#2003-45

AGREEMENT BY AND BETWEEN
KUTAK ROCK LLP
AND
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY

WHEREAS, Kutak Rock LLP (the "Firm") and the Office of the Comptroller of the Currency of the United States of America ("Comptroller" or "OCC") wish to protect the interests of the United States banking system and, toward that end, wish to encourage depository institutions to operate safely and soundly and in accordance with all applicable laws, rules, and regulations; and

WHEREAS, the Firm has agreed with the OCC to enter into and adhere to certain policies and procedures concerning the representation of insured depository institutions, which agreement is not intended to be, and shall not be deemed, an admission, denial, or suggestion that the Firm's past and/or present policies and procedures were or are in any manner inadequate for the provision of all necessary oversight for the representation of insured depository institutions;

THEREFORE, in consideration of the above premises, it is agreed by and between the Firm and the Comptroller, through his authorized representative, that the Firm voluntarily agrees to comply with the Articles of this Agreement.

ARTICLE I

DEFINITIONS

(1) For purposes of this Agreement, the following definitions shall apply:

(2) "Federal Banking Laws" shall be defined to include, without limitation, the statutes contained in Title 12 of the United States Code and all regulations and regulatory interpretations promulgated by the Federal Banking Agencies.

(3) "Federal Banking Agencies" shall mean the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.

(4) The "Firm" shall mean Kutak Rock LLP, Kutak Rock Illinois LLC, and all predecessor and successor organizations.

(5) "Firm attorney" shall mean all partners, associates and other attorneys affiliated with the Firm.

(6) "Insured Depository Institution" shall have the meaning provided in 12 U.S.C. § 1813(c)(2) ("Insured depository institutions"), and shall also include credit unions as defined in 12 U.S.C. § 1752(1), entities identified in 12 U.S.C. § 1813(c)(3), and any subsidiaries of such institutions or entities; and shall also include any bank holding company as defined in 12 U.S.C. § 1841(a) and any savings and loan holding company as defined in 12 U.S.C. §§ 1467a(a)(D)-(F).

(7) "Knowledge" in any context as to a Firm attorney shall mean the actual knowledge of such attorney or reckless disregard by such attorney of the facts.

(8) "Knowledge" in any context as to the Firm shall mean (a) the knowledge of the Firm attorney in charge on the matter, or (b) the knowledge of another Firm attorney working on the matter where such knowledge should have been, but was not, requested by the Firm attorney in charge on the matter in the reasonable exercise of his or her supervisory responsibility, or (c) knowledge of another Firm attorney not working on the matter, when to the knowledge of the Firm attorney in charge, such other Firm attorney has knowledge material to the Firm attorney in charge's responsibility, it being understood that clause 8(c) is not intended to imply that the

attorney in charge has a duty to survey other Firm attorneys not working on the matter to determine whether or not they have any relevant knowledge.

(9) "Knowingly" shall mean that a Firm attorney has acted voluntarily and intentionally and not because of inadvertence, ignorance, mistake, or accident.

(10) "Regulatory Responsibility" shall mean the representation of an Insured Depository Institution in connection with an application, examination, or proceeding before a Federal Banking Agency; advising an Insured Depository Institution concerning its compliance with Federal Banking Laws; or formal designation as general counsel by an Insured Depository Institution. For purposes of this Agreement, Regulatory Responsibility shall be limited to the foregoing types of engagements and shall not be deemed to include the following services:

(a) Litigation engagements that do not involve the application or interpretation of Federal Banking Laws;

(b) Engagements for the preparation, review, or negotiation of contracts that do not involve the application or interpretation of Federal Banking Laws; and

(c) Other engagements that involve advice or representation of the type provided by the Firm to other corporate or commercial entities (for example, real estate, employment or intellectual property representation that does not involve the application or interpretation of Federal Banking Laws).

(11) "Appropriate Response" means a response to a Firm attorney regarding reported evidence of an actionable breach of fiduciary duty, as determined by applicable law, by an

employee, officer or director of an Insured Depository Institution as a result of which the attorney reasonably believes:

(a) That no actionable breach has occurred, is ongoing, or is about to occur;

(b) That the Insured Depository Institution has, as necessary, adopted and implemented appropriate remedial measures, including appropriate steps or sanctions to stop any actionable breach that is ongoing, to prevent any actionable breach that has yet to occur, and to remedy or otherwise appropriately address any actionable breach that has already occurred and to minimize the likelihood of its recurrence; or

(c) That the Insured Depository Institution has retained or directed an attorney to review the reported evidence of actionable breach and either: (i) has substantially implemented any remedial recommendations made by such attorney after a reasonable investigation and evaluation of reported evidence; or (ii) has been advised that such attorney may, consistent with his or her professional obligations, assert a colorable defense on behalf of the Insured Depository Institution (or officer or director) in any investigation or judicial or administrative proceeding relating to the reported evidence of actionable breach.

ARTICLE II

JURISDICTION

(12) For purposes of this Agreement and any proceeding concerning this Agreement, the Firm acknowledges and stipulates that:

(13) The First National Bank of Keystone, West Virginia ("Keystone"), was a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 et seq, until closed by the Comptroller on September 1, 1999. Accordingly, Keystone was an Insured Depository Institution.

(14) The Firm served as counsel for Keystone-within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

(15) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the "appropriate Federal banking agency" to maintain an enforcement proceeding, if necessary, relating to Keystone. Therefore, without admitting or denying any liability, wrongdoing or other improper conduct, the Firm hereby consents to the jurisdiction of the Comptroller under 12 U.S.C. § 1818 with respect to the matters subject to this Agreement, and, solely for the purposes of assuring the Comptroller's authority to enforce this Agreement, the Firm expressly agrees not to contest its status as an institution-affiliated party, as defined in 12 U.S.C. § 1813(u), in any proceeding to enforce this Agreement.

ARTICLE III

REPRESENTATION OF INSURED DEPOSITORY INSTITUTION CLIENTS

(16) When the Firm undertakes Regulatory Responsibility for an Insured Depository Institution, the Firm shall:

a. with respect to each new Insured Depository Institution client, confirm in writing, or obtain written confirmation of, the nature of the representation at or about the time the Firm is retained by such client and, for each significant new matter opened by the Firm, record the nature of such matter in accordance with the Firm's normal policy; and

b. assign an attorney ("attorney in charge") who is qualified to supervise the type of matter in question and who has had at least five (5) years experience in advising (i) Insured Depository Institutions, or (ii) other clients as to Federal Banking Laws (either Federal Banking Laws generally or the specific Federal Banking Laws reasonably expected to be involved in the engagement) and other matters related to Insured Depository Institutions ("Banking Experience"); or, if other experience is more appropriate for supervision of the type of matter in question, assure that the attorney in charge has such other experience and that an attorney with Banking Experience, as defined above, is assigned to work with the attorney in charge. The attorney in charge, or an attorney with Banking Experience acting in concert with the attorney in charge, shall, with respect to any portion of the matter that involves advising the Insured Depository Institution about Federal Banking Laws or representing said Institution in connection with an application, examination or proceeding before a Federal Banking Agency: (i) assign as necessary other attorneys qualified to work on the matter undertaken; (ii) supervise the work of the attorneys assigned to such matter; and (iii) monitor the quality of such attorneys' work.

(17) When the Firm assumes Regulatory Responsibility for an Insured Depository Institution, neither the Firm nor any Firm attorney shall knowingly or recklessly violate, or knowingly or recklessly cause, bring about, participate in, counsel, or aid and abet a violation of any applicable Federal Banking Laws; provided, however, that nothing contained herein shall prevent the Firm or any Firm attorney from engaging in good faith activities falling within the traditional attorney-client relationship, including without limitation: (i) assisting a client in seeking a waiver, modification or other relief from applicable Federal Banking Laws; (ii) providing advice to a client on violations of Federal Banking Laws that the Firm or any Firm

attorney did not knowingly or recklessly cause, bring about, participate in, counsel, or aid and abet; (iii) providing advice to a client on the alternative arguments that may be available with respect to the application or interpretation of Federal Banking Laws; or (iv) providing advice to a client on the potential consequences of violation of Federal Banking Laws.

(18) The Firm shall require each attorney at or prior to the time that he or she is initially assigned to perform legal services covered by this Agreement to read a copy of the Agreement and acknowledge in writing that he or she has done so.

ARTICLE IV

DOCUMENTATION PREPARED BY THE FIRM ON BEHALF OF INSURED DEPOSITORY INSTITUTION CLIENTS

(19) In the course of representing an Insured Depository Institution in any matter:

a. neither the Firm nor any Firm attorney shall prepare or assist in the preparation or submission of any documentation that will to the knowledge of the Firm or the Firm attorney, as applicable, have the effect of providing a materially inaccurate or misleading record of the business of such Insured Depository Institution;

b. no Firm attorney shall prepare, deliver or make, or assist in the preparation, delivery or making of, any document that such attorney knows will be relied upon by, or submitted to, a Federal Banking Agency, and which, to the Firm's knowledge, includes any untrue or misleading statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading; and

c. the Firm shall correct any document which it has prepared that the Firm or any Firm attorney knows will be relied upon by, or submitted to, a Federal Banking Agency if to the subsequent knowledge of the Firm or any Firm attorney such document contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading. Such correction shall be promptly submitted to the Insured Depository Institution and, if the uncorrected document has been submitted to, or relied upon by, a Federal Banking Agency, the Firm shall advise the Insured Depository Institution to promptly submit the corrected document to such Federal Banking Agency.

(20) The Firm shall retain substantive documentation prepared during, and all files pertaining to, its representation of an Insured Depository Institution that will provide an accurate and complete record of the transaction or the matter undertaken. This retention shall continue in accordance with the Firm's record retention policy.

ARTICLE V

CONFLICTS OF INTEREST

(21) The Firm shall not, in the same transaction, knowingly represent both (a) an Insured Depository Institution and (b) any other person or entity, including another Insured Depository Institution, with respect to a matter in which the interests of the Insured Depository Institution and the other person or entity are adverse unless: (i) each such client (if a corporate entity, by an appropriate officer who has no conflicting duty to the other party) consents to such representation in such matter after full disclosure concerning the nature of any such conflict in that matter, which disclosure and consent shall be appropriately documented by the Firm; and (ii)

such representation is permitted by applicable standards of professional conduct. The representation of a syndicate and the syndicate manager in the ordinary course of a syndicated financial transaction, or a lead lending institution and loan participants in the ordinary course of a loan transaction, shall not be deemed "adverse" for the purpose of this paragraph.

(22) During the course of the Firm's representation of any Insured Depository Institution, the Firm shall retain all documentation and files concerning all conflicts checks procedures pertaining to new or proposed matters to be performed by the Firm consistent with the Firm's record retention policy.

ARTICLE VI

DISCLOSURE TO INSURED DEPOSITORY INSTITUTION CLIENTS

(23) When, to the knowledge of a Firm attorney, an employee, officer or director of an Insured Depository Institution client has committed or is threatening to commit an actionable breach of such person's fiduciary duties, as determined by applicable law, the Firm attorney shall inform the attorney in charge, who, if he or she concurs, shall advise such employee, officer or director (a) concerning such person's fiduciary duties to the Institution's shareholders and creditors, which shall include the Bank Insurance Fund or Savings Association Insurance Fund, if applicable, and (b) that the fiduciary duties of such person include the responsibility not to participate in, cause, or permit unsafe and unsound practices by the Insured Depository Institution as set forth in paragraph 24 below. Should such employee, officer or director, to the Firm's knowledge, fail to provide an Appropriate Response within a reasonable time, the attorney in charge shall inform a responsible executive officer, or the in-house counsel of the Insured Depository Institution to whom the attorney in charge reports in the matter (unless such

in-house counsel is the person allegedly committing an actionable breach of his or her fiduciary duty), of the facts and circumstances surrounding the actions or intended actions of such employee, officer or director and of the advice provided to such employee, officer or director. If the responsible executive officer or in-house counsel, to the Firm's knowledge, fails to provide an Appropriate Response within a reasonable time, if warranted by the seriousness of the matter, the Firm shall cause the attorney in charge to take the same steps with respect to such Insured Depository Institution's Board of Directors as it was required to take with respect to such responsible executive officer. If the Board of Directors, to the Firm's knowledge, fails to provide an Appropriate Response within a reasonable time, the Firm shall consider whether the applicable ethical rules require the Firm's resignation from the engagement or some other action and shall act in accordance with such ethical rules and shall document its decision. Provided, however, that if, during the course of satisfying its obligations under this paragraph, the Firm is terminated by the client or if the Firm resigns, consistent with applicable ethical rules, the Firm has no further obligations under this paragraph with respect to such client. In the case of entities identified in 12 U.S.C. § 1813(c)(3), the Firm's obligation to advise and inform others if an employee, officer or director fails to adhere to advice shall be limited to a notice to the most senior executive known to the Firm within the United States.

(24) When advising any person concerning his or her responsibility for the safety and soundness of an Insured Depository Institution, the Firm shall advise that person that an unsafe or unsound practice embraces, among other things, any action, or lack of action, which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be unacceptable risk of loss or damage to an institution, its shareholders, or its creditors (including the Bank Insurance Fund or Savings Association

Insurance Fund, where applicable). The foregoing shall not preclude the Firm from supplementing such advice in any manner consistent with applicable law and regulations and nothing in this paragraph shall be deemed to obligate the Firm or any Firm attorney to evaluate each proposed action of an Insured Depository Institution client to determine whether or not such action constitutes an unsafe and unsound practice, unless requested by the client.

ARTICLE VII

MICHAEL T. LAMBERT

(25) For so long as Michael T. Lambert ("Lambert") remains a member of the Firm or performs services for the Firm, the Firm shall supervise Lambert to ensure that he does not participate in the representation of any Insured Depository Institution.

(26) In the event Lambert leaves the Firm, the Firm shall promptly notify the Federal Deposit Insurance Corporation ("FDIC") and the OCC in writing of his departure and, if known by the Firm, the name of his present or future employer. The Firm shall also provide a copy of the certain Agreement by and between Lambert and the OCC, dated May 21, 2003, to any prospective employer of Lambert if such prospective employer (a) is a law firm, provides legal services to an Insured Depository Institution, or is an Insured Depository Institution, and (b) requests a written evaluation or recommendation of Lambert from the Firm.

ARTICLE VIII

MISCELLANEOUS

(27) The Firm shall retain all records or files required to be created or maintained pursuant to this Agreement while this Agreement is in effect or for three years after the record or file was created, whichever period is longer.

(28) Subject to the limitations set forth in paragraph 29 below, the Firm shall promptly respond to any request from the OCC for the Firm's documents that the OCC reasonably requires to determine compliance with this Agreement.

(29) Nothing contained herein shall require the Firm to provide to the OCC information protected by an attorney-client or work product privilege unless waived in writing by the holder of the privilege. The Firm shall not be obligated to provide such documents except pursuant to a subpoena, the validity of which the Firm or any other interested party may challenge, to the extent permitted by law or regulation. In the event that the Firm seeks to withhold documents from the OCC under a claim of privilege, the Firm shall provide the OCC with a privilege log containing a description of each document withheld and listing the document's date, its author, the names and positions of persons to whom the document was or has been provided, the applicable privilege asserted, and such other non-privileged information as may reasonably be requested by OCC for the purpose of determining the validity of the claim of privilege.

(30) In order to ensure adequate time for the Firm to implement procedures to comply fully with this Agreement, the provisions of this Agreement shall become effective sixty (60) days after its execution by the Comptroller or his designee and shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to

the Agreement or excepted, waived or terminated by the Comptroller or his designee, subject to the provisions of paragraph 31 below.

(31) The Firm and all Firm attorneys shall for a period of three (3) years from the effective date of this Agreement comply with the policies and procedures set forth above. The Firm shall not amend, modify, revise or alter any Firm policies implementing this Agreement in a manner inconsistent with the provisions of this Agreement without prior notice to the FDIC and the OCC and prior written determination of no supervisory objection by the OCC. At the conclusion of a three-year period commencing on the effective date of this Agreement, the Firm shall submit written certification to the OCC that the Firm complied in all material respects with the terms and conditions of the Agreement as set forth herein. Upon its receipt of the certification, the Firm's obligations under this Agreement shall terminate and the OCC shall forward written notification of this fact to the Firm.

(32) Any items that this Agreement directs the Firm to provide to the OCC shall be sent to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St. NW, Washington, DC 20219. Any items that this Agreement directs the Firm to provide to the FDIC shall be sent to FDIC General Counsel, 550 17th Street, N.W., Washington, D.C. 20429.

(33) The Firm acknowledges that it has read this Agreement through its representatives and understands the premises and obligations of this Agreement. Furthermore, the Firm declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Firm to agree to consent to and/or execute this Agreement.

(34) This Agreement constitutes a settlement of any and all administrative actions against the Firm and all of the Firm's present and former partners, of counsel attorneys, associates and other affiliated attorneys, agents, employees, and representatives, contemplated by the Comptroller with respect to the failure of Keystone. The Comptroller agrees not to institute proceedings with respect to the Firm or any of the Firm's present or former partners, of counsel attorneys, associates or other affiliated attorneys, agents, employees, or representatives, for any acts, omissions, failures to act, or violations relating, either directly or indirectly, to the failure of Keystone.

(35) This Agreement is intended to be, and shall be construed to be, a supervisory "written agreement entered into with the agency," as contemplated by 12 U.S.C. § 1818(b)(1), and is further intended by the parties to be binding and enforceable with respect to the Firm and the OCC. This Agreement expressly does not form, and may not be construed to form, a contract that could give rise to a claim for damages. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Firm under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Firm also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other Federal Banking Agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. The preceding shall not, however, be construed to alter or modify the terms of paragraph 34 above.

(36) The Firm, by signing this Agreement, hereby waives:

(a) the issuance of any notice pursuant to 12 U.S.C. § 1818(b);

(b) any and all procedural rights available in connection with the issuance of this Agreement;

(c) all rights to seek any type of administrative or judicial review of this Agreement; and

(d) any and all rights to challenge or contest the validity of the Agreement.

(37) It is further agreed that the provisions of this Agreement shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Firm if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(38) The Firm understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Agreement, and that nothing herein constitutes, nor shall the Firm contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate. The Firm acknowledges that this Agreement may be used in any proceeding brought by the Comptroller to enforce this Agreement.

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

(40) Nothing contained herein shall be construed to require the Firm to violate applicable rules of professional responsibility.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ *Ronald G. Schneck*	*May 21, 2003*
Ronald G. Schneck Director for Special Supervision Office of the Comptroller of the Currency	Date
Signed	*May 15, 2003*
Patrick W. Kennison General Counsel Kutak Rock LLP	Date