

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

In the Matter of:	)	
	)	
Gateway Bank, F.S.B.	)	AA-ENF-2020-69
Oakland, California	)	
	)	

**CONSENT ORDER**

**WHEREAS**, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over Gateway Bank, F.S.B, Oakland, California (“Bank”);

**WHEREAS**, the Bank consented to the issuance of a Cease and Desist Order on October 26, 2011, AA-EC-11-90 (“2011 Order”) for engaging in certain unsafe or unsound banking practices and violations of law, rule, and regulation;

**WHEREAS**, the OCC has determined that the Bank has not attained full compliance with the 2011 Order, and that new unsafe or unsound banking practices and new violations of law, rule, or regulation exist;

**WHEREAS**, this Consent Order (“Order”) is intended to replace and supersede the 2011 Order and is tailored to address the Bank’s violations and unsafe or unsound practices;

**WHEREAS**, the OCC intends to initiate cease and desist proceedings against the Bank pursuant to 12 U.S.C. § 1818(b), through the issuance of a Notice of Charges, for engaging in unsafe or unsound practices, including those relating to board and management supervision, internal audit, credit administration, and consumer compliance management and for violations of 12 C.F.R. §§ 21.21(d)(1), 21.21(d)(3), and 163.180(d) and 12 U.S.C. § 1818(s)(3)(B);

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, by and

through its duly elected and acting Board of Directors (“Board”), consents to the issuance of this Order by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”); and

**NOW, THEREFORE**, pursuant to the authority vested in the OCC by Section 8(b) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the OCC hereby orders that:

## **ARTICLE I**

### **JURISDICTION**

- (1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).
- (2) The Bank is a Federal savings association within the meaning of 12 U.S.C. § 1813(q)(1)(C), and is chartered and examined by the OCC. *See* 12 U.S.C. §§ 1461 *et seq.*, 5412(b)(2)(B).
- (3) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this cease and desist action against the Bank pursuant to 12 U.S.C. § 1818(b).

## **ARTICLE II**

### **COMPTROLLER’S FINDINGS**

The Comptroller finds, and the Bank neither admits nor denies, the following:

- (1) Prior to the 2011 Order, the Bank consented to the issuance of a Cease and Desist Order by the Office of Thrift Supervision on April 24, 2009 (“2009 Order”). The Bank did not achieve compliance with the 2009 Order and it was replaced with the 2011 Order.

(2) The Board and management have not corrected all deficiencies that led to the 2011 Order, and the Bank is engaging in unsafe or unsound practices. Among other things, the Board and management have not provided effective oversight, maintained an adequate internal audit program and internal controls, effectively managed compliance with consumer laws and regulations, and adhered to a program for the prudent administration of its loans and other extensions of credit.

(3) The Board has not ensured that its Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”) compliance program is safe and sound and achieves and maintains compliance with 12 C.F.R. § 21.21, and has failed to correct material deficiencies in its BSA/AML compliance program previously reported to it by the OCC.

### **ARTICLE III**

#### **COMPLIANCE COMMITTEE**

(1) The Board shall maintain a Compliance Committee of at least three (3) members, of which a majority shall be directors who are not employees or officers of the Bank or any of its affiliates. In the event of a change of the membership, the Board shall submit the name of any new or resigning committee member in writing to the Director for Special Supervision (“Director”) within ten (10) days of adding or removing a member. The Compliance Committee shall monitor and oversee the Bank’s compliance with the provisions of this Order.

(2) The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

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

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

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

#### **ARTICLE IV**

##### **BOARD AND MANAGEMENT SUPERVISION**

(1) Within ninety (90) days of the date of this Order, the Board shall ensure that the Bank has hired effective and qualified management for all senior executive officer positions to carry out the Board's policies. In the event that a position is vacated, the Board shall appoint a new officer within 90 days.

(2) Within ninety (90) days of the date of this Order, the Board shall adopt, and management shall implement and thereafter adhere to, a written program, including policies and procedures, to ensure appropriate controls, staffing, and oversight of the Bank's corporate governance and decision-making processes to correct the Bank's deficient practices as described in the most recent examination report and to ensure compliance with applicable laws, rules, regulations, and this Order, to include requirements for:

- (a) capable management and staff to perform present and anticipated duties, factoring in actual performance, experience, and qualifications, compared to their position descriptions, duties and responsibilities, with particular

- emphasis on proposed responsibilities to effectively execute the Strategic and Capital Plan required by Article V of this Order, and to correct the deficient practices identified in the most recent examination;
- (b) the identification of future senior management staffing requirements of each area of the Bank;
  - (c) clear lines of responsibility and authority for each member of senior management;
  - (d) a management employment and succession program to promote the retention and continuity of capable management;
  - (e) sufficient Bank policies, processes, personnel, and control systems to effectively implement and adhere to all provisions of this Order;
  - (f) sufficient training and authority for Bank personnel to execute their duties and responsibilities under this Order;
  - (g) an adequate 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;
  - (h) a sufficient process to ensure that management appropriately responds to any audit, compliance, and/or regulatory criticisms; and
  - (i) the Board to receive and review sufficient (with regard to scope, frequency, timing, and content) information from management regarding the operation of the Bank and compliance with this Order to enable the Board to provide oversight and fulfill their fiduciary duties and other

responsibilities under law and in accordance with safe and sound practices. Refer to the “Corporate and Risk Governance” booklet of the *Comptroller’s Handbook*.

(3) The Board shall adopt written procedures to ensure that the Board and management perform, as applicable, annual written performance appraisals for the Bank’s President and Chief Executive Officer and all other senior executive officers and that corrective actions are taken for any identified deficiencies. Each annual written performance appraisal shall consider the senior executive officer’s position description and responsibilities as well as an evaluation of compliance with each of the following as applicable:

- (a) any objectives established by the Board;
- (b) Board-approved policies and procedures;
- (c) the Board-approved Strategic and Capital Plan;
- (d) action plans to remedy deficiencies raised in examinations, any supervisory or regulatory communications, or audit reports; and
- (e) laws, regulations, and the Order.

## **ARTICLE V**

### **STRATEGIC AND CAPITAL PLAN**

(1) Bank management, subject to Board review and ongoing monitoring, shall continue to implement and ensure adherence to the Bank’s written Strategic Plan and Capital Plan.

(2) The Bank may not initiate any action that significantly deviates from the Bank’s Strategic Plan and Capital Plan, or a future written Strategic and Capital Plan adopted in

compliance with paragraph (6) of this Article, without a prior written determination of no supervisory objection from the Director for the proposed significant deviation.

(3) Any request by the Bank for a prior written determination of no supervisory objection to a significant deviation described in this Article shall be submitted in writing to the Director at least thirty (30) days in advance of the proposed significant deviation. Such request shall include an assessment of the effects of the proposed change on the Bank's condition and risk profile, including a profitability analysis and an evaluation 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 proposed change.

(4) For the purposes of this Article, changes that may constitute a significant deviation include, but are not limited to, a change in the Bank's marketing strategies, products, services, marketing partners, underwriting practices or standards, credit administration, account management, collection strategies or operations, fee structure or pricing, accounting processes or practices, or funding strategy, any of which, alone or in the aggregate, may have a material effect on the Bank's operations or financial performance; or any other changes in personnel, operations, or external factors that may have a material effect on the Bank's operations or financial performance.

(5) At least monthly, Bank management shall prepare and submit to the Board a written evaluation of the Bank's performance against the Bank's written Strategic Plan and Capital Plan, or a future, written Strategic and Capital Plan that has received a written determination of no supervisory objection from the Director. The evaluation shall include financial reports and earnings analyses that evaluate the Bank's performance against the goals

and objectives established in the written Strategic and Capital Plan, as well as management's written explanation of significant differences between the actual and projected balance sheet, off balance sheet items, income statement, and expense accounts, including descriptions of extraordinary and/or nonrecurring items. Within ten (10) days after submission of the evaluation, the Board shall review the evaluation and determine the corrective actions the Board will require Bank management to take to address any identified shortcomings. At least quarterly, the Board shall prepare a written evaluation of the Bank's performance against the Bank's Strategic Plan and Capital Plan, or a future, written Strategic and Capital Plan that has received a written determination of no supervisory objection from the Director, 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's meeting minutes. The Board shall retain a copy of these quarterly 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.

(6) The Board shall review and update the written Strategic and Capital Plan no later than January 31st every year and more frequently if necessary or if required by the Director in writing. Any updates, amendments, or revisions shall be submitted to the Director for 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 revised written Strategic and Capital Plan and any amendments or revisions thereto.



- (7) The Bank may declare or pay a dividend or make a capital distribution only:
- (a) when the Bank is in compliance, and would remain in compliance, with its written Strategic and Capital Plan that received a prior written of no supervisory objection from the Director immediately following the declaration or payment of any dividend or capital distribution; and
  - (b) if the Bank is in compliance with 12 U.S.C. § 5.55, including submission of any filing and receipt of any approval by the OCC, as required therein; and
  - (c) following the Director’s prior written determination of no supervisory objection to the dividend or capital distribution.

(8) The Bank’s capital planning process shall be consistent with safe and sound practices and ensure the integrity, objectivity, and consistency of the process through adequate governance. Refer to the “Capital and Dividends” booklet of the *Comptroller’s Handbook*. 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 appropriate, or if required by the Director in writing.

## **ARTICLE VI**

### **INTERNAL AUDIT**

(1) Within sixty (60) days of the date of this Order, the Bank shall develop, and the Board shall adopt, a comprehensive, written internal audit program that adequately assesses controls and operations to allow the Board and management to understand the sufficiency of the Bank’s internal controls system (“Internal Audit Program”). Upon adoption, Bank management,

subject to Board review and ongoing monitoring, shall immediately implement and adhere to the Internal Audit Program and any amendments or revisions thereto.

(2) Management shall ensure the Internal Audit Program's compliance with the standards for internal audit systems set forth in Section II.B of the Interagency Guidelines Establishing Standards for Safety and Soundness, Appendix A to 12 C.F.R. Part 30. Refer to the "Internal and External Audits" booklet of the *Comptroller's Handbook*.

The Internal Audit Program shall incorporate safety and soundness standards that are commensurate with the Bank's size, complexity, scope of activities, and risk profile and shall, at a minimum:

- (a) require the development of a risk-based internal audit plan that provides adequate audit scope, coverage, and frequency for all areas of the Bank, with annual documented Board approval of the internal audit plan and Board notification of any material variance from the plan;
- (b) ensure detailed due diligence is conducted when using third parties to complete any internal audit activities, including documented Board approval of selection and termination of third parties. Refer to "Third-Party Relationships" (OCC Bulletin 2013-29);
- (c) evaluate the reliability, adequacy, and effectiveness of the Bank's internal controls system;
- (d) determine and ensure the Bank complies with laws and regulations and adheres to its established policies, procedures, and processes;
- (e) determine and ensure management is taking appropriate and timely steps to address control deficiencies and audit report recommendations, that the

progress of such actions is validated, documented, tracked, and reported to the Board on at least a monthly basis;

- (f) require internal audit reports to be in writing and distributed directly, not through any intervening party, to the Board or a designated audit committee in a timely manner after audit completion; and
- (g) require audit work papers and documentation that provide a meaningful audit trail and validation for audit findings, conclusions, and recommendations.

(3) The Board shall provide effective oversight of the Internal Audit Program, including:

- (a) verifying that management has adequately staffed the internal audit function with required knowledge, skills, and experience;
- (b) ensuring the internal audit function is independent and objective. The person or persons responsible for implementing the Internal Audit Program shall report directly to the Board or a designated committee thereof;
- (c) verifying management's actions to address material weaknesses in a timely manner and, where appropriate, directing management to take additional action; and

(4) The Board shall ensure that the Bank's Internal Audit Program includes independent testing for the Bank's BSA/AML compliance program, and that BSA audit procedures sufficiently test the alert generation, analysis, investigation, and disposition process and opine on the strength of management's audit/documentation trail. Independent testing for

BSA/AML compliance, including the frequency and depth, should be commensurate with the BSA risk profile of the Bank. The Board shall ensure that detailed due diligence is conducted when using third parties to complete any BSA related independent testing activities as required in paragraph (2) of this Article.

(5) The Bank's internal audit function shall have access to any records necessary for the proper conduct of its activities. The OCC shall have access to all reports and work papers of the internal audit staff and any third parties providing internal audit services.

(6) Within ten (10) days following the Board's adoption of the Internal Audit Program, the Bank shall forward a copy of the program to the Director.

(7) The Board shall review the effectiveness of the Internal Audit Program at least semi-annually, and more frequently if necessary or if required by the Director in writing, and, if necessary, revise the program. Within thirty (30) days following the Board's adoption of any revisions to the Internal Audit Program, the Bank shall forward a copy of the revised program to the Director.

## **ARTICLE VII**

### **CONSUMER COMPLIANCE MANAGEMENT SYSTEM**

(1) Within ninety (90) days of the date of this order, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to a Consumer Compliance Management System that shall, at a minimum, include:

- (a) procedures and processes for compliance with consumer laws, rules, and regulations (including, but not limited to, laws enumerated in 12 U.S.C. § 5481; Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45;

the Flood Disaster Protection Act, 42 U.S.C. § 4001, et seq.; the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, et seq.; and state consumer protection laws), and for timely self-identification and resolution of violations. Refer to the *Compliance Management Systems* booklet of the *Comptroller's Handbook*;

- (b) roles, responsibility, and accountability for consumer compliance risk management;
- (c) a program and methodology to assess, measure, and control compliance risk on an ongoing basis;
- (d) identification of any gaps in the skills and expertise needed to execute the Consumer Compliance Management System within current staff, along with a program to develop, attract, and retain talent, and maintain appropriate staffing levels to fulfill respective roles in the Bank's compliance risk management framework;
- (e) an effective, independent monitoring and testing function;
- (f) an effective change management program;
- (g) policies and procedures for effective third-party compliance risk management;
- (h) consumer compliance information systems to measure, track, and report risk, and to escalate significant compliance concerns to senior management and the Board;

- (i) a comprehensive training program for all appropriate staff that addresses relevant consumer laws, rules, and regulations and impending, publicly-announced changes to them; and
- (j) policies and procedures for timely response to and resolution of consumer complaints.

## **ARTICLE VIII**

### **CREDIT RISK MANAGEMENT**

(1) Within ninety (90) days of the date of this Order, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to, a credit underwriting and administration program (the “Credit Risk Management Program”) that requires the Bank to obtain and analyze credit and collateral information sufficient to identify, monitor, and report credit risk, properly account for loans, and assign accurate risk ratings in a timely manner. The Credit Risk Management Program shall be consistent with safe and sound banking practices and at minimum shall include:

- (a) policies that address, for both Bank-generated and purchased loans, acceptable loan types, terms, concentration limits, and collateral requirements and exceptions;
- (b) clear and comprehensive underwriting standards for all loan types offered or purchased;
- (c) a description of the types of credit information required from borrowers and guarantors prior to making a loan determination (e.g., annual audited statements, interim financial statements, personal financial statements, and tax returns with supporting schedules);

- (d) procedures that require that any extensions of credit are granted, by renewal or otherwise, only after obtaining the required credit information and thoroughly analyzing and documenting the borrower's and guarantor's financial condition, including, but not limited to, cash flow, debt service requirements, contingent liabilities, liquidity condition, sensitivity analysis, and global financial analysis in support of the credit decision;
- (e) procedures to identify and track all exceptions and efforts to mitigate or cure exceptions, including but not limited to financial, collateral, policy, and underwriting exceptions. The number of loans with exceptions, and their aggregate dollar value, shall be reported to the Board on a monthly basis. The Board shall establish aggregate exception level limits. The Bank shall consider each loan officer's exceptions in conducting periodic performance reviews and compensation decisions;
- (f) policies and procedures for managing risk from loan purchases, including due diligence and risk assessment requirements. Such risk assessments must cover the purchased loan's conformance to Bank credit policy and underwriting standards and record exceptions to policy. Refer to "Credit Risk: Risk Management of Loan Purchase Activities" OCC Bulletin 2020-81;
- (g) credit decision and annual loan review memorandums include accurate and complete financial analysis, inclusive of global financial capacity and multi-factor-stress testing and policy exceptions;
- (h) specific assignment of responsibility and accountability over the credit

administration process to ensure the Credit Risk Management Program developed pursuant to this Article is effectively implemented;

- (i) an annual review of the experience level of lending staff to ensure employees have the requisite knowledge to perform their duties; and
- (j) related management information systems and Board reporting sufficient to document the credit risk of the Bank. Reporting that includes concentration reports must segment purchased loans, including alternative documentation loans purchased, by the originator/seller.

## **ARTICLE IX**

### **BANK SECRECY ACT OFFICER**

(1) The Board shall ensure that the Bank has a permanent, qualified, and experienced BSA Officer who shall be vested with sufficient authority to fulfill the position's duties and responsibilities. In the event that the position is vacated, the Board shall appoint a new BSA Officer within ninety (90) days of the vacancy according to the requirements of this Article.

(2) The Board shall analyze the current BSA/AML risk profile and strategic direction and determine the skills, experience, and expertise required of the BSA Officer. Based on this analysis, the Board shall develop a comprehensive BSA Officer job description detailing the role's requirements and responsibilities.

(3) The Board shall ensure that the Bank has sufficient BSA staff with appropriate skills to support the BSA Officer and the BSA/AML compliance function and that the BSA staff is vested with sufficient authority and expertise to fulfill their respective duties and responsibilities.

(4) Within one hundred eighty (180) days of this Order, and no less than annually



thereafter, the Board shall review the adequacy of the BSA Officer and supporting staff and shall document its determination(s) in writing. The review shall evaluate and consider, as appropriate, the effectiveness of the BSA compliance program, as well as the leadership, knowledge, training, and skills of the BSA Officer and staff, and appropriate staffing levels for the BSA/AML compliance function considering the Bank's size, complexity, and BSA/AML risk profile, including anticipated risks from new or expanded lines of business, products and services. The Bank shall promptly take action to correct any deficiencies identified following each review.

## **ARTICLE X**

### **BSA/AML COMPLIANCE PROGRAM INTERNAL CONTROLS**

(1) Within ninety (90) days of this Order, the Board shall revise and adopt and thereafter ensure the Bank immediately implements and adheres to a comprehensive written program of internal control policies and procedures for identifying, monitoring, and reporting suspicious activity in compliance with the BSA. At a minimum, the Bank's internal controls must include:

- (a) procedures for periodically updating BSA risk assessments to cover the risks associated with current, or subsequently proposed, Bank products, services, customers, entities, and geographies served, and include the dollar volume, number, and countries associated with Bank products, services, customers, and transactions;
- (b) procedures to apply appropriate thresholds in the Bank's automated monitoring systems to filter accounts and customers for further monitoring, review, and analysis, including:
  - i. an analysis of the filtering thresholds established by the Bank;

- ii. periodic testing and monitoring of thresholds for their appropriateness to the Bank’s customer base, products, services, and geographic areas;
  - iii. requirements that any changes to thresholds are approved at the senior management level and reported to the Board;
  - iv. requirements that documentation of any changes to the filtering thresholds is maintained and available to auditors and OCC examiners;
- (c) requirements for periodic independent validation of the models and filtering thresholds used for the BSA monitoring systems to ensure that all accounts and transactions are captured, and the systems are adequate to detect potentially suspicious activity;
- (d) policies and procedures for investigating and responding to transactions identified as posing greater than normal risk for compliance with the BSA, including timely, well-documented dispositions of alerts generated by the automated monitoring systems; and
- (e) procedures to ensure accurate and timely filing of SARs that comply with FinCEN’s filing instructions in accordance with 12 C.F.R. § 163.180(d).

## **ARTICLE XI**

### **CUSTOMER DUE DILIGENCE**

(1) Within ninety (90) days of this Order, Bank management, subject to Board review and ongoing monitoring, shall ensure adherence to appropriate written policies and procedures for collecting customer due diligence (“CDD”) information when opening new accounts,

renewing or modifying existing accounts, and when events indicate information is missing or activity does not match customer profile. Such policies shall be in accordance with applicable law and regulations and be commensurate with the Risk Assessments conducted pursuant to Article X. At a minimum, these policies and procedures must ensure that the Bank understands the nature and purpose of its customer relationships and develops an accurate customer risk profile, and shall include:

- (a) ongoing high-risk account review expectations to provide for meaningful analysis and documentation of information, which among other information should include:
  - i. evidence of transactional analysis and trend analysis of significant and unexplained variances in account activity;
  - ii. development of triggering criteria to maintain and update customer information; and
  - iii. when customer audit report findings are tracked, monitored, and sufficiently analyzed as part of the CDD review;
- (b) assigned accountability and oversight for account opening and review, including provisions for BSA Officer involvement in decisions to open higher-risk accounts;
- (c) procedures to ensure accounts are accurately risk-rated and CDD performed is appropriate; and
- (d) explanations for changes in account activity.

(2) The BSA Officer or his/her designee(s) shall monitor accounts for high-risk customers/transactions, and any related accounts, to determine whether activity is consistent with

the customer's business and the stated account purpose. The BSA Officer or his/her designee(s) shall update the customer profiles annually or more frequently as defined in the Bank's BSA/AML policy.

(3) The Board shall ensure that relevant BSA staff receive CDD review training in accordance with the revised policies and procedures outlined in this Article.

## **ARTICLE XII**

### **ACCURATE BOOKS AND RECORDS**

(1) Effective immediately, Bank management, subject to Board review and ongoing monitoring, shall ensure adherence to a written program that includes appropriate policies and procedures, to ensure:

- (a) the Bank's books and records are maintained in compliance with Generally Accepted Accounting Principles ("GAAP") and are consistent with safe and sound banking practices, including making adjustments as required by any written communication from the OCC; and
- (b) the Bank timely files complete and accurate Consolidated Reports of Condition and Income ("Call Reports") in accordance with the Federal Financial Institutions Examination Council's "Instructions for Preparation of Consolidated Reports of Condition and Income," and submits a copy of all adjustments to Call Reports to the Director upon re-filing the Call Report.

(2) A copy of all written policies and procedures developed as a result of this article must be readily accessible for OCC review.

## ARTICLE XIII

### 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 the most recent examination report or brought to the Board or Bank's attention in writing by management, regulators, auditors, loan review, or through other compliance efforts. Within thirty (30) days after the violation is cited or brought to the Board or Bank's attention, the Board shall provide to the Director a plan to correct the violation by a specific date.

(2) The monthly progress reports required by Article III of this Order shall include the date and manner in which each correction has been effected during that reporting period.

(3) Within sixty (60) days of the date of this Order and thereafter within sixty (60) days of receipt of a report of examination, 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 violations cited in the most recent examination report and any future examination reports or any supervisory or regulatory communication; and
- (b) written procedures addressing compliance management that incorporate internal controls systems and employee education regarding laws, rules, and regulations applicable to their areas of responsibility.

## ARTICLE XIV

### GENERAL BOARD RESPONSIBILITIES

(1) The Board shall ensure that the Bank has timely adopted and implemented all corrective actions required by this Order, and shall verify that the Bank adheres to the corrective actions and that those actions effectively address the deficiencies that resulted in this Order.

(2) In each instance in which this Order imposes responsibilities upon the Board, it is intended to mean that the Board shall:

- (a) authorize, direct, and adopt corrective actions on behalf of the Bank as may be necessary to perform the obligations and undertakings imposed on the Board by this Order;
- (b) ensure the Bank has sufficient processes, management, personnel, control systems, and corporate and risk governance to implement and adhere to all provisions of this Order;
- (c) require that Bank management and personnel have sufficient training and authority to execute their duties and responsibilities pertaining to or resulting from this Order;
- (d) hold Bank management and personnel accountable for executing their duties and responsibilities pertaining to or resulting from this Order;
- (e) require appropriate, adequate, and timely reporting to the Board by Bank management of corrective actions directed by the Board to be taken under the terms of this Order; and
- (f) address any noncompliance with corrective actions in a timely and appropriate manner.

## ARTICLE XV

### WAIVERS

- (1) The Bank, by executing and consenting to this Order, waives:
  - (a) any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818;
  - (b) any and all procedural rights available in connection with the issuance of this Order;
  - (c) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
  - (d) any and all rights to seek any type of administrative or judicial review of this Order;
  - (e) any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;
  - (f) any and all rights to assert these proceedings, the consent to and/or the issuance of this Order, as the basis for a claim of double jeopardy in any pending or future proceedings brought by the United States Department of Justice or any other governmental entity; and
  - (g) any and all rights to challenge or contest the validity of this Order.

## **ARTICLE XVI**

### **OTHER PROVISIONS**

(1) As a result of this Order, the Bank is in “troubled condition,” as set forth in 12 C.F.R. § 5.51(c)(7)(ii), unless otherwise informed in writing by the OCC. In addition, as a result of this Order, the Bank is not an “eligible bank” for purposes of 12 C.F.R. § 5.3(g)(5) and 12 C.F.R. § 24.2(e), unless otherwise informed in writing by the OCC.

(2) This Order supersedes all prior OCC communications issued pursuant to 12 C.F.R. §§ 5.3(g)(5), 5.51(c)(7)(ii), and 24.2(e)(4).

## **ARTICLE XVII**

### **CLOSING**

(1) This Order is a settlement of the cease and desist proceedings against the Bank contemplated by the OCC, based on the unsafe or unsound practices and violations described in the Comptroller’s Findings set forth in Article II of this Order. The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the unsafe or unsound practices described in Article II of this Order, to the extent known to the OCC as of the effective date of this Order. Nothing in this Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions other than a cease and desist order against the Bank based on the Comptroller’s Findings set forth in Article II of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;



- (c) instituting enforcement actions against institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) based on the Comptroller's Findings set forth in Article II of this Order, or any other findings; or
- (d) utilizing the Comptroller's Findings set forth in Article II of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

(2) Nothing in this Order is a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) This Order is:

- (a) a "cease-and-desist order issued upon consent" within the meaning of 12 U.S.C. § 1818(b);
- (b) a "cease-and-desist order which has become final" within the meaning of 12 U.S.C. § 1818(e);
- (c) an "order issued with the consent of the depository institution" within the meaning of 12 U.S.C. § 1818(h)(2);
- (d) an "effective and outstanding . . . order" within the meaning of 12 U.S.C. § 1818(i)(1); and
- (e) a "final order" within the meaning of 12 U.S.C. § 1818(i)(2) and (u).

(4) This Order is effective upon its issuance by the OCC, through the Comptroller's duly authorized representative. Except as otherwise expressly provided herein, all references to "days" in this Order shall mean calendar days and the computation of any period of time

imposed by this Order shall not include the date of the act or event that commences the period of time. The provisions of this Order shall remain effective except to the extent that, and until such time as, such provisions are amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller's duly authorized representative. If the Bank seeks an extension, amendment, suspension, waiver, or termination of any provision of this Order, or within any plan or program submitted pursuant to this Order, the Board or a Board-designee shall submit a written request to the Director asking for relief. Any request submitted pursuant to this paragraph shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with the relevant provision(s) of the Order or plan or program submitted pursuant to this Order, and shall be accompanied by relevant supporting documentation. The OCC's decision concerning a request submitted pursuant to this paragraph, which will be communicated to the Board in writing, is final and not subject to further review.

(5) The Bank will not be deemed to be in compliance with this Order until it has adopted, implemented, and adhered to all of the corrective actions set forth in each Article of this Order; the corrective actions are effective in addressing the Bank's deficiencies; and the OCC has verified and validated the corrective actions. An assessment of the effectiveness of the corrective actions requires sufficient passage of time for the Bank to demonstrate the sustained effectiveness of the corrective actions.

(6) This Order is not a contract binding on the United States, the United States Treasury Department, the OCC, or any officer, employee, or agent of the OCC and neither the Bank nor the OCC intends this Order to be a contract.

(7) Each citation, guidance, or issuance referenced in this Order includes any subsequent citation, guidance, or issuance that replaces, supersedes, amends, or revises the referenced cited citation, guidance, or issuance.

(8) This Order applies to the Bank and all its subsidiaries.

(9) No separate promise or inducement of any kind has been made by the OCC, or by its officers, employees, or agents, to cause or induce the Bank to consent to the issuance of this Order.

(10) All reports, plans, or programs submitted to the OCC pursuant to this Order shall be forwarded by email to the Director.

(11) 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.

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

//s// Digitally Signed, Dated 2020.11.12

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Julie A. Thieman  
Director for Special Supervision

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Gateway Bank, F.S.B., have hereunto set their signatures on behalf of the Bank.

<u>/s/</u> Gregory Gersack	<u>11/20/20</u> Date
<u>/s/</u> Daniel Harrington	<u>11/9/20</u> Date
<u>/s/</u> James Keefe	<u>11/10/2020</u> Date
<u>/s/</u> Colin Madden	<u>11/9/2020</u> Date
<u>/s/</u> Dale McKinney	<u>11/12/2020</u> Date
<u>/s/</u> Daniel Tachiera	<u>11/10/2020</u> Date
<u>/s/</u> Glen Terry	<u>11/20/2020</u> Date
<u>/s/</u> Vinod Thukral	<u>11/12/2020</u> Date