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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

June 10, 2005

**Corporate Decision #2005-06  
July 2005**

John J. Sullivan, Esq.  
McDermott Will & Emery  
50 Rockefeller Plaza  
New York, NY 10020

Re: Change in Bank Control Act Notice submitted by Computershare Limited, Victoria, Australia, and EQAC Inc., Chicago, Illinois, to acquire control of EquiServe Trust Company, National Association, Canton, Massachusetts  
Charter Number: 23148  
Control Number: 2004 NE 11 0003

Dear Mr. Sullivan:

The Comptroller of the Currency (OCC) has reviewed and evaluated the subject Change in Control Notice involving EquiServe Trust Company, National Association, Canton, Massachusetts. This letter is to convey our intent to not to disapprove the proposed change in bank control.<sup>1</sup> The OCC has determined the regulatory factors it is required to consider under the Change in Bank Control Act are consistent with this decision.

Our decision was based upon a through review of all information available, including representations and commitments made in the Notice and subsequent correspondence and communications, and Agreements with Computershare Limited and its representatives, both written and verbal.

The date of consummation of this change in control must be provided to the Northeastern District Office Licensing Division within 10 days after consummation. The transaction must be consummated as proposed in the Notice. If any of the terms, conditions, or parties to the transaction described in the Notice change, the OCC must be informed in writing prior to consummation to determine if any additional action/reconsideration is required. In such situations, the OCC reserves the right to require submission of an amended or new Notice of Change in Bank Control.

In addition, unless an extension is granted, the transaction must be consummated within six months of the date of this letter. Failure to consummate within six months or an approved

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<sup>1</sup> Based on a review of the facts of record and the representations and commitments made by Computershare Limited, the OCC has determined that the Notice is technically complete.

extended time period granted by the OCC will cause our decision to lapse and require the filing of a new notice by the acquiring party and the appropriate filing fee if the acquirer wishes to proceed with the change in bank control.

You are reminded that the OCC requires pushdown purchase accounting for a change in control of at least 95 percent of the voting stock of a bank. Under pushdown accounting, when a bank is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired bank are restated to their fair values as of the acquisition date. Those values, including any goodwill, are reflected in the financial statement of the parent and the acquired bank.

The OCC poses no objection to the following persons serving as directors and/or senior officers, of EquiServe Trust Company, National Association, as proposed in the Notice.

Philip Daniel DeFeo	Director
Barbara Yvonne Hall	Director
Blanche Owen Hurt	Director/Senior Executive Officer

The results of the background checks requested by the OCC have not all been received yet. Although we have decided not to delay action pending receipt of those responses, this Office may consider remedies available to us under the Change in Bank Control Act or other statutes, if adverse or previously withheld information is received.

This letter also grants approval of your request to the OCC for multiple waivers of the residency requirement under 12 USC 72. We understand that after the election of the proposed new directors, 40 percent of the bank's board of directors will meet the residency requirements of 12 USC 72. The OCC reserves the right to withdraw this waiver at any time and, at our discretion, to request additional biographical and/or financial information on any member of the board of directors. All other requirements of 12 USC 72 remain applicable.

These decisions noted above, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable laws and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

John J. Sullivan, Esq.  
McDermott Will & Emery  
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All correspondence regarding this Notice should reference the application control number. If you have any questions concerning this letter, please contact Senior Licensing Analyst Sandya Reddy in our Northeastern District Office at (212) 790-4055 or Senior Licensing Analyst Greg Parvin in our Headquarters at (202) 874-5060.

A separate letter is enclosed requesting your feedback on how we handled your application, we would appreciate your response so we may improve our service.

Sincerely,

**signed**

Stephen A. Lybarger  
Director for Licensing Activities

Enclosure (Survey)

**AGREEMENT BY AND BETWEEN**

**Computershare Limited  
and  
The Office of the Comptroller of the Currency**

**WHEREAS**, pursuant to 12 C.F.R. § 5.50, any person seeking to acquire control of a national bank shall provide 60 days prior notice of a change in control to the Office of the Comptroller of the Currency (“OCC”);

**WHEREAS**, Computershare Limited (“Computershare”), an entity organized under the laws of Australia has submitted a notice (“Change in Control Notice”) to the OCC to acquire control of EquiServe Trust Company, N.A., Canton, Massachusetts (the “Bank”);

**WHEREAS**, Computershare intends to acquire, through its wholly owned subsidiary, EQAC, Inc., one hundred (100%) of the issued and outstanding shares of EquiServe, Inc., (“EquiServe”) and, thereby, acquire control of the Bank, which is a national bank chartered by the OCC and wholly-owned by EquiServe;

**WHEREAS**, Computershare and the OCC seek to ensure that the Bank operates in a safe and sound manner and in accordance with all applicable laws, rules, regulations;

**WHEREAS**, Computershare and the OCC seek to enter into an agreement outlining the measures that Computershare will take to ensure that the Bank will operate in a safe and sound manner and in accordance with all applicable laws, rules, and regulations;

**NOW, THEREFORE**, in consideration of the above premises, the OCC and Computershare, by and through its duly elected representative, agree as follows (“Agreement”):

**ARTICLE I**  
**JURISDICTION**

(1) Computershare is an “institution-affiliated party” (“IAP”) of the Bank within the meaning of 12 U.S.C. § 1813(u)(1).

(2) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(3) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(4) All correspondence related to this Agreement, and any information, documentation, reports, plans and/or other written submissions which Computershare has agreed to submit pursuant to this Agreement shall be forwarded, by overnight mail, to:

Assistant Deputy Comptroller  
New England Field Office  
20 Winthrop Square, Suite 200  
Boston, MA 02110

(5) The OCC may, by thirty (30) days written notice, change the OCC’s designated recipients listed in paragraph (4) of this Article.

(6) Computershare shall designate and maintain for the term of this Agreement

Computershare Investor Services, LLC  
2 North LaSalle Street  
Chicago, Illinois 60602

as its agent for service of process in the United States, and Computershare shall, at all times, be subject to service of process at Computershare Investor Services, LLC’s main office location.

**ARTICLE II**  
**OPERATING AGREEMENT**

(1) No later than one (1) business day after Computershare acquires control of the Bank, Computershare shall cause the Bank to enter into a written agreement with the OCC (“Operating Agreement”), in the form attached hereto as Appendix A. After the Bank enters into the Operating Agreement with the OCC, Computershare shall take all necessary actions to ensure the Bank’s compliance with the Operating Agreement.

**ARTICLE III**  
**CAPITAL ASSURANCE AND LIQUIDITY MAINTENANCE AGREEMENT**

(1) No later than two (2) business days after Computershare acquires control of the Bank, Computershare shall execute a Capital Assurance and Liquidity Maintenance Agreement (“CALMA”) with the Bank, in the form attached hereto as Appendix B. After execution of the CALMA, Computershare will comply with the CALMA and ensure that the Bank complies with the CALMA.

(2) At all times while the CALMA is in effect, Computershare shall maintain total equity of 600 million Australian Dollars.

(3) Computershare shall notify the Bank and the OCC in writing within five (5) calendar days after discovery of any material change(s) to the financial condition of Computershare, which adversely affects its ability to comply with its obligations under the CALMA. 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. Provided, however, that notification to the OCC pursuant to this paragraph is required if Computershare’s total equity falls below 600 million Australian Dollars or

Computershare's Total Debt to EBITDA, as that term is defined in Article IV, at the end of any quarter on a consolidated basis exceeds 3:1.

(4) Computershare shall notify the Bank and the OCC in writing within five (5) calendar days after discovery of any material change(s) to the financial condition of EquiServe. 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** **DEFINITIONS**

(1) For purposes of this Agreement, the term "EBITDA" shall mean the total of: (i) net operating profit before tax and before accounting for any extraordinary or abnormal items; (ii) gross interest paid, or accrued as payable; (iii) depreciation and amortization of brand names, trade marks, business names, and goodwill; and (iv) the interest component of finance lease payments paid, or accrued as payable; excluding: (i) unrealized foreign exchange gains; and (ii) consolidated adjustments.

#### **ARTICLE V** **CONCLUDING PROVISIONS**

(1) This Agreement shall become effective on the 10<sup>th</sup> day of June, 2005 ("effective date"), and shall remain in full force and effect until such time as: (i) Computershare (or any of its affiliates) ceases to own or control the Bank for the purposes of 12 C.F.R. § 5.50; (ii) Computershare ceases to be an IAP of the Bank pursuant to 12 U.S.C. § 1813(u); or (iii) the OCC, in its sole discretion, elects to terminate this Agreement and provides written notice to that effect.

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

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date. Such time requirements may be extended in writing by the OCC for good cause upon written application by Computershare.

(4) This Agreement may be amended only by mutual consent of Computershare and the OCC.

(5) This Agreement expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. 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 Computershare under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. Computershare expressly acknowledges that neither Computershare nor the OCC has any intention to enter into a contract. Computershare 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 bank regulatory 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.

(6) This Agreement constitutes the entire agreement of the parties with regard to the specific subject matter hereof and supersedes all prior written and/or oral understandings between the parties.



## **OPERATING AGREEMENT**

**Between  
EquiServe Trust Company, N.A., Canton, Massachusetts  
and  
The Office of the Comptroller of the Currency**

**WHEREAS**, pursuant to 12 C.F.R. § 5.50, any person seeking to acquire control of a national bank shall provide sixty (60) days prior notice of a change in control to the Office of the Comptroller of the Currency (“OCC”);

**WHEREAS**, Computershare Limited (“Computershare”), an entity organized under the laws of Australia, submitted a notice (“Change in Control Notice”) to the OCC to acquire control of EquiServe Trust Company, N.A. (the “Bank”), a national bank chartered by the OCC and wholly-owned directly by EquiServe, Inc. (“EquiServe”) and indirectly by DST Systems, Inc.

**WHEREAS**, the Bank and the OCC seek to ensure that the Bank operate in a safe and sound manner, in accordance with all applicable laws, rules and regulations;

**WHEREAS**, Computershare committed to certain undertakings memorialized in an agreement entered into between Computershare and the OCC on or about June 10, 2005 ;

**WHEREAS**, those undertakings specified, inter alia, that after Computershare had acquired the Bank, the Bank would operate in a safe and sound manner, in accordance with all applicable laws, rules and regulations;

**WHEREAS**, on or about June 10, 2005, the OCC issued its non-objection to the Change in Control Notice; and

**WHEREAS**, Computershare, through its wholly owned subsidiary, EQAC, Inc., has acquired one hundred (100%) of the issued and outstanding shares of EquiServe, thereby acquiring control of the Bank.

**NOW THEREFORE**, in consideration of the above premises, the OCC, by and through its authorized representative, and the Bank, by and through its duly elected Board of Directors (“Board”), agree as follows (“Agreement”):

**ARTICLE I**  
**JURISDICTION**

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. §§ 1818(e)(1) and 1818(i)(2).

(3) By virtue of 12 U.S.C. § 1818(b)(5), all of the provisions of 12 U.S.C. § 1818 apply to the Bank.

(4) All correspondence related to this Agreement, and any information, documentation, reports, plans or other written submissions which the Bank or its Board have agreed to submit pursuant to this Agreement shall be forwarded, by overnight mail, to:

Assistant Deputy Comptroller  
New England Field Office  
20 Winthrop Square, Suite 200  
Boston, MA 02110

(5) The OCC may, by thirty (30) days written notice, change the OCC’s designated recipient listed in paragraph (4) of this Article.

**ARTICLE II**  
**CAPITAL AND LIQUIDITY MAINTENANCE**

(1) Effective one business day after the effective date of this Agreement, the Bank shall maintain a minimum of \$10 million in Tier 1 Capital, or such other higher amount as may be required by the OCC pursuant to the exercise of its regulatory authority under 12 C.F.R. Part 3, Subparts C or E.

(2) Effective five business days after the effective date of this Agreement the Bank shall at all times maintain an amount of Liquid Assets, as that term is defined in Article XII that is at least equal to the greater of (a) \$5 million; or (b) the Bank's projected daily operating expenses for the next ninety (90) days plus any other expenses that the Bank will incur within those ninety (90) days.

(3) If, at any time, the Bank's Tier 1 Capital falls below the minimum capital required under Paragraph (1) of this Article, or the Bank's Liquid Assets fall below the amount required under Paragraph (2) of this Article, then the Bank shall take such corrective measures as the OCC may direct from among the provisions applicable to undercapitalized depository institutions under 12 U.S.C. § 1831o(e). For purposes of this paragraph, an action "necessary to carry out the purpose of this section" under section 1831o(e)(5) shall include restoration of the Bank's Tier 1 Capital and/or Liquid Assets to the levels required in this Article, and/or any other action deemed advisable by the OCC to address the Bank's Tier 1 Capital or Liquid Asset deficiency or the safety and soundness of its operations.

(4) Effective one (1) business day after the effective date of this Agreement, the Bank shall enter into and at all times thereafter maintain a legally enforceable Capital Assurance and Liquidity Maintenance Agreement ("CALMA") that provides the Bank with the right to obtain

capital and liquidity if and when needed by the Bank, and that complies with the requirements of this Article.

(5) The terms of the CALMA shall, at a minimum:

- (a) ensure the maintenance of Tier One Capital in accordance with Paragraph (1) of this Article; and
- (b) ensure the maintenance of Liquid Assets in accordance with Paragraph (2) of this Article.

(6) The Bank shall obtain a written non-objection from the OCC before entering into the CALMA. Within three (3) business days after entering into the CALMA, the Bank shall provide the OCC with:

- (a) the fully executed CALMA entered into by and between the Bank and the counter-party; and
- (b) the resolutions adopted by the Boards of the Bank and the counter-party evidencing the respective Boards' approvals and authorizations to enter into and be bound by the CALMA.

(7) The Bank shall take all actions necessary to exercise its rights and enforce the terms of the CALMA, if and when necessary. Any Bank demand or request to the counter-party 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 after delivery to the counter-party.

(8) The Bank shall notify the OCC in writing within one (1) business day after the Bank discovers any breach or violation of the CALMA by the counter-party, or the Bank determines that a future breach or violation by the counter-party is probable.

(9) The Bank shall not modify, amend or terminate, nor agree or consent to a modification, amendment or termination of a CALMA without obtaining a prior written non-objection from the OCC.

**ARTICLE III**  
**TRANSFER AGENT SERVICES INDEMNIFICATION AGREEMENT**

(1) Effective one (1) business day after the effective date of this Agreement, the Bank shall at all times maintain a legally enforceable Transfer Agent Services Indemnification Agreement with any affiliate that performs transfer agent services on the Bank's behalf or in conjunction with the Bank ("Transfer Agent Servicer"). The Transfer Agent Services Indemnification Agreement shall provide that the Bank will be fully indemnified for any costs incurred as the result of any legal claim filed against the Bank or any Transfer Agent Servicer related to the Bank's or the Transfer Agent Servicer's performance of its transfer agent responsibilities, and shall comply with the requirements of this Article. For purposes of this Article, any costs incurred as the result of any legal claim shall include all costs incurred in defending against such claim whether or not the claim proceeds to litigation.

(2) The terms of any such Transfer Agent Services Indemnification Agreement shall, at a minimum, provide that the Bank will be fully indemnified and held harmless for any and all expense, loss, claim, damage, or liability to which the Bank may become subject as a result of or arising out of the counter-party's:

- (a) performance under or failure to comply with the terms of any agreement between the Bank and the counter-party to provide transfer agent services for clients of the Bank and/or the counter-party;
- (b) malfunctions of the counter-party's equipment, systems or programs; or

(c) negligence, misconduct, error, omission, commission or failure to act by the counter-party, its officers, employees or agents, or any of the Bank's employees while working under the supervision or direction of the counter-party.

(3) Before entering into any agreement with a Transfer Agent Servicer, and continuing thereafter, the Bank shall apply prudent and conservative due diligence on the counter-party's:

- (a) reputation;
- (b) business practices;
- (c) compliance with applicable transfer agent laws, rules and regulations;
- (d) business and strategic plans;
- (e) corporate governance ; and
- (f) contracts, guarantees or other agreements with affiliates or third parties relevant to the counter-party's financial condition.

(4) The Bank shall ensure that it regularly analyzes sufficient information to reliably determine the financial condition of the counter-party to a Transfer Agent Servicer Indemnification Agreement and, as applicable, the financial condition of any guarantor or other third party relevant to the financial condition of the counter-party. The Bank shall notify the OCC in writing within five (5) calendar days after discovery of any material change(s) to the financial condition of the counter-party, any counter-party affiliate(s), or any other Bank affiliate(s) which would adversely affect the ability of the counter-party to perform under the Transfer Agent Servicer Indemnification Agreement. 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.

(5) The Bank shall take all actions necessary to exercise its rights and enforce the terms of a Transfer Agent Servicer Indemnification Agreement, if and when necessary. Any Bank demand or request to the counter-party for compliance with a Transfer Agent Servicer Indemnification Agreement, where there has been a breach or violation of the Transfer Agent Servicer Indemnification Agreement, 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 after delivery to the counter-party.

(6) The Bank shall notify the OCC in writing within one (1) business day after the Bank discovers any breach or violation of a Transfer Agent Servicer Indemnification Agreement by the counter-party, or the Bank determines that a future breach or violation by the counter-party is probable.

(7) The Bank shall maintain documentation of any Transfer Agent Servicer Indemnification Agreement on site and OCC personnel shall have prompt and unrestricted access to such documentation

#### **ARTICLE IV** **STRATEGIC PLAN**

(1) Within forty-five (45) days from the effective date of this Agreement, and annually thereafter, the Bank shall submit to the OCC for its review a Strategic Plan covering at least a three (3) year period. After receiving written notice that the OCC does not object to the Strategic Plan, the Board shall immediately adopt, implement, and thereafter ensure Bank adherence to the Strategic Plan.

- (2) The Strategic Plan shall include the following as a minimum:
- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
  - (b) an assessment of the Bank's current and future operating environment;
  - (c) identification of the Bank's short and long-term strategic goals, and the present and future market segments, business and product lines that the Bank will promote to achieve those goals;
  - (d) a detailed analysis of how the Bank intends to accomplish the goals identified in (2)(c) of this Article, including executive management responsibilities and target dates for achievement;
  - (e) an evaluation of the Bank's internal operations, staffing requirements, Board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (2)(c) of this Article;
  - (f) a financial forecast for the 3-year period covered by the Strategic Plan, broken down on a monthly basis for the first year of the budget and annually for the remaining budget periods, to include projected balance sheets, income statements, and cash flow statements (collectively, an "Operating Budget");
  - (g) the specific business assumptions forming the basis of the Operating Budget, and a process for Bank management to track and address changes to those assumptions throughout the period covered by the Operating Budget;

- (h) any specific plans to outsource functions and responsibilities to third parties and any anticipated changes in outsourcing arrangements;
- (i) control systems to mitigate risks associated with planned new products, new services, alterations or modifications to existing products or services, growth, outsourcing arrangements, or any proposed changes in the Bank's operating environment;
- (j) provisions for the maintenance and growth of the Bank's earnings, capital, and liquidity, so as to ensure compliance with Article II of this Agreement;
- (k) provisions for Board review and assessment of the adequacy of the Bank's earnings, capital position, liquidity position, fidelity bond insurance and errors and omissions insurance;
- (l) an analysis of how any proposed acquisitions or mergers involving the Bank or any of its affiliates will impact the Bank financially and operationally;
- (m) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(3) Prior to making any changes that may have a material impact on the Strategic Plan, the Bank shall give the OCC sixty (60) days advance written notice of such changes, and shall not implement such changes without obtaining a written non-objection from the OCC. For purposes of this paragraph, changes that may have a material impact on the Strategic Plan include, but are not limited to, any significant deviations from or material changes to:

- (a) outsourcing arrangements with third parties who perform transfer agent services on behalf of or in conjunction with the Bank;
  - (b) transfer agent system platforms currently in use by the Bank or any third party providing transfer agent services on behalf of or in conjunction with the Bank;
  - (c) the current business focus, including entering into or exiting from a business segment, including administration of issuer and bank sponsored dividend reinvestment and direct stock purchase plans;
  - (d) marketing strategies, marketing partners, or acquisition channels;
  - (e) accounting processes and practices;
  - (f) new products or services to be offered, and any outsourcing arrangements related to such product or service;
  - (g) alterations or modifications, including changes in terms, to existing products or services;
  - (h) funding strategies and capital maintenance; and
  - (i) any other changes in personnel or operations that may have a material impact on the Bank's operations or financial performance;
- (4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the Strategic Plan and ensure that the Strategic Plan is updated annually, within sixty (60) days of the anniversary of the effective date of this Agreement, to cover the next three (3) year period.

**ARTICLE V**  
**DISPOSITION PLAN**

(1) The Board shall, within five (5) business days following notice from the OCC, prepare and submit to the OCC a Disposition Plan acceptable to the OCC, if the OCC determines, in its sole discretion, that:

- (a) an existing or probable breach or violation identified pursuant to Article II, paragraph 8 of this Agreement is deemed to be significant or a change in the financial condition of the counter-party is such that it is insufficient to fulfill the counter-party's obligations under a CALMA;
- (b) an existing or probable breach or violation identified pursuant to Article III, paragraph 6 of this Agreement is deemed to be significant or the financial condition of the counter-party is unlikely to be sufficient to indefinitely fulfill the counter-party's obligations under a Transfer Agent Servicer Indemnification Agreement; or
- (c) the Bank has (i) failed to submit an acceptable Strategic Plan as required by Article IV of this Agreement; (ii) failed to implement or adhere to the Bank's specific, measurable and verifiable objectives included in the Strategic Plan to which the OCC has not objected pursuant to Article IV; or (iii) significantly deviated from, or materially changed, the Strategic Plan or Operating Budget without first obtaining the OCC's written non-objection to such deviation or change as required by Article IV of this Agreement; and has not cured the default within thirty (30) days of receiving written notice of such default from the OCC.

(2) Upon obtaining a written non-objection from the OCC, 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 OCC.

(4) The Disposition Plan shall include provisions addressing any potential harm caused or likely to be caused to the Bank's clients, the steps the Bank will take to mitigate such harm, and the steps the Bank will take to compensate clients for harm that is not mitigated.

(5) Failure to submit a timely Disposition Plan that is acceptable to the OCC, or failure to implement and adhere to the Disposition Plan after the Board obtains a written non-objection from the OCC, may be deemed by the OCC to constitute a violation of this Agreement.

## **ARTICLE VI**

### **INFORMATION TECHNOLOGY SYSTEM DEVELOPMENT AND CONVERSION**

(1) Within forty-five (45) days of the effective date of this Agreement the Bank shall submit to the OCC an action plan detailing the planned system conversion of the platforms currently in use by the Bank and/or any third party affiliate providing transfer agent services on behalf of or in conjunction with the Bank. The action plan shall detail how the Bank will monitor third party actions related to the system conversion and include at a minimum:

- (a) the activities necessary and estimated timeframe for development and implementation of any new system;
- (b) assignment of responsibility for overseeing third party system development and implementation;

- (c) due diligence procedures the Bank will follow in overseeing third party system development and implementation, including how the Bank will ensure adequate testing of the system occurs prior to final implementation; and
  - (d) procedures for reporting to the Board progress on third party system development and implementation.
- (2) The Bank shall review the action plan on a quarterly basis and revise the plan as necessary.
- (3) The Bank shall submit to the OCC the revised action plan within ten (10) days of making any changes to the plan.

**ARTICLE VII**  
**FINANCIAL INFORMATION ON AFFILIATED ENTITIES**

- (1) Beginning June 30, 2005, the Bank shall obtain and perform a written analysis of the following financial information on Computershare within thirty (30) days of its release:
- (a) Audited semi-annual financial statements, including the Consolidated Statement of Financial Performance, the Consolidated Statement of Financial Position and the Consolidated Statement of Cash Flows, and Supporting Financial Notes; and
  - (b) Audited annual financial statements, including the Consolidated Statement of Financial Performance, the Consolidated Statement of Financial Position and the Consolidated Statement of Cash Flows, and Supporting Financial Notes.

(2) All financial information that the Bank obtains and the written analysis performed in accordance with paragraph (1), shall be maintained at the Bank and OCC personnel shall have prompt and unrestricted access to such financial information and documentation.

**ARTICLE VIII**  
**CHANGES IN DIRECTORS OR SENIOR EXECUTIVE OFFICERS**

(1) For a period of three years beginning on the effective date of this Agreement, prior to the appointment of any individual to a position of senior executive officer or the appointment of any individual to the Bank's Board, the Bank shall obtain a written non-objection from the OCC. The Bank shall submit to the OCC the following information on any individual proposed as a senior executive officer or director of the Bank:

- (a) documentation of the Bank's investigation of the proposed individual, which is no less detailed than that provided in the Management Review Guidelines ("Guidelines") of the *Background Investigations* booklet of the *Comptroller's Licensing Manual*, provided however, the Bank may limit the information in item 1 of the Guidelines to the information sought in pages 1 through 4, inclusive, of the Interagency Biographical and Financial Report.
- (b) a written statement of the Board's reasons for selecting the proposed individual;
- (c) a written description of the proposed individual's duties and responsibilities; and

(d) any other documentation related to the proposed individual that the OCC may require.

(2) The OCC's written non-objection to any proposed senior executive officer or director shall not constitute an approval or endorsement of such individual.

## **ARTICLE IX** **CORPORATE STRUCTURE AND GOVERNANCE**

(1) The Bank shall maintain and adhere to policies and procedures that delineate lines of reporting within the Bank, and specify requirements for information to be supplied to the Board of the Bank. The Bank shall not materially alter or amend such policies and procedures without obtaining the prior written non-objection from the OCC.

(2) The Board shall maintain and ensure Bank adherence to policies and procedures that preserve the Bank's separate corporate identity, including, without limitation, the maintenance of books and records that are separate and apart from any Transfer Agent Servicer or affiliate, under the control of the Bank, and readily available to OCC personnel upon request. The Bank shall not materially alter or amend such policies and procedures without obtaining the prior written non-objection from the OCC.

(3) Within ninety (90) days the Bank shall establish an Independent Audit Committee which shall be comprised of at least three Bank directors who are not officers or employees of the Bank, and a majority of whom are not officers, directors or employees of any affiliate or subsidiary of the Bank or Computershare.

(4) The Board shall ensure adherence to independent internal and external audit functions in accordance with the Comptroller's Handbook titled "Internal and External Audits"

dated April 2003. The Bank's internal and external audit functions shall include regular audits of the Bank's compliance with each requirement of this Agreement.

**ARTICLE X**  
**AFFILIATE TRANSACTIONS**

(1) The Board shall ensure that all contracts, agreements and transactions between the Bank and any affiliate are fair and equitable to the Bank and are in compliance with 12 U.S.C. §§ 371c and 371c-1, and 12 C.F.R. Part 223 ("Regulation W") (hereinafter "affiliate laws").

(2) Within ninety (90) days from the effective date of this Agreement and continuing at least yearly thereafter, the Board shall review all contracts and agreements with affiliates, whether then existing or proposed, and whether written or otherwise, to determine whether each contract and agreement is fair and equitable to the Bank and complies with the affiliate laws. The Board shall document its conclusions from each review. Within thirty (30) days of the close of the initial review required by this Article, the Board shall submit such documentation and conclusions to the OCC. Documentation and conclusions from subsequent reviews shall be maintained at the Bank and OCC personnel shall have prompt and unrestricted access to such documentation.

(3) Within thirty (30) days of determining that any contract or agreement with an affiliate is not in writing, the Bank shall reduce such contract or agreement to writing and a copy shall be submitted to the OCC.

(4) Within sixty (60) days and continuing thereafter, the Bank shall maintain, in a centralized location, a listing of all contracts, agreements and transactions with any affiliate, and records and documentation showing that such contracts, agreements and transactions are fair and equitable to the Bank and in compliance with the affiliate laws. Such listing, records and

documentation shall be updated no less frequently than each month. OCC personnel shall have prompt and unrestricted access to such listing, records and documentation.

(5) Within thirty (30) days of the date that the Bank determines that any contract or agreement is not fair and equitable to the Bank or is not in compliance with the affiliate laws, the Bank shall:

- (a) renegotiate the terms of such contract or agreement to ensure that it is fair and equitable to the Bank and in compliance with the affiliate laws; and/or
- (b) take other steps acceptable to the OCC to address the issues raised by the terms of the contract or agreement.

(6) Within thirty (30) days of the date that the OCC provides the Bank with an objection to any contract or agreement, the Bank shall renegotiate the terms of such contract or agreement, or take other steps acceptable to the OCC, to resolve such objection.

(7) The Bank shall not enter into any new contract, agreement or transaction with any of its affiliates, unless the contract, agreement or transaction:

- (a) is in writing;
- (b) is fair and equitable to the Bank;
- (c) is in compliance with the affiliate laws;
- (d) has been approved in advance by the Board in writing; and
- (e) provides that, if the OCC appoints a receiver for the Bank, then to the extent requested by the OCC, the affiliate agrees to continue to fulfill its obligations under the contract or agreement, on commercially reasonable terms, until such time as the Bank obtains the goods or services from another party.

**ARTICLE XI**  
**COMPLIANCE REPORTS**

(1) Each month for the first three (3) months following the effective date of this Agreement, and on a quarterly basis thereafter, the Bank's Board of Directors shall require the submission of a written progress report to them setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results of those actions.

(2) The Board shall promptly forward a copy of this report, with any additional comments by the Board, to the OCC, unless the OCC directs otherwise.

**ARTICLE XII**  
**DEFINITIONS**

(1) For purposes of this Agreement, the following terms shall have the below-described meanings:

- (a) The term "Capital Assurance and Liquidity Maintenance Agreement" shall mean that certain agreement entered into between the Bank and a counter-party pursuant to the terms of this Agreement;
- (b) The term "Transfer Agent Servicer Indemnification Agreement" shall mean that certain agreement entered into between the Bank and a counter-party pursuant to the terms of this Agreement.
- (c) The term "Liquid Assets" shall mean: (i) cash deposits; (ii) overnight federal funds sold; (iii) Type I Securities under 12 C.F.R. § 1.2; and (iv) such other assets as to which the Bank has obtained a non-objection from

the OCC. The term Liquid Assets shall not include any assets that are pledged in any manner, nor any assets that are not free and kept free from any lien, encumbrance, charge, right of set off, credit or preference in connection with any claim against the Bank.

- (d) The term “affiliate” shall be defined as set forth in 12 U.S.C. § 371c(b)(1) and 12 C.F.R. § 223.
- (e) The term “business day” shall mean any day other than Saturday, Sunday, a “legal public holiday,” as listed in 5 U.S.C. § 6103(a) or any successor statute, as either may be amended or modified, or any day the OCC has permitted the Bank to be closed; provided, however, if a January 1, July 4, November 11, or December 25 falls on a Sunday, the next Monday is not a business day.
- (f) The term “senior executive officer” shall be defined as set forth in 12 C.F.R. § 5.51(c)(3).

### **ARTICLE XIII** **TERM OF AGREEMENT**

(1) This Agreement shall become effective immediately upon its execution by all parties (“effective date”).

(2) This Agreement will remain in full force and effect until the OCC, in its sole discretion, elects to terminate the Agreement.

**ARTICLE XIV**  
**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 her by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(2) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement, unless otherwise provided. Such time requirements may be extended in writing by the Comptroller or her duly authorized representative for good cause upon written application by the Board.

(3) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions 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 in writing by the Comptroller or her duly authorized representative.

(4) The conditions imposed in connection with the Bank's charter approval dated August 26, 1996 remain in full force and effect, except to the extent that they conflict with the terms of this Agreement, in which case, the provisions of this Agreement shall control;

(5) In each instance in this Agreement 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.

(6) This Agreement is intended, 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

expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States of America. 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 Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States of America, the United States Treasury Department, the OCC, or any other federal bank regulatory 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 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.

**IN TESTIMONY WHEREOF**, the undersigned, authorized by the Comptroller, has hereunto set her hand on behalf of the Comptroller.

/s/  
Kathleen M. Cahill  
Assistant Deputy Comptroller  
New England Field Office

June 23, 2005  
Date

**IN TESTIMONY WHEREOF**, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/  
Deborah A. Culhane

June 17, 2005  
Date

/s/  
Philip Daniel Defeo

June 17, 2005  
Date

/s/  
Barbara Hall

June 17, 2005  
Date

/s/  
Blanche Hurt

June 15, 2005  
Date

/s/  
Charles V. Rossi

June 17, 2005  
Date