

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

<b>In the Matter of:</b> First National Bank of Marin Las Vegas, Nevada	) ) ) )	AA-EC-2004-61
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**STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”), through his National Bank Examiners, has examined First National Bank of Marin, Las Vegas, Nevada (“Bank”), and his findings have been communicated to the Bank; and

**WHEREAS**, the Bank, by and through its duly elected and acting Board of Directors (“Board”), desiring to cooperate with the OCC, has executed this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation and Consent”), dated May 21, 2004, which is accepted by the Comptroller. By this Stipulation and Consent, the Bank has consented to the issuance of a Consent Order (“Order”) by the Comptroller dated May 21, 2004, and incorporated herein by this reference as though fully set forth.

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, by and through its Board, hereby stipulate and agree to the following:

## **ARTICLE I**

### **Jurisdiction**

(1) The Bank is a national bank association chartered and examined by the Comptroller pursuant to the National Bank Act, as amended, 12 U.S.C. § 1 et seq.

(2) The Comptroller is the “appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## **ARTICLE II**

### **Agreement**

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i)(1). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

### **ARTICLE III**

#### **Waivers**

(1) The Bank, by signing this Stipulation and Consent, admits to the jurisdiction of the Comptroller with respect to the matters set forth in the Order pursuant to 12 U.S.C. § 1818(b).

(2) The Bank, by signing the Stipulation and Consent, hereby waives:

- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
- (b) any and all procedural rights available in connection with the issuance of the Order;
- (c) all rights to seek any type of administrative or judicial review of the Order; and
- (d) any and all rights to challenge or the validity of the Order;

### **ARTICLE IV**

#### **Other Action**

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank, 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

**IN TESTIMONY WHEREOF**, the undersigned, authorized by the Comptroller, has

hereunto set his hand on behalf of the Comptroller.

/s/ Jennifer C. Kelly  
Jennifer C. Kelly  
Deputy Comptroller  
For Mid-Size and Credit Card Bank Supervision

5-24-04  
Date

**IN TESTIMONY WHEREOF**, the undersigned, as the duly elected Board of

Directors of the Bank, have hereunto set their hands on behalf of the Bank.

Signed  
Kjell Qvale, Director

5-21-04  
Date

Signed  
Jeff Qvale, Director

5-21-04  
Date

Signed  
Robert DeJong, Director

5-21-04  
Date

Signed  
Berkman Hong, Director

5-21-04  
Date

Signed  
Don Endo, Director

5-21-04  
Date

Signed  
Tom Hartley, Director

5-21-04  
Date

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

**In the Matter of:**

First National Bank of Marin  
Las Vegas, Nevada

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AA-EC-2004-61

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiners, has examined First National Bank of Marin, Las Vegas, Nevada (“Bank”), and his findings have been communicated to the Bank. The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated May 21, 2004, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated herein by this reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

ARTICLE I  
Restitution and Credit Reporting

(1) Within ten (10) days, the Bank shall establish a reserve of, or deposit into a segregated deposit account, at least ten million dollars (\$10,000,000), to fund any restitution required by this Article. Within sixty (60) days, the Bank shall complete a review of its books and records and shall make any adjustments to the amount of such reserve or deposit account necessary to fully fund the restitution required by this Article.

(2) The Bank shall provide the restitution determined by this Article to each consumer (“Eligible Account Holder”) whose account, after December 18, 2003, was assessed a periodic rate finance charge on an Outstanding Security Deposit Charge Balance.

(3) The amount of the restitution required to be paid to each Eligible Account Holder shall equal:

(a) The total amount of periodic rate finance charges assessed on the Outstanding Security Deposit Charge Balance between December 18, 2003 and the date of the restitution payment; and

(b) Interest on the amount determined in sub-paragraph (a) of this paragraph, at a rate of eight percent (8%) per annum, for the period beginning on the date of this Order and ending on the date of restitution payment.

(4) The Bank’s payment of restitution to an Eligible Account Holder under this Article shall be made:

(a) In the case of a Current Account Holder, through a credit to the consumer’s credit card account; and

(b) In the case of each other Eligible Account Holder, through a payment by check.

(5) Notwithstanding anything in this Order to the contrary:

(a) No restitution shall be required to be paid to a consumer whose account was unwound in a manner such that the Bank repaid all interest to the consumer that the consumer had paid to the Bank;

(b) The amount of restitution required to be paid to a consumer shall be reduced by any charge-off amount caused by non-payment of Customer Initiated

Charges, *provided, however*, that the amount of such reduction shall be offset against the charged-off amount; and

(c) No restitution shall be required to be paid by check if the total amount of restitution to the consumer does not equal or exceed one dollar (\$1).

(6) Except as provided in this Article, the amount of restitution to be paid to each consumer shall not be limited by, reduced by, or offset against any debt of the consumer to the Bank or any Bank affiliate.

(7) The Bank shall adjust any adverse credit report made to any credit reporting agency since December 18, 2003 related to an account described in sub-paragraph (5)(b) of this Article, to reflect a reduction of the charged-off amount.

## ARTICLE II Credit Practices

(1) The Bank shall not engage in any unfair or deceptive acts or practices and shall comply with section 5 of the Fair Trade Commission Act, 15 U.S.C. § 45(a)(1).

(2) The Bank shall not make a Security Deposit Charge to any consumer's account, and the Bank shall not engage in any act or practice whereby a consumer incurs any debt to the Bank or any Bank affiliate for the purpose of establishing a deposit as collateral for the consumer's account.

(3) With respect to the account of each Current Account Holder on which the Bank previously made a Security Deposit Charge, effective upon the date of the restitution payment under Article I, the Bank shall not assess any finance charge on the Outstanding Security Deposit Charge Balance.

ARTICLE III  
Capital and Funding

(1) Beginning not later than one hundred and twenty (120) days after the date of this Order, the Bank shall no longer accept any new deposits and shall not renew or extend any existing deposits, except:

- (a) Deposits accepted and held, in conformance with this Order, as collateral for Bank credit card accounts and on which the Bank has a valid lien;
- (b) A deposit by a third party for whom the Bank services a portfolio, limited to the amount necessary, in the Bank's judgment, to secure performance by such third party; and
- (c) A deposit by Marin National Bancorp ("MNB"), limited to the amount that, when added to the total amount of deposits accepted and held as collateral against Bank credit card accounts, and the third party deposit described in subparagraph (b) of this paragraph, is necessary to maintain the Bank's status as an "insured depository institution" as that phrase is defined at 12 U.S.C. § 1813(c)(2).

(2) Beginning not later than December 31, 2004, the Bank shall not hold any deposits whatsoever, except:

- (a) Deposits accepted and held, in conformance with this Order, as collateral for Bank credit card accounts and on which the Bank has a valid lien;
- (b) A deposit by a third party for whom the Bank services a portfolio, limited to the amount necessary, in the Bank's judgment, to secure performance by such third party;
- (c) A deposit by MNB, limited to the amount that, when added to the total amount of deposits accepted and held as collateral against Bank credit card

accounts, and the third party deposit described in sub-paragraph (b) of this paragraph, is necessary to maintain the Bank's status as an "insured depository institution" as that phrase is defined at 12 U.S.C. § 1813(c)(2); and

(d) Deposits guaranteed by an Irrevocable Letter of Credit equal to or exceeding the amount of such deposits, and in a form to which the OCC takes no prior supervisory objection, and issued by an institution to which the OCC takes no prior supervisory objection, *provided, however*, that the deposits covered by the Irrevocable Letter of Credit may not be renewed or extended, and no new deposits may be accepted by the Bank that would be covered by the Irrevocable Letter of Credit.

(3) Until such time as the Bank complies with the requirements of paragraph (2) of this Article and implements the Capital and Funding Plan pursuant to Article IV:

(a) The Bank shall not declare any dividends, shall not pay any dividends, and shall not make any other capital reductions, unless the Office of the Comptroller of the Currency ("OCC") has advised the Bank in writing that it does take supervisory objection to the Bank's Capital and Funding Plan required by Article IV;

(b) The Bank shall at all times maintain total risk based capital of at least twelve percent (12%) of total risk weighted assets after the subprime assets are risk-adjusted by a minimum of three hundred percent (300%) consistent with the Interagency Guidance on Subprime Lending; and

(c) The Bank shall at all times maintain a total amount of unencumbered cash, cash equivalents and money market investments of not less than five percent (5%) of the total amount of the assets of the Bank.

(4) Within five (5) days, the Bank shall use its best efforts to execute a Capital Assurances and Liquidity Maintenance Agreement (“CALMA”) with MNB, in form and in substance acceptable to the OCC, that:

(a) Ensures the maintenance of capital in accordance with sub-paragraph (3)(b) of this Article, or such lower amount detailed in the Bank’s Capital and Funding Plan for which the OCC takes no supervisory objection; and

(b) Ensures the maintenance of liquidity in accordance with sub-paragraph (3)(c) of this Article or such lower amount detailed in the Bank’s Capital and Funding Plan, for which the OCC takes no supervisory objection.

(5) Within ten (10) days, the Bank shall provide the OCC with:

(a) The fully executed CALMA entered into by and between the Bank and MNB; and

(b) The resolutions adopted by the Boards of the Bank and MNB evidencing the respective Boards’ approvals and authorizations to enter into and be bound by the CALMA.

(6) The Bank shall take all actions needed to exercise its rights and enforce the terms of the CALMA, if and when necessary. The Bank shall not modify, amend or terminate, or agree or consent to a modification, amendment or termination of the CALMA without the prior written supervisory non-objection of the OCC. Any Bank demand or request to MNB for

compliance with the CALMA shall be in writing, and the Bank shall provide the OCC with a copy of such written demand or request within one (1) business day of delivery to MNB.

(7) The Bank shall notify the OCC in writing within five (5) business days of discovery of any material change(s) to the financial condition of MNB or other Bank affiliate(s). For purposes of this Paragraph, “material” shall have the same meaning accorded to that term in Securities and Exchange Commission Staff Accounting Bulletin No. 99 on Materiality.

#### ARTICLE IV Capital and Funding Plan

(1) Within sixty (60) days, the Bank shall prepare and submit to the OCC a comprehensive three-year capital and funding plan (“Capital and Funding Plan”) acceptable to the OCC. Upon receiving written notice that the OCC does not take supervisory objection to the Capital and Funding Plan, the Bank shall immediately implement and shall thereafter adhere to the Capital and Funding Plan.

(2) The Capital and Funding Plan shall address the sources and uses of Bank capital and liquidity and, at a minimum, shall:

- (a) Specify the measures the Bank will take to address the effects of the payment of restitution required by Article I of this Order;
- (b) Specify the measures the Bank will take to ensure compliance with, and address the effects of, the provisions of Article III, paragraphs (1) through (3);
- (c) Include provisions necessary to ensure that the Bank maintains, at all times, assets with a value of not less than one hundred percent (100%) of all deposit liabilities, based upon a conservative asset valuation methodology acceptable to the OCC;

- (d) Include provisions necessary to ensure the Bank maintains capital levels required by Article III and adequate capital after such time as the Bank complies with paragraph (2) of Article III;
- (e) Include provisions necessary to ensure that the Bank maintains the liquidity level required by Article III and adequate liquidity after such time as the Bank complies with paragraph (2) of Article III;
- (f) Include projections for growth and capital levels based upon a detailed analysis of the Bank's assets (including fixed assets), liabilities, earnings, operations and off-balance-sheet activities;
- (g) Include projections of the sources and the timing of additional capital and funding necessary to meet the Bank's current and future needs;
- (h) Include an analysis of the support expected to be provided by MNB;
- (i) Identify the primary sources from which the Bank will strengthen its capital structure to meet the Bank's current and future needs;
- (j) Identify alternative sources of additional capital in the event that the Bank is unable to obtain additional capital from the primary sources, above;
- (k) Include a dividend policy that permits the declaration of a dividend only when the Bank is in compliance with this Order, the Capital and Funding Plan, and 12 U.S.C. §§ 56 and 60; and
- (l) Include a provision for continuing to review the adequacy of the Bank's allowance for loan and lease losses.

(3) The Board shall review and, if necessary, update the Bank's Capital and Funding Plan within thirty (30) days of the end of each calendar quarter, or more frequently if requested

by the OCC. Copies of the reviews and updates shall be submitted to the OCC upon completion. The Board shall not make any material changes to the Bank's Capital and Funding Plan without the prior supervisory non-objection of the OCC.

(4) The OCC may require the Bank to prepare and submit a revised Capital and Funding Plan if OCC determines that any of the Bank's practices do not comply with, or are inconsistent with:

- (a) OCC publications;
- (b) Section 5 of the Federal Trade Commission Act; or
- (c) The safe and sound operation of the Bank.

ARTICLE V  
Underwriting, Marketing and Business Strategy

(1) Effective immediately, the Bank shall not market or solicit to open any new account or increase the credit line of any account, unless:

- (a) If the Bank continues to obtain Fair, Isaac & Company (FICO) credit scores on consumers, the consumer, at the time of the marketing or solicitation, has a credit score of not less than the credit score disclosed to the OCC in the Bank's quarterly status report dated April 21, 2004;
- (b) If the Bank obtains a different type of credit score on consumers, the consumer has a credit score of not less than the credit score to which the OCC does not take supervisory objection;
- (c) The account is fully secured by cash collateral that is provided by the consumer and that is not derived through a Security Deposit Charge or any debt to the Bank or any Bank affiliate; or

(d) The Bank has fulfilled the requirements of paragraph (2) of Article III and implements the Capital and Funding Plan pursuant to Article IV.

(2) Effective one hundred and twenty (120) days from the date of this Order, and notwithstanding any other provision of this Order to the contrary, the Bank shall not market or solicit to open any new account or increase the credit line of any account, unless:

(a) If the Bank continues to obtain Fair, Isaac & Company (FICO) credit scores on consumers, the consumer at the time of the marketing or solicitation, has a credit score of not less than the credit score disclosed to the OCC in the Bank's quarterly status report dated April 21, 2004, plus fifty (50) points;

(b) If the Bank obtains a different type of credit score on consumers, the consumer has a credit score of not less than the credit score to which the OCC does not take supervisory objection;

(c) The account is fully secured by cash collateral that is provided by the consumer and that is not derived through a Security Deposit Charge or any debt to the Bank or any Bank affiliate; or

(d) The Bank has fulfilled the requirements of paragraph (2) of Article III and implements the Capital and Funding Plan pursuant to Article IV.

(3) Effective immediately, the Bank shall not make any significant changes in marketing or business strategy, other than those required by this Order, unless it provides prior written notice to the OCC and the OCC does not take supervisory objection to such change. For purposes of this Paragraph, significant changes in marketing or business strategy shall include material changes to:

(a) Marketing strategies, marketing partners, or acquisition channels;

- (b) Underwriting practices and standards for account acquisitions or portfolio acquisitions;
- (c) Account management strategies;
- (d) Collection strategies, partners, or operations;
- (e) Fee structure or fee application methods;
- (f) Accounting processes and practices;
- (g) Current business focus (*e.g.*, entrance into or exiting from a business segment);
- (h) Initial available credit;
- (i) Credit line increases;
- (j) Collateral requirements; and
- (k) Any other changes in standards, policies, processes, personnel or control systems that may have a material impact on the Bank's operations or financial performance.

ARTICLE VI  
Credit Card Management Plan

(1) Within sixty (60) days, the Board shall prepare and submit to the OCC a comprehensive credit card management and marketing plan ("Credit Card Management Plan") acceptable to the OCC. Upon receiving written notice that the OCC does not take supervisory objection to the Credit Card Management Plan, the Bank shall immediately implement and shall thereafter adhere to the Credit Card Management Plan.

(2) The Credit Card Management Plan shall address the Bank's management and marketing of credit card accounts and, at a minimum, shall:

- (a) Include the development of an account graduation program and other actions to increase retention rates;
- (b) Specify the measures the Bank will take to control and reduce over-limit accounts from the level detailed in the OCC's Report of Examination ("ROE") as of March 31, 2003;
- (c) Specify the measures the Bank will take to reduce delinquency roll rates and loss rates from the levels detailed in the OCC's ROE as of March 31, 2003; and
- (d) Include a provision ensuring that the Bank's average total loans (as determined by the Bank's Consolidated Report of Condition and Income) at any calendar quarter end, do not increase by more than ten percent (10%) over its average total loans (as determined by the Bank's Consolidated Report of Condition and Income) at the end of the preceding rolling twelve month period, beginning with the quarter ending June 30, 2004 and ending with the quarter during which the Bank receives written notice that the OCC does not take supervisory objection to the Bank's Capital and Funding Plan.

(3) The OCC may require the Bank to prepare and submit a revised Credit Card Management Plan if the OCC determines that any of the Bank's practices do not comply with, or are inconsistent with:

- (a) OCC publications;
- (b) Section 5 of the Federal Trade Commission Act; or
- (c) The safe and sound operation of the Bank.

ARTICLE VII  
Disposition Plan

(1) The Board shall prepare and submit to the OCC a Disposition Plan acceptable to the OCC if the OCC determines that the Bank has materially failed to implement this Order; the OCC provides the Bank thirty (30) days in which to cure the default; and the Bank fails to cure the default.

(2) The Disposition Plan shall be submitted to the OCC within thirty (30) days of receiving written notice from the OCC of such determination. Upon receiving written notice that the OCC does not take supervisory objection to the Disposition Plan, the Board shall immediately implement and shall thereafter adhere to the Disposition Plan.

(3) The Disposition Plan shall detail the Board's proposal to liquidate the Bank, in conformance with 12 U.S.C. §§ 181 and 182, and in a manner that will result in no loss or cost to the Bank Insurance Fund of the Federal Deposit Insurance Corporation.

(4) Failure to submit a timely Disposition Plan acceptable to the OCC, or failure to implement and adhere to the Disposition Plan after the Board receives written notice that the OCC does not take supervisory objection to the Disposition Plan, may be deemed by the OCC to constitute a violation of this Order.

ARTICLE VIII  
Compliance Committee

(1) Within three (3) business days of the date of this Order, the Board shall create a committee composed of at least three (3) members, no more than two (2) of whom may be senior executive officers of the Bank ("Compliance Committee").

(2) The Compliance Committee shall be responsible for ensuring, monitoring, evaluating and coordinating the Bank's compliance and implementation of the provisions of this

Order and shall meet at least monthly for the first one hundred and twenty (120) days after the date of this Order, and subsequently shall meet at least quarterly.

(3) Within twenty (20) days following each required meeting, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) Actions taken to comply with each Article of this Order;
- (b) The results of those actions; and
- (c) Any noncompliance with any provision of this Order.

(4) Within thirty (30) days following the end of each required meeting, the Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the OCC.

#### ARTICLE IX Method of Payment

(1) The restitution required by Article I shall be paid in conformity with this Article, unless otherwise provided by Article I.

(2) The Bank shall use reasonable efforts to perform the following within one hundred and twenty (120) days from the date of this Order, and shall in any event complete the following no later than one hundred and eighty (180) days from the date of this Order:

- (a) Compile a list of the consumers to whom a payment is required to be paid pursuant to Article I of this Order (hereinafter "Payment List"), which Payment List shall identify, for each consumer: (i) the consumer's name and address; (ii) the consumer's account number or pre-account reservation number; (iii) the paragraph or paragraphs of this Order pursuant to which a payment is required to be made to the consumer; and (iv) the dollar amount of the payment attributable to each paragraph;

(b) Update the addresses for all consumers to whom the Bank is required to make a payment by check by conducting a standard address search using the National Change of Address System (“NCOA”); if the most recent Bank communication sent to such consumer’s last known address was returned as undeliverable, and the Bank is unable to obtain an updated address through the NCOA, designate the consumer on the Payment List as a “Consumer With an Address Subject to Confirmation;”

(c) Prepare a detailed written description of the processes by which the Bank identified the consumers, determined the payments, and, for consumers to be paid by check, updated the addresses in compiling the Payment List;

(d) Arrange for an independent audit, which may be internal or external, of the accuracy and completeness of the Payment List; and

(e) Submit to the OCC the Payment List, the detailed written description prepared pursuant to paragraph 2(c) of this Article, and the results of the independent internal or external audit conducted pursuant to paragraph 2(d) of this Article.

(3) The Bank shall pay interest on the amount of restitution to be paid under this Order, in addition to any other interest required by this Order, if any of the materials described in paragraph (2)(e) of this Article is submitted to the OCC later than one hundred and twenty (120) days after the date of this Order. The amount of such interest shall be calculated at a rate of eight percent (8%) per annum, for a period of sixty (60) days.

(4) After receiving written notification that the OCC does not object to the materials required to be submitted pursuant to Paragraph (2)(e) of this Order, the Bank shall:

- (a) For all Current Account Holders, credit the account with an amount of restitution provided for that consumer in the Payment List within thirty (30) days;
- (b) For all consumers who are required to be paid by check and are not designated on the Payment List as a “Consumer With an Address Subject to Confirmation,” pay to each consumer the amount of restitution provided for that consumer in the Payment List within thirty (30) days;
- (c) For all consumers who are required to be paid by check and are designated as a “Consumer With an Address Subject to Confirmation,” within ten (10) days send to each such consumer, at the consumer’s last known address, an envelope containing a pre-addressed postage-paid return envelope and a letter in a form substantially the same as Appendix A, attached hereto. The envelope shall contain no materials other than the letter and return envelope, and shall be mailed in an envelope approved by the Assistant Deputy Comptroller for Credit Card Banks. If the Bank receives, within thirty (30) days of mailing, a communication that provides an address for that consumer, the Bank, using that address, shall within fifteen (15) days pay to such consumer the amount of restitution provided for that consumer in the Payment List, and otherwise proceed, adjusting dates and timeframes accordingly, as if the consumer had not been identified as a “Consumer With an Address Subject to Confirmation;” and
- (d) The Bank shall not use, sell, share, or otherwise disclose any information on a consumer that the Bank receives in response to the letter in Appendix A for any marketing or debt collection purpose.

(5) For those consumers being paid by check, checks shall be sent by United States Postal Service first-class mail, address correction service requested. The face of the checks shall clearly and conspicuously state “VOID IF NOT NEGOTIATED WITHIN 180 DAYS.” The checks shall be mailed in an envelope approved by the Assistant Deputy Comptroller for Credit Card Banks.

(6) For those consumers being paid by check, the Bank shall enclosed with each check a letter provided by the Assistant Deputy Comptroller for Credit Card Banks, which shall be provided to the Bank within ten (10) days of the date of this Order and shall be in a form substantially the same as Appendix B, attached hereto. The envelope containing the check shall contain no other materials other than those specified by this Article. For those consumers being paid by credit to their account, the Bank may either: (a) include with the periodic statement that reflects the restitution payment, a letter substantially the same as Appendix B; or (b) include a message on the periodic statement which shall be provided to the Bank by the Assistant Deputy Comptroller for Credit Card Banks within ten (10) days of the date of this Order.

(7) For a period of one hundred and twenty (120) days from the date the first payment check is mailed pursuant to this Article, the Bank shall make reasonable attempts to locate and mail payment checks to any consumers whose payment checks were returned for any reason. If the Bank has information that the consumer is deceased, the Bank shall make reasonable efforts to pay the restitution to the consumer’s estate or the consumer’s heirs, as appropriate.

(8) One hundred eighty-seven (187) days after the last payment check is mailed pursuant to this Article, the Bank shall:

- (a) Compile a list of all checks that the Bank has been unable to deliver to the consumer, the consumer's estate, or the consumer's heirs, and that have not been negotiated;
- (b) Prepare a description of the Bank's attempt to locate consumers whose checks were returned, and the Bank's procedures with regard to consumers who were designated on the Payment List as "Consumer With an Address Subject to Confirmation;"
- (c) Arrange for an independent internal or external audit of the Bank's efforts to locate consumers whose checks were returned; and
- (d) Submit to the OCC the list and description compiled pursuant to sub-paragraphs (a) and (b) of this paragraph, and the results of the audit conducted pursuant to sub-paragraph (c) of this paragraph.

(9) After receiving written notice that the OCC does not object to the materials required to be provided pursuant to paragraph (8)(d) of this Article, the Bank shall void all checks that were either returned or have not been cashed. Within thirty (30) days thereafter, the Bank shall offset the amount of each check voided pursuant to this paragraph against any outstanding or charged-off balance on the consumer's account.

ARTICLE X  
Submissions to the OCC

All reports, plans or other submissions to the OCC by the Bank or the Board that are required by this Order, shall be submitted to:

John F. Curtis  
Assistant Deputy Comptroller  
Office of the Comptroller of the Currency  
One Front Street, Suite 1000  
San Francisco, California 94111-5363

and a copy shall be sent to:

Examiner-in-Charge  
Office of the Comptroller of the Currency  
2350 Market Street, Room 100  
St. Louis, Missouri 63103.

ARTICLE XI  
Definitions

(1) “Customer Initiated Charge” shall mean a charge on the credit card initiated by the customer for a purchase from a party other than the Bank, any Bank affiliate, or any vendor marketing to Bank customers through a Bank marketing channel; or for a cash advance that is not pre-arranged to be provided to the Bank, any Bank affiliate, or any vendor marketing to Bank customers through a Bank marketing channel. Expressly excluded from this definition are Security Deposit Charges, Bank fees, payments for debt cancellation contracts or debt suspension contracts, and any payments for goods or services marketed as being related to the customer’s account, or in which the Bank receives a fee or part of the proceeds from the vendor.

(2) “Security Deposit Charge” shall mean a charge to a consumer’s credit card for the purpose of establishing a security deposit for that credit card.

(3) “Outstanding Security Deposit Charge Balance” shall mean, for any given month, the amount of the initial Security Deposit Charge, less:

(a) Fifty percent (50%) of any payments other than Excess Principal Payments made by the Eligible Account Holder; and

(b) One hundred percent (100%) of any Excess Principal Payment made by the Eligible Account Holder.

(4) “Excess Principal Payment” shall mean any amount paid in excess of any Customer Initiated Charges plus any unpaid interest and unpaid fees from prior billing periods,

when payments are applied as indicated in the definition of “Outstanding Security Deposit Charge Balance;”

(5) “Eligible Account Holder” shall mean any customer who maintained an Outstanding Security Deposit Charge Balance at the Bank on or after December 18, 2003.

(6) “Current Account Holder” shall mean an Eligible Account Holder who maintains an account with the Bank on the date payment is made under Article I.

## ARTICLE XII Concluding Provisions

(1) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(2) Unless otherwise specifically provided, any time limitations imposed by this Order shall begin to run from the issuance of this Order and shall be measured in calendar days. Such time requirements may be extended in writing by the Comptroller or his duly authorized representative for good cause upon written application by the Board.

(3) In each instance in this Order in which the Board is required to act, the Board shall be obligated to take such measures within the scope of their authority necessary to accomplish such act, and, to the extent that such measures involve directions to management of the Bank, the Board shall be obligated to ensure that management of the Bank follows such directions.

(4) The provisions of this Order shall be effective upon issuance and its provisions shall continue in full force and effect unless or until such provisions are excepted, waived, or terminated in writing by the Comptroller.

**IT IS SO ORDERED**, this 24<sup>th</sup> day of May 2004.

*/s/ Jennifer C. Kelly*

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Jennifer C. Kelly  
Deputy Comptroller  
For Mid-Size and Credit Card Bank Supervision

## Appendix A

Dear Consumer:

The enclosed check is a restitution payment from First National Bank of Marin (“FNB Marin”). Please cash this check as soon as possible. It will be void after 180 days from the date of the check.

The Office of the Comptroller of the Currency of the United States of America (“OCC”) supervises and regulates FNB Marin. FNB Marin has entered into a Consent Order as part of a settlement with the OCC. As a result of that settlement, FNB Marin agreed to make payments to certain consumers. Under the terms of the Consent Order, you were identified as one of the consumers to whom FNB Marin is required to make a payment.

If you would like to review the Consent Order, you will find it at [www.occ.treas.gov](http://www.occ.treas.gov). If you have any questions about this payment, please call FNB Marin at [number].

Sincerely,

Comptroller of the Currency

## Appendix B

[date]

[name]  
[address]

*Settlement Tracking Number:* [preprinted]

Re: Refund Payment from Government Settlement  
with First National Bank of Marin

Dear [name]:

You have been identified as a consumer who is entitled to restitution from the First National Bank of Marin (“FNB Marin”). Pursuant to a government settlement, you are in the group of such consumers who is to receive a refund payment, so long as you confirm your address by completing and returning the form at the bottom of this letter. A pre-addressed postage-paid envelope is provided for this purpose.

The Office of the Comptroller of the Currency (“OCC”), an agency of the United States Department of the Treasury, supervises and regulates FNB Marin. FNB Marin has entered into a Consent Order as part of a settlement with the OCC. As a result of that settlement, FNB Marin agreed to make payments to consumers like you.

This letter has been sent to your last known address in FNB Marin’s records. However, FNB Marin has been unable to confirm that it has a correct address for you. In order to qualify for the refund payment, you must within 30 days of the date of this letter provide an address where you receive mail by returning the form below.

The settlement requires that FNB Marin send you a refund payment after you complete and return the form. ***You will not receive a refund payment from the settlement unless you complete and return the form within thirty (30) days of the date of this letter.***

The Consent Order requires that FNB Marin use the information you provide to mail a check to you. The Consent Order prohibits the bank from using the information for marketing purposes or for debt collection.

If you would like to review the Consent Order, you will find it at [www.occ.treas.gov](http://www.occ.treas.gov). If you have any questions, please call FNB Marin at [800 number].

Sincerely,

Comptroller of the Currency

