

UNITED STATES OF AMERICA  
BEFORE  
THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

STATE OF ILLINOIS  
DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION  
SPRINGFIELD, ILLINOIS

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Written Agreement by and among	)	
	)	
FIRST MIDWEST BANK	)	Docket No. 04-016-WA/RB-SM
Itasca, Illinois	)	
	)	DBR No. 2004-50
FEDERAL RESERVE BANK OF	)	
CHICAGO	)	
Chicago, Illinois	)	
	)	
and	)	
	)	
ILLINOIS DEPARTMENT OF	)	
FINANCIAL AND PROFESSIONAL	)	
REGULATION	)	
Springfield, Illinois	)	

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WHEREAS, the First Midwest Bank, Itasca, Illinois (the “Bank”), a state chartered bank that is a member of the Federal Reserve System, is taking steps to enhance its compliance with all applicable federal and state laws, rules, and regulations relating to anti-money laundering (“AML”) policies and procedures, including the Currency and Foreign Transactions Reporting Act (31 U.S.C. 5311 et seq.) (the Bank Secrecy Act (the “BSA”)) and the rules and regulations issued thereunder by the U.S. Department of the Treasury (31 C.F.R. Part 103), and the AML provisions of Regulation H (12 C.F.R. 208.62 and 208.63) of the Board of Governors of the Federal Reserve System (the “Board of Governors”);

WHEREAS, it is the common goal of the Bank, the Federal Reserve Bank of Chicago (the “Reserve Bank”), and the Illinois Department of Financial and Professional Regulation, (the “IDFPR”) to ensure that the Bank fully addresses all deficiencies in the Bank’s AML policies and procedures, customer due diligence practices, and internal controls environment; and

WHEREAS, on July 9, 2004, the Bank’s board of directors, at a duly constituted meeting, adopted a resolution authorizing and directing John M. O’Meara to enter into this Written Agreement (the “Agreement”) on behalf of the Bank, and consenting to compliance by the Bank and its institution-affiliated parties, as defined in section 3(u) of the Federal Deposit Insurance Act, as amended (the “FDI Act”) (12 U.S.C. 1813(u)), with each and every provision of this Agreement.

NOW, THEREFORE, the Bank, the Reserve Bank, and the IDFPR agree as follows:

**Bank Secrecy Act and Regulation H Compliance**

1. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the IDFPR an acceptable written program designed to improve the Bank’s system of internal controls to ensure compliance with all applicable provisions of the BSA and the rules and regulations issued thereunder, as required by section 208.63 of Regulation H of the Board of Governors (12 C.F.R. 208.63). The program shall include procedures to identify and incorporate, on an ongoing basis, the requirements of any amendments to the BSA or the rules and regulations issued thereunder. The program, at a minimum, shall provide for:

(a) Adequate AML and other internal controls to ensure compliance with the BSA and the rules and regulations issued thereunder, including an effective system that is designed to ensure compliance with the recordkeeping and reporting requirements for currency transactions over \$10,000 (31 C.F.R. 103.22) and currency transaction reporting exemption

procedures (31 C.F.R. 103.22) and that is capable of aggregating multiple cash transactions for appropriate business periods and across business lines and products and identifying any cash transactions, including deposits, withdrawals, and exchanges, that may have been structured to avoid currency transaction reporting requirements;

(b) independent review of compliance with the BSA and the rules and regulations issued thereunder and ensure that comprehensive compliance audits are performed frequently, are fully documented, are conducted with appropriate segregation of duties, and are reviewed at an appropriate senior level; and

(c) the training of all appropriate personnel conducted on a regular basis by competent personnel in all aspects of regulatory and internal policies and procedures related to the BSA and AML compliance.

### **Suspicious Activity and Customer Due Diligence**

2. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the IDFPR an acceptable enhanced written customer due diligence program designed to reasonably ensure the identification and timely, accurate, and complete reporting of all known or suspected violations of law and suspicious activities against or involving the Bank to law enforcement and supervisory authorities as required by the suspicious activity reporting provisions of Regulation H of the Board of Governors (12 C.F.R. 208.62). At a minimum, the program shall include:

(a) An effective system to ensure that all known or suspected violations of law and suspicious activities are properly identified, reviewed, and reported;

(b) a risk-focused assessment of the Bank's customer base to:

(i) identify the categories of customers whose transactions and banking activities are routine and usual; and

- (ii) determine the appropriate level of enhanced due diligence necessary for those categories of customers that the Bank has reason to believe pose a heightened risk of illicit activities at or through the Bank; and

- (c) for those customers whose transactions require enhanced due diligence,

additional procedures to:

- (i) determine the appropriate documentation necessary to confirm the business activities of the customer;
- (ii) understand the normal and expected transactions of the customer; and
- (iii) report known or suspected violations of law and suspicious activities in compliance with the reporting requirements set forth in Regulation H of the Board of Governors (12 C.F.R. 208.62).

- (d) a policy for determining action to be taken in the event of multiple filing

of Suspicious Activity Reports on the same customer.

### **Transaction Review**

3. (a) Within 120 days of this Agreement, the Bank shall complete a forensic review of transactions from January 2003 through the date of this Agreement (the “Transaction Review”) to determine whether suspicious activity involving accounts or transactions at, by, or through the Bank was properly identified and reported by the Bank in accordance with applicable suspicious activity reporting regulations.

(b) Within 30 days of this Agreement, the Bank shall submit to the Reserve Bank and the IDFPR an acceptable plan that shall establish the: (i) types of accounts and transactions, (ii) methodology, and (iii) sampling procedures to be used in the Transaction Review.

(c) Within 30 days of the completion of the Transaction Review, the Bank shall submit to the Reserve Bank and the IDFPR a written report of the findings of the Transaction Review.

(d) Within 30 days of the completion of the Transaction Review, the Bank shall ensure that all transactions previously required to be reported have been reported in accordance with applicable regulations and guidelines.

### **OFAC Compliance**

4. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the IDFPR an acceptable written plan designed to ensure compliance with the regulations of the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") (31 C.F.R. 500 et seq.), as well as any guidelines issued or administered by OFAC. The plan shall include, at a minimum, procedures to ensure that customer transactions are processed in accordance with OFAC requirements and in accordance with a regularly updated list of entities and individuals whose transactions or assets are required to be blocked, frozen, or monitored.

### **Approval of Programs and Plans**

5. The written programs and plans required by paragraphs 1, 2, 3(b), and 4 of this Agreement shall be submitted to the Reserve Bank and the IDFPR for review and approval. Acceptable programs and plans shall be submitted within the time periods set forth in this Agreement. The Bank shall adopt the approved programs and plans within 10 days of approval by the Reserve Bank and the IDFPR and then shall fully comply with them. During the term of this Agreement, the Bank shall not amend or rescind the approved programs and plans without the prior written approval of the Reserve Bank and the IDFPR.

## **Communications**

6. All communications regarding this Agreement shall be sent to:
  - (a) Mr. James Nelson  
Senior Vice President  
Banking Supervision and Regulation  
Federal Reserve Bank of Chicago  
230 South LaSalle Street  
Chicago, Illinois 60604
  - (b) Mr. Scott D. Clarke  
Illinois Department of Financial and Professional Regulation  
Commercial Bank Supervision  
310 South Michigan Avenue, Suite 2130  
Chicago, Illinois 60604-4278
  - (c) Mr. John M. O'Meara  
Chairman and Chief Executive Officer  
First Midwest Bank  
300 Park Boulevard, Suite 400  
Itasca, Illinois 60143-4169

## **Miscellaneous**

7. Notwithstanding any provision of this Agreement to the contrary, the Reserve Bank and the IDFPR may, in their sole discretion, grant written extensions of time to the Bank to comply with any provision of this Agreement.
8. The provisions of this Agreement shall be binding upon the Bank and all of its institution-affiliated parties, in their capacities as such, and their successors and assigns.
9. Each provision of this Agreement shall remain effective and enforceable until stayed, modified, terminated or suspended by the Reserve Bank and the IDFPR.
10. The provisions of this Agreement shall not bar, estop or otherwise prevent the Board of Governors, the Reserve Bank, the IDFPR or any other federal or state agency from taking any other action affecting the Bank or any of its current or former institution-affiliated parties and their successors and assigns.

11. This Agreement is a “written agreement” for the purposes of, and is enforceable by the Board of Governors as an order issued under, section 8 of the FDI Act (12 U.S.C. 1818).

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the 9<sup>th</sup> day of July, 2004.

First Midwest Bank

Federal Reserve Bank of Chicago

Illinois Department of Financial  
And Professional Regulation