

**#2013-042**

*Terminates #2008-012*

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

<b>In the Matter of:</b>	)	AA-EC-13-29
Millennium Bank, N.A.	)	
Sterling, Virginia	)	

**CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has supervisory authority over Millennium Bank, N.A., Sterling, Virginia (“Bank”);

**WHEREAS**, the Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of a Consent Order (“Stipulation and Consent”), dated April 15, 2013, that is accepted by the Comptroller through his duly authorized representative; and

**WHEREAS**, by this Stipulation and Consent, which is incorporated by reference, the Bank, has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

**NOW, THEREFORE**, pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

**ARTICLE I**

**COMPLIANCE COMMITTEE**

(1) The Compliance Committee shall continue to consist of at least five (5) directors of which at least three (3) shall not be employees, former employees, or controlling shareholders of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee and, in the event of a change of the membership, the name of any new

member shall be immediately submitted in writing to the Director of Special Supervision (“Director”). The Compliance Committee shall be responsible for monitoring and coordinating the Bank’s adherence to the provisions of this Order.

(2) The Compliance Committee shall continue to meet at least monthly.

(3) Within thirty (30) days of the date of this Order, and every thirty (30) days thereafter or within such other time period as the Director requires in writing, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the actions needed to achieve full compliance with each Article of this Order, Bank personnel responsible for implementing the corrective actions and the timeframes for completion;
- (b) actions taken to comply with each Article of this Order; and
- (c) the results and status of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Director within ten (10) days of receiving such report.

## ARTICLE II

### STRATEGIC PLAN

(1) Within ninety (90) days of the date of this Order, the Board shall revise and forward to the Director for his review, pursuant to paragraph (3) of this Article, a written Strategic Plan for the Bank that is acceptable to the Director, covering at least a two-year period. The Strategic Plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital and liquidity adequacy, together with strategies to achieve those objectives, and shall, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;

- (b) the strategic goals and objectives to be accomplished, including key financial indicators and risk tolerances;
- (c) an assessment of the Bank's strengths, weaknesses, opportunities and threats that impact strategic goals and objectives;
- (d) an identification and prioritization of initiatives and opportunities, including timeframes that take into account the requirements of this Order;
- (e) a description of the Bank's targeted market(s) and competitive factors in its identified target market(s) and a description of control systems to mitigate risks in the Bank's markets;
- (f) an assessment of the present and planned product lines (assets and liabilities) and the identification of appropriate risk management systems to identify, measure, monitor, and control risks within the product lines;
- (g) assigned responsibilities and accountability for the strategic planning process;  
and
- (h) a description of systems and metrics designed to monitor the Bank's progress in meeting the Strategic Plan's goals and objectives.

(2) If the Board's Strategic Plan under paragraph (1) of this Article includes a proposed sale or merger of the Bank, the Strategic Plan shall, at a minimum, address the steps that will be taken and the associated timeline to effectuate the implementation of that alternative.

(3) Prior to adoption by the Board, a copy of the Strategic Plan, and any subsequent amendments or revisions, shall be submitted to the Director for review and prior written determination of no supervisory objection. At the next Board meeting following receipt of the Director's written determination of no supervisory objection, the Board shall adopt and the Bank,

subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to the Strategic Plan.

(4) The Bank may not initiate any action that deviates significantly from the Strategic Plan (that has received a supervisory no-objection from the Director and that has been adopted by the Board) without a written determination of no supervisory objection from the Director. The Board must give the Director advance, written notice of its intent to deviate significantly from the Strategic Plan, along with an assessment of the impact of such change on the Bank's condition, including a profitability analysis and an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the change in the Strategic Plan. For the purposes of this Article, changes that may constitute a significant deviation from the Strategic Plan include, but are not limited to, a change in the Bank's marketing strategies, products and services, marketing partners, underwriting practices and standards, credit administration, account management, collection strategies or operations, fee structure or pricing, accounting processes and practices, or funding strategy, any of which, alone or in aggregate, may have a material impact on the Bank's operations or financial performance; or any other changes in personnel, operations, or external factors that may have a material impact on the Bank's operations or financial performance.

(5) At least quarterly, the Board shall prepare a written evaluation of the Bank's performance against the Strategic Plan and shall include a description of the actions the Board will require the Bank to take to address any shortcomings, which shall be documented in the Board meeting minutes. Upon completion of its evaluation, the Board shall submit a copy to the Director.

(6) The Board shall review and update the Strategic Plan at least annually, no later than January 31, and more frequently if necessary or if requested by the Director in writing.

(7) Until the Strategic Plan required under this Article has been submitted by the Bank for the Director's review, has received a written determination of no supervisory objection from the Director, and is being implemented by the Bank, the Bank shall not significantly deviate from the products, services, asset composition and size, funding sources, structure, operations, policies, procedures, and markets of the Bank that existed before this Consent Order without first obtaining the Director's prior written determination of no supervisory objection to such significant deviation. Any request to the Director for prior written determination of no supervisory objections to a significant deviation must be submitted to the Director at least 30 days in advance of the significant deviation, along with an assessment of the impact of such change on the Bank's condition, including a profitability analysis and an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the change.

### ARTICLE III

#### CAPITAL PLAN

(1) Within seventy-five (75) days of the date of this Order, the Bank shall achieve and maintain the following minimum capital ratios (as defined in 12 C.F.R. Part 3):

(a) Total risk-based capital at least equal to thirteen percent (13%);

(b) Tier 1 capital to adjusted total assets ratio at least equal to ten percent (10%);

(2) The requirement in this Order to meet and maintain a specific capital level means that the Bank may not be deemed to be “well-capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6, pursuant to 12 C.F.R. § 6.4(b)(1)(iv).

(3) Within thirty (30) days of the date of this Order, the Board shall develop and implement an effective internal capital planning process to assess the Bank’s capital adequacy in relation to its overall risks and to ensure maintenance of appropriate capital levels, which shall in no event be less than the requirements of paragraph one (1) of this Article. The capital planning process shall be consistent with *OCC Bulletin 2012-16* (Guidance for Evaluating Capital Planning and Adequacy) (June 7, 2012), and shall ensure the integrity, objectivity, and consistency of the process through adequate governance. The Board shall document the initial capital planning process and thereafter review and document the capital planning process at least annually or more frequently if requested by the Director in writing.

(4) Within sixty (60) days of the date of this Order, the Board shall forward to the Director for his review, pursuant to paragraph seven (7) of this Article, a written Capital Plan for the Bank, consistent with the Strategic Plan pursuant to Article II, covering at least a two (2) year period. The written Capital Plan shall, at a minimum:

(a) include specific plans for the maintenance of adequate capital, which shall in no event be less than the requirements of paragraph one (1) of this Article;

- (b) identify and evaluate all material risks;
- (c) determine the Bank's capital needs in relation to material risks and strategic direction;
- (d) identify and establish a strategy to maintain capital adequacy and strengthen capital if necessary and establish a contingency or back-up capital plan commensurate with the Bank's overall risk and complexity;
- (e) include detailed quarterly financial projections; and
- (f) include specific plans detailing how the Bank will comply with restrictions or requirements set forth in this Order that will have an impact on the Bank's capital.

(5) If the Bank's written Capital Plan outlines a sale or merger of the Bank, the written Capital Plan shall only address the steps that will be taken and the associated timeline to ensure that within ninety (90) days after the receipt of the Director's written determination of no supervisory objection to the written Capital Plan, a definitive agreement for the sale or merger is executed.

- (6) The Bank may declare or pay a dividend or make a capital distribution only:
- (a) when the Bank is in compliance with its approved written Capital Plan and would remain in compliance with its approved written Capital Plan immediately following the declaration or payment of any dividend or the capital distribution;
  - (b) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (c) following the prior written determination of no supervisory objection by the Director.

(7) Prior to adoption by the Board, a copy of the Bank's written Capital Plan shall be submitted to the Director for prior written determination of no supervisory objection. The Board

shall review and update the Bank's written Capital Plan at least annually, no later than January 31, and more frequently if required by the Director in writing. Revisions to the Bank's written Capital Plan shall be submitted to the Director for a prior written determination of no supervisory objection. At the next Board meeting following receipt of the Director's written determination of no supervisory objection, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall immediately implement and thereafter ensure adherence to the written Capital Plan and any amendments or revisions thereto.

(8) At least monthly, the Board shall review financial reports and earnings analyses that evaluate the Bank's performance against the goals and objectives established in the written Capital Plan, as well as the Bank's written explanation of significant differences between the actual and projected balance sheet, income statement, and expense accounts, including descriptions of extraordinary and/or nonrecurring items. This review shall include a description of the actions the Board will require the Bank to take to address any deficiencies. At least quarterly the Board shall prepare a written evaluation of the Bank's performance against the written Capital Plan, which shall include a description of the actions the Board will require the Bank to take to address any deficiencies. The Board's monthly reviews and preparation of the quarterly written evaluations shall be documented in the Board meeting minutes. The Board shall retain a copy of these monthly reviews and Board meeting minutes and shall forward a copy of these quarterly written evaluations and Board meeting minutes to the Director within ten (10) days of completion of its quarterly written evaluations.

(9) If the Bank fails to maintain the capital ratios required by paragraph (1) of this Article, fails to submit a Capital Plan as required by paragraph four (4) of this article, or fails to implement a Capital Plan to which the Director has provided a written determination of a no supervisory objection, then the Bank may, in the Director's sole discretion, be deemed



undercapitalized for purposes of this Order. The Bank shall take such corrective measures as the OCC may direct in writing from among the provisions applicable to undercapitalized depository institutions under 12 U.S.C. § 1831o(e) and 12 C.F.R. Part 6 for national banks. For purposes of this requirement, an action “necessary to carry out the purpose of this section” under 12 U.S.C. § 1831o(e)(5) shall include restoration of the Bank’s capital to the minimum ratios required by this Order, and any other action deemed advisable by the OCC to address the Bank’s capital deficiency or the safety and soundness of its operations.

#### ARTICLE IV

##### BOARD TO ENSURE EFFECTIVE MANAGEMENT

(1) Within ninety (90) days of the date of this Order, the Board shall adopt and take the necessary steps to implement corporate governance and decision-making processes to correct the Bank’s deficiencies in management leadership and Board oversight as described in the most recent Report of Examination (“ROE). At a minimum, the Board shall ensure and document the following:

- (a) executive officers are capable of performing present and anticipated duties, factoring in each officer’s past actual performance, experience, and qualifications, compared to their position description, duties and responsibilities, with particular emphasis on their proposed responsibilities to execute the Strategic Plan and correct the concerns raised in the ROE;
- (b) clear lines of responsibility and authority for each member of senior management, including but not limited to, the Chairman of the Board, Chief Executive Officer, President, Chief Credit Officer, and Chief Financial Officer;
- (c) a management employment and succession program to promote the retention and continuity of capable management;

- (d) sufficient processes, personnel, and control systems to effectively implement and adhere to all provisions of this Order, and that Bank personnel have sufficient training and authority to execute their duties and responsibilities under this Order;
- (e) a process to evaluate, at least annually, the Bank's overall internal operations, staffing, Board and management oversight and information systems, policies, procedures and other risk management systems with time sensitive strategies to address any deficiencies;
- (f) a process to ensure that management appropriately responds to any audit or compliance or regulatory criticisms; and
- (g) that the Board receives and reviews sufficient Bank information from management (including scope, frequency and content) on the operation of the Bank and compliance with this Order to enable them to provide oversight and fulfill their fiduciary duties and other responsibilities under law and as outlined in the OCC's The Directors Handbook (October 2010) and Duties and Responsibilities of Directors booklet (March 1990) of the *Comptroller's Handbook*.

(2) The Board shall establish, at least annually, the objectives by which executive officers' effectiveness will be measured.

(3) The Board shall perform and prepare an annual written performance appraisal for each Bank executive officer that evaluates performance according to the position's description and responsibilities, adherence to the Strategic Plan, objectives established by the Board and the effectiveness of developing and successfully implementing action plans to remedy issues raised in Reports of Examination or audit reports. Upon completion and at the request of the Director, copies of each performance appraisal shall be submitted to the Director. The Board shall ensure

that the Bank addresses any identified deficiencies in a manner consistent with paragraph (1) of this Article.

## ARTICLE V

### PROBLEM ASSET MANAGEMENT

(1) The Bank, subject to Board review and ongoing monitoring, shall continue to implement and thereafter ensure adherence to a written program designed to eliminate the basis of criticism of those assets criticized as "doubtful," "substandard," or "special mention" in the most recent ROE, in any subsequent ROE, by any internal or external loan review, or in any list provided to management by the OCC Examiners during any examination. The program shall include:

- (a) sufficient staff having the qualifications, skills, and experience to effectively manage and resolve problem assets, who will be held accountable by the Bank's Board to successfully execute their assigned duties;
- (b) adequate management information systems to measure the status of workout plans on each problem asset; and
- (c) the development of Problem Asset Reports ("PARs") identifying all credit relationships and other assets totaling in aggregate one hundred and fifty thousand dollars (\$150,000) or more, criticized as "doubtful," "substandard," or "special mention" as identified in any ROE, internal or external loan review, or in any list provided to management by the OCC Examiners during any examination. The PARs must be updated and submitted to the Board or a committee designated by the Board monthly and to the Director quarterly.

(2) Each PAR shall cover an entire credit relationship and other assets, and include, at a minimum, analysis and documentation of the following:

- (a) the origination date and any renewal or extension dates, amount, purpose of the loan or other asset, and the originating and current handling officer(s);
- (b) the expected primary and secondary sources of repayment, and an analysis of the adequacy of the repayment source;
- (c) the appraised value of supporting collateral, along with the date and source of the appraisal, and the position of the Bank's lien on such collateral, as well as other necessary documentation to support the current collateral valuation;
- (d) an analysis of current and complete credit information, including a global cash flow analysis where loans are to be repaid from operations;
- (e) results of any impairment analysis as required under Accounting Standards Codification ("ASC") Topic 310;
- (f) accurate risk ratings consistent with the classification standards contained in the Rating Credit Risk booklet (April 2001) of the *Comptroller's Handbook*;
- (g) appropriate accrual status pursuant to the FFIEC Instructions for the Preparation of Consolidated Reports of Condition and Income;
- (h) significant developments, including a discussion of changes since the prior PAR, if any; and
- (i) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment, including, if appropriate, an exit strategy.

(3) The Bank shall not extend credit, directly or indirectly, including renewals, modifications, or extensions, to borrowers whose loans or other extensions of credit that aggregate one hundred fifty thousand dollars (\$150,000) or more and have a credit risk rating of “special mention”, “substandard”, or “doubtful”, unless and until a majority of the Board, or a

designated committee thereof, determines in writing that each of the following conditions are met:

- (a) the extension of additional credit is necessary to promote the best interests of the Bank;
- (b) a written credit and collateral analysis is performed as required by paragraphs (2)(b), (c) and (d) of this Article and, if necessary, the proposed action referred to in paragraph (2)(i) of this Article is revised; and
- (c) the Board's formal plan to collect or strengthen the criticized asset will not be compromised by the extension of additional credit.

(4) A copy of the findings and approval of the Board or designated committee thereof shall be maintained in the credit file of the affected borrower.

## ARTICLE VI

### LOAN REVIEW

(1) Within thirty (30) days, the Board shall employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem credits.

(2) Within sixty (60) days, the Board shall adopt, and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to an effective, independent and on-going loan review system to review, at least quarterly, the Bank's loan and lease portfolios to assure the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in "Rating Credit Risk" (April 2001) and "Allowance for Loan and Lease Losses" (June 1996) booklets of the *Comptroller's Handbook*. Such reports shall include, at a minimum, conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;
- (d) credit and collateral documentation exceptions;
- (e) the identification and status of credit-related violations of law, rule or regulation;
- (f) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of the Article;
- (g) concentrations of credit;
- (h) loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (i) loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(3) The Board shall evaluate the loan review written report(s) and shall ensure that immediate, adequate, and continuing remedial action is taken to correct any deficiencies noted in the report(s).

## ARTICLE VII

### AUDIT

(1) Within forty-five (45) days of the date of this Order, the Board shall appoint and maintain an Audit Committee of which at least a majority of the members shall not be employees of the Bank or any of its affiliates (as the term "affiliate" is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. The current audit charter shall be reviewed and revised

to accurately set forth the objectives, authorities, responsibilities, and organization of the Audit Committee. The revised audit charter shall also be adopted by the Board.

(2) Within sixty (60) days of the date of this Order, the Board shall adopt, implement, and thereafter ensure Bank adherence to an independent, internal audit program sufficient to:

- (a) detect irregularities and weak practices in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) assess and report the effectiveness of policies, procedures, controls, and management oversight relating to accounting and financial reporting;
- (d) evaluate the Bank's adherence to established policies and procedures, with particular emphasis directed to the Bank's adherence to its loan policies concerning underwriting standards and problem loan identification and classification;
- (e) adequately cover Bank activities to maintain or improve the efficiency and effectiveness of the Bank's risk management, internal controls, and corporate governance functions;
- (f) ensure timely follow-up on identified deficiencies to ensure their correction; and
- (g) establish an annual audit plan using a risk based approach sufficient to achieve these objectives.

(3) The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and maintain a written record describing the deficiency, the projected corrective action, and the status of the corrective action. The Board shall ensure that management provides detailed explanations in those circumstances, if any, where the deficiencies cannot be remedied, and that the audit staff maintain a written record describing

these circumstances. The Board shall provide for a timely independent written follow-up for any remedied deficiencies.

## ARTICLE VIII

### INFORMATION TECHNOLOGY

(1) Within sixty (60) days, the Board shall take all steps necessary to improve the management of the Bank's Information Technology ("IT") and Information Security activities to ensure the safety and soundness of its operations and the Bank's compliance with 12 C.F.R. Part 30, Appendix B, Safeguarding Customer Information, and to correct each deficiency (including without limitation, those related to user access levels) cited in the most recent Report of Examination, or any supervisory or audit communication.

(2) Within sixty (60) days from the date of this Order, the Board shall develop and implement a written information security program and IT corporate governance guidelines consistent with the requirements of 12 C.F.R. Part 30, Appendix B to require:

- (a) a risk assessment that includes all auditable areas (e.g., remote access, remote deposit capture, paper files) which identifies the inherent risk in each of the auditable areas and takes into consideration any mitigating factors;
- (b) an annual report to the Board on the overall status of the information security program and the status of compliance with these regulatory requirements. The report(s) should discuss material matters related to the Bank's program, addressing issues such as: the risk assessment; risk management and control decisions; service provider arrangements; results of testing; security breaches or violations; recommendations for changes in the program; and management's responses;
- (c) a review and approval of all policies related to IT on an annual basis; and



- (d) engagement of an independent contractor to perform an annual external penetration test.

(3) The Board shall submit, upon the Director's request, a copy of the revised written information security program that addresses, at a minimum, the requirements of paragraphs (1) and (2) of this Article.

## ARTICLE IX

### BANK SECRECY ACT PROGRAM

(4) Within sixty (60) days of the date of this Order, the Board shall revise, implement, and thereafter ensure adherence to the Bank's written program of policies and procedures to provide for compliance with the Bank Secrecy Act ("BSA"), as amended (31 U.S.C. § 5311 *et seq.*); the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C; and the rules and regulations of the Office of Foreign Assets Control (collectively referred to as the "Bank Secrecy Act" or "BSA"); and for the appropriate identification and monitoring of transactions that pose greater than normal risk for compliance with the BSA. At a minimum, revisions to the Bank's written program shall address guidelines, procedures, and controls to:

- (a) enhance written policies and procedures for identifying and monitoring transactions that pose greater than normal risk for compliance with the BSA;
- (b) enhance policies and procedures for investigating and resolving the Bank's response to transactions that have been identified as posing greater than normal risk for compliance with the BSA;
- (c) expand customer due diligence and enhanced due diligence policies and procedures to ensure process are in line with regulatory guidance;

- (d) perform sufficient due diligence prior to opening a new account that provides for collecting a customer's identifying information, verifying the customer's identification, maintaining identification records, evaluating and rating the customer's BSA risk profile, and determining whether the customer appears on any list of suspected terrorists or terrorist organizations;
- (e) enhance internal controls to include appropriate controls for risk rating accounts, effective customer due diligence and enhanced due diligence processes, and effective suspicious activity alert and investigation processes;
- (f) ensure that effective internal control and suspicious activity monitoring processes are in place with respect to remote deposit capture, automated clearing house accounts, online banking, wire transfers, and gift cards;
- (g) ensure that new products and services are subject to senior level compliance review and approval that will consider the quantity of BSA/AML and OFAC risk of the new product or service as well as the quality of risk management, as well as the impact of the new product or service on compliance staffing;
- (h) enhance the OFAC program to ensure that it identifies higher-risk areas and provides for appropriate internal controls, an assessment of specific product lines, customer base, and nature of transactions on an annual basis, ensure that management performs a look-back review, that OFAC policies and procedures are expanded to address the enhanced due diligence and risk assessments of international activity to high-risk countries;
- (i) record and maintain information about transactions that deviate from expected account activity and pose greater than normal risk for compliance with the BSA;

- (j) investigate, resolve and document the Bank's response to transactions that have been identified as posing greater than normal risk for compliance with the BSA;
- (k) confirm, on an annual basis, the accuracy of account risk ratings and stratify the customer base by risk rating, entity type and geographic region;
- (l) perform annual risk assessment of the Bank's operations, products, services, and geographies of operation;
- (m) engage the services of an independent firm to validate the parameters established in the Bank's automated BSA monitoring system; and
- (n) include a formal evaluation of the knowledge, capabilities, and performance of the Bank's BSA Officer and BSA staff for identifying transactions that pose greater than normal risk for compliance with the BSA, taking into account the findings contained in the September 30, 2012 Report of Examination and any subsequent examination and audit findings, and factoring in BSA staff performance, experience, and qualifications relative to position descriptions, duties, and responsibilities.

(5) Upon completion, the Board shall forward a copy of the program revisions required in paragraph (1) of this Article to the Director.

(6) The Board shall conduct appropriate oversight of the BSA Officer function to ensure that the BSA Officer maintains a sufficient working knowledge of BSA requirements, is capable of executing the responsibilities of the BSA Officer position so as to ensure that risks are identified and a comprehensive framework for compliance exists, and has the authority to perform assigned responsibilities.

(7) The Board, or a designated committee of the Board, shall ensure that the BSA audit function is independent and adequate in scope in light of the Bank's risk profile. The

persons responsible for implementing the BSA audit function shall report directly to the Board, or a designated committee of the Board, which shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board and not through any intervening party.

(8) All BSA audit reports shall be in writing and supported by adequate workpapers. The Board, or a designated committee of the Board, shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

## ARTICLE X

### LIQUIDITY MANAGEMENT

(1) Within fifteen (15) days of the date of this Order, the Board or designated committee shall revise, adopt and implement a liquidity policy that results in adherence to a comprehensive liquidity risk management program (“Program”). This Program must include assessing, on an ongoing basis, the Bank’s current and projected funding needs and ensuring that sufficient funds or access to funds exist to meet those needs and is appropriate in light of the Bank’s risk profile, Strategic and Capital Plans and the “Liquidity” booklet of the *Comptroller’s Handbook* (June 2012). This Program must also include a contingency funding plan (“CFP”) that allows the Bank to operate with adequate liquidity in the event of extraordinary demands against its funding base. At a minimum, the CFP shall be consistent with the guidance outlined in the Liquidity booklet (June 2012) of the *Comptroller’s Handbook*.

## ARTICLE XI

### THIRD PARTY CONTRACTS INVOLVING SALE, MERGER, OR RECAPITALIZATION

(1) The Bank shall not enter into any contract with a third party, to assist in the sale, merger, or recapitalization of the Bank that requires the payment of anything other than expenses prior to such sale, merger, or recapitalization, or that requires the Bank to pay, directly or indirectly, the cost of performing due diligence, or other services related to the transaction, unless the Bank first receives the Director's written determination of no supervisory objection.

(2) Any request for the Director's written determination of no supervisory objection shall include:

- (a) a description of the due diligence credit review, fairness opinion, or any other services to be performed by the third party, including a copy of the proposed contract or engagement;
- (b) a description of the Bank's due diligence process for agreeing to the services to be performed by a potential purchaser or merger partner; and
- (c) a determination by the Board that:
  - i. the activities to be performed by the third party as part of the sale or merger requirements are fair and reasonable to the Bank;
  - ii. the parties are able to perform under the contract or commitment;
  - iii. the fees the Bank is required to pay to the third party are reasonable for the services provided; and
  - iv. the contract is in the best interests of the Bank.

(3) Following any written determination of no supervisory objection by the Director, the Board shall regularly monitor the third party provider's performance to ensure that the third party provider is complying with the written contract or engagement. The Board shall immediately

take appropriate action if the third party provider is not complying with the written contract or engagement and shall maintain documentation of any such actions.

## ARTICLE XII

### OTHER PROVISIONS

(1) Although the Bank is by this Order required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Director, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon it by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) The provisions of this Order are effective upon issuance by the Comptroller through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller, through his authorized representative.

(4) Except as otherwise expressly provided herein, any time limitations imposed by this Order shall begin to run from the effective date of this Consent Order.

(5) In each instance in this Order in which the Board is required to ensure adherence to and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) ensure that the Bank has sufficient processes, management, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Order, and that Bank management and personnel have sufficient training and authority to execute their duties under this Order;
- (b) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (c) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (d) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (e) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) Each citation or referenced guidance included in this Order includes any subsequent guidance that replaces, supersedes, amends, or revises the cited law, regulation or guidance.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(8) All reports or plans which the Bank or Board has agreed to submit to the Director pursuant to this Order shall be forwarded, by overnight mail or via email, to the following:

Director for Special Supervision  
Comptroller of the Currency  
400 7<sup>th</sup> Street, S.W.  
Suite 3E-218, MS 8E-12  
Mail Stop 2-7  
Washington, DC 20219

*with a copy to:*  
Washington DC Field Office  
400 7<sup>th</sup> Street, S.W.  
Suite 3E-218  
Mail Stop 2W-11  
Washington, DC 20219

(10) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

(11) The OCC and the Bank entered into a Formal Agreement dated January 20, 2008 ("Formal Agreement"). This Order replaces the Formal Agreement in its entirety and, therefore, the Formal Agreement is hereby terminated. Provided, however, that the Bank and its institution-affiliated parties remain liable for any breach of the Formal Agreement preceding its termination.

IT IS SO ORDERED, this 15th day of April, 2013.

signed

---

James R. Moore  
Director for Special Supervision



**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

In the Matter of: )  
Millennium Bank, N.A. )  
Sterling, Virginia )

AA-EC-13-XX

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America ("Comptroller" or "OCC") intends to initiate cease and desist proceedings against Millennium Bank, National Association, Sterling, Virginia ("Bank") pursuant to 12 U.S.C. § 1818 through the issuance of a Notice of Charges, for unsafe or unsound banking practices relating to asset quality, earnings and management, violations of law and regulation and for the failure to comply with the Formal Agreement dated January 24, 2008;

**WHEREAS**, the Bank, in the interest of compliance and cooperation consents to the issuance of a Consent Order, dated April 15th, 2013 ("Order") by executing this Stipulation and Consent to the Issuance of a Consent Order;

**NOW THEREFORE**, in consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

ARTICLE I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is "the appropriate Federal banking agency" regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an "insured depository institution" within the meaning of 12 U.S.C. § 1818(b)(1).

## ARTICLE II

### AGREEMENT

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an "order issued with the consent of the depository institution" as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute the Consent Order.

(5) The Bank also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(6) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19
  - (d) all rights to seek any type of administrative or judicial review of the Order; and

(e) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

CLOSING PROVISIONS

(1) The provisions of this Stipulation and Consent Order shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

*signed*

*April 15, 2013*

James R. Moore  
Director  
Special Supervision Division

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

signed  
Gerald A. Hanweck, Sr.

April 15, 2013  
Date

signed  
J. Anthony Fulkerson

April 15, 2013  
Date

signed  
Jeffrey M. Johnson

April 15, 2013  
Date

signed  
Joseph W. Paulini

April 15, 2013  
Date

signed  
Robert T. Smoot

April 15, 2013  
Date

signed  
James W. Wolfe

April 18, 2013  
Date