

UNITED STATES OF AMERICA  
BEFORE THE  
OFFICE OF THE COMPTROLLER OF THE CURRENCY  
FEDERAL DEPOSIT INSURANCE CORPORATION  
OFFICE OF THRIFT SUPERVISION  
AND  
DEPARTMENT OF BANKING AND FINANCE FOR THE STATE OF GEORGIA

IN THE MATTER OF )  
NOVA FINANCIAL CORPORATION )  
ATLANTA, GEORGIA )

OTS Order No.: ATL-98-4

Dated: July 8, 1998

STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER

The Acting Comptroller of the Currency of the United States of America ("Comptroller"), the Federal Deposit Insurance Corporation ("FDIC"), the Office of Thrift Supervision ("OTS"), and the Department of Banking and Finance for the State of Georgia ("Georgia Department of Banking") (collectively referred to as the "Banking Regulators") intend to initiate cease and desist proceedings against Nova Financial Corporation ("NOVA") pursuant to 12 U.S.C. §§. 1818(b), 1867(c) and (d), 1464(d)(7) and Sections 7-1-72 and 7-1-91 of the Official Code of Georgia Annotated ("OCGA").

NOVA, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated 7-8-98 ("Order") which is incorporated by this reference as if fully set forth herein;

In consideration of the above premises, the Comptroller, FDIC, OTS and the Georgia Department of Banking, through their authorized representatives, and NOVA, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

## ARTICLE I

(1) NOVA is an independent data service provider which provides data processing and technical support services to insured depository institutions (hereinafter referred to as the “Client Banks”) which are subject to regulation and examination by the Comptroller, FDIC, OTS and Georgia Department of Banking.

(2) NOVA is subject to regulation and examination by the Comptroller and FDIC pursuant to 12 U.S.C. § 1867(c), is subject to regulation and examination by the OTS pursuant to 12 U.S.C. § 1464(d)(7)(D), is an institution-affiliated party as that term is defined at 12 U.S.C. § 1813(u), and is subject to examination and regulation by the Georgia Department of Banking pursuant to § 7-1-72 of the OCGA.

(3) The Comptroller and FDIC may, pursuant to 12 U.S.C. § 1867(d), issue enforcement orders as may be necessary to ensure the safe and sound operation of NOVA and to address NOVA’s performance of services to the Client Banks, their subsidiaries and affiliates, including orders to cease and desist issued under 12 U.S.C. § 1818(b), the OTS may issue such orders pursuant to 12 U.S.C. § 1464(d)(7)(E), and the Georgia Department of Banking may issue such orders pursuant to §§ 7-1-72 and 7-1-91 of the OCGA.

## ARTICLE II

(1) NOVA, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Banking Regulators. NOVA further agrees that said Order shall be deemed an “order issued with the consent of the institution-affiliated party” as that phrase is used in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall thereafter be fully enforceable under the provisions

of 12 U.S.C. § 1818(i) and § 7-1-91 of the OCGA.

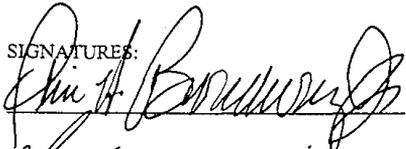
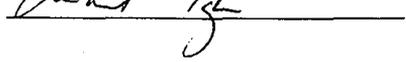
ARTICLE III

- (1) NOVA, by signing this Stipulation and Consent, hereby waives:
  - (a) all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) all rights to a hearing and final agency decisions issued pursuant to 12 U.S.C. § 1818(b), 12 C.F.R. Parts 19,308 and 509 and § 7-1-90 of the OCGA;
  - (c) all rights to seek judicial review of the Order, including all rights under 12 U.S.C. § 1818(h)(2);
  - (d) all rights in any way to contest the validity of the Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, FDIC, OTS, or the Georgia Department of Banking, or any of their agents or employees, related in any way to this enforcement matter and/or the Order, whether arising under common law or under the terms of any statute, including but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

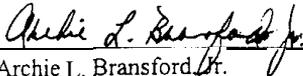
ARTICLE IV

(1) NOVA agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Banking Regulators from taking any other action affecting NOVA if, at any time, the Banking Regulators individually or collectively deem it appropriate to do so to fulfill the responsibilities placed upon them by the several laws of the United States of America or the State of Georgia.

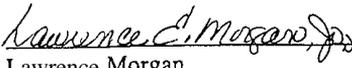
IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of NOVA, have hereunto set their hands on behalf of NOVA.

NAMES:	SIGNATURES:	DATES:
Olin Broadway	<u></u>	_____
Danny Jett	<u></u>	<u>4/26/98</u>
Bob Taylor	<u></u>	<u>6-30-98</u>
Don Modenbach	_____	_____

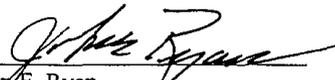
IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller, has hereunto set his hand on behalf of the Comptroller.

<u></u>	<u>7/1/98</u>
Archie L. Bransford, Jr. Deputy Comptroller, Southeastern District Office of the Comptroller of the Currency	Date

IN TESTIMONY WHEREOF, the undersigned, authorized by the FDIC, has hereunto set his hand on behalf of the FDIC.

<u></u>	<u>7/2/98</u>
Lawrence Morgan Regional Director (Supervision) Federal Deposit Insurance Corporation	Date

IN TESTIMONY WHEREOF, the undersigned, authorized by the OTS, has hereunto set his hand on behalf of the OTS.

  
\_\_\_\_\_  
John E. Ryan  
Southeast Regional Director  
Office of Thrift Supervision

  
\_\_\_\_\_  
Date

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand on behalf of the Department of Banking and Finance for the State of Georgia.

  
\_\_\_\_\_  
Commissioner Steven D. Bridges  
Department of Banking and Finance for the  
State of Georgia

  
\_\_\_\_\_  
Date



WHEREAS, NOVA performs bank services for insured depository institutions (hereinafter referred to as “Client Banks”) which are subject to regulation and examination by the Comptroller and FDIC pursuant to 12 U.S.C. § 1867(c), subject to the regulation and examination by the OTS pursuant to 12 U.S.C. § 1464(d)(7)(D), and subject to examination by the Georgia Department of Banking pursuant to § 7-1-72 of the Official Code of Georgia Annotated (“OCGA”);

WHEREAS, NOVA qualifies as an institution-affiliated party as that term is defined at 12 U.S.C. § 1813(u);

WHEREAS, pursuant to 12 U.S.C. §§ 1867(d) and 1464(d)(7)(E), the Comptroller, FDIC and OTS, respectively, may issue enforcement orders as may be necessary to ensure the safe and sound operation of NOVA and to address NOVA’s performance of services to the Client Banks, their subsidiaries or affiliates, including orders to cease and desist issued under 12 U.S.C. § 1815(b), and the Georgia Department of Banking may issue such orders pursuant to §§ 7-1-2 and 7-1-91 of the OCGA; and

WHEREAS, the Comptroller, through her appointed National Bank Examiners, and on behalf of the Federal Financial Institutions Examination Council (“FFIEC”), has criticized in the Reports certain practices of NOVA as being unsafe or unsound, within the meaning of 12 U.S.C. § 1818(b), as amended. Specifically, NOVA is not adequately capitalized and, therefore, presents financial risk to the Client Banks. In addition, NOVA’s current financial condition may not ensure that all computer-related products and operations of NOVA will continue to be fully functional or operational on or after January 1, 2000.

NOW, THEREFORE, pursuant to the authority vested in them by 12 U.S.C. §§ 1818(b), 1818(b)(6)(D), 1867(c), 1867(d), 1464(d)(7)(E) and §§ 7-1-72 and 7-1-91 of the OCGA, the Comptroller, FDIC, OTS and Georgia Department of Banking hereby order that:

## **Article I Capital Requirement**

(1) Within sixty (60) days from the effective date of this Order, NOVA shall achieve and thereafter maintain total equity capital, as determined by generally accepted accounting principles (“GAAP”), in an amount acceptable to the Banking Regulators.

This capital requirement may be achieved through any one or more of the following:

- (a) the infusion of cash, marketable securities, or other non-cash capital contribution to NOVA that is acceptable to the Banking Regulators;
- (b) the conversion of NOVA’s existing debt to equity; and/or
- (c) the completed acquisition of NOVA’s core processing unit by another data processing service provider or other entity acceptable to the Banking Regulators (“Acceptable Acquirer”).

(2) Any infusion of non-cash as a capital contribution in NOVA or conversion of debt to equity undertaken by NOVA pursuant to paragraph (1) of this Article shall be certified in writing by an independent certified public accountant as having been recorded in accordance with GAAP.

(3) In order to be considered an Acceptable Acquirer of NOVA pursuant to paragraph (1) of this Article, such entity must, at a minimum (i) have in place sufficient **managerial**

and technical personnel and expertise to adequately perform the duties and obligations of NOVA under its existing contracts with the Client Banks; (ii) have audited financial statements for the most recently completed fiscal year; (iii) possess equity capital in an amount acceptable to the Banking Regulators; and (iv) have been assigned a “satisfactory” Year 2000 rating by any of the FFIEC member agencies, or can demonstrate that it has a satisfactory plan to achieve Year 2000 compliance.

**Article II**  
**Transition of Client Banks and Rescission of Contracts**

(1) In the event NOVA fails to comply with the capital requirement contained in paragraph (1) of Article I within sixty (60) days from the effective date of this Order (as solely determined in the discretion of the Banking Regulators), or if at any time prior to the end of the sixty-day period NOVA advises the Banking Regulators that it is unable to comply with the capital requirement, NOVA shall within five (5) days thereafter:

(a) implement a schedule for the orderly transition of the Client Banks then being serviced pursuant to a contract with NOVA to another data processing service provider;

(b) identify and provide to the Client Banks the names of data processing servicers with compatible applications to facilitate an orderly transition of the Client Banks to alternate data processing service providers;

(c) fully cooperate with and provide transition assistance to the Client Banks and alternative service providers to transfer each Client Banks’ data records (including master files, transaction files and source documents) on a timely basis; and

(d) execute a mutual rescission of the then existing contracts with each of the Client Banks which is acceptable to the Client Banks and which, at a minimum (i) provides for NOVA's immediate waiver and release of any right to notice of termination by the Client Banks; (ii) provides for NOVA's immediate waiver and release of any right or claim to any fees or charges for early termination of the NOVA contracts by the Client Banks, including any right or claim to termination fees, penalties, damages, attorneys fees and/or obligations to indemnify; and (iii) provides that the remaining contractual rights and obligations of the parties will cease no later than December 31, 1998.

(2) During the transition of the Client Banks to other service providers as required by paragraph (1) of Article II, NOVA shall make all reasonable efforts to retain key personnel to enable NOVA to comply with the provisions of this Order.

(3) Nothing in this Order is intended to, or shall have the effect of, preventing, precluding or in any way inhibiting any of the Client Banks from at any time exercising any rights they may have under the terms of their respective NOVA contracts, including but not limited to, the exercise of any termination or cancellation provisions of such contracts.

### **Article III Access to NOVA Financial Information**

(1) Within ten (10) days from the effective date of this Order, NOVA shall make available for inspection by the Client Banks at NOVA's offices complete and accurate financial and operating information reflecting NOVA's current financial and operational performance. The content of the financial information shall include, but not be limited to,

NOVA's financial statements comprised of a balance sheet, statement of income and expense, statement of change in financial position and notes to financial statements; and management's discussion and analysis of NOVA's financial condition and results of operations.

**Article IV**  
**NOVA's New Business**

(1) From and after the effective date of this Order, and for so long as NOVA remains in noncompliance with the capital requirement of paragraph (1) of Article I, NOVA shall not pursue any new data processing business with, market its data processing services to, or renew or enter into any new data processing service contracts with any depository institutions regulated or examined by any of the FFIEC member agencies.

**Article V**  
**Progress Reports**

(1) Within thirty (30) days after the effective date of this Order, and every thirty (30) days thereafter, NOVA shall submit a written progress report, addressing NOVA's compliance with each of the Articles of this Order, to the Office of the Comptroller of the Currency at the following address: Archie L. Bransford, Jr., Deputy Comptroller, Southeastern District, Office of the Comptroller of the Currency, Marquis I Tower, 245 Peachtree Center Avenue, Atlanta, Georgia 30303, with copies provided to the Federal Deposit Insurance Corporation at the following address: Lawrence Morgan, Regional Director (Supervision), Federal Deposit Insurance Corporation, 1 Atlantic Center, 1201 W. Peachtree St., N.E., Atlanta, Georgia 30309-3449; to the OTS at the following

address: John E. Ryan, Southeast Regional Director, Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, GA 30309; and to the Georgia Department of Banking at the following address: Commissioner Steven D. Bridges, Department of Banking and Finance for the State of Georgia, 2990 Brandywine Rd., Suite 200, Atlanta, Georgia 30341-5565.

## **Article VI**

- (1) This Order shall be effective as of the date it is executed by all of the Banking Regulators.
- (2) Any time limitations in this Order not identified specifically by date shall begin to run from the effective date of this Order. Any time limitations in this Order may be extended by the joint agreement of the Banking Regulators for good cause upon written application of NOVA.
- (3) If, at any time, the Banking Regulators individually or collectively deem it appropriate in fulfilling the responsibilities placed upon them by the laws of the United States of America or the State of Georgia to undertake any action affecting NOVA, nothing in this Order shall in any way estop, inhibit, bar or otherwise prevent them, individually or collectively, from doing so.
- (4) The provisions of this Order shall continue in full force and effect unless or until such provisions are amended by mutual consent of the parties to the Order or are modified, waived, or terminated by the joint agreement of the Banking Regulators.

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

Archie L. Bransford, Jr.  
Archie L. Bransford, Jr.  
Deputy Comptroller, Southeastern District  
Office of the Comptroller of the Currency

7/1/98  
Date

IN TESTIMONY WHEREOF, the undersigned, authorized by the FDIC, has hereunto set his hand on behalf of the FDIC

Lawrence C. Morgan, Jr.  
Lawrence Morgan  
Regional Director (Supervision)  
Federal Deposit Insurance Corporation

7-2-98  
Date

IN TESTIMONY WHEREOF, the undersigned, authorized by the OTS, has hereunto set his hand on behalf of the OTS.

John E. Ryan  
John E. Ryan  
Southeast Regional Director  
Office of Thrift Supervision

7-8-98  
Date

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand on behalf of the Georgia Department of Banking.

Steven D. Bridges  
Commissioner Steven D. Bridges  
Department of Banking and Finance for the  
State of Georgia

7-8-98  
Date

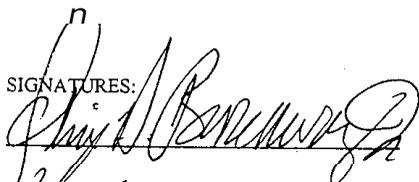
IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of NOVA, have hereunto set their hands on behalf of NOVA.

NAMES:

SIGNATURES:

DATES:

Olin Broadway

<sup>n</sup>  


\_\_\_\_\_

Danny Jett



6/26/98

Bob Taylor



6-30-98

Don Modenbach

\_\_\_\_\_