

#2011-180

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

In the Matter of:)
Charter National Bank and Trust)
Hoffman Estates, Illinois)

AA-EC-11-102

PROMPT CORRECTIVE ACTION DIRECTIVE

WHEREAS, Charter National Bank and Trust, Hoffman Estates, Illinois (“Bank”) is a critically undercapitalized bank pursuant to 12 U.S.C. § 1831o and 12 C.F.R. Part 6; and

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) is authorized, pursuant to 12 U.S.C. § 1831o, to take certain supervisory actions against critically undercapitalized banks; and

WHEREAS, on November 17, 2011, the OCC issued a Notice of Intent to Issue a Prompt Corrective Action Directive (“Notice”) to the Bank pursuant to 12 C.F.R. § 6.21(a)(1); and

WHEREAS, on December 2, 2011, the Bank submitted a written response to the Notice pursuant to 12 C.F.R. § 6.22; and

WHEREAS, the OCC has carefully considered the Bank’s response to the Notice; and

WHEREAS, the Comptroller finds it necessary in order to carry out the purpose of 12 U.S.C. § 1831o to issue this Prompt Corrective Action Directive (“Directive”), requiring the Bank to immediately follow proscriptions and take actions; and

NOW THEREFORE, pursuant to the authority in 12 U.S.C. § 1831o, the Comptroller hereby issues this Directive.

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 1831o.

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1831o.

(4) This Directive constitutes a final order under 12 U.S.C. § 1831o and is enforceable under 12 U.S.C. § 1818(i).

(5) A violation of this Directive constitutes a violation of a final order under 12 U.S.C. § 1831o and is subject to the assessment of civil money penalties under 12 U.S.C. § 1818(i)(2).

ARTICLE II

COMPLIANCE COMMITTEE

(1) Within five (5) days of the date of this Directive, the Board shall appoint a Compliance Committee of at least three (3) directors, of which none shall be an employee or controlling shareholder 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 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 Directive and the Consent Order issued against the Bank by the OCC on April 29, 2010 (“2010 Order”).

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

(3) Within fifteen (15) days of the date of this Directive and every thirty (30) days thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the action needed to achieve full compliance with each Article of this Directive and the 2010 Order;
- (b) actions taken to comply with each Article of this Directive and the 2010 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.

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

Director for Special Supervision
Comptroller of the Currency
250 E Street, S.W.
Mail Stop 2-7
Washington, DC 20219

with a copy to
Comptroller of the Currency
1700 E. Golf Road
Suite 800
Schaumburg, IL 60173

ARTICLE III

BOARD TO ENSURE COMPETENT MANAGEMENT

(1) The Board shall ensure that the Bank has competent management in place on a full-time basis in all executive officer positions to carry out the Board's policies; correct the concerns raised in the most recent Report of Examination ("ROE") and the 2010 Order; ensure compliance with this Directive; ensure compliance with all applicable laws, rules, and regulations; and manage the day-to-day operations of the Bank in a safe and sound manner.

(2) Within thirty (30) days of the issuance of this Directive, the Board shall prepare an updated written assessment of the capabilities of the Bank's executive officers to perform present and anticipated duties, taking into account the findings contained in the most recent ROE, and factoring in an executive officer's past actual performance, experience, and qualifications, compared to his/her position description, duties and responsibilities, with particular emphasis on his/her proposed responsibilities to correct the concerns raised in this Directive, the 2010 Order, and the most recent ROE. Upon completion, a copy of the written assessment shall be submitted to the Director.

(3) If the Board determines that an officer's skills or abilities need improvement and that the officer will continue in his/her position, the Board shall, within ten (10) calendar days following its determination, require the Bank to develop and implement a written program, with specific time frames, to improve the officer's performance, skills, and abilities. Upon completion, a copy of the written program shall be submitted to the Director.

(4) If the Board determines that an officer will not continue in his/her position, the Board shall document the reasons for this decision in its assessment performed pursuant to paragraph (2) of this Article, and shall within ten (10) calendar days of such vacancy identify and provide notice to the Director of a qualified and capable candidate for the vacant position who shall be vested with sufficient executive authority to ensure the Bank's compliance with this Directive, the 2010 Order, and the safe and sound operation of the functions within the scope of that position's responsibility.

(5) In selecting individuals to serve in senior executive officer positions, the Board shall comply with the prior notice requirements of 12 U.S.C. § 1831i and 12 C.F.R. § 5.51.

(6) The Board shall perform a written performance appraisal for each Bank officer that establishes objectives by which the officer's effectiveness will be measured, evaluates performance according to the position's description and responsibilities, and assesses accountability for action plans to remedy issues raised in ROEs or audit reports. Upon completion, copies of the performance appraisals shall be submitted to the Director. The Board shall ensure that the Bank addresses any identified deficiencies in a manner consistent with this Article.

(7) The Board shall ensure that the Bank has sufficient processes, personnel, and control systems to effectively implement and adhere to all provisions of this Directive, and that Bank personnel have sufficient training and authority to execute their duties and responsibilities under this Directive.

ARTICLE IV

DIRECTOR AND EXECUTIVE OFFICER COMPENSATION

(1) Effective immediately, the Bank shall obtain the Director's written, supervisory non-objection prior to the payment of any fees, expense reimbursements, bonuses, commissions, or other types of compensation to a Bank director, executive officer, or his or her related interests, as defined in 12 C.F.R. § 215, other than salary payments to the Bank's executive officers that were previously approved by the Board or earned and accrued in any pay period.

(2) Any request for supervisory non-objection pursuant to this Article shall contain, at a minimum and in writing, the Board's determination that such remuneration:

- (a) is reasonable;
- (b) is proportionate to services rendered; and

- (c) compensates only for providing services that meet the Bank's legitimate needs.

ARTICLE V

SEVERANCE PAYMENTS AND INDEMNIFICATION

(1) The Bank shall not make any payments of severance or remuneration to any institution-affiliated party unless approved pursuant to 12 U.S.C. § 1828(k)(4) and 12 C.F.R. Part 359.

(2) The Bank shall make no indemnification payments to, or on behalf of, any institution-affiliated party unless such payments fully comply with 12 U.S.C. § 1828(k)(5) and 12 C.F.R. Part 359. Pursuant to 12 U.S.C. § 1831o(f)(2)(J), the Bank shall not cause any indemnification payments to be made to, or on behalf of, any institution-affiliated party without first obtaining a written, supervisory non-objection from the Director. Any request for the Director's supervisory non-objection shall include a legal opinion from independent counsel setting forth the basis under which such indemnification payments fully satisfy the requirements of 12 U.S.C. § 1828(k)(5) and 12 C.F.R. Part 359.

ARTICLE VI

PRESERVATION OF BOOKS AND RECORDS

(1) The Board shall ensure that all of the Bank's documents, books, and records are accurately maintained and preserved on the premises of the Bank and shall ensure that no Bank documents, books, or records are destroyed, altered, or removed from the Bank's premises. For purposes of this paragraph, "documents, books, and records" shall have the broadest possible meaning reasonably imaginable and shall include, without limitation, paper and electronic

records of all kinds, reports, notes, calendars, phone logs, e-mails, voice-mails, financial instruments, and tapes.

(2) The Bank shall provide OCC personnel with prompt and unrestricted access to the documents, books, records, directors, officers, and staff of the Bank. The Board shall also ensure all agents and representatives of the Bank provide OCC personnel with prompt and complete access to the documents, books, and records of the Bank.

(3) The Bank shall provide full and complete details of the purpose of the transactions by and between the Bank and any of its customers and by and between the Bank and any of its directors, officers, and staff, to OCC personnel upon inquiry.

ARTICLE VII

VIOLATIONS OF LAW

(1) The Board shall require and the Bank shall immediately take all necessary steps to correct each violation of law, rule, or regulation cited in any ROE, or brought to the Board's or Bank's attention in writing by management, regulators, auditors, loan review, or other compliance efforts. Within fifteen (15) calendar days after the violation is cited or brought to the Board's attention, the Bank shall provide to the Board a list of any violations that have not been corrected. This list shall include an explanation of the actions taken to correct the violation, the reasons why the violation has not yet been corrected, and a plan to correct the violation by a specified date.

(2) The Board shall require and the Bank shall immediately take all necessary steps to comply with the requirements of the 2010 Order, which shall remain in effect.

(3) Within fifteen (15) calendar days of the date of this Directive, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to:

- (a) specific procedures to prevent future violations as cited by the OCC in any correspondence to the Bank; and
- (b) general procedures addressing compliance management that incorporate internal control systems and education of employees regarding laws, rules, and regulations applicable to their areas of responsibility.

(4) Upon adoption, the Board shall forward a copy of these policies and procedures to the Director.

ARTICLE VIII

CONTINUING OBLIGATION TO SUBMIT

AN ACCEPTABLE CAPITAL RESTORATION PLAN

(1) The Bank first became undercapitalized as of April 30, 2011, and the OCC confirmed this status to the Bank by letter dated May 6, 2011. Since April 30, 2011, the Bank has been under a continuing obligation to submit an acceptable Capital Restoration Plan (“CRP”), pursuant to 12 U.S.C. § 1831o(e)(2) and 12 C.F.R. § 6.6(a)(2)(iii), and the OCC’s letter dated May 6, 2011.

(2) Any increase in capital necessary to meet the requirements of this Article and satisfy the CRP may be accomplished solely by the following:

- (a) the sale of common stock; or
- (b) the sale of noncumulative perpetual preferred stock; or

- (c) the direct contribution of cash by the Board and/or shareholders of the Bank; or
- (d) any other means acceptable to the Director.

ARTICLE IX

LOAN REVIEW

(1) Within thirty (30) days, the Bank shall implement and maintain an effective, independent, and on-going loan review program to review, at least quarterly, the Bank's loan portfolio, to assure the timely identification and categorization of problem credits. The program shall provide for a written report to be filed with the Board promptly after each review and shall employ a loan and lease rating system consistent with the guidelines set forth in "Rating Credit Risk" and "Allowance for Loan and Lease Losses," Booklets A-RCR and A-ALLL, respectively, of the *Comptroller's Handbook*. Such reports shall include, at a minimum:

- (a) the loan review scope and coverage parameters;
- (b) conclusions regarding the overall quality of the loan and lease portfolios;
- (c) the identification, type, rating, and amount of problem loans and leases;
- (d) the identification and amount of delinquent loans and leases;
- (e) credit and collateral documentation exceptions;
- (f) loans meeting the criteria for non-accrual status;
- (g) the identity of the loan officer(s) of each loan reported in accordance with subparagraphs (b) through (f);
- (h) the identification and status of credit-related violations of law, rule, or regulation;

- (i) concentrations of credit; and
- (j) loans and leases in nonconformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(2) A written description of the program required by paragraph (1) of this Article shall be forwarded to the Director immediately upon implementation.

(3) The Board shall evaluate the loan review report(s) and shall ensure that immediate, adequate, and continuing remedial action, as appropriate, is taken upon all findings noted in the report(s). The Board shall also ensure that the Bank preserves documentation of any actions to collect or strengthen assets identified as problem credits.

ARTICLE X

ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) The Board shall continue to require and the Bank shall continue to implement and thereafter adhere to a program for the maintenance of an adequate Allowance for Loan and Lease Losses ("ALLL"). The program shall continue to be consistent with the comments on maintaining a proper ALLL found in the Interagency Policy Statement on the ALLL contained in OCC Bulletin 2006-47 (dated December 13, 2006) and with "Allowance for Loan and Lease Losses," booklet A-ALLL of the *Comptroller's Handbook*, and shall incorporate the following, in addition to those requirements in Article V of the 2010 Order:

- (a) internal risk ratings of loans;
- (b) results of the Bank's independent loan review;
- (c) Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Topic 310 Receivables (pre-codification reference:

Statement of Financial Accounting Standards (“FAS”) Statement No.

114), how impairment will be determined, and procedures to ensure that

the analysis of loans complies with ASC 310 requirements;

- (d) criteria for determining loan pools under ASC 310 (pre-codification reference: FAS Statement No. 5) and an analysis of those loan pools;
- (e) recognition of non-accrual loans in conformance with generally accepted accounting principles ("GAAP") and regulatory guidance;
- (f) loan loss experience;
- (g) trends of delinquent and non-accrual loans;
- (h) concentrations of credit in the Bank; and
- (i) present and projected economic and market conditions.

(2) The program shall provide for a review of the ALLL by the Board at least once each calendar quarter. Any deficiency in the ALLL shall be remedied in the quarter it is discovered, prior to filing the Consolidated Reports of Condition and Income, by additional provisions from earnings. Written documentation shall be maintained of the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL and made available for review by Bank Examiners.

(3) A copy of the Board's ALLL program, and any subsequent revisions to the program, shall be submitted to the Director.

ARTICLE XI

LIQUIDITY

(1) The Board shall immediately ensure the Bank has adequate liquidity to sustain its current operations and to withstand any anticipated or extraordinary demand against its funding base. Actions to increase liquidity to a sufficient level may include, but are not necessarily limited to:

- (a) selling assets;
- (b) obtaining lines of credit from the Federal Reserve Bank;
- (c) obtaining lines of credit from correspondent banks;
- (d) recovering charged-off assets; and
- (e) injecting additional equity capital.

(2) The Board shall review the Bank's liquidity on a daily basis until the bank is notified otherwise. Such reviews shall consider:

- (a) a maturity schedule of certificates of deposit, including large uninsured deposits;
- (b) the volatility of demand deposits including escrow deposits;
- (c) the amount and type of loan commitments and standby letters of credit;
- (d) an analysis of the continuing availability and volatility of present funding sources;
- (e) an analysis of the impact of decreased cash flow from the Bank's loan portfolio resulting from delinquent and non-performing loans; and
- (f) an analysis of the impact of decreased cash flow from the sale of loans or loan participations.

(3) The Board shall take appropriate action to ensure adequate sources of liquidity in relation to the Bank's needs. Daily reports shall set forth liquidity requirements and sources and

establish a contingency plan. Copies of these reports shall be forwarded to the Director daily until notified otherwise.

ARTICLE XII

OTHER REAL ESTATE OWNED

(1) Within fifteen (15) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a policy to ensure that Other Real Estate Owned (“OREO”) is managed and supervised in accordance with 12 U.S.C. § 29 and 12 C.F.R. Part 34. The policy shall address:

- (a) responsibility and authority for OREO properties;
- (b) proper accounting procedures for OREO properties from transfer to the Bank and until and upon sale to a third party;
- (c) procedures to require timely appraisals pursuant to 12 C.F.R. § 34.85 and 12 C.F.R. Part 34, Subpart C;
- (d) diligent sales efforts; and
- (e) reporting systems.

(2) Upon adoption, the Board shall submit a copy of the policy to the Director.

ARTICLE XIII

CONCENTRATIONS OF CREDIT

(1) Within fifteen (30) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to a written asset diversification program consistent with OCC Banking Circular 255. The program shall include, but not necessarily be limited to, the following:

- (a) a review of the balance sheet to identify any concentrations of credit;

- (b) a written analysis of any concentration of credit identified above in order to identify and assess the inherent credit, liquidity, and interest rate risk;
- (c) policies and procedures to control and monitor concentrations of credit; and
- (d) an action plan approved by the Board to reduce the risk of any concentration deemed imprudent in the above analysis.

(2) For purposes of this Article, a concentration of credit is as defined in the “Loan Portfolio Management” booklet of the *Comptroller's Handbook*.

(3) The Board shall ensure that future concentrations of credit are subjected to the analysis required by subparagraph (1)(b) and that the analysis demonstrates that the concentration will not subject the Bank to undue credit or interest rate risk.

(4) The Board shall forward a copy of any analysis performed on existing or potential concentrations of credit to the Director immediately following the review.

ARTICLE XIV

OTHER ACTIONS REQUIRED

(1) Immediately upon issuance of this Directive, the Bank shall not do any of the following without the prior, written approval of the Bank’s Board and prior, written, supervisory non-objection of the Director¹:

¹ This is in addition to any approval required by the Federal Deposit Insurance Corporation (“FDIC”).

- (a) enter into any material transaction other than in the usual course of business, including any investment, expansion, acquisition, or other similar action;
- (b) engage in the sale or transfer of any Bank-owned other real estate exceeding a fair market value of two hundred fifty thousand dollars (\$250,000) unless the loss to the Bank does not exceed ten (10) percent of book value; or engage in the sale or transfer of any other Bank asset or pool of assets, excluding other real estate owned, exceeding a fair market value of one hundred thousand dollars (\$100,000). Any real estate owned sale or transfer under \$250,000 or where the loss to the Bank does not exceed 10 percent of book value, and any other asset sale or transfer less than \$100,000 must be reported to the OCC within five (5) days after the sale;
- (c) transfer any asset to an institution-affiliated party, as defined by 12 U.S.C. § 1813(u), or to an affiliate, as defined by 12 U.S.C. § 371c as if section 371c(d)(1) did not apply;
- (d) engage in any transaction for the transfer of funds, the extension of credit, acceptance or transference of risk and/or the conferring of another type of benefit, directly or indirectly, involving any affiliates of the Bank, as defined in 12 U.S.C. § 371c as if section 371c(d)(1) did not apply, or current or former Bank directors, shareholders, officers, or their respective family members;

- (e) amend the Bank's charter or bylaws, except to the extent necessary to carry out any other requirement of law, regulation, or order;
- (f) make any material change in accounting methods;
- (g) increase compensation or other payments, including bonuses, to employees, directors, agents or independent contractors;
- (h) enter into any new product or service, or undertake a significant expansion of any existing product or service.

ARTICLE XV

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) the Board's written analysis of why the proposed contract is in the best interests of the Bank;
- (b) 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;

- (c) 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
- (d) 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 contractor or service provider's performance to ensure that the contractor or service provider is complying with the written contract or engagement. The Board shall immediately take appropriate action if the contractor or service provider is not complying with the written contract or engagement and shall maintain documentation of any such actions.

ARTICLE XVI

CLOSING

(1) This Directive is enforceable under 12 U.S.C. § 1818(i). Each provision of this Directive shall be binding upon the Bank, its directors, officers, employees, agents, successors, assigns, subsidiaries, and other persons participating in the affairs of the Bank.

(2) Any time limitations imposed by this Directive shall begin to run from the effective date of this Directive. Such time limitations may be extended in writing by the Director for good cause upon written application by the Board.

(3) The provisions of this Directive are effective upon issuance of this Directive 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 Directive shall have been amended, suspended, waived, or terminated in writing by the Director.

(4) 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, or any institution-affiliated party of the Bank, nothing in this Directive shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

IT IS SO ORDERED, this 20th day of December, 2011.

/s
Michael R. Brickman
Director
Special Supervision Division
Office of the Comptroller of the Currency