

THE SUPERINTENDENT OF BANKS OF  
THE STATE OF NEW YORK

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In the Matter of  
WATERFORD VILLAGE BANK

CLARENCE, NEW YORK

Order to Cease and  
Desist Issued Upon  
Consent

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WHEREAS, in recognition of their common goals to ensure compliance with all applicable federal and state laws, rules and regulations, and the conduct of safe and sound banking operations by Waterford Village Bank (the "Bank"), a New York State-chartered institution, the deposits of which are insured by the Federal Deposit Insurance Corporation (the "FDIC"), the New York State Banking Department (the "Department") and the Bank have mutually agreed to enter into the Order to Cease and Desist Issued upon consent (the "Order"); and

WHEREAS, the Department and the FDIC identified certain supervisory concerns relating to the conduct of the Bank's business, including numerous unsafe and unsound banking practices and violations of written conditions imposed by the Department in connection with the issuance of its Authorization Certificate, dated December 7, 2006, and by the FDIC in its Order dated July 28, 2005, approving the Bank's application for deposit insurance; and

WHEREAS, the Superintendent of Banks of the State of New York (the "Superintendent") is concerned that the Bank has failed to conduct its operations in a safe and sound manner by failing to take steps and establish the controls necessary to operate in a safe, prudent and lawful manner; and

WHEREAS, the Superintendent possesses the authority under Banking Law Section 39 to issue an Order to the Bank to discontinue unsafe and unsound practices; and

WHEREAS, the Superintendent believes that prompt enforcement action and this issuance of this Order is necessary to address the aforementioned supervisory concerns with respect to the Bank and further believes that additional enforcement action may be necessary to address any other supervisory concerns which may come to the attention of the Department; and

WHEREAS, on February 12, 2009, the board of directors of the Bank (the "Board"), at a duly constituted meeting, adopted a resolution:

1. Authorizing and directing Mr. Orrin D. Tobbe to enter into this Order on behalf of the Bank, and to consent to compliance on behalf of the Bank with each and every provision of this Order;
2. Waiving any and all rights to judicial review of this Order;
3. Waiving any and all rights to challenge or contest the validity, effectiveness, terms or enforceability of the provisions of this Order.

NOW, THEREFORE, without admitting or denying any findings of fact or conclusions of law, and without this Order constituting an admission of wrongdoing or an adoption, approval or admission of any allegation made by the Department, and pursuant to the aforesaid resolution:

IT IS HEREBY ORDERED pursuant to Banking Law Section 39 that the Bank shall cease and desist from engaging in the unsafe or unsound banking practices and from committing violations of written conditions imposed as specified below in connection with the issuance of the Department's Authorization Certificate and the FDIC's Order granting an application:

(a) operating with a Board that has failed to provide adequate supervision over, and direction to, the management of the Bank to prevent unsafe or unsound practices;

(b) operating with inadequate management supervision and oversight by its board of directors to ensure compliance with certain written conditions imposed by the Department in connection with the issuance of its Authorization Certificate dated December 7, 2006, and by the FDIC in its Order dated July 28, 2005, approving the Bank's application for deposit insurance;

(c) operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

(d) operating with inadequate capital in relation to the kind and quality of assets held by the Bank;

- (e) operating in such a manner as to produce unsatisfactory earnings;
- (f) operating in such a manner as to produce operating losses; and
- (g) operating without a current, comprehensive written business/strategic plan.

IT IS FURTHER ORDERED that the Bank shall take affirmative action as follows:

CAPITAL PLAN

1. (a) Within 60 days from the effective date of this Order, the Bank shall increase and maintain its ratio of Tier 1 capital to total assets equal to or greater than 8 percent.

(b) Any increase in Tier 1 capital necessary to meet the requirements of paragraph 1(a) of this Order may be accomplished by the following:

(i) the sale of new securities in the form of common stock or noncumulative perpetual preferred stock; or

(ii) the direct contribution of cash by the directors and/or shareholders; or

(iii) any other method acceptable to the Superintendent of Banks of the State of New York (the "Superintendent").

(c) If all or part of the increase in Tier 1 capital required by paragraph 1(a) of this Order is accomplished by the sale of new securities,

the Board of the Bank shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal securities laws. Prior to the implementation of the plan and, in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the Department for review. Any changes requested to be made in the plan or materials by the Department shall be made prior to their dissemination. If the Superintendent allows any part of the increase in Tier 1 capital to be provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including, but not limited to, those terms and conditions relative to the interest rate and any convertibility factor, shall be presented to the Superintendent for prior written approval.

(d) In complying with the provisions of paragraph 1(c) of this Order, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or

other changes which are materially different from the information reflected in any offering materials used in connection with the sale of the Bank securities. The written notice required by this paragraph shall be furnished within 10 days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original or any subsequent offering materials.

(e) For the purposes of this Order the terms "Tier 1 capital" and "total assets" shall have the meanings ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325.

(f) The Bank shall not lend funds directly or indirectly, whether secured or unsecured, to any purchaser of Bank stock or to any investor by any other means for any portion of any increase in Tier 1 capital required herein.

#### ASSESSMENT OF MANAGEMENT AND STAFF

2. (a) During the life of this Order, the Bank shall have management and staff qualified to restore the Bank to a sound condition. Such management shall include a Chief Executive Officer and an experienced senior lending officer responsible for supervising the Bank's overall lending function.

(b) Present management shall be assessed on its ability to:

(i) comply with the requirements of this Order;

(ii) improve and thereafter maintain the Bank in a safe and sound condition, including the adequacy of asset quality, capital, liquidity, earnings and sensitivity to market risk;

(iii) comply with all applicable State and Federal laws, and regulations; and

(iv) restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, liquidity and sensitivity to market risk.

(c) (i) During the life of this Order, the Bank shall notify the Superintendent in writing of any resignation and/or terminations of any members of its Board and/or any of its senior executive officer(s) within 10 days of the event.

(ii) The Bank shall comply with section 32 of the Federal Deposit Insurance Act (the "Act"), 12 U.S.C. § 1831i.

(d) (i) To ensure both compliance with this Order and qualified management for the Bank, the Board, within 60 days from the effective date of this Order, shall develop a written policy (the "Management Policy") which shall incorporate an analysis of the Bank's management and staffing requirements and shall, at a minimum address: (1) both the number and type of positions needed to properly manage the Bank; (2) a clear and concise description of the needed experience and pay for each job; (3) an evaluation

of the present management; (4) a plan to recruit, hire or replace personnel with requisite ability and experience; (5) a periodic evaluation of each individual's job performance, and (6) the establishment of procedures to periodically review and update the Management Policy.

(ii) The Management Policy and any subsequent modification thereto shall be submitted to the Superintendent for review and comment. Within 30 days from receipt of any comment, and after due consideration of such comment, the Board shall approve the Management Policy which approval shall be recorded in the minutes of the meeting of the Board. Thereafter, the Bank and its directors, officers and employees shall implement and follow the Management Policy and any modification thereto.

#### STRATEGIC PLAN

3. (a) Within 60 days from the effective date of this Order, the Board shall formulate a comprehensive written business/strategic plan covering an operating period of at least three years for the Bank (the "Strategic Plan"). The Strategic Plan shall contain an assessment of the Bank's current financial condition and market area along with a description of the operating assumptions that form the basis for major projected income and expense components of the assessment.

(b) The Strategic Plan shall include short term goals and operating plans to comply with the terms of this Order and correct all regulatory

criticisms, intermediate goals and project plans, and long-range goals and project plans. The Strategic Plan shall, at a minimum, include:

- (i) strategies for pricing policies and asset/liability management;
- (ii) anticipated average maturity and average yield on loans and securities, average maturity and average cost of deposits, the level of earning assets as a percentage of total assets and the ratio of net interest income to average earning assets;
- (iii) dollar volume of total loans, total investment securities and total deposits;
- (iv) plans for sustaining adequate liquidity, including back-up lines of credit to meet any unanticipated deposit withdrawals;
- (v) financial goals including pro forma statements for asset growth, capital adequacy and earnings; and
- (vi) formulation of a mission statement and the development of a strategy to carry out that mission.

(c) The Board shall submit the Strategic Plan to the Superintendent for review and comment. Within 30 days from receipt of any comment from the Superintendent and after due consideration of any recommended changes, the Board shall approve the Strategic Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(d) The Board shall implement and fully comply with the Strategic Plan after completion of the requirements of subparagraph (c) above.

(e) Within 15 days from the end of each calendar quarter following the effective date of this Order, and subsequent to the implementation of the Strategic Plan mandated by Paragraph 3, the Board shall evaluate the Bank's performance in relation to the Strategic Plan and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting during which such evaluation is undertaken. In the event the Board determines that the Strategic Plan should be revised in any manner, the Strategic Plan shall be revised and submitted to the Superintendent for review and comment within 15 days after such revisions have been approved by the Board. Within 30 days of receipt of any comment from the Superintendent, and after due consideration thereof, the Bank shall approve the revised Strategic Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(f) The Board shall implement and fully comply with the revised Strategic Plan after completion of the requirements of subparagraph (e) above.

#### PROFIT AND BUDGET PLAN

4. (a) Within 60 days from the effective date of this Order, and within the first 30 days of each calendar year thereafter, the Board shall develop and fully implement a written profit plan (the "Profit Plan")

consisting of goals and strategies, consistent with sound banking practices, and taking into account the Bank's other written plans, policies, or other actions required by this Order.

(b) The Profit Plan should not include any areas representing a material change in the business plan and which have not been submitted to the Superintendent 60 days prior to consummation of the change but shall, at a minimum, include:

(i) identification of the major areas in and means by which the Board will seek to improve the Bank's operating performance;

(ii) specific goals to improve the net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings, as well as maintain adequate provisions to the allowance for loan and lease losses (the "ALLL");

(iii) realistic and comprehensive budgets for all categories of income and expense items;

(iv) a description of the operating assumptions that form the basis for, and adequately support, material projected revenue and expense components;

(v) coordination of the Bank's loan, investment, funds management, and operating policies; strategic plan; and ALLL methodology with the profit and budget planning;

(vi) a budget review process to monitor the revenue and expenses of the Bank whereby actual performance is compared against budgetary projections not less than monthly; recording the results of the evaluation and any actions taken by the Bank in the minutes of the Board meeting at which such evaluation is undertaken; and

(vii) individual(s) responsible for implementing each of the goals and strategies of the Profit Plan.

(c) The Board shall submit the Profit Plan to the Superintendent for review and comment. Within 30 days from receipt of any comment from the Superintendent and after due consideration thereof, the Board shall approve the Profit Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(d) Within 15 days from the end of each calendar month following the effective date of this Order, and subsequent to the implementation of the Profit Plan mandated by Paragraph 4, the Board shall evaluate the Bank's performance in relation to the Profit Plan and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting during which such evaluation is undertaken. In the event the Board determines that the Profit Plan should be revised in any manner, the Profit Plan shall be revised and submitted to the Superintendent for review and comment within 15 days after such revisions have been approved by the Board. Within 30 days of receipt of any comment from the Superintendent,

and after due consideration thereof, the Board shall approve the revised Profit Plan, which approval shall be recorded in the minutes of the Board meeting in which it is approved.

(e) The Board shall implement and fully comply with the revised Profit Plan after completion of the requirements of subparagraph (d) above.

#### DIVIDENDS

5. While this Order is in effect, the Bank shall not declare or pay any cash dividends on its capital stock without the prior written approval of the Superintendent.

#### COMPLIANCE COMMITTEE

6. Within 30 days from the effective date of this Order, the Board shall appoint a committee (the "Compliance Committee") composed of at least three directors who are not now, and never have been, involved in the daily operations of the Bank, and whose composition is acceptable to the Superintendent, to monitor the Bank's compliance with this Order. Within 30 days from the effective date of this Order, and subsequent to the appointment of a Compliance Committee, as mandated by this Paragraph, and at monthly intervals thereafter, such Compliance Committee shall prepare and present to the Board a written report of its findings, detailing the form, content, and manner of any action taken to ensure compliance with this Order and the results thereof, and any recommendations with respect to such compliance. Such progress reports shall be included in the Board

meeting minutes. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this Order.

#### PROGRESS REPORTS

7. Within 30 days after the end of the calendar quarter following the effective date of this Order, and by the 30<sup>th</sup> day after the end of every calendar quarter thereafter, the Board shall furnish written progress reports to the Superintendent detailing the form, content, and manner of any actions taken to secure compliance with this Order, and the results thereof.

#### SHAREHOLDERS

8. Following the effective date of this Order, the Board shall provide to shareholders, or otherwise furnish, a description of this Order, in conjunction with the Bank's next shareholder communication, and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe this Order in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the Department, at the address noticed in Paragraph 14 of this Order, for review at least 20 days prior to dissemination to shareholders. Any change requested to be made by the Department shall be made prior to dissemination of the description, communication, notice, or statement.

#### OTHER ACTIONS

9. It is expressly and clearly understood that if, at any time, the Superintendent shall deem it appropriate in fulfilling the responsibilities

placed upon him or her under applicable law to undertake any further action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent him or her from doing so, including, but not limited to, seeking to impose civil money penalties.

10. It is expressly and clearly understood that nothing herein shall preclude any proceeding brought by the Superintendent to enforce the terms of this Order, and that nothing herein constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any representative of the United States departments or agencies thereof, or any other representatives of the State of New York, or any other departments or agencies thereof, including any prosecutorial agency, to bring other actions deemed appropriate.

#### ORDER EFFECTIVE

11. The effective date of this Order shall be the date of issuance.

12. The provisions of this Order shall be binding upon the Bank, its directors, officers, employees, agents, successors and assigns.

13. The provisions of this Order shall remain effective and enforceable except to the extent that, and until such time as, any provision of this Order has been modified, terminated, or set aside in writing by the Superintendent.

NOTICES

14. All communications regarding this Order shall be sent as follows:

If to the Department:

Mr. Martin D. Cofsky, Deputy Superintendent  
New York State Banking Department  
One State Street  
New York, New York 10004-1511

If to the Bank:

Mr. Orrin D. Tobbe, President & CEO  
Waterford Village Bank  
8411 Main Street  
Williamsville, NY 14221

By Order of the Superintendent of Banks of the State of New York,  
Effective this 12<sup>th</sup> of February, 2009.

NEW YORK STATE  
BANKING DEPARTMENT

WATERFORD VILLAGE BANK  
Clarence, New York

By: Martin D. Cofsky  
Martin D. Cofsky  
Deputy Superintendent of Banks

By: Orrin D. Tobbe  
Orrin D. Tobbe, President & CEO  
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BANKING DEPARTMENT

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Clarence, New York

By: Martin D. Cofsky  
Martin D. Cofsky  
Deputy Superintendent of Banks

By: Orrin D. Tobbe  
Orrin D. Tobbe, President & CEO  
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