

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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IN THE MATTER OF	)	
	)	
USA BANK	)	NOTICE OF CHARGES
PORT CHESTER, NEW YORK	)	AND OF HEARING
	)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-10-060b
	)	
_____	)	

The Federal Deposit Insurance Corporation ("FDIC"), having reasonable cause to believe that USA Bank, Port Chester, New York ("Bank"), has engaged in unsafe or unsound banking practices and violation of laws, regulations and/or contraventions of policy and, unless restrained, will continue to engage in such practices, violations and contraventions in conducting the business of the Bank, hereby institutes this proceeding for the purpose of determining whether an appropriate order should be issued against the Bank under the provisions of section 8(b)(1) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(b)(1). Pursuant to the provisions of the Act and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, the FDIC hereby issues this NOTICE OF CHARGES AND OF HEARING ("Notice") and alleges as follows:

## JURISDICTION

1. The Bank is a corporation existing and doing business under the laws of the State of New York and has its principal place of business in Port Chester, New York. The Bank is, and has been at all times pertinent to this proceeding, a State nonmember bank within the meaning of section 3(e)(2) of the Act, 12 U.S.C. § 1813(e)(2), and an insured depository institution within the meaning of section 3(c)(2) of the Act, 12 U.S.C. § 1813(c)(2). The Bank is therefore subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III ("FDIC's Regulations"), and the laws of the State of New York. The FDIC has jurisdiction over the Bank and the subject matter of this proceeding.

## EXAMINATION DATA (FINANCIAL)

2. The Bank was examined by examiners from the FDIC and the New York State Banking Department as of March 9, 2009 ("2009 Examination"). Utilizing financial information as of December 31, 2008:

- (a) The Bank's total deposits equaled \$169,768,000;
- (b) The Bank's total loans and leases equaled

\$153,057,000;

(c) The Bank's "total assets", as defined in section 325.2(x) of the FDIC's Regulations ("total assets"), equaled \$209,933,000.

(d) The Bank's "Tier 1 or Core Capital", as defined in section 325.2(v) of the FDIC's Regulations ("Tier 1 Capital"), equaled \$19,221,000; and

(e) The Bank's "allowance for loan and lease losses", as defined in section 325.2(a) of the FDIC's Regulations ("ALLL"), equaled \$2,044,000.

### **UNSAFE OR UNSOUND BANKING PRACTICES**

#### **Credit Lending and Administration Practices**

3. The Bank has engaged in unsafe and unsound banking practices in that it has engaged in unsatisfactory credit lending and lax credit administration practices including, but not limited to, the following:

(a) The Bank has excessive loan concentrations in commercial real estate ("CRE") which totaled \$115,715,000 and represented 544% of total capital of the Bank. Of this amount, \$75,527,000 were construction and development loans (representing

355% of total capital of the Bank) and \$41,704,000 were speculative 1-4 family residential construction loans (representing 196% of total capital of the Bank);

(b) The Bank's total CRE concentration in construction and development loans, according to the Uniform Bank Performance Report ("UBPR") dated December 31, 2008, ranks in the 94<sup>th</sup> percentile among its peer group in that construction and development loans as a percentage of average gross loans and leases is 46.01% as compared to 20.02% for the Bank's peer group;

(c) The Bank's total CRE concentration in 1-4 family residential construction, according to the UBPR dated December 31, 2008, ranks in the 98<sup>th</sup> percentile among its peer group in that the Bank's percentage of average gross loans and leases is 38.15% as compared to 5.70% for the Bank's peer group;

(d) The Bank's concentrations in CRE lending are well above safety and soundness levels and exceed thresholds for identifying institutions that may face significant CRE concentration risks incorporated in the "Joint Guidance on Concentrations in Commercial Real Estate Lending; Sound Risk Management Practices" issued on December 12, 2006;

(e) The Bank has extended credit without establishing an overall CRE lending strategy and without developing more

robust protocols for measuring, monitoring, and controlling CRE exposure;

(f) The Bank has failed to establish and maintain adequate policies, procedures, programs or systems commensurate with the nature and scope of its CRE lending operations in order to appropriately identify and address deterioration in its problem CRE assets;

(g) The Bank has failed to adequately communicate CRE concentration results to the Bank's Board of Directors;

(h) The Bank has operated with an unsatisfactory internal loan review function, has lacked a loan exception tracking report, and has maintained a limited loan watch list;

(i) The Bank has maintained a loan policy without guidelines regarding use of interest reserves;

(j) The Bank has over-advanced construction loan disbursements relative to actual work completed on projects;

(k) The Bank has granted exceptions on loans that have matured without appropriate guidelines addressing when extensions will be permitted, who is authorized to grant extensions, and requirements for reporting extensions to the Board; and

(1) The Bank's loan portfolio continues to deteriorate.

### Asset Quality

4. As a result of the Bank's unsatisfactory lending and credit administration practices described herein, the Bank has unsatisfactory asset quality including, but not limited to, the following:

(a) The Bank's total adversely classified assets equaled \$39,854,000 as of the 2009 Examination, compared to only \$6,533,000 as of the Bank's prior examination in 2008, representing a 510.04% increase;

(b) The Bank's total adversely classified assets at the 2009 Examination equaled 187.42% of the Bank's Tier 1 capital plus the ALLL and 18.98% of total assets;

(c) As of the 2009 Examination, the Bank's past due and non-accrual loans and leases represented 7.59% of gross loans and leases. By December 31, 2009, as evidenced by the Bank's Reports of Condition and Income ("Call Report") as of that date, this figure had increased to 38.80%; and

(d) The Bank's total assets listed for Special Mention totaled \$7,974,000 as of the 2009 examination compared to

\$7,481,000 as of the Bank's prior examination in 2008.

#### ALLL

5. The Bank has engaged in unsafe or unsound banking practices in that it has failed to maintain an adequate allowance for loan and lease losses ("ALLL") including, but not limited to, the following:

(a) The Bank's ALLL, as of the 2009 Examination, was found to be deficient by at least \$2.7 million. Despite the Bank's subsequent addition of \$367,000 to its ALLL on March 31, 2009, its ALLL continued to remain deficient by \$2.3 million at that time; and

(b) The Bank's ALLL methodology does not comply with Generally Accepted Accounting Principles and is not based on a comprehensive, well-documented analysis of the loan portfolio.

#### Earnings

6. The Bank has engaged in unsafe or unsound banking practices in that it has operated with unsatisfactory earnings, as evidenced by the fact that the Bank has not been profitable since its inception on December 22, 2005, as reflected by the Bank's negative net operating income ("NI") and the negative Return on Average Assets ("ROA") from year-end 2005 to 2009:

2005 NI (1,312,000) - ROA (8,357.42%)  
2006 NI (4,509,000) - ROA (8.14%)  
2007 NI (4,316,000) - ROA (3.17%)  
2008 NI (2,692,000) - ROA (1.39%)  
2009 NI (12,066,000) - ROA (5.43%)

### Capital

7. The Bank has engaged in unsafe or unsound banking practices in that it has operated with inadequate capital in relation to the volume, growth, quality and risk of assets held by the Bank, and has allowed capital levels to fall to deficient levels including, but not limited to:

(a) As of the 2009 Examination, the Bank's Tier 1 leverage ratio capital was 9.48%, representing a steady decline from its 13.21% Tier 1 leverage ratio capital ratio as of December 31, 2007 and 42.22% Tier 1 leverage capital ratio as of September 30, 2006;

(b) Since the 2009 Examination, the Bank has submitted Call Reports to the FDIC indicating that its Tier 1 leverage capital ratio has declined further to 6.59% on June 30, 2009, to 4.81% on September 30, 2009, and to 3.35% on December 31, 2009;

(c) As of the 2009 Examination, the Bank's total risk-



based capital ratio was 12.52%, representing a steady decline from its 18.13% total risk-based capital ratio as of December 31, 2007 and 85.65% total risk-based capital ratio as of September 30, 2006;

(d) Since the 2009 Examination, the Bank has submitted Call Reports to the FDIC indicating that its total risk-based capital ratio has declined further to 9.51% on June 30, 2009, to 7.48% on September 30, 2009, and to 5.75% on December 31, 2009; and

(e) Since the 2009 Examination, the Bank's deteriorating capital condition has required the FDIC to take prompt corrective action against the Bank pursuant to 12 U.S.C. §1831o: the Bank was adequately capitalized as of June 30, 2009; the Bank was undercapitalized as of September 30, 2009; and the Bank was significantly undercapitalized as of December 31, 2009.

### **Liquidity**

8. The Bank has engaged in unsafe or unsound banking practices in that its liquidity is deficient for reasons including, but not limited to, the following:

(a) The Bank's net non-core funding dependence ratio of 52.45% evidences a continued reliance on volatile funding

sources to support asset growth; and

(b) The Bank's lending efforts are primarily funded by high-cost deposits. The Bank's high cost of funding, according to the UBPR dated December 31, 2008, ranks in the 95<sup>th</sup> percentile among its peer group in that the Bank's percentage of total interest bearing deposits cost is 4.36% as compared to 3.54% for the Bank's peer group.

### Management

9. The Bank has engaged in unsafe and unsound banking practices by operating with management whose policies and practices are detrimental to the Bank and jeopardize the safety of the Bank's deposits. Management's unsafe and unsound practices include, but are not limited to:

(a) Concentrating lending in commercial real estate, particularly speculative construction and development loans, which has elevated risk to an unacceptable level;

(b) Inadequately monitoring the growth of CRE lending and its impact on, among other matters, the Bank's earnings and capital; and

(c) Operating without adequate policies, procedures, programs or systems in the areas of credit administration, ALLL,

loan concentrations, liquidity, and interest rate risk.

10. The Bank's Board of Directors has engaged in unsafe or unsound banking practices in that it has failed to provide adequate supervision over and direction to the active officers of the Bank to prevent the unsafe or unsound banking practices, violations and contraventions set forth in this Notice.

#### **VIOLATIONS OF LAW AND/OR REGULATIONS**

11. As of the 2009 Examination, the Bank was in violation of certain laws and regulations including, but not limited to, section 103.22(c)(2) of the Treasury Department's financial recordkeeping regulations, 31 C.F.R. § 103.22(c)(2), which requires a covered financial institution to treat multiple transactions by or on behalf of any person during one business day as a single, aggregated transaction for currency transaction reporting purposes, and Part 323 of the FDIC's Regulations, 12 C.F.R. Part 323, in that the Bank failed to provide for an appropriate valuation of real estate, as more fully described on page 35 of the 2009 Examination Report.

#### **CONTRAVENTIONS OF POLICY**

12. As of the 2009 Examination, the Bank engaged in unsafe

or unsound practices by operating in contravention of FDIC guidelines and interagency policy statements including, but not limited to, the following:

(a) "Interagency Appraisal and Evaluation Guidelines," in that the Bank failed to develop criteria for obtaining reappraisals or reevaluations as part of its overall program to review and monitor portfolio risk; and

(b) "Joint Agency Policy Statement on Interest Rate Risk," in that the Bank did not conduct adequate reviews of its risk management process to ensure its integrity, accuracy, and reasonableness.

#### **NOTICE OF HEARING**

13. Notice is hereby given that a hearing will be held in New York, New York commencing 60 days from the date of service of this Notice on the Bank, or such other time as may be set by the Administrative Law Judge appointed to hear this matter, for the purpose of taking evidence on the charges specified above and determining whether an Order should be issued under the Act requiring the Bank:

(a) To cease and desist from the unsafe or unsound banking practices, violations of law, regulations and/or

contraventions herein specified; and/or

(b) To take affirmative action to correct the conditions resulting from such practices, violations and contraventions.

14. The FDIC's proposed Order granting the requested relief is attached hereto and made a part hereof.

15. The hearing is to be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication ("OFIA") pursuant to 5 U.S.C. § 3105. The hearing will be open to the public, unless the FDIC shall determine that an open hearing would be contrary to the public interest, and in all respects will be conducted in compliance with the provisions of the Act and the FDIC Rules of Practice and Procedures.

16. The Bank is hereby directed to file an Answer to this Notice within 20 days from the date of service of this Notice on the Bank, as provided by section 308.19 of the FDIC's Regulations, 12 C.F.R. § 308.19. Failure to answer within the 20 day period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice and shall, upon the FDIC's motion, cause the Administrative Law Judge or the FDIC to find the facts in this Notice to be as alleged and to issue an appropriate Order.

17. Pursuant to section 308.10(b)(4) of the FDIC's Regulations, 12 C.F.R. § 308.10(b)(4), all documents required to be filed, excluding documents produced in response to a discovery request pursuant to sections 308.25 and 308.26, shall be filed via electronic mail with OFIA, FDIC, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500 at [ofia@fdic.gov](mailto:ofia@fdic.gov). In addition, all such documents shall be served upon the Office of the Executive Secretary, FDIC, 550 17<sup>th</sup> Street, N.W., Room F-1058, Washington, D.C. 20429-9990; A.T. Dill, Assistant General Counsel, Enforcement Section, FDIC, 550 17<sup>th</sup> Street, N.W., Washington, D.C. 20429-9990; and Stephen L. Rodgers, Acting Regional Counsel, FDIC, 350 Fifth Avenue, 13<sup>th</sup> Floor, New York, New York 10118.

Pursuant to delegated authority.

Dated at New York, New York, this 16<sup>th</sup> day of April, 2010.

/s/  
\_\_\_\_\_  
Daniel E. Frye  
Acting Regional Director  
350 Fifth Avenue, 13<sup>th</sup> Floor  
New York, NY 10118  
Telephone: 917-320-2500