

AGREEMENT BY AND BETWEEN
Excel Bank, N.A.
New York, NY
and
The Office of the Comptroller of the Currency

Excel Bank, N.A., New York, NY (“Bank”) and the Comptroller of the Currency of the United States of America (“Comptroller”) wish to protect the interests of the depositors, other customers, and shareholders of the Bank, and, toward that end, wish the Bank to operate safely and soundly and in accordance with all applicable laws, rules, and regulations.

In consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (“Board”), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

ARTICLE I

JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “formal written agreement” within the meaning of 12 C.F.R. § 5.51(c)(6)(ii). See 12 U.S.C. § 1831i.

(4) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

ARTICLE II

CONCENTRATION REDUCTIONS AND EXPOSURE LIMITS

(1) The Bank, on a consolidated basis with its subsidiary, Excel Capital Corporation, shall limit by June 30, 2002, and every day thereafter, its total exposure to Designated Countries to no more than two hundred fifty percent (250%) of Tier 1 capital plus the Allowance for Loan and Lease Losses.

(2) The Bank, on a consolidated basis with its subsidiary, Excel Capital Corporation, shall limit by June 30, 2002, and every day thereafter, its total exposure to any one of the Designated Countries to no more than fifty percent (50%) of Tier 1 capital plus the Allowance for Loan and Lease Losses.

(3) The Bank shall not purchase or acquire securities in any of the Designated Countries, whether the Bank makes such acquisition using its investment authority or loan authority, that do not meet the definition of "investment grade" pursuant to 12 C.F.R. Part 1

(4) At a minimum, on a weekly basis, the Bank shall determine the value of all "Designated Country" exposure. The value of the assets will be based on the average bid price obtained from three (3) independent sources who are active in, and have sufficient knowledge of, emerging market debt such as the debt the Bank holds. The Director reserves the right to review, and request changes in, the sources used to provide pricing.

(5) For purposes of this Agreement, the term "Designated Countries" shall include Mexico, Turkey, and all non-OECD countries.

ARTICLE III

CAPITAL PLAN

(1) Within sixty (60) days, the Bank shall provide to the Director for Special Supervision/Fraud (“Director”), a Capital Plan covering a three (3) year period that, at a minimum, shall include:

- (a) Specific plans for achieving, and thereafter maintaining, the following minimum capital levels as defined in 12 C.F.R. Part 3¹:
 - (i) Total capital at least equal to ten percent (10%) of risk-weighted assets;
 - (ii) Tier 1 capital at least equal to eight percent (8%) of risk-weighted assets; and
 - (iii) Tier 1 capital at least equal to six percent (6%) of actual adjusted total assets.
- (b) Projections for capital based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet assets and activities;
- (c) Projections of the sources and timing of additional capital and/or projections of the methods and timing of reducing assets, consistent with the requirements and limitations of Article II, to meet the requirements of subparagraph (1)(a) of this Article;

¹ The requirement in this Agreement 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).

- (d) The primary source(s) from which the Bank will strengthen its capital structure to meet the requirements of subparagraph (1)(a) of this Article;
- (e) Alternative source(s) from which the Bank will strengthen its capital structure should the primary source(s) under (d) above not be available;
- (f) A dividend policy that permits the declaration of a dividend only:
 - (i) When the dividend would not cause the Bank, after making the distribution, to be undercapitalized;
 - (ii) When the Bank is in compliance with its approved Capital Plan;
 - (iii) When the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
 - (iv) With the prior written determination of no supervisory objection by the Director.
- (g) Maintenance of adequate liquidity while complying with the restrictions or requirements set forth in this Agreement; and
- (h) A business strategy that details the types and levels of activities in which the Bank will prospectively engage.

(2) The Bank shall submit the plan to the Director for a determination of no supervisory objection. Once that determination is made, the Bank shall thereafter adhere to the provisions of the Capital Plan submitted to the Director. The Board shall review and update the Bank's Capital Plan on an annual basis, or more frequently if necessary. The Bank shall submit any changes to the Capital Plan to the Director for a determination of no supervisory objection.

ARTICLE IV

BUSINESS EXPANSION

(1) Prior to the Bank's involvement in any new products or services, or the significant expansion of any existing product or service, Bank management shall prepare and present to the Board a written analysis of that product or service. The analysis shall, at a minimum, include the following:

- (a) an assessment of the risks and benefits of the product or service to the Bank;
- (b) an explanation of how the product or service is consistent with the Bank's strategic plan;
- (c) an evaluation of the adequacy of the Bank's organizational structure, management and other staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
- (d) a profitability analysis, including growth projections and interest rate risk.

(2) Thirty (30) days prior to the Bank's involvement in a new product or service, or the significant expansion of an existing product or service, the Board shall review management's written analysis and shall submit a copy to the Director for review and prior determination of no supervisory objection.

(3) Within forty-five (45) days, the Bank shall submit a detailed statement of the Bank's current business lines, products, and services and to whom those products and services are offered.

(4) For purposes of this Article, “significant expansion” shall be defined as an annualized growth rate of an existing product or service greater than fifteen percent (15%), as calculated on the last date of each calendar quarter.

ARTICLE V

ADMINISTRATIVE RELIEF AND EXTENSIONS OF TIME

(1) If the Bank or its subsidiary, Excel Capital Corporation, determine that an exception to any provision of the Order is in the best interests of the Bank or the subsidiary, or require an extension of any timeframe within this Order, the Bank or the subsidiary shall submit a written request to the Director asking for relief.

(2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank or the subsidiary from complying with any provision, that require the Director to exempt the Bank or the subsidiary from any provision, or that require an extension of any timeframe within this Order. All such requests shall be accompanied by relevant supporting documentation.

(3) The Director’s decision in granting the request is final and is not subject to further review.

ARTICLE VI

NOTICE TO THE COMPTROLLER

(1) All correspondence related to this Agreement, and any information or documentation required hereunder to be submitted shall be sent by overnight mail, hand delivery or facsimile to:

Ronald G. Schneck
Director for Special Supervision/Fraud
Office of the Comptroller of the Currency
Mail Stop 6-4
250 E. Street, S.W.
Washington, DC 20219
202-874-4450
202-874-5214 (fax)

and

Kathleen Page
National Bank Examiner
New York Field Office
1114 Avenue of the Americas
Suite 3900
New York, NY 10036
212-790-4020
212-790-4083 (fax)

ARTICLE VII

CLOSING

(1) Although the Board has agreed to submit certain programs and reports to the Director for review or approval, 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 him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement. Such time requirements may be extended in writing by the Director for good cause upon written application by the Board, as set forth in Article V.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are

amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. §1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States. 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 its supervisory powers, including 12 U.S.C. §1818(b)(1), 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. The Bank also expressly acknowledges that no Comptroller officer or employee 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 its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

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

/s/ Ronald G. Schneck
Ronald G. Schneck
Director for Special Supervision/Fraud

April 11, 2002
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

John Altenau

April 9, 2002

Date

Signed

Donald Frain

April 9, 2002

Date

Signed

Arthur Keller

April 9, 2002

Date

Signed

Robert F. Moreschi

April 9, 2002

Date

Signed

Roy Nersesian

April 9, 2002

Date