

UNITED STATES OF AMERICA
Before the
OFFICE OF THRIFT SUPERVISION

In the Matter of)
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ABACUS FEDERAL SAVINGS BANK,)
New York, New York)
(OTS No. 08509))

Order No. NE 03-07

Date: October 23, 2003

ORDER TO CEASE AND DESIST AND FOR AFFIRMATIVE RELIEF

WHEREAS, **ABACUS FEDERAL SAVINGS BANK**, New York, New York ("ABACUS" or the "Bank") has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist For Affirmative Relief and For Assessment of Civil Money Penalty ("Stipulation"); and

WHEREAS, ABACUS, by its execution of the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist pursuant to 12 U.S.C. § 1818(b);¹ and

WHEREAS, the Director of the Office of Thrift Supervision ("OTS") has delegated to the Regional Directors of the OTS the authority to issue consent orders on behalf of the OTS pursuant to provisions of Section 8 of Federal Deposit Insurance Act, 12 U.S.C. § 1818.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Compliance With Laws and Regulations. The Bank and its directors, officers, employees, and agents shall cease and desist from any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling or the aiding and abetting of any violation of:

- (a) 12 U.S.C. § 1468(a) & 12 C.F.R. § 563.41 (as amended at 67 Fed. Reg. 77909, Dec. 20, 2002), regarding transactions with affiliates;
- (b) 12 U.S.C. § 1468(b) & 12 C.F.R. § 563.43, regarding loans to executive officers, directors, principal shareholders and their related interests;
- (c) 12 CFR § 563.200, regarding conflicts of interest;
- (d) 31 U.S.C. § 5318(h), 31 C.F.R. § 120(b), and 12 C.F.R. § 563.177, requiring an effective anti-money laundering program;
- (e) 12 C.F.R. § 563.180(d) and 31 C.F.R. § 103.18, regarding Suspicious Activity Reports;
- (f) 12 C.F.R. § 563.161, requiring savings associations to be well managed; and
- (g) Safety and Soundness Standards set forth in Appendix A of 12 C.F.R. Part 570 (Interagency Guidelines Establishing Standards for Safety and Soundness).

¹ All references to the United States Code ("U.S.C.") are as amended, unless otherwise indicated.

2. Effective Anti-Money Laundering Program Required.

(a) No later than October 31, 2003, ABACUS shall, after taking into account: (i) all risks related to the nature of its business and (ii) the recommendations of the outside Anti-Money Laundering Consultant ("AML Consultant") retained by it, adopt, and commence implementation and monitoring of an effective anti-money laundering program ("AML Program") that complies with the requirements of 12 C.F.R. § 563.177 and the terms of this Order. The AML Program must be approved by the Bank's Board of Directors and be reflected in the minutes of the meeting at which such approval occurs.

(b) AML Expert Assistance in Implementation of AML Program. ABACUS shall work with its AML Consultant as it establishes and begins implementation of its AML Program.

(c) Minimum AML Program Requirements. At a minimum, the AML Program must include:

(1) A Customer Identification Program ("CIP") that meets or exceeds the requirements set forth in 31 C.F.R. § 103.121 (as amended at 68 Fed. Reg. 25089, May 9, 2003).² To assist in the identity verification process, the Bank shall employ an automated system, acceptable to OTS, that validates the identifying information supplied by customers and identifies high-risk data elements through searches of available databases.

(2) A Risk-Focused Assessment of the Bank's Customer Base that

(i) Documents the Bank's expectations about the normal range of banking activities and the types of transactions that the customer is likely to be engaged ("Transaction Profile"); and

(ii) Describes the appropriate level of enhanced due diligence necessary for those categories of customers who the Bank has reason to believe pose a heightened risk of illicit activities at or through the Bank.

(3) An Upgrade and Improvement of Internal Controls to ensure compliance with the BSA Laws and Regulations, including but not limited to monitoring transactions that are unusual or inconsistent with each customer's Transaction Profile. To assist in identifying such transactions, the Bank shall upgrade its data processing capability and employ an automated system, acceptable to OTS, that flags such unusual or inconsistent transactions based on established parameters.

(4) Independent Testing By An Outside Party Acceptable To OTS/Quarterly Reviews.

(i) The AML Program shall provide for an independent review of compliance with the Bank's AML Program and its compliance with BSA Laws and Regulations ("Independent Review") by an outside independent party that is acceptable to OTS. OTS's decision about the proposed outside independent party will be transmitted in writing after ABACUS submits a written request for non-objection in accordance with Paragraph 14(a) of this Order and all information requested by OTS has been provided by ABACUS.

(ii) The Independent Reviews shall be conducted quarterly; commencing no later than January 1, 2004 for the quarter ended December 31, 2003 ("Quarterly Review"). Such Quarterly Reviews shall cover all substantive requirements, compliance processes and follow

² The May 9, 2003 rulemaking notice established an October 1, 2003 deadline for banking institutions to comply with the CIP requirements set out in 31 C.F.R. § 103.121.

up on corrective actions directed as a result of findings/recommendations set forth in prior Quarterly Reviews. The independent party shall, no later than 30 days following the end of each calendar quarter, prepare a written report for the Board and/or the Bank's Audit Committee detailing the findings and recommended corrective actions to address any deficiencies. The written reviews shall be considered by the Board and/or Audit Committee, which shall direct any and all appropriate corrective actions. Such written reviews shall be attached to the minutes of the meeting of the Board and/or Audit Committee meeting at which the findings are presented and all corrective actions directed by the Board shall be recorded in the minutes.

(5) BSA Compliance Officer. Commencing no later than the Effective Date hereof and thereafter at all times, the Bank shall have in its employ a qualified BSA Compliance Officer, who shall have responsibility for coordinating and monitoring all BSA compliance and related matters, including, without limitation:

(i) Compliance with all recordkeeping and reporting requirements;

(ii) Identification of known or suspected violations of Federal law, any suspicious transaction related to money laundering activity, or any violations of the BSA Laws and Regulations that are required to be reported in Suspicious Activity Reports ("SARs") pursuant to 12 C.F.R. § 563.180(d) and 31 C.F.R. § 103.18 ("SAR Regulations");

(iii) Monitoring the Bank's BSA compliance and ensuring that full and complete corrective action is taken with respect to previously identified violations and deficiencies; and

(iv) Oversight of the Bank's BSA training, as set forth below.

(6) BSA Training and Awareness.

(i) The AML Program shall:

(A) Provide for an effective training program for all appropriate personnel at the Bank, including, but not limited to, tellers, customer service representatives, lending officers, branch managers and all other customer contact personnel, and

(B) No later than January 31, 2004, and at least annually thereafter, require the BSA Compliance Officer to submit a written report to the Board that: (I) sets forth the scope, nature and frequency of the Bank's BSA training efforts, (II) evaluates the effectiveness of the training program and (III) recommends updates to the training program so that Bank personnel have access to the most current information.

(ii) No later than the first Board of Directors meeting following the Effective Date, each member of the Board and each Senior Executive Officer of the Bank shall certify, in writing, that he/she has read and understands the OCC publication entitled "Money Laundering: A Banker's Guide to Avoiding Problems".³ After the certifications have been completed and signed, they shall be collected and attached to the minutes of the next scheduled meeting of the Board of Directors.

(7) Periodic Updates to AML Program. The AML Program shall be monitored and updated on an ongoing basis as necessary to adjust to changes in the: (i) Bank's operations that may

³ This document can be found at <http://www.occ.treas.gov/moneylaundering2002.pdf>

impact on its compliance with the BSA Laws and Regulations and (ii) BSA Laws and Regulations (and related forms).

3. Suspicious Activity Reporting.

(a) The Bank must immediately develop, adopt and commence implementation of an effective system to ensure that all known or suspected violations of law are properly identified and reported in accordance with the SAR Regulations. The system, at a minimum, must provide for:

(1) Collection of Sufficient Identifying Information. The Bank shall collect information about Bank customers and transactors (including non-Depositor wire transfer customers) that is sufficient to: (A) permit a meaningful analysis about whether or not transactions involving those customers are reportable and (B) complete a SAR, when required, in a manner that is consistent with the form's instructions;

(2) Consideration of Activity Flagged as Unusual or Inconsistent With the Transaction Profile. The Bank shall consider all transactions that are flagged as being unusual or inconsistent with a customer's Transaction Profile and file a SAR when required by the SAR Regulations.

(3) Compliance With SAR Instructions. A requirement that each and every SAR prepared by the Bank must fully comply with applicable instructions, including without limitation:

(i) The entry into each SAR of the full name(s), address(es), and official identification number(s) required by items 19 and 29 of the SAR form for each person identified as engaging in a suspicious activity; and

(ii) A meaningful detailed narrative description of the suspicious activity in conformity with the instructions set out in Part V of the SAR form.

(b) Reports to the Board of Directors. The Bank's management shall, on a monthly basis, provide the Bank's Board of Directors with a written report that: (1) identifies the number of SARs prepared during the previous calendar month, and (2) provides a meaningful summary of information with respect to each of the SARs prepared by the Bank during the previous calendar month. Such reports shall be attached to the minutes of the Board meeting.

(c) Electronic Filing of SARs. Commencing no later than November 1, 2003, the Bank shall file all SARs electronically.

4. Review of Past Transactions.

(a) By no later than January 31, 2004, the Bank shall conduct and complete a review (the "Review") of: (1) all cash transactions exceeding \$5,000 in the Bank's Canal Street Branch and (2) all wire transfer activity in the Bank occurring during the period of January 1, 2002 through June 30, 2003. The Review shall be designed to determine whether activity involving accounts or transactions at, by, or through the Bank was properly identified and reported by the Bank in accordance with the SAR Regulations and to evaluate compliance with applicable currency transaction reporting ("CTR") requirements of the BSA Laws and Regulations.

(b) By no later than March 31, 2004, the Bank shall submit to the OTS:

(1) A written report setting forth the findings, conclusions and recommendations resulting from the Review;

(2) An acceptable written plan setting forth the actions the Bank will take to respond to the findings, conclusions, and recommendations; and

(3) Appropriate evidence that all transactions have been reported and appropriate records have been maintained in accordance with the BSA Laws and Regulations and SAR Regulations.

5. Restrictions on the Bank's Wire Transfer Operation.

(a) Customer Limitations. The Bank shall effect, process, perform or engage in wire transfer activities only for Persons⁴ who own at least one FDIC-insured Bank deposit account at ABACUS that maintains a minimum balance of not less than \$100 ("Depositor"), except that the Bank may effect wire transfers on behalf of non-Depositors if payment of the funds to be remitted by wire transfer is made by a single check or other negotiable instrument drawn on the non-Depositor's Transaction Account⁵ at an Insured Depository Institution.⁶ For each such wire transfer effected by ABACUS for a non-Depositor, ABACUS shall keep in its records a photocopy of the check or other negotiable instrument submitted to ABACUS, and such photocopy shall be attached to the Application completed by the non-Depositor.

(b) Limitations on Forms of Payment. In connection with the processing and handling of wire transfers, ABACUS shall not accept cash as payment of the funds to be remitted. With respect to the wire transfers performed on behalf of a Depositor, ABACUS may accept only payment of funds to be remitted in one or more of the following forms: (1) the Depositor's written instructions to debit the Depositor's deposit account at ABACUS; (2) a check or money order drawn by the Depositor on his or her account or other Transaction Account made payable to the order of ABACUS; or (3) payment by a credit card or debit card issued to the Depositor by an Insured Depository Institution. With respect to a wire transfer performed for a non-Depositor, the sole method of payment shall be a single check or other negotiable instrument drawn on the Person's Transaction Account at an Insured Depository Institution payable to the order of ABACUS.

(c) Restrictions on Wire Transfers With Persons Engaged in Suspicious Activities. In addition to the other restrictions set forth in this Order, ABACUS shall not, unless it has received instructions to the contrary by a governmental law enforcement agency, engage in wire transfers on behalf of any Person who (1) has engaged in what a prudent person would reasonably deem to be a pattern of suspicious activities involving ABACUS, as indicated in information available to ABACUS, or (2) is identified on the list of Specially Designated Nationals and Blocked Persons that is maintained and updated by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC").

(d) Identification Procedures For Persons Conducting Wire Transfers. In addition to the other restrictions set forth in this Order and requirements set forth in applicable laws, rules, and regulations, ABACUS shall not process a request for a wire transfer transaction exceeding \$999.99 for a Depositor unless:

(1) The Depositor has set out in the wire transfer application the Depositor's current name, address, telephone number and bank account number;

⁴ For purposes of this Order, "Person" has the meaning for that term as set forth in 31 C.F.R. § 103.11(z).

⁵ For purposes of this Order, "Transaction Account" has the meaning for that term as set forth in 31 C.F.R. § 103.11(hh).

⁶ For purposes of this Order, "Insured Depository Institution" has the meaning for that term as set forth in 12 U.S.C. § 1813(c)(2).

(2) Prior to completing the wire transfer transaction, the Person submitting the wire transfer request provides the Bank with documentation demonstrating that such Person is, in fact, a Depositor, and the Bank:

(i) has verified the Depositor's name and address by inspection of (A) valid, photographic identification issued by the United States or any State, or (B) any other form of identification that (I) satisfies the identification verification requirements of the Bank's Customer Identification Program (required by Paragraph 2(c) hereof and the regulations referenced therein) and (II) has been accepted by OTS for use in connection with wire transfers; or

(ii) has previously verified the identity of the Depositor in accordance with the foregoing clause (i), as reflected by the readily retrievable records of the Bank; and

(3) The Bank employee verifying such information makes notations on the wire transfer application about the issuer and form of the identification documentation reviewed by such employee.

(e) Wire Transfer Promotional Materials. ABACUS's advertisements and other promotional materials (including Web pages on the Internet created and maintained by/for the Bank) shall not promote its wire transfer business in a manner that is inconsistent with the restrictions and requirements of this Order.

6. Internal Controls.

(a) By no later than January 1, 2004, the Bank's Board shall adopt, and the Bank shall implement, written policies and procedures on internal controls and information systems that: (1) conform to section II.A. of Appendix A of the Part 570 Safety and Soundness Standards (12 C.F.R. Part 570); (2) are established following consideration of the guidance at paragraph 10 of Appendix A to 12 C.F.R. Part 363 and OTS Thrift Activities Handbook Section 355; and (3) address and correct internal control deficiencies that were exploited by certain former employees in the Bank's Canal Street Branch.

(b) Abacus shall immediately cease and desist from the practice of holding bank statements for bank customers to pick-up in person ("no mail accounts"). This prohibition shall be communicated to all Bank employees in writing within five days of the Effective Date of this Order.

7. Enhancements to Management and Board of Director Oversight of the Bank. The Bank shall fully implement and comply with the resolutions adopted by the Board of Directors on September 30, 2003 (the "Resolutions") that provide for enhancements to management and board of director oversight of the Bank. The Bank and the Board shall not modify the Resolutions without prior written notice to and approval in writing from the Regional Director or his designee.

8. Internal and External Audit System; Audit Committee. No later than February 28, 2004, the Bank's Board shall adopt and the Bank shall implement written prudent policies and procedures for its internal audit system that conform with the requirements and guidelines at section II.B of Appendix A of the Part 570 Safety and Soundness Standards (12 C.F.R. Part 570) and the requirements set forth below. Such policies and procedures shall be adopted after soliciting input from previously retained consultants having knowledge of the Bank's internal control systems. At a minimum the system shall provide as follows:

(a) Establishment of Independent Audit Committee. No later than February 28, 2004, the Board shall designate an independent audit committee of the Board ("Audit Committee") comprised of three members who are Independent of Management⁷. The Audit Committee shall:

(1) Be directly responsible for the appointment, scope of services, compensation, retention and oversight of the work of any public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Bank, and each such public accounting firm must report directly to the Audit Committee;

(2) Establish procedures for: (i) the receipt, retention, and treatment of complaints received by the Bank regarding accounting, internal accounting controls, or auditing matters; and (ii) the confidential, anonymous submission by employees of the Bank of concerns regarding questionable accounting or auditing matters;

(3) Have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties;

(4) Have access to appropriate funding by the Bank, as determined by the Audit Committee, in its capacity as a committee of the Board of Directors, for payment of: (i) compensation to any public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the Bank; (ii) compensation to any advisers employed by the audit committee; and (iii) ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties;

(5) On an ongoing basis, take all appropriate actions so that: (i) the Internal Audit Department ("Audit Department") is adequately staffed with qualified personnel (including employees and/or independent contractors) and (ii) such in-house Audit Department staff receive such ongoing training as is necessary to provide for the department's effectiveness; and

(6) Perform such other appropriate duties as determined by the Board, after reviewing the guidance set forth at 12 C.F.R. Part 363, Appendix A, ¶ 31.

(b) Audit Department Managed By Internal Auditor. The Audit Department staff shall be supervised and managed by a Bank officer designated as Internal Auditor; however, this requirement does not preclude outsourcing of selected audit functions subject to the supervision of the Internal Auditor and/or the Audit Committee.

(c) Supervision of Audit Department. The Audit Department staff shall be subject to direction, discipline and termination solely by the Internal Auditor, the Audit Committee, and the Board. The Internal Auditor shall report directly to the Audit Committee.

(d) Audit Department Schedule and Completion of Assignments. By no later than April 15, 2004, and on an annual basis thereafter, the Audit Committee shall establish in writing, and assure the completion of, a schedule of assignments for the Audit Department encompassing all of the Bank's operations (including activities through subsidiaries and agents) and departments. The initial

⁷ As used in this Order, the phrase "Independent of Management" means that the person: (i) is not an officer, employee or consultant of ABACUS, (ii) is not, either by blood or marriage, related to any existing ABACUS director, officer or their attorneys or consultants, (iii) does not currently have a business or professional relationship with any existing ABACUS director, officer or their attorneys or consultants and (iv) to the extent not inconsistent with the foregoing, meets the criteria set forth at 12 C.F.R. Part 363 and Appendix A thereof.

schedule of assignments shall be developed after soliciting input from previously retained consultants having knowledge of the Bank's internal control systems. Such Audit Department assignments shall be designed to determine:

- (1) Whether the Bank is in compliance with applicable statutes, regulations, and internal Bank policies;
- (2) Whether the Bank's internal controls system is working properly;
- (3) Whether Bank employees are using personal accounts held at the Bank for improper purposes;
- (4) Whether all significant deficiencies noted in internal and/or external audit reports have been or are being corrected by management;
- (5) The soundness and adequacy of information systems and of accounting, operating, and administrative controls;
- (6) The effectiveness of internal policies and procedures; and
- (7) The extent to which the Bank's assets are protected against loss.

(e) Audit Department Reporting to Audit Committee. On a quarterly basis, the Audit Department shall prepare a written report for the Audit Committee that must, at a minimum, discuss: (1) the scope of the reviews conducted by the Audit Department during the preceding quarter, (2) whether the Bank is in compliance with its policies and procedures and outstanding OTS enforcement actions; (3) whether the internal controls system is effective, (4) any material exceptions noted during the review, and (5) the response of management to the material exceptions.

(f) Correction of Deficiencies Identified by Audit Department. The Audit Committee shall direct appropriate corrective action by Bank management to address deficiencies cited by the Audit Department. The Audit Committee shall periodically (and no less than quarterly) report to the Board about the status of such corrective actions. Such reports by the Audit Department shall be reflected in the Board's minutes.

9. Bank Code of Ethics. By December 31, 2003, the Bank's Board shall adopt a written code of ethics ("Code") that: (i) governs the conduct of the Bank's directors, officers and employees (collectively "Bank Insiders"), (ii) complies with the recommendations about ethics policies set forth in the OTS's Directors' Guide to Management Reports⁸ and (iii) is distributed to all Bank personnel. At a minimum the Code must address the following elements:

- (a) Corporate Creed. The Code shall set forth a broad statement of corporate policy on ethics.
- (b) Conflicts of Interest. The Code shall:
 - (1) Define what is meant by "conflicts of interest" ("Conflicts") in a manner that conforms to: 12 C.F.R. § 563.200, the guidance in the OTS's Directors' Guide to Management Reports, and industry best practices;
 - (2) Mandate timely, comprehensive, and accurate disclosure of Conflicts to the Bank's Board of Directors or Audit Committee;

⁸ The Directors Guide may be found on OTS's website at <http://www.ots.treas.gov/docs/48091.pdf>

(3) Prescribe a formal system for the identification, disclosure and resolution of Conflicts and the written documentation thereof; and

(4) Address (A) the acceptance of gifts, entertainment, favors and loans, (B) employment of relatives, (C) participation by a Bank Insider in any manner in any transaction or loan in which the individual, his/her spouse, child or any related interest has a financial or other interest, and (D) the provision of goods or services to the Bank.

(c) Finances. The Code shall:

(1) State that improper handling of personal finances could undermine the credibility of the Bank Insider or the Bank and that a precarious financial position could appear to influence the Bank Insider's actions or judgments made for the Bank;

(2) Set forth specific policies and procedures for reporting loans and other financial transactions of Bank Insiders; and

(3) Mandate the identification of material outside economic interests of all officers and directors at least annually.

(d) Confidentiality. The Code shall provide for the protection of confidential customer and bank information by, *inter alia*:

(1) Defining what is meant by confidential customer and bank information; and

(2) Providing guidance on how such information must be guarded, and why abuses can be harmful to the Bank, its employees, and customers.

(e) Outside Activities. The Code shall:

(1) State that each Bank Insider must not engage in outside activities that conflict with his/her official bank duties; and

(2) Set out explicit restrictions and guidelines on outside employment.

(f) Protection of Bank Property. The Code shall include guidelines for the protection of the Bank's property, including proprietary information, products and services.

(g) Laws and Regulations. The Code shall address applicable laws and regulations relating to the conduct of institution affiliated parties, including but not limited to 12 C.F.R. §§ 563.41 (transactions with affiliates), 563.43 (loans to executive officers, directors and principal shareholders), 563.200 (conflicts of interest) and 563.201 (corporate opportunity), and the other laws and regulations referenced in Sections 310, 360, and 380 of OTS's Thrift Activities Handbook.

(h) Code Administration. The Code shall clearly describe methods for ensuring compliance with, and policies and procedures for enforcing, the Code. The Code shall require an annual written and signed statement from each officer and director of the Bank certifying their respective compliance with the Code and containing the disclosures required by the Code. A director that is Independent of Management shall be responsible for overseeing the maintenance of all records, including the annual statements, regarding the matters governed by the Code.

10. Review of Board and Management Changes. ABACUS shall be and is subject to the requirements and limitations set out in Subpart H of Part 563 of the OTS's regulations (12 C.F.R. §§ 563.550 - .590). Without limitation on such requirements, this means, among other things, that, except as otherwise permitted by 12 C.F.R. § 563.590, no person shall be appointed to the position of

or be hired as a member of the Board or as a senior executive officer of the Bank unless -- (a) ABACUS (or the individual, if appropriate) previously has filed with the OTS an appropriate and complete notice pursuant to 12 C.F.R. Part 563, Subpart H; and (b) the person's commencement of service on behalf of the Bank is permissible under 12 U.S.C. § 1831i and 12 C.F.R. § 563.585.

11. Notice About Transactions with Affiliates. At least 30 days before engaging in any new transaction with an affiliate, the Bank (and/or any Bank subsidiary contemplating such a transaction) shall submit written notice to the OTS's Regional Director that sets out a detailed description of the proposed transaction, and the Bank (and/or subsidiary, as appropriate) shall not engage in the proposed transaction unless it has received written notice of non-objection from the OTS. See 12 C.F.R. § 563.41(c)(4) (as amended at 67 Fed. Reg. 77918).

12. Compensation and Benefit Arrangements. The Bank shall not enter into, renew, extend or revise any contractual arrangement related to compensation or benefits with any director or senior executive officer of the Bank or unless the Bank first -- (a) provides a minimum of 30 days advance notice of the proposed transaction and (b) receives a written notice of non-objection from the Regional Director.

13. Golden Parachute Restrictions; Severance Agreements. The restrictions at 12 C.F.R. Part 359 (concerning "golden parachute payments" and "prohibited indemnification payments") are applicable to the Bank. This means, among other things, that the Bank shall not make, nor enter into an agreement to make, any severance payment or other "golden parachute payment", as that term is defined 12 U.S.C. § 1828(k) and in 12 C.F.R. Part 359, except as may be permitted by the aforesaid statutory provision and regulations.

14. Submissions To OTS/Director Responsibility.

(a) Submissions To OTS. Various provisions of this Order require the Bank to make submissions to OTS for its approval, non-objection or notice of acceptability. All such submissions shall be in written form, following appropriate due diligence, inquiry and satisfaction of the Bank's internal approval processes. Each such submission shall: (1) summarize the Bank's inquiry and due diligence efforts, (2) identify the internal approval process (e.g., Board or Board Committee approval) that has been satisfied, and (3) otherwise comport with any applicable regulatory requirement governing such submissions.

(b) Director Responsibility. The Board shall have the ultimate responsibility for overseeing the safe and sound operation of the Bank at all times, including compliance with the determinations of the Regional Director as required by this Order. Notwithstanding the requirements of this Order that the Board submit various matters to the Regional Director (or his designee) for the purpose of receiving his approval, non-objection or notice of acceptability, such regulatory oversight does not derogate or supplant each individual Board member's continuing fiduciary duty. The requirements set forth in this Order should be supplemented by the Bank as necessary to address risks posed by the Bank's operations that become apparent over time and to maintain full compliance with all applicable laws, rules and regulations.

15. Compliance with Order; Compliance Resolutions; Submission of Documents.

(a) The Board and officers of the Bank shall take immediate action to cause the Bank to comply with the terms of this Order and shall take all actions necessary or appropriate thereafter to cause the Bank to continue to carry out the provisions of this Order.

(b) Within 30 days of the Effective Date of this Order, the Board shall appoint a committee (the "Compliance Committee") comprised of three or more directors, the majority of whom shall be Independent of Management, to monitor and coordinate the Bank's compliance with the provisions of this Order.

(c) By January 31, 2004 and thereafter within 30 days after the end of each calendar quarter, the Compliance Committee shall submit a written progress report to the Board of Directors detailing the actions taken to comply with each provision of this Order and the results of those actions.

(d) By February 15, 2004 and thereafter within 45 days after the end of each calendar quarter, the Board shall submit to the Regional Director: (i) a copy of the Compliance Committee's quarterly progress report required by the foregoing subparagraph, with any additional comments made by the Board, to the Regional Director, and (ii) a written certification that each director has reviewed the report.

(e) The Bank, its Board, officers and institution-affiliated parties shall promptly respond to any request from the OTS for documents or other information that the OTS requests to demonstrate compliance with this Order.

16. Definitions. All technical words or terms used in this Order for which meanings are not specified or otherwise provided by the provisions of this Order shall, insofar as applicable, have meanings as defined in Chapter V of Title 12 of the Code of Federal Regulations, the Home Owners' Loan Act ("HOLA"), the Federal Deposit Insurance Act ("FDIA") or OTS Memoranda. Any such technical words or terms used in this Order and undefined in said Code of Federal Regulations, the HOLA, the FDIA, or OTS Memoranda shall have meanings that are in accordance with the best custom and usage in the savings and loan industry.

17. Successor Statutes, Regulations, Guidance, Amendments. Reference in this Order to provisions of statutes, regulations, and OTS Memoranda shall be deemed to include references to all amendments to such provisions as have been made as of the Effective Date and references to successor provisions as they become applicable.

18. No Violations Authorized; OTS Not Restricted. Nothing in this Order or the Stipulation shall be construed as: (a) allowing the Bank to violate any law, rule, regulation, or policy statement to which it is subject, or (b) restricting or estopping the OTS from taking any action(s) that it believes are appropriate in fulfilling the responsibilities placed upon it by law including, without limitation, any type of supervisory, enforcement or other action that OTS determines to be appropriate, arising out of matters described in the most recent Report of Examination, or based on other matters.

19. Relation to Prior Regulatory Actions. The requirements, restrictions and other terms of this Order supersede the requirements, restrictions and other terms of the Supervisory Directive issued to the Bank by the OTS on March 28, 2003 (as modified on April 4, 2003).

20. Time Limits; Effect of Headings; Separability Clause; Stipulation Incorporated.

(a) Time limitations for compliance with the terms of this Order run from the Effective Date, unless otherwise noted.

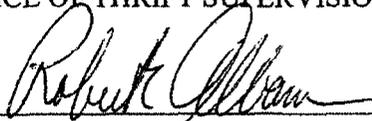
(b) The section and paragraph headings herein are for convenience only and shall not affect the construction hereof.

(c) In case any provision in this Order is ruled to be invalid, illegal or unenforceable by the decision of any court of competent jurisdiction, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his/her sole discretion determines otherwise.

(d) The Stipulation is made a part hereof and is incorporated herein by this reference.

21. Effective Date; Duration. This Order is and shall become effective on the date it is issued, *i.e.*, the Effective Date as shown on the first page hereof. The Stipulation and the Order shall remain in effect until terminated, modified or suspended, in writing by the OTS, acting through its Director, Regional Director or other authorized representative.

OFFICE OF THRIFT SUPERVISION

By: 

Robert C. Albanese

Regional Director, Northeast Region

UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

ABACUS FEDERAL SAVINGS BANK,)

New York, New York)

OTS No. 08059)

Re: Order Nos. NE-03-07

and

NE-03-08

Dated: October 23, 2003

**STIPULATION AND CONSENT TO ISSUANCE OF
AN ORDER TO CEASE AND DESIST AND FOR AFFIRMATIVE RELIEF
AND AN ORDER OF ASSESSMENT OF CIVIL MONEY PENALTIES**

WHEREAS, the Office of Thrift Supervision ("OTS"), based upon information derived from the exercise of its regulatory responsibilities, has informed ABACUS FEDERAL SAVINGS BANK ("ABACUS") that the OTS is of the opinion that grounds exist to initiate administrative proceedings against ABACUS pursuant to 12 U.S.C. § 1818,¹ and

WHEREAS, ABACUS, desiring to cooperate with the OTS to avoid the time and expense of such administrative proceedings and, without admitting or denying that such grounds exist, but only admitting the statements and conclusions in Paragraph 1 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

1. Jurisdiction.

(a) ABACUS is a "savings association" within the meaning of 12 U.S.C. § 1813(b), and 12 U.S.C. § 1462(4). Accordingly, ABACUS is an "insured depository institution" as that term is defined in 12 U.S.C. § 1813(c).

(b) Pursuant to 12 U.S.C. § 1813(q), the OTS is the "appropriate Federal banking agency" with jurisdiction to maintain administrative enforcement proceedings against savings associations. Therefore, ABACUS is subject to the authority of the OTS to initiate and maintain administrative cease-and-desist and civil-money-penalty proceedings against it pursuant to 12 U.S.C. §§ 1818(b) and (i).

¹ All references in this Stipulation and Consent to Issuance of an Order of Prohibition and An Order of Assessment of Civil Money Penalties ("Stipulation") and the related Orders are to the United States Code as amended.

2. OTS Findings of Fact.

The OTS finds that ABACUS had implemented a number of ineffective programs and otherwise seriously mismanaged a number of aspects of its operations, as noted in more detail in the most recent Report of Examination issued by the OTS concerning ABACUS. In particular, ABACUS failed to develop an effective anti-money laundering program and to ensure compliance with regulations governing the Bank Secrecy Act, and the filing of Suspicious Activities Reports. In addition, ABACUS violated the OTS's regulations codified at 12 C.F.R. §§ 563.41, 563.42 and 563.43. Further, ABACUS suffers from serious deficiencies in internal controls and inadequate oversight by senior management and the Board of Directors.

3. Consent.

(a) ABACUS hereby consents to the issuance by the OTS of the following accompanying orders: (i) Order To Cease and Desist and for Affirmative Relief ("C&D Order"), and (ii) Order of Assessment of Civil Money Penalties ("CMP Order", and collectively with the C&D Order sometimes referred to herein as the "Orders").

(b) ABACUS further agrees to comply with the terms of the Orders upon their issuance. ABACUS further stipulates and agrees that the C&D Order and the CMP Order comply with all requirements of law, as applicable.

4. Finality.

The C&D Order and the CMP Order are issued by the OTS under the authority of 12 U.S.C. §§ 1818(b) and 1818(i), respectively. Upon their issuance by the OTS, acting by and through its Northeast Regional Director (or his designee), each of the Orders shall be a final order, effective and fully enforceable by the OTS under the provisions of 12 U.S.C. § 1818(i).

5. Waivers.

ABACUS hereby waives the following:

- (i) The right to be served with a written notice of the OTS's charges;
- (ii) The right to an administrative hearing of the OTS's charges;
- (iii) The right to seek judicial review of either the C&D Order or the CMP Order or both, including, without limitation, any such right provided by 12 U.S.C. § 1818(h), or otherwise to challenge the validity of the Orders; and
- (iv) The right to assert as the basis for a claim of double jeopardy, in any pending or future proceedings brought by the United States Department of Justice or any other governmental

entity, any of the following: the OTS's issuance of the Orders; ABACUS's consent to the issuance of the Orders; the payment of any monies or the provision of any other financial relief as contemplated by the Orders; any governmental proceedings relating to such Orders; and/or any other OTS actions relating to such Orders.

6. Other Government Actions Not Affected.

ABACUS acknowledges and agrees that its consent to the issuance of the Orders does not release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of ABACUS that arise pursuant to this action or otherwise, and that may be or have been brought by any other government entity other than the OTS.

7. Miscellaneous.

(a) The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Orders.

(b) All references to the OTS in this Stipulation and the Orders shall also mean any of the OTS's predecessors, successors, and assigns.

(c) The section and paragraph headings in this Stipulation and Orders are for convenience only, and such headings shall not affect the interpretation of this Stipulation or the Orders.

(d) The terms of this Stipulation and of the Orders represent the final written agreement of the parties with respect to the subject matters hereof, and constitute the sole agreement of the parties with respect to such subject matters.

(e) This Stipulation and the Orders shall remain in effect until terminated, modified, or suspended in writing by the OTS, acting through its Director, Regional Director, or other authorized representative.

WHEREFORE, ABACUS executes this Stipulation and Consent to Issuance of a Cease and Desist Order for Affirmative Relief and an Order of Assessment of Civil Money Penalties, intending to be legally bound hereby.

ABACUS FEDERAL SAVINGS BANK

By: 
Thomas Sung
President and Chairman of the Board

Date: October 21, 2003

Accepted by:
OFFICE OF THRIFT SUPERVISION

By: 
Robert C. Albanese
Regional Director

Date: See the date in the caption hereof

