Board shall approve the Strategic Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(d) The Board shall implement and fully comply with the Strategic Plan after completion of the requirements of subparagraph (c) above.

(e) Within 15 days from the end of each calendar quarter following the effective date of this ORDER, the Board shall evaluate

the Bank's performance in relation to the Strategic Plan and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting during which such evaluation is undertaken. In the event the Board determines that the Strategic Plan should be revised in any manner, the Strategic Plan shall be revised and submitted to the Bank for review and comment within 15 days after such revisions have been approved by the Board. Within 30 days of receipt of any comments from the Superintendent, and after consideration of all such comments, the Bank shall approve the revised Strategic Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(f) The Board shall implement and fully comply with the revised Strategic Plan after completion of the requirements of this paragraph 5.

#### PROFIT AND BUDGET PLAN

6. (a) Within 60 days from the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the Board shall develop and fully implement a written profit plan (the "Profit Plan") consisting of goals and strategies, consistent with sound banking practices, and taking into account the Bank's other written plans, policies, or other actions required by this Order.

(b) The Profit Plan should not include any areas representing a material change in the business plan and which have not been submitted to the Bank 60 days prior to consummation of the change but shall, at a minimum, include:

(i) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;

(ii) specific goals to improve the net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings, as well as maintain adequate provisions to the allowance for loan and lease losses ("ALLL");

(iii) realistic and comprehensive budgets for all categories of income and expense items;

(iv) a description of the operating assumptions that form the basis for, and adequately support, material projected revenue and expense components;

(v) coordination of the Bank's loan, investment, funds management, and operating policies; strategic plan; and ALLL methodology with the profit and budget planning;

(vi) a budget review process to monitor the revenue and expenses of the Bank whereby actual performance is compared against budgetary projections not less than monthly; recording the results of

the evaluation and any actions taken by the Bank in the minutes of the Board meeting at which such evaluation is undertaken; and

(vii) individual(s) responsible for implementing each of the goals and strategies of the Profit Plan.

(c) The Board shall submit the Profit Plan to the Superintendent for review and comment. Within 30 days from receipt of any comment from the Superintendent, and after due consideration of any recommended changes, the Board shall approve the Profit Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(d) Within <sup>25</sup>~~15~~ days from the end of each calendar month following the effective date of this ORDER, the Board shall evaluate the Bank's performance in relation to the Profit Plan and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting during which such evaluation is undertaken. In the event the Board determines that the Profit Plan should be revised in any manner, the Profit Plan shall be revised and submitted to the Superintendent for review and comment within 15 days after such revisions have been approved by the Board. Within 30 days of receipt of any comments from the Superintendent, and after consideration of all such comments, the Board shall approve the revised Profit Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(e) The Board shall implement and fully comply with the revised Profit Plan after completion of the requirements of this paragraph

#### CORRECTION OF VIOLATIONS

7. Within 90 days from the effective date of this ORDER, the Board shall eliminate and/or correct all violations of law and/or regulations, as described in pages 29 through 33 of the S&S ROE, dated December 18, 2006, and in pages 8 through 17 of the Compliance ROE, dated February 20, 2007. In addition, the Board shall take all steps necessary to ensure future compliance with all applicable Federal and State laws and regulations and FDIC, Interagency and FFIEC guidance and policy statements.

#### BANK SECRECY ACT POLICIES AND PROCEDURES

8. Within 60 days, the Board will implement the Bank Secrecy Act related policy and procedural recommendations contained in the S&S ROE dated December 18, 2006.

## INFORMATION TECHNOLOGY

9. (a) Within 120 days of the effective date of this ORDER, the Board shall develop and implement an effective corporate information security policy to safe guard confidential customer information that meets the requirements of Appendix B to Part 364 of the FDIC's Rules and Regulations, 12 C.R.F. Part 364, Appendix B.

(b) Within 120 days of the effective date of this ORDER, the Board shall complete its Disaster Recovery/Business Continuity Plan ensuring that each element noted in the IT ROE is finalized and included in this Plan. Upon completion of its Disaster Recovery/Business Continuity Plan, the Bank shall immediately execute a disaster recovery test and report the results of the test directly to the Board. The minutes of the next Board meeting, following receipt of the test results, shall reflect consideration of the results and describe any discussion or action taken as a result thereof.

## COMPLIANCE MANAGEMENT SYSTEM

10. (a) Within 60 days from the effective date of this ORDER, and annually thereafter, the Board shall review the CMS for adequacy and, based upon this review shall make all appropriate revisions to the CMS necessary to ensure full compliance with the CPS taking into

account the Bank's size, level and complexity of operations. The Bank CMS, shall, at a minimum, be enhanced to include provisions that:

(i) establish internal compliance monitoring policies, procedures and processes necessary to implement and ensure the adherence to the CMS by management and staff; and

(ii) ensure timely resolution of all issues appearing on the corrective action matrix compiled in accordance with the CMS.

(b) the Board shall submit the revised CMS to the Superintendent for review and comment. Within 30 days from receipt of any comment from the Bank, and after due consideration of any recommended changes, the Bank shall approve the revised CMS, with such approval recorded in the minutes of the Board meeting in which it is approved.

(c) the Bank shall implement and fully comply with the revised CMS after completion of subparagraph (b) above.

#### AUTHORITY OF COMPLIANCE OFFICER

11. Within 60 days from the effective date of this ORDER, the Board shall ensure that the designated individual or individuals responsible for coordinating and monitoring day-to-day CPS compliance ("Compliance Officer"): (i) have sufficient executive authority to access,

monitor and ensure compliance with the CPS and the CMS throughout all areas of the Bank; (ii) are responsible for enhancing the Bank's CMS to ensure compliance with all CPS requirements; (iii) provide or coordinate the training required by paragraph 30 of this ORDER; (iv) review any new policies and procedures for CPS and CMS compliance prior to implementation; (v) assess emerging issues or potential liabilities; (vi) coordinate responses to consumer complaints; (vii) report compliance activities and audit/review findings directly to the Board; and (viii) ensure corrective measures are taken when appropriate.

#### COMPLIANCE TRAINING

12. (a) Beginning on the effective date of the ORDER, the Board shall take all steps necessary, consistent with sound banking practices, to ensure that all appropriate personnel are aware of, and can comply with, the requirements of the CPS applicable to the individual's specific responsibilities to ensure the Bank's compliance with the CPS and the CMS.

(b) Within 90 days from the effective date of this ORDER, the Board shall develop, adopt and implement effective training programs designed for directors, management and staff and their specific compliance responsibilities on all relevant aspects of the CPS and the CMS

("Compliance Training Program"). This Compliance Training Program shall ensure that all appropriate personnel are aware of, and can comply with, CPS requirements on an ongoing basis. The Compliance Training Program shall, at a minimum, include:

(i) an overview of the CPS for new staff along with specific training designed for their specific duties and responsibilities upon hiring;

(ii) training on the Bank's CMS along with new rules and requirements as they arise for appropriate personnel designed to address their specific duties and responsibilities;

(iii) a requirement that the Board fully document such training for each employee; and

(iv) a requirement that the Compliance Officer periodically assess each employee on their knowledge and comprehension of the training they have received and re-train and/or provide additional training as appropriate.

#### AUDIT PROGRAM

13. (a) Within 90 days from the effective date of this ORDER, the Board shall develop an internal audit program that establishes

procedures to (i) protect the integrity of the Bank's operational and accounting systems; (ii) ensures BSA compliance; (iii) ensures CPS compliance; and (iv) addresses all IT functions identified as "critical" or "high" risk during the IT risk assessment process ("Audit Program"). The Audit Program shall, at a minimum, conform to the *Interagency Policy Statement on the Internal Audit Function and its Outsourcing* and provide procedures to test the validity and reliability of operating systems, procedural controls, and resulting records, shall include the areas recommended in the *Audit Booklet of the Federal Financial Institutions Examination Council's Information Technology Examination Handbook* dated August 2003, and shall require monthly reports of all audit findings with such reports being provided directly to the Board.

(b) The Board shall submit the Audit Program to the Superintendent for review and comment. Within 30 days from receipt of any comment from the Superintendent, and after due consideration of any recommended changes, the Board shall approve the Audit Program, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(c) The Bank shall implement and fully comply with the Audit Program after completion of the requirements of subparagraph (b).

(d) The minutes of Board meetings shall reflect consideration of the monthly audit reports provided to the Board in

accordance with the Audit Program and describe any discussion or action taken as a result thereof.

#### COMPLIANCE COMMITTEE

14. 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 Superintendent, to monitor the Bank's compliance with this ORDER. 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 Board meeting minutes. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

## PROGRESS REPORTS

15. By the 30<sup>th</sup> day after the end of the calendar quarter following the effective date of this ORDER, and by the <sup>3<sup>rd</sup> FRD</sup> 15<sup>th</sup> day after the end of every calendar quarter thereafter, the Board shall furnish written progress reports to the Superintendent detailing the form, content, and manner of any actions taken to secure compliance with this ORDER, and the results thereof.

## SHAREHOLDERS

16. Following the effective date of this ORDER, the Board shall provide to shareholders, or otherwise furnish a description of this ORDER, (i) in conjunction with the Bank's next shareholder communication, and (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 Superintendent of Banks, New York State Banking Department, 1 State Street Plaza, New York, New York 10004 for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the Superintendent shall be made prior to dissemination of the description, communication, notice, or statement.

## OTHER ACTIONS

17. It is expressly and clearly understood that if, at any time, the Superintendent shall deem it appropriate in fulfilling the responsibilities placed upon him 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 him from doing so, including, but not limited to, the imposition of civil money penalties.

18. It is expressly and clearly understood that nothing herein shall preclude any proceedings brought by 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, Department of Justice, or any departments or representatives of the State of New York or any other agencies thereof, including any prosecutorial agency, to bring other actions deemed appropriate, or that this Agreement precludes any further action whatsoever.

NOTICES

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

Mr. Robert A. Mengani  
New York State Banking Department  
1 State Street Plaza  
New York, New York 10004

MISCELLANEOUS

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

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

22. Notwithstanding any provision of this ORDER, the  
Department may, in its sole discretion, grant extensions of time to 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 22<sup>nd</sup> of October, 2007.

NEW YORK STATE  
BANKING DEPARTMENT

By: Robert A. Mengani  
Robert A. Mengani  
Deputy Superintendent of Banks

USA BANK  
Port Chester, New York

By: Arnold Gentile  
PRESIDENT & CEO  
USA Bank