

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

|                                    |   |                           |
|------------------------------------|---|---------------------------|
| In the Matter of                   | ) |                           |
|                                    | ) |                           |
| SALVATORE PANE                     | ) | NOTICE OF ASSESSMENT OF   |
|                                    | ) | CIVIL MONEY PENALTY,      |
| individually and as                | ) | FINDINGS OF FACT AND      |
| an institution-affiliated party of | ) | CONCLUSIONS OF LAW, ORDER |
|                                    | ) | TO PAY, AND NOTICE OF     |
|                                    | ) | HEARING                   |
| USA BANK                           | ) |                           |
| Port Chester, New York             | ) | FDIC-08-076k              |
|                                    | ) |                           |
| (INSURED STATE NONMEMBER BANK)     | ) |                           |
| _____                              | ) |                           |

**NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY**

The Federal Deposit Insurance Corporation ("FDIC") is of the opinion that SALVATORE PANE ("Respondent"), individually and as an institution-affiliated party of USA Bank, Port Chester, New York, Port Chester, New York ("Bank"), caused, brought about, participated in, counseled, or aided or abetted the Bank to violate a condition imposed in writing by the FDIC in connection with the granting of an application for deposit insurance, and is therefore subject to the assessment of a civil money penalty under section 8(i)(2)(A)(iii) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(i)(2)(A)(iii).

The FDIC hereby issues this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("Notice of Assessment") against Respondent pursuant to the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308.

In support thereof, the FDIC finds and concludes the following:

## **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### Jurisdiction

1. At all times pertinent to the charges herein, the Bank was a corporation organized, existing and doing business under the laws of the State of New York, having its principal place of business at Port Chester, New York.
2. At all times pertinent to the charges herein, the Bank was an “insured depository institution” within the meaning of section 3(c)(2) of the Act, 12 U.S.C. § 1813(c)(2) and a “State nonmember bank” within the meaning of section 3(e)(2) of the Act, 12 U.S.C. § 1813(e)(2). As such, the Bank is subject to the Act, 12 U.S.C. §§ 1811-1831aa; the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of New York.
3. The Respondent was a director of the Bank from August 10, 2005 to November 15, 2006.
4. At all times pertinent to the charges herein, the Respondent was an “institution-affiliated party” as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u).
5. The FDIC is the “appropriate Federal banking agency” within the meaning of section 3(q) of the Act, 12 U.S.C. § 1813(q)(3), with respect to the Bank and has jurisdiction over the Bank, the Respondent, and the subject matter of this proceeding.

### Application for Federal Deposit Insurance

6. In March of 2005, the organizers of the Bank (“Organizers”), including the Respondent, filed an Interagency Charter and Federal Deposit Insurance Application

(“FDI Application”) with the FDIC. The Organizers were required to include in the FDI Application, among other things, an overview of the Bank’s proposed business and any special market niche, including the products, market, services to be offered, and any nontraditional activities in which the Bank planned to engage.

7. The Organizers were also required to provide a business plan and to include, among other things, applications relating to any proposed subsidiaries.

8. The Organizers submitted to the FDIC the required business plan (“Business Plan”) with the FDI Application. The Business Plan represented that the Bank would be a conventional community bank with one location, headquartered in Port Chester, New York. The Business Plan indicated that the Bank would have a temporary location in Port Chester, New York, while a permanent location in the same locality was being constructed. The Business Plan also represented that the Bank did not intend to have any additional branches or offices.

9. The FDI Application did not include any information about proposed subsidiaries. In fact, the Business Plan stated that the Bank did not intend to invest in any subsidiaries or service corporations or to merge or acquire any entities.

10. The Business Plan did not state that the Bank intended to engage in mortgage banking, either directly or through a subsidiary. For purposes of this Notice of Assessment, “mortgage banking” means the origination and warehousing of mortgages for sale into the secondary market.

11. The only discussion of mortgage banking in the Business Plan was a reference to USA Mortgage Bankers of America, Inc. (“Respondent’s Mortgage Company”), an entity wholly owned by the Respondent. The Business Plan represented that

Respondent's Mortgage Company was a separate legal entity and would have solely a referral relationship with the Bank, whereby each entity would refer business to the other on a non-fee basis.

12. The FDI Application and the Business Plan stated that the Bank would rely upon traditional types of deposits to fund its growth, and avoid large denominated, high interest rate deposits known as "brokered deposits." For purposes of this Notice of Assessment, the term "brokered deposits" has the meaning set forth in section 337.6 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.6.

13. In filing the FDI Application with the FDIC, the Organizers, including the Respondent, certified under penalty of criminal sanctions that the information contained therein was true, correct, and complete.

14. The Organizers, including Respondent, also certified that the Bank would not engage in any other business not stated in the FDI Application (and accompanying Business Plan) without the prior written consent of the FDIC.

15. On August 10, 2005, the FDIC approved the Bank's application for Federal deposit insurance subject to the conditions stated in an Order granting Federal deposit insurance ("FDI Order"). These conditions of approval were conditions "imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request" within the meaning of section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

16. Condition 6 of the FDI Order ("Condition 6") stated that "the bank shall operate within the parameters of the business plan submitted to the FDIC. Furthermore, during the first three years of operations, the bank shall notify the Regional Director of any

proposed major deviation or material change from the submitted plan 60 days before consummation of the change.”

17. On or about December 9, 2005, the Bank (in organization), through a letter to the FDIC from its authorized spokesperson, Fred A. DeCaro, Jr., agreed to and acknowledged the Bank’s obligations to comply with, among other things, Condition 6.

18. On or about December 22, 2005, the Bank commenced operations.

19. On or about February 2, 2006, the Bank, pursuant to Condition 6, notified the FDIC in writing of a proposed material change to its Business Plan regarding an increase in capital. The Bank, therefore, through its Board of Directors (“Board”), was aware of its obligations under Condition 6 and how to comply with such obligations. On or about March 28, 2006, the FDIC consented to the material change in the Business Plan regarding capital.

20. On or about November 15, 2006, the Respondent resigned from the Board.

Violations of a Condition Imposed in Writing by the FDIC

21. Condition 6 required the Bank, during the first three years of its operations, to notify the FDIC Regional Director in writing of any proposed “major deviation or material change from the Business Plan” 60 days before commencing such change. As described below, Respondent caused, brought about, participated in, counseled, or aided or abetted the Bank to engage in three violations of Condition 6, a condition imposed in writing by the FDIC in connection with the granting of an application for Federal deposit insurance.

*Entrance into Mortgage Banking and Establishment of Mortgage Banking  
Subsidiary in Violation of Condition 6*

22. The Business Plan indicated that the Bank would not engage in nontraditional activities or operate in any market niche. Mortgage banking, the origination

and warehousing of mortgages for sale into the secondary market, is a nontraditional activity. The Business Plan: (a) did not contain a mortgage banking component; and (b) affirmatively stated that the Bank did not intend to invest in any subsidiaries or to merge or acquire any entities.

23. On or about March 30, 2006, the Board, including the Respondent, voted to approve one or more resolutions authorizing the establishment of a wholly owned mortgage banking subsidiary to be named USA MBA Inc. and located at 36 Sherwood Place, Greenwich, Connecticut (“Bank’s Mortgage Company”).

24. In addition, the Board, including the Respondent, was notified on or about March 30, 2006, that the Bank intended to sell loans on the secondary market.

25. The Bank did not notify the FDIC in writing of the Bank’s intent to establish a mortgage banking subsidiary, or of its plan to sell loans on the secondary market, in violation of Condition 6.

26. Subsequent to March 2006, the Bank entered into a new line of business, mortgage banking. The Bank budgeted for and began hiring staff to engage in mortgage banking through the Bank itself and/or through the Bank’s Mortgage Company.

27. The Bank did not provide the FDIC with 60 days prior written notice of its entry into mortgage banking, a major deviation or material change from the Business Plan, in violation of Condition 6.

*Use of Brokered Deposits in Violation of Condition 6*

28. The FDI Application and the Business Plan indicated that the Bank would rely upon traditional types of deposits, known as “core deposits,” to fund its growth, and that

the Bank would avoid large denominated, high interest rate deposits known as “brokered deposits.”

29. On or about April 20, 2006, the Board, including Respondent, was informed of the Bank’s intent to use the Certificate of Deposit Account Registry Service (“CDARS”), a brokered deposit program.

30. On or about May 11, 2006, the Bank obtained approximately \$2 million in brokered deposits through CDARS.

31. On or about May 18, 2006, the Board, including the Respondent, was notified of the Bank’s strategy of using CDs purchased through CDARS, as an alternative to core deposits, in order to fund loans.

32. On or about July 20, 2006, the Board, including the Respondent, was notified that the Bank had purchased \$12 million in CDARS deposits to fund loans.

33. On or about September 26, 2006, the Board, including the Respondent, was informed that the Bank had purchased \$10 million in brokered deposits.

34. Contrary to representations in the Business Plan that the Bank would fund asset growth through core deposits, the Bank relied significantly on brokered deposits, thereby engaging in a major deviation from or material change to the Business Plan. The Bank ultimately purchased \$29.9 million in brokered deposits, representing 56.38% of overall deposits, as of September 30, 2006.

35. The Bank failed to provide the FDIC with 60 days prior written notice of its solicitation and use of brokered deposits, in violation of Condition 6.

*Operating from Three Separate Locations in Violation of Condition 6*

36. The Business Plan indicated that the Bank would operate from one location, from a temporary location at 211 Irving Avenue, Port Chester, New York and then from a permanent location at 417 North Main Street, Port Chester, New York, after construction of premises at that location was completed. The Business Plan also represented that the Bank did not intend to have any additional branches or offices.

37. The Bank in fact operated from three separate locations, thereby engaging in a major deviation or a material change from the Business Plan, without providing the FDIC 60 days prior written notice.

38. In July of 2005, approximately five months prior to the opening of the Bank, the Board, including the Respondent, was informed that the Bank planned to lease space at 800 Westchester Avenue, Rye Brook, New York (“800 Westchester Ave), or sublease the space at that location from USA Mortgage Bankers, the Respondent’s Mortgage Company.

39. On or about September 15, 2005 and on or about October 20, 2005, the Board, including the Respondent, was informed of lease negotiations for premises located at 800 Westchester Ave.

40. On or about January 13, 2006, the Bank entered into a lease for the space at 800 Westchester Ave, New York, a location not included in the Business Plan.

41. The Bank did not provide the FDIC with 60 days prior written notice of its intention to lease space at 800 Westchester Ave, or that the Bank entered into such lease, in violation of Condition 6.

42. The Bank also operated from a third location at 36 Sherwood Place, Greenwich, Connecticut (“36 Sherwood Place”), the proposed location of USA MBA, Inc.,



the Bank's Mortgage Company. The Board, including the Respondent, was aware of the Bank's additional location at 36 Sherwood Place.

43. On or about February 16, 2006, the Board, including Respondent, was informed that the Bank intended to hire seven residential loan officers to work at 36 Sherwood Place.

44. The Bank did not provide the FDIC 60 days prior written notice of its intention to lease space or conduct operations at 36 Sherwood Place, in violation of Condition 6.

45. As a result of the Respondent's acts, omissions, and/or practices as set forth in Paragraphs 1 through 44 above, the Respondent caused, brought about, participated in, counseled, or aided or abetted the Bank to violate a condition imposed in writing by the FDIC in connection with the granting of an application for deposit insurance.

### **ORDER TO PAY**

By reason of the violations set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. §1818(i)(2).

After taking into account the appropriateness of the penalty with respect to the size of financial resources and the good faith of the Respondent, the gravity of the violation, the history of previous violations, and such other matters as justice may require, it is:

ORDERED that, by reason of Respondent's violation of a condition imposed in writing by the FDIC, as set forth in the Notice of Assessment, a penalty of \$5,000 be, and hereby, is assessed against the Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. §1818(i)(2).

FURTHER ORDERED, that **the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to Respondent until twenty (20) days after the date of service of the NOTICE OF ASSESSMENT on Respondent, during which time Respondent may file an answer and request a hearing** pursuant to section 8(i)(2)(H), 12 U.S.C. §1818(i) (2) (H) and section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

**If Respondent fails to request a hearing within twenty (20) days from the date of service of this NOTICE OF ASSESSMENT on him, the civil money penalty assessed against Respondent pursuant to the Order to Pay will be final and shall be paid within sixty (60) days from service of this NOTICE OF ASSESSMENT on him.**

#### **NOTICE OF HEARING**

IT IS FURTHER ORDERED, that if Respondent requests a hearing with respect to the charges alleged in this NOTICE OF ASSESSMENT, within twenty (20) days of service of this NOTICE OF ASSESSMENT on him, the hearing shall commence at a time and location to be determined by the Administrative Law Judge who will be assigned by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105.

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308.

In the event the Respondent requests a hearing, the Respondent shall also file an answer to the charges set forth in this Notice of Assessment within 20 days after service of this Notice of Assessment on him in accordance with section 308.19 of the FDIC's Rules of

Practices and Procedures, 12 C.F.R. § 308.19. Failure of the Respondent to request a hearing within 20 days of service of this NOTICE OF ASSESSMENT, shall render the ORDER TO PAY in this NOTICE OF ASSESSMENT final and unappealable pursuant to section 8(i)(E)(ii) of the Act, 12 U.S.C. § 1818 (i)(E)(ii), and section 308.19(c)(2) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19 (c)(2).

Pursuant to section 308.10(b)(4) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.10(b)(4), all papers filed in this proceeding, excluding documents produced in response to a discovery request under section 308.25 and 308.26, 12 C.F.R. §§ 308.25 and 308.26, shall be filed electronically with the Office of Financial Institution Adjudication via electronic email at [OFIA@fdic.gov](mailto:OFIA@fdic.gov).

Copies of all papers filed in this proceeding shall be served upon Robert Feldman, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., (F-1058), Washington, D.C. 20429; A. T. Dill III, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W. (MB - 3020), Washington, D.C. 20429; and Stephen L. Rodgers, Acting Regional Counsel, Federal Deposit Insurance Corporation, 350 Fifth Avenue, New York, NY 10018.

Pursuant to delegated authority.

Dated at Washington, D.C., this 4<sup>th</sup> day of November, 2010.

/s/

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Serena L. Owens  
Associate Director  
Division of Supervision and Consumer Protection