

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

In the Matter of:

The Upstate National Bank
Ogdensburg, New York

AA-NE-2023-59

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over The Upstate National Bank, Ogdensburg, New York (“Bank”);

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 practice(s), including those relating to board oversight and corporate governance; strategic and capital planning; interest rate risk management; liquidity risk management; and for engaging in violation of law, rule, or regulation, relating to reports of condition, 12 U.S.C. § 161;

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 Consent Order (“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 national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*
- (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) The Bank has engaged in various unsafe or unsound practices, including those relating to board oversight and corporate governance; strategic and capital planning; interest rate risk management; and liquidity risk management.
- (2) The Bank has engaged in various unsafe or unsound practices and violation of law, rule, or regulation, relating to reports of condition, 12 U.S.C. § 161.

ARTICLE III

COMPLIANCE COMMITTEE

- (1) Within fifteen (15) days of the date of this Order, the Board shall appoint a Compliance Committee of at least three (3) members of which a majority shall be directors who

are not employees, officers, or controlling shareholders of the Bank or any of its subsidiaries or affiliates, or family members of any such person. The Board shall submit in writing to the Assistant Deputy Comptroller the names of the members of the Compliance Committee within ten (10) days of their appointment. In the event of a change of the membership, the Board shall submit in writing to the Assistant Deputy Comptroller within ten (10) days the name of any new or resigning committee member. The Compliance Committee shall monitor and oversee the Bank's compliance with the provisions of this Order. The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

(2) Within thirty (30) days of the date of this Order, and thereafter within thirty (30) days after the end of each month, the Compliance Committee shall submit to the Board a written progress report setting forth in detail:

- (a) a description of the corrective actions needed to achieve compliance with each Article of this Order;
- (b) the specific corrective actions undertaken to comply with each Article of this Order; and
- (c) the results and status of the corrective actions.

Upon receiving each written progress report, the Board shall forward a copy of the report, with any additional comments by the Board, to the Assistant Deputy Comptroller within ten (10) days of the first Board meeting following the Board's receipt of such report.

ARTICLE IV

BOARD OVERSIGHT AND CORPORATE GOVERNANCE

(1) Within sixty (60) days of the date of this Order, the Board shall submit to the

Assistant Deputy Comptroller, at a minimum, prior notices pursuant to 12 U.S.C. § 1831i and 12 C.F.R. § 5.51 for at least two additional independent directors above the number of directors in place as of the date of this Order who possess the necessary competence, experience, character, and integrity to direct the Bank's affairs in a safe, sound, and legal manner. The term "independent" means a person who is not an officer, employee or principal shareholder of the Bank; who is not a director, officer, employee, or principal shareholder of any affiliate of the Bank; who is not a director, officer, or employee of the related interests, as defined in 12 C.F.R. § 215.2(n), of any director, officer, employee, or principal shareholder of the Bank; and who is not a family member of any such person.

(2) If the OCC issues a notice of disapproval as to any individual whose name the Bank submitted pursuant to paragraph (1) of this Article, within sixty (60) days of receipt of that disapproval or affirmation of that disapproval on appeal, if any, the Bank shall submit the prior notice required by paragraph (1) of this Article for another individual who meets the requirements of that paragraph.

(3) Within sixty (60) days of the date of this Order, the Bank shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection an acceptable written program to provide oversight and corporate governance of the Bank ("Board Oversight and Corporate Governance Program").

(4) The Board Oversight and Corporate Governance Program shall, at a minimum, include:

- (a) procedures to monitor management's implementation of Board-established goals and objectives;

- (b) the retention of, at all times, a qualified Chief Executive Officer (“CEO”) and senior management team, including President, Chief Financial Officer (“CFO”), and Chief Credit Officer (“CCO”), vested with sufficient authority to fulfill the duties and responsibilities of each position, carry out the Board’s policies, ensure Bank adherence to safe and sound corporate governance and decision-making processes, ensure Bank compliance with this Order and applicable laws, rules and regulations, and manage and operate the day-to-day operations of the Bank in a safe and sound manner;
- (c) a succession plan for CEO, President, CFO, CCO, Chief Strategy Officer, Regulatory Compliance Officer, any senior executive officer (as defined in 12 C.F.R. §.5.51(c)(4)) (collectively Officers), and the Board;
- (d) an effective corporate governance structure for the Bank to ensure that the responsibilities of the Board and senior management are appropriately assigned and documented, that includes detailed written descriptions of:
 - (i) the Bank’s corporate governance and decision-making processes;
 - (ii) the Bank’s overall committee structure, as well as individual committee composition and purpose;
 - (iii) the Bank’s organization chart that clearly reflects areas of responsibility and lines of authority for all Officers; and
 - (iv) each Officer’s roles and responsibilities in the management of the Bank’s day-to-day affairs;

- (e) a process to periodically evaluate the Officers to determine whether their knowledge and expertise are appropriate for the Bank's strategy, complexity, and risk profile;
- (f) oversight of senior management's compensation and benefits, to include at a minimum:
 - (i) a process for Board review and decisioning for Officers' employment contracts;
 - (ii) verification that senior management receives annual performance evaluations and that the results of such reviews, including determinations about the achievement of predetermined objectives, are considered in the decision about their total compensation and benefits;
 - (iii) establishment of compensation and benefits for the CEO that considers Board-established goals and objectives; and
 - (iv) annual review to confirm that incentive compensation arrangements and aggregate Bank compensation levels are safe and sound;
- (g) proper lines of authority, reporting responsibilities, and delegation of duties for all Officers;
- (h) a comprehensive conflict of interest and insider lending policy applicable to the Bank's directors, principal shareholders, executive officers, affiliates, and employees ("Insiders") and related interests of such

Insiders. Refer to the “Insider Activities” and “Corporate and Risk Governance” booklets of the *Comptroller’s Handbook*;

- (i) procedures to ensure the Bank complies with applicable laws and regulations for affiliate transactions;
- (j) procedures to ensure the Bank complies with the requirements of 12 C.F.R. § 5.51 for changes in directors and senior executive officers, if applicable, as well as the restrictions in 12 C.F.R. part 359 for golden parachute payments, if applicable, and indemnification payments;
- (k) procedures to ensure the Board receives and reviews sufficient Bank information from management (including scope, frequency and content) on the operation of the Bank to enable it to provide proper oversight and fulfill its fiduciary duties and other responsibilities under the law;
- (l) procedures to ensure the Board monitors the Bank’s operations and performance;
- (m) procedures to ensure the Board holds management accountable for accurate and complete reporting to the Board and for the taking and retention of appropriate Board and committee meeting minutes;
- (n) procedures to ensure the Bank maintains adequate internal controls and assigned accountability to monitor and hold management accountable for adherence to Bank policies and procedures;
- (o) processes to ensure that management responds to audit, compliance, and regulatory criticisms with a written action plan that contains corrective

actions to be taken, deadlines for taking the corrective action, and the individual(s) responsible for making the corrective action;

- (p) requirements for each individual Board member to provide active and full participation in the oversight of the affairs of the Bank and avoid giving significant deference to any Officer or Board member; and
- (q) procedures for the Board to periodically evaluate the size, composition, expertise, and independence of the Board, as well as individual Board member participation and contributions, with additions or other changes to the Board, as appropriate.

Refer to the “Corporate and Risk Governance” booklet of the *Comptroller’s Handbook*.

(5) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller’s written determination of no supervisory objection to the Board Oversight and Corporate Governance Program or to any subsequent amendment to the Board Oversight and Corporate Governance Program, the Board shall immediately adopt, implement and thereafter monitor adherence to the Board Oversight and Corporate Governance Program. The Board shall review the effectiveness of the Board Oversight and Corporate Governance Program at least annually, no later than January 31 each year, and more frequently if necessary or if required by the OCC in writing, and amend the Board Oversight and Corporate Governance Program as needed or directed by the OCC. Any amendment to the Board Oversight and Corporate Governance Program must be submitted to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

ARTICLE V
STRATEGIC PLAN

(1) Within one hundred twenty (120) days of the date of this Order the Board shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection an acceptable written strategic plan for the Bank, covering at least a three-year period (“Strategic Plan”). 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, and 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) an evaluation of the bank’s risk profile relative to credit, interest rate, liquidity, price, operational, compliance, strategic, and reputation risks;
- (c) the strategic goals and objectives to be accomplished, including key financial indicators and risk tolerances, and realistic strategies to improve the overall condition of the bank;
- (d) an action plan to improve and sustain the Bank’s earnings and accomplish identified strategic goals and objectives;
- (e) concentration limits commensurate with the Bank’s strategic goals and objectives and risk profile;
- (f) an assessment of the Bank’s strengths, weaknesses, opportunities and threats that impact its strategic goals and objectives;
- (g) a detailed description and assessment of major capital expenditures

- required to achieve the goals and objectives of the Strategic Plan;
- (h) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems, policies, and procedures for their adequacy and contribution to the accomplishment of the strategic goals and objectives developed under paragraph (1)(c) of this Article;
 - (i) a management employment and succession plan for each Officer designed to promote adequate staffing and continuity of capable management;
 - (j) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of Article VI;
 - (k) a realistic and comprehensive budget that corresponds to the Strategic Plan's goals and objectives;
 - (l) an identification and prioritization of initiatives and opportunities, including timeframes that comply with the requirements of this Order;
 - (m) a description of the Bank's target market(s) and competitive factors in its identified target market(s), and control systems to mitigate risks in the Bank's target market(s);
 - (n) an identification and 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;
 - (o) a financial forecast to include projections for major balance sheet and income statement accounts and desired financial ratios over the period covered by the Strategic Plan;

- (p) assigned roles, responsibilities, and accountability for strategic planning;
and
- (q) 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 Strategic Plan under paragraph (1) of this Article includes a proposed sale or merger of the Bank, including a transaction pursuant to 12 U.S.C. § 215a-3, the Strategic Plan shall, at a minimum, address the steps that shall be taken and the associated timeline to effect the implementation of that alternative.

(3) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the Strategic Plan or to any subsequent amendment to the Strategic Plan, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to the Strategic Plan. The Board shall review the effectiveness of the Strategic Plan at least annually, no later than January 31 of each year, and more frequently if necessary or if required by the OCC in writing, and amend the Strategic Plan as needed or directed by the OCC. Any amendment to the Strategic Plan must be submitted to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

(4) Until the Strategic Plan required under this Article has been submitted by the Bank for the Assistant Deputy Comptroller's review, has received a written determination of no supervisory objection from the Assistant Deputy Comptroller and has been adopted by the Board, 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 immediately before the effective date of this Order without first obtaining the Assistant

Deputy Comptroller's prior written determination of no supervisory objection to such significant deviation.

(5) The Bank may not initiate any action that significantly deviates from a Strategic Plan (that has received written determination of no supervisory objection from the Assistant Deputy Comptroller and has been adopted by the Board) without a prior written determination of no supervisory objection from the Assistant Deputy Comptroller.

(6) Any request by the Bank for prior written determination of no supervisory objection to a significant deviation described in paragraphs (4) or (5) of this Article shall be submitted in writing to the Assistant Deputy Comptroller at least thirty (30) days in advance of the proposed significant deviation. Such written request by the Bank shall include an assessment of the effects of such proposed change on the Bank's condition and risk profile, 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 proposed change.

(7) 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 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 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.

(8) At least quarterly, a written evaluation of the Bank's performance against the

Strategic Plan shall be prepared by Bank management and submitted to the Board. Within fifteen (15) 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. The Board's review of the evaluation and discussion of any required corrective actions to address any identified shortcomings shall be documented in the Board's meeting minutes. Within fifteen (15) days of completion of the Board's review, the Board shall submit to the Assistant Deputy Comptroller a copy of its evaluation as well as a detailed description of the corrective actions the Board will require the Bank to take to address any identified shortcomings.

ARTICLE VI

CAPITAL PLAN AND HIGHER MINIMUMS

- (1) The Bank shall maintain the following minimum capital ratios as defined in 12 C.F.R. § 3.10(b) and as calculated in accordance with 12 C.F.R. Part 3¹:
 - (a) a total capital ratio at least equal to fifteen percent (15%);
 - (c) a common equity tier 1 capital ratio at least equal to fourteen percent (14%);
 - (d) a leverage ratio at least equal to ten percent (10%).

- (2) Notwithstanding any election to use the community bank leverage ratio ("CBLR") framework under 12 C.F.R. § 3.12, the Bank is subject to the minimum capital levels prescribed in paragraph (1) of this Article pursuant to the OCC's authority to impose affirmative corrective actions pursuant to 12 U.S.C. § 1818(b)(6). If the Bank elects to use the CBLR framework, it

¹ For purposes of the capital conservation buffer set forth at 12 C.F.R. § 3.11, the Bank's minimum total capital ratio, minimum tier 1 capital ratio, and minimum common equity tier 1 capital ratio requirements are deemed to be those that are set forth in 12 C.F.R. § 3.10.

must demonstrate compliance with the minimum capital levels prescribed in paragraph (1) of this Article by completing Schedule RC-R to the Consolidated Reports of Condition and Income in accordance with the instructions for Banks that have not made the CBLR framework election in addition to Schedule RC-R, CBLR.

(3) The requirement in this Order to meet and maintain a specific capital level for any capital measure 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. § 6.4.²

(4) Within sixty (60) days of the date of this Order the Board shall adopt 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. Thereafter, management shall implement, and the Board shall verify at least annually, no later than January 31 of each year, and more frequently if necessary or if required by the OCC in writing, adherence to the capital planning process. The 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 required by the Assistant Deputy Comptroller in writing.

(5) Within one hundred twenty (120) days of the date of this Order the Board shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection an acceptable written Board-reviewed capital plan for the Bank, consistent

² The Bank may not solicit, accept, renew, or roll over any brokered deposit (as defined in 12 C.F.R. § 337.6(a)(2)) except in compliance with the applicable restrictions of 12 U.S.C. § 1831f and 12 C.F.R. § 337.6.

with the Strategic Plan required by Article V, covering at least a three-year period (“Capital Plan”). Refer to “Capital and Dividends” booklet of the *Comptroller’s Handbook*.

(6) Except as provided in paragraph (7) of this Article, the Bank’s 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 (1) of this Article;
- (b) identify and evaluate all material risks, with particular attention to material risks related to rate- and credit-sensitive funding sources and commercial real estate concentrations;
- (c) determine the Bank’s capital needs in relation to material risks and strategic direction consistent with the Strategic Plan required by Article V;
- (d) establish appropriate capital limits reflective of the bank’s condition and the board’s risk appetite;
- (e) develop early warning indicators and actionable plans to ensure capital levels remain above appropriate limits;
- (f) integrate capital stress testing results;
- (g) identify and establish a prudent strategy to maintain adequate capital and strengthen capital if necessary and establish a contingency or backup capital plan commensurate with the Bank’s overall risk and complexity;
- (h) include detailed quarterly financial projections which shall be consistent with the Strategic Plan required by Article V; and

- (i) 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.

(7) If the Bank's Capital Plan outlines a sale or merger of the Bank, including a transaction pursuant to 12 U.S.C. § 215a-3, the Capital Plan shall, at a minimum, address the steps and the associated timeline to ensure that within thirty (30) days after the receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the Capital Plan, a definitive agreement for the sale or merger is executed.

- (8) The Bank may declare or pay a dividend or make a capital distribution only:
 - (a) when the Bank is in compliance with its Board-approved Capital Plan and would remain in compliance with such Capital Plan immediately following the declaration or payment of any dividend or capital distribution;
 - (b) when the dividend or capital distribution would comply with 12 U.S.C. §§ 56, 60 and 1831o(d)(1) and 12 C.F.R. § 3.11(a)(4); and
 - (c) following the Assistant Deputy Comptroller prior written determination of no supervisory objection to the dividend or capital distribution.

(9) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the Bank's Capital Plan or to any subsequent amendment to the Capital Plan, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to the Capital Plan. The Board shall review the effectiveness of the Capital Plan at least annually, no later than January 31 of each year, and more frequently if necessary or if

required by the OCC in writing, and amend the Capital Plan as needed or directed by the OCC. Any amendment to the Capital Plan must be submitted to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

(10) 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 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 a description of any extraordinary and/or nonrecurring items. This review shall include a description of the actions the Board and management will take to address any deficiencies. At least quarterly, management shall prepare, and the Board shall review, a written evaluation of the Bank's performance against the Capital Plan, which shall include a description of the actions the Board and management will take to address any deficiencies. The Board's monthly reviews and quarterly written evaluations shall be documented in the Board meeting minutes. The Board shall forward a copy of these monthly reviews and quarterly written evaluations and Board meeting minutes to the Assistant Deputy Comptroller within fifteen (15) days of completion of its monthly reviews and quarterly written evaluations, respectively.

(11) If the Bank fails to maintain the capital ratios required by paragraph (1) of this Article, or fails to submit a Capital Plan as required by paragraph (5) of this Article, or fails to implement a Capital Plan to which the Assistant Deputy Comptroller has provided a written determination of no supervisory objection, then the Bank may, at the Assistant Deputy Comptroller's sole discretion, be deemed undercapitalized for purposes of this Order. Following written notification from the Assistant Deputy Comptroller that the Bank is deemed undercapitalized for purpose 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 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 paragraph (1) of this Article, and any other action deemed necessary by the OCC to address the Bank’s capital deficiency or the safety and soundness of its operations.

ARTICLE VII

INTEREST RATE RISK MANAGEMENT

(1) Within one hundred twenty (120) days of the date of this Order the Bank shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection an acceptable written Interest Rate Risk Program (“IRR Program”). Refer to the “Interest Rate Risk” booklet of the *Comptroller’s Handbook*; OCC Bulletin 2010-1, “Interagency Advisory on Interest Rate Risk Management” (Jan. 2010); OCC Bulletin 2012-5, “Interest Rate Risk Management: FAQs on 2010 Interagency Advisory on Interest Rate Risk Management” (Jan. 2012); and “Model Risk Management” booklet of the *Comptroller’s Handbook*.

(2) The IRR Program shall include risk management systems to identify, measure, monitor, and control interest rate risk (“IRR”), to include at a minimum:

- (a) the establishment of formal policies, procedures, and governance commensurate with the Bank’s complexity and business activities, to include:

- (i) the establishment of IRR appetite and risk management objectives with specific approved and prohibited strategies for managing IRR;
 - (ii) standards for measuring and monitoring IRR;
 - (iii) the frequency of IRR measurement;
 - (iv) determinations of how the Bank will measure the *quality* of IRR management; and
 - (v) procedures to monitor, escalate, and address any breaches of established IRR limits;
- (b) accurate and timely risk identification which identify and quantify the major sources and types of IRR;
- (c) the establishment of risk monitoring processes to provide sufficient information on which to base sound IRR management decisions from both an earnings and economic perspective with recognition and consideration of all risks (repricing, basis, yield-curve, and options), to include:
- (i) limits on IRR exposures that consider the Bank's risk appetite, complexity of operations, earnings performance, liquidity position, and capital adequacy; and
 - (ii) IRR reporting standards and procedures that specify the frequency and types of reports senior management and the Board will use to monitor the Bank's IRR that address:
 - a. the level and trends of aggregate Bank IRR exposure;
 - b. whether management's strategies are within the Bank's established risk appetite and policy;

- c. the sensitivity of any key assumptions;
 - d. whether the Bank holds sufficient capital for its level of IRR; and
 - e. whether management's major interest rate strategies balance risk with reward, including at a minimum, an evaluation of a potential adverse rate movement against the potential rewards of a favorable rate movement;
- (d) requirements for retention of qualified personnel with sufficient authority and responsibility to manage and monitor IRR, which may include additional training or the addition of qualified staff;
 - (e) adequate and documented support for the reasonableness of assumptions used in the Bank's IRR model;
 - (f) periodic review and adjustment, when there are material changes to the Bank's balance sheet and otherwise, as needed, of the assumptions and inputs used in the Bank's IRR model, that includes sensitivity analysis and model stress testing, with appropriate documentation and governance that requires approval for changes;
 - (g) independent validation of the Bank's IRR model and processes when there are material changes to the Bank's balance sheet and otherwise, as needed, but in no event, no less than on an annual basis;
 - (h) procedures to test the Bank's IRR model to compare, reconcile, and report actual performance to simulated results;

- (i) procedures that require the Board to review and discuss, on at least a quarterly basis, the model results required by this Article;
- (j) oversight by a senior manager who is sufficiently trained and knowledgeable about managing interest rate risk; and
- (k) an annual review of the Bank's adherence to the IRR Program.

(3) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the IRR Program or to any subsequent amendment to the IRR Program, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to the IRR Program. The Board shall review the effectiveness of the IRR Program at least annually, no later than January 31 of each year, and more frequently if necessary or if required by the OCC in writing, and amend the IRR Program as needed or directed by the OCC. Any amendment to the IRR Program must be submitted to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

ARTICLE VIII

LIQUIDITY RISK MANAGEMENT

(1) Within sixty (60) days of the date of this Order the Board shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection an acceptable written Liquidity Risk Management Program ("Liquidity Program") for the Bank. The Liquidity Program shall provide for the identification, measurement, monitoring, and control of the Bank's liquidity risk exposure, and shall emphasize the importance of cash flow projections, diversified funding sources, a cushion of highly liquid assets, robust liquidity

stress testing scenario analyses, and a formal, well-developed contingency funding plan as primary tools for measuring and managing liquidity risk. Refer to OCC Bulletin 2010-13, “Interagency Policy Statement on Funding and Liquidity Risk Management,” (March 22, 2010); the “Addendum to the Interagency Policy Statement on Funding and Liquidity Risk Management: Importance of Contingency Funding Plans,” (July 28, 2023); and the “Liquidity” booklet of the *Comptroller’s Handbook*.

(2) In addition to the general requirements set forth above, the Bank’s Liquidity Program shall, at a minimum:

- (a) provide specific assigned accountability for development, execution and oversight of liquidity risk management, including oversight by both the Board and senior management;
- (b) include appropriate policies and procedures for identifying, measuring, monitoring, and controlling liquidity risk exposures, that includes at a minimum:
 - (i) assignment of accountability and processes for monitoring and managing intraday liquidity;
 - (ii) procedures to ensure that sufficient funds or access to funds exist to meet such cash flow needs under both expected and adverse conditions, including an adequate cushion to meet any unanticipated cash flow needs; and
 - (iii) procedures and reporting to assess the risks related to deposit runoff, rollovers, wholesale, and alternative funding sources;

- (c) identify appropriate funding strategies and provide limits to manage and control liquidity risk that are commensurate with the Bank's complexity and business activities, that considers internal and external factors that could affect the Bank's liquidity, that include at a minimum:
 - (i) limits or triggers placed on projected net cash flow positions over specified timeframes under both expected and adverse business conditions that are based on realistic assumptions supported by sound historical economic data;
 - (ii) limits or triggers on funding mismatches and guidelines for minimum and maximum average maturity of the Bank's assets and liabilities (by category);
 - (iii) minimum levels of highly liquid assets;
 - (iv) minimum levels of committed and collateralized contingent funding sources to meet funding needs in both expected and adverse conditions, which are periodically tested to verify availability and operational capabilities;
 - (v) limits or triggers on the structure of short-term and long-term funding of the Bank's asset base, under both normal and stressed conditions;
 - (vi) limitations on funding concentrations and other strategies to ensure diversification of funding sources; and
 - (vii) limitations on contingent liabilities in aggregate and by individual category;

- (d) provide adequate risk measurement and monitoring systems, including processes and reporting to assess, on an ongoing basis, the Bank's current and projected funding needs, including the development of cash flow projections under both expected and adverse conditions, and considering the changes in depositor behavior, interest rates and capital levels;
- (e) detailed identification of sources of liquidity to meet projected shortfalls from existing sources under both expected and adverse conditions; and
- (f) include a Contingency Funding Plan that incorporates, at a minimum:
 - (i) the identification of plausible stress events relating to internal and external events or circumstances, including systemic or market events, that could lead to a Bank liquidity crisis;
 - (ii) determinations of how each identified stress event will affect the Bank's ability to obtain funding needs under different levels of severity;
 - (iii) a quantitative projection and evaluation of expected funding needs and funding capacity based on realistic assessments of the behaviors of funding providers during stress events; and
 - (iv) provision for management processes, reporting, and internal as well as external communication throughout the stress event.

(3) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller written determination of no supervisory objection to the Liquidity Program, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and adhere to the Liquidity Program and any amendments or revisions

thereto.

(4) Within fifteen (15) days of the beginning of each calendar month, Bank management shall prepare, subject to Board review and approval, a report identifying current liquidity requirements and sources for the month and projecting liquidity requirements and sources for the upcoming one-year period (“Periodic Liquidity Report”) to enable the Board to recognize longer-term liquidity needs. The Periodic Liquidity Report shall also include a rolling five-quarter historical liquidity trend analysis. Copies of each Periodic Liquidity Report, and any Board comments, shall be forwarded to Assistant Deputy Comptroller within fifteen (15) days of the beginning of each calendar quarter.

(5) The Board shall review the effectiveness of the Liquidity Program at least annually, no later than January 31 of each year, and more frequently if necessary or if required by the Assistant Deputy Comptroller in writing, and amend the Liquidity Program as needed or directed by the Assistant Deputy Comptroller in writing. The Bank shall submit the revised Liquidity Program to the Assistant Deputy Comptroller for prior written determination of no supervisory objection. At the next Board meeting following receipt of the Assistant Deputy Comptroller’s written determination of no supervisory objection, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and adhere to the revised Liquidity Program and any amendments or revisions thereto.

ARTICLE IX

BOOKS AND RECORDS

(1) The Board shall immediately take all necessary actions to ensure that the Bank’s books, records and management information systems (MIS) are restored and maintained in a

complete and accurate condition.

(2) Within thirty (30) days of the date of this Order, the Board shall cause the Bank to refile amended and accurate Reports of Condition and Income for the period ending March 31, 2023.

(3) Within sixty (60) days of the date of this Order the Bank shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection to an acceptable written Action Plan, (“Books and Records Plan”). The Books and Records Plan shall include formal accounting and financial internal control policies and procedures, detailing how the Board intends to support the ongoing integrity of financial information reported, and shall, at a minimum, address the following:

- (a) procedures to ensure reports of condition and income are completed in accordance with the Instructions for Preparation of Consolidated Reports of Condition and Income and that all official and regulatory reports accurately reflect the Bank’s condition for the as of the date that such reports are submitted;
- (b) an annual independent Call Report audit, which shall be forwarded to the Assistant Deputy Comptroller within fifteen (15) days of receipt by the Audit Committee;
- (b) timing and frequency of performing balance sheet and income and expense account reconcilements;
- (c) personnel assigned to perform account reconcilements;
- (d) supervisory personnel independent of the account reconciliation process assigned to review account reconcilements for completeness and accuracy;

- (e) investigation and resolution of account reconciliation differences to occur within the quarter of discovery;
- (f) a charge-off policy on account reconciliation differences which cannot be resolved within the quarter of discovery;
- (g) sufficient and ongoing training of personnel involved in the account reconciliation process and resolution of account reconciliation differences, and preparation of financial reports;
- (h) a process for the Board to certify quarterly that the Bank's general ledger accounts were reconciled or to identify the unreconciled accounts, provide a detailed written explanation of why such accounts were not reconciled and a specific plan and timeframe for reconciling such accounts;
- (i) procedures to ensure MIS is accurate; and
- (j) standards for which Bank personnel will be held accountable to ensure compliance with the requirements of this Article.

(4) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the Books and Records Plan or to any subsequent amendment to the Books and Records Plan, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to the Books and Records Plan. The Board shall review the effectiveness of the Books and Records Plan at least annually, no later than January 31 of each year, and more frequently if necessary or if required by the OCC in writing, and amend the Books and Records Plan as needed or directed by the OCC. Any amendment to the Books and Records Plan must be submitted to the Assistant Deputy Comptroller for review and prior

written determination of no supervisory objection.

ARTICLE X

THIRD-PARTY RISK MANAGEMENT

(1) Within ninety (90) days of the date of this Order, the Bank shall submit to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection an acceptable written program to effectively assess and manage the risks posed by third-party relationships (“Third-Party Risk Management Program”). Refer to OCC Bulletin 2023-17, “Third-Party Relationships: Interagency Guidance on Risk Management,” for related safe and sound principles. The Third-Party Risk Management Program shall be commensurate with the level of risk and complexity of the Bank’s third-party relationships and shall, at a minimum, address the following:

- (a) plans that outline the Bank’s strategy for third-party relationships, identify the inherent risks of the activities performed by the third parties, and detail how the Bank selects, assesses, and oversees third parties;
- (b) a process to select consultants and periodically evaluate the performance of any engaged consultants that perform any Officer functions to ensure such consultants have the appropriate knowledge and expertise and perform such functions in accordance with the engagement contract and safe and sound principles. Refer to OCC Bulletin 2023-17, “Third-Party Relationships: Interagency Guidance on Risk Management,” (June 6, 2023) for related safe and sound principles;
- (c) written contracts that outline the rights and responsibilities of all parties;

- (d) contingency plans for terminating third-party relationships in an effective manner;
- (f) clear roles and responsibilities for overseeing and managing third-party relationships and risk management;
- (g) documentation and reporting that facilitates Board and management oversight, accountability, monitoring, and risk management associated with third-party relationships; and
- (h) independent reviews that allow Bank management to assess whether the Bank's risk management process aligns with its strategy and effectively manages risks associated with third-party relationships.

(2) Within fifteen (15) days following receipt of the Assistant Deputy Comptroller's written determination of no supervisory objection to the Third-Party Risk Management Program or any subsequent amendment to the Third-Party Risk Management Program, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and thereafter ensure adherence to the Third-Party Risk Management Program. The Board shall review the effectiveness of the Third-Party Risk Management Program at least annually, no later than January 31 of each year, and more frequently if necessary or if required by the OCC in writing, and amend the Third-Party Risk Management Program as needed or directed by the OCC. Any amendment to the Third-Party Risk Management Program must be submitted to the Assistant Deputy Comptroller for review and prior written determination of no supervisory objection.

ARTICLE XI

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 they are effective in addressing the Bank's 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 XII

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 XIII

OTHER PROVISIONS

(1) As a result of this Order, pursuant to 12 C.F.R. § 5.51(c)(7)(ii), the Bank is in “troubled condition,” and is not an “eligible bank” for purposes of 12 C.F.R. § 5.3 or 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, 5.51(c)(7)(ii), and 24.2(e)(4).

ARTICLE XIV

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 violation of law 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 practices and violation described in Article II of this Order, to the extent known to the OCC as of the effective date of this Order. The OCC expressly reserves its right to assess civil money penalties or take other enforcement actions if the OCC determines that the Bank has continued, or failed to correct, the practices and/or violations described in Article II of this Order or that the Bank otherwise is violating or has violated this Order. These actions could include additional requirements and restrictions, such as: (a) requirements that the Bank make or increase investments, acquire or hold additional capital or liquidity, or simplify or reduce its operations, or (b) restrictions on the Bank’s growth, business activities, or payment of dividends.

- (2) 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, including if the OCC determines that the Bank has continued, or failed to correct, the practices and/or violations described in Article II of this Order or that the Bank otherwise is violating or has violated this Order;
 - (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.

(3) 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.

- (4) 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).

(5) 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.

(6) 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, the Board or a Board-designee shall submit a written request to the Assistant Deputy Comptroller asking for the desired relief. Any request submitted pursuant to this paragraph shall include a statement setting forth in detail the circumstances that warrant the desired relief or prevent the Bank from complying with the relevant provision(s) of the 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.

(7) 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.

(8) 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.

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

(10) 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.

(11) All reports, plans, or programs submitted to the OCC pursuant to this Order shall be forwarded, via email, to the following:

Assistant Deputy Comptroller at occsyr@occ.treas.gov

(12) 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 his signature on behalf of the Comptroller.

//s// Digitally Signed, Dated: 2023.11.16

Jesse A. Anderson
Assistant Deputy Comptroller
Syracuse Office

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

/s/

Nov.13th 2023

R. Carlos Carballada

Date

/s/

November 13, 2023

Donald O. Chesworth

Date

/s/

Nov/16/23

Bernard Karfunkel

Date

/s/

11/16/23

Richard D. Sanford

Date

/s/

11/16/23

Kathleen R. Whelehan

Date