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Comptroller of the Currency  
Administrator of National Banks

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Washington, D.C.

December 27, 2005

**Corporate Decision #2006-02**  
**January 2006**

Mr. Thomas C. Blank  
Counsel  
Shumaker, Loop & Kendrick, LLP  
North Courthouse Square  
1000 Jackson  
Toledo, Ohio 43624-1573

Re: Notice of Change in Bank Control  
The Private Trust Company, National Association, Cleveland, Ohio.  
Application Control Number: 2005-CE-11-001

Dear Mr. Blank:

The Comptroller of the Currency (OCC) has reviewed and evaluated the subject Notice of Change in Control involving The Private Trust Company, National Association, Cleveland, Ohio. This letter is to convey our intent not to disapprove the proposed change in bank control.<sup>1</sup> The OCC has determined the regulatory factors it is required to consider under the Change in Bank Control Act are consistent with this decision.

Our decision was based upon a thorough review of all information available, including representations and commitments made in the Notice and subsequent correspondence and communications, and Agreements with BD Investment Holdings, Inc., Hellman & Friedman Capital Partners V, L.P., Hellman & Friedman Capital Partners V (Parallel), L.P., Hellman & Friedman Investors, V, LLC, TPG Partners IV, L.P., TPG Genpar IV, L.P. and TPG Advisors IV, Inc. and its representatives, both written and verbal.

The date of consummation of this change in control must be provided to the Central District Office Licensing Division within 10 days after consummation. The transaction must be consummated as proposed in the Notice. If any of the terms, conditions, or parties to the transaction described in the Notice change, the OCC must be informed in writing prior to consummation to determine if any additional action/reconsideration is required. In such situations, the OCC reserves the right to require submission of an amended or new Notice of Change in Bank Control.

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<sup>1</sup> Based on a review of the facts of record and the representations and commitments made by BD Investment Holdings, Inc., Hellman & Friedman Capital Partners V, L.P., Hellman & Friedman Capital Partners V (Parallel), L.P., Hellman & Friedman Investors V, LLC, TPG Partners IV, L.P., TPG Genpar IV, L.P. and TPG Advisors IV, Inc., the OCC has determined that the Notice is technically complete.

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In addition, unless an extension is granted, the transaction must be consummated within six months of the date of this letter. Failure to consummate within six months or an approved extended time period granted by the OCC will cause our decision to lapse and require the filing of a new notice by the acquiring party and the appropriate filing fee if the acquirer wishes to proceed with the change in bank control.

You are reminded that the OCC requires pushdown purchase accounting for a change in control of at least 95 percent of the voting stock of a bank. Under pushdown accounting, when a bank is acquired, yet retains its separate corporate existence, the assets and liabilities of the acquired bank are restated to their fair values as of the acquisition date. Those values, including any goodwill, are reflected in the financial statement of the parent and the acquired bank.

The OCC poses no objection to the following persons serving as directors of The Private Trust Company, National Association, as proposed in the Notice.

Steven Mark Black     Director  
Esther Marion Stearns     Director

The results of the background checks requested by the OCC have not all been received yet. Although we have decided not to delay action pending receipt of those responses, this Office may consider remedies available to us under the Change in Bank Control Act or other statutes, if adverse or previously withheld information is received.

These decisions noted above, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable laws and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence regarding this Notice should reference the application control number. If you have any questions concerning this letter, please contact Director for District Licensing Dave Rogers in our Central District Office at (312) 360-8863.

Sincerely,

*/s/ Lawrence E. Beard*  
Lawrence E. Beard  
Deputy Comptroller for Licensing

**AGREEMENT BY AND BETWEEN**

**BD Investment Holdings, Inc., Hellman & Friedman Capital Partners V, L.P., Hellman & Friedman Capital Partners V (Parallel), L.P., Hellman & Friedman Investors V, LLC, TPG Partners IV, L.P., TPG Genpar IV, L.P., TPG Advisors IV, Inc.**

**and  
The Office of the Comptroller of the Currency**

**WHEREAS**, pursuant to 12 C.F.R. § 5.50, any person seeking to acquire control of a national bank shall provide 60 days prior notice of a change in control to the Office of the Comptroller of the Currency (“OCC”);

**WHEREAS**, BD Investment Holdings, Inc. (“BDIH”), an entity organized under the laws of Delaware, and Hellman & Friedman Capital Partners V, L.P., Hellman & Friedman Capital Partners V (Parallel), L.P., Hellman & Friedman Investors V, LLC, TPG Partners IV, L.P., TPG Genpar IV, L.P., TPG Advisors IV, Inc. (the “investment affiliates”), have submitted a notice (“Change in Control Notice”) to the OCC to acquire control of The Private Trust Company, N.A., Cleveland, Ohio (the “Bank”);

**WHEREAS**, BDIH intends to acquire, through its wholly owned subsidiary, BD Acquisition, Inc., one hundred percent (100%) of LPL Holdings, Inc. (“LPL”) and, thereby, acquire control of the Bank, which is a national bank chartered by the OCC and wholly-owned by PTC Holdings, Inc., which is wholly-owned by LPL;

**WHEREAS**, BDIH, its investment affiliates and the OCC seek to ensure that the Bank operates in a safe and sound manner and in accordance with all applicable laws, rules, and regulations;

**WHEREAS**, BDIH, its investment affiliates and the OCC seek to enter into an agreement outlining the measures that BDIH and its investment affiliates will take to ensure that

the Bank will operate in a safe and sound manner and in accordance with all applicable laws, rules, and regulations;

**NOW, THEREFORE**, in consideration of the above premises, the OCC and BDIH and its investment affiliates, by and through their duly elected representatives, agree as follows (“Agreement”):

**ARTICLE I**  
**JURISDICTION**

(1) BDIH and its investment affiliates are “institution-affiliated parties” (“IAPs”) of the Bank within the meaning of 12 U.S.C. § 1813(u)(1).

(2) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(3) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(4) All correspondence related to this Agreement, and any information, documentation, reports, plans and/or other written submissions which BDIH and its investment affiliates have agreed to submit pursuant to this Agreement shall be forwarded, by overnight mail, to:

Assistant Deputy Comptroller  
Cleveland Field Office  
3 Summit Park Drive, Suite 530  
Independence, Ohio 44131

(5) The OCC may, by thirty (30) days written notice, change the OCC’s designated recipients listed in paragraph (4) of this Article.

(6) BDIH and its investment affiliates shall designate and maintain for the term of this Agreement

David Spuria  
General Counsel  
Texas Pacific Group  
301 Commerce Street, Suite 3300  
Fort Worth, Texas 76102

and

Arrie Park  
General Counsel  
Hellman & Friedman LLC  
1 Maritime Plaza, 12th Floor  
San Francisco, CA 94111

as its agent for service of process in the United States, and BDIH and its investment affiliates shall, at all times, be subject to service of process at Texas Pacific Group's and Hellman & Friedman's main office location.

**ARTICLE II**  
**OPERATING AGREEMENT**

(1) No later than one (1) business day after BDIH and its investment affiliates acquire control of the Bank, BDIH and its investment affiliates shall cause the Bank and LPL to enter into a written agreement with the OCC ("Operating Agreement"), in the form attached hereto as Appendix A. After the Bank and LPL enter into the Operating Agreement with the OCC, BDIH and its investment affiliates shall take all necessary corporate actions to cause the Bank and LPL to implement and comply with the Operating Agreement.

**ARTICLE III**  
**CAPITAL ASSURANCE AND LIQUIDITY MAINTENANCE AGREEMENT**

(1) No later than six (6) business days after BDIH and its investment affiliates acquire control of the Bank, BDIH and its investment affiliates shall cause LPL to execute a Capital Assurance and Liquidity Maintenance Agreement ("CALMA") with the Bank, in a form

acceptable to the OCC. After execution of the CALMA, BDIH and its investment affiliates will take all necessary corporate actions to cause LPL and the Bank to comply with the CALMA.

(2) At all times while the CALMA is in effect, BDIH and its investment affiliates shall not cause LPL to pay dividends to BDIH or its investment affiliates if such dividend payments would cause LPL's total stockholder's equity to fall below \$217 million.

(3) BDIH and its investment affiliates shall notify the Bank and the OCC in writing within five (5) calendar days after discovery of any material change(s) to the financial condition of LPL, which adversely affects its ability to comply with its obligations under the CALMA. For purposes of this Paragraph, "material" shall have the same meaning accorded to that term in Securities and Exchange Commission Staff Accounting Bulletin No. 99 on Materiality. Provided, however, that notification to the OCC pursuant to this paragraph is required if LPL's total stockholder's equity falls below \$217 million.

(4) BDIH and its investment affiliates shall notify the Bank and the OCC in writing within five (5) calendar days after LPL fails to meet any of its debt service requirements.

#### **ARTICLE IV** **LETTER OF CREDIT**

(1) No later than five (5) business days after BDIH and its investment affiliates acquire control of the Bank, BDIH and its investment affiliates shall cause LPL to establish and fund a pre-paid letter of credit on behalf of the Bank. Provided:

- (a) the letter of credit shall be in an amount equal to \$10 million;
- (b) the terms of the letter of credit shall provide that the Bank be the sole beneficiary;

- (c) BDIH shall at all times take any necessary corporate actions to cause LPL to provide that the letter of credit, or a renewed or replacement letter of credit on terms no less favorable to the Bank and on the same terms and conditions provided in this Article, is funded and maintained in place until such time that the letter of credit is drawn upon in full by the Bank;
- (d) the letter of credit shall be issued by an insured depository institution acceptable to the OCC; and
- (e) the letter of credit shall be irrevocable during its term; and shall be on other terms acceptable to the OCC, such acceptance shall not be unreasonably withheld.

(2) BDIH and its investment affiliates shall establish and fund a pre-paid letter of credit on the same terms and conditions as set forth in Article IV, Paragraph (1) of this Agreement if the letter of credit provided by LPL is not renewed or replaced, or the Bank is unable to draw down the funds from the letter of credit provided by LPL.

## **ARTICLE V**

### **CONCLUDING PROVISIONS**

(1) This Agreement shall become effective on the 27th day of December, 2005 (“effective date”), and shall remain in full force and effect until such time as: (i) BDIH or any of its investment affiliates cease to own or control the Bank for the purposes of 12 C.F.R. § 5.50; (ii) BDIH and its investment affiliates cease to be IAPs of the Bank pursuant to 12 U.S.C. § 1813(u); or (iii) the OCC, in its sole discretion, elects to terminate this Agreement and provides written notice to that effect.

(2) It is expressly understood that if, at any time, the OCC deems it appropriate in fulfilling the responsibilities placed upon it by the several laws of the United States of America to undertake any action affecting the Bank nothing in this Agreement shall in any way inhibit, estop, bar or otherwise prevent the OCC from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date. Such time requirements may be extended in writing by the OCC for good cause upon written application by BDIH and its investment affiliates.

(4) This Agreement may be amended only by mutual consent of BDIH and its investment affiliates and the OCC.

(5) This Agreement expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by BDIH and its investment affiliates under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. BDIH and its investment affiliates expressly acknowledge that neither BDIH and its investment affiliates nor the OCC has any intention to enter into a contract. BDIH and its investment affiliates also expressly acknowledge that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency, or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities.

(6) This Agreement constitutes the entire agreement of the parties with regard to the specific subject matter hereof and supersedes all prior written and/or oral understandings between the parties.



(7) This Agreement may be executed in counterparts, each of which shall be considered an original and all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile transmission or other comparable means.

(8) The headings and section references contained herein are included solely for ease of reference and in no way shall limit, expand or otherwise affect either the substance or construction of the terms and conditions of this Agreement or the intent of the parties hereto.

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

*Signed*

*December 27, 2005*

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Lance J. Cirolì  
Assistant Deputy Comptroller  
Cleveland Field Office

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Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of BD Investment Holdings, Inc., has hereto set his/her hand on behalf of BD Investment Holdings, Inc.

signed  
John Viola  
Vice President

12/27/05  
Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of Hellman & Friedman Investors V, LLC, has hereto set his/her hand on behalf of Hellman & Friedman Capital Partners V, L.P.

signed  
Jeffrey Goldstein  
Managing Director

12/27/05  
Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of Hellman & Friedman Investors V, LLC, has hereto set his/her hand on behalf of Hellman & Friedman Capital Partners V (Parallel), L.P.

signed  
Jeffrey Goldstein  
Managing Director

12/27/05  
Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of Hellman & Friedman Investors V, LLC, has hereto set his/her hand on behalf of Hellman & Friedman Investors V, LLC.

signed  
Jeffrey Goldstein  
Managing Director

12/27/05  
Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of TPG Advisors IV, Inc., the General Partner of TPG GenPar IV, L.P., the General Partner of TPG Partners IV, L.P., has hereto set his hand on behalf of TPG Partners IV, L.P.

signed  
\_\_\_\_\_  
John Viola  
Vice President

12/27/05  
\_\_\_\_\_  
Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of TPG Advisors IV, Inc., the General Partner of TPG GenPar IV, L.P., has hereto set his hand on behalf of TPG GenPar IV, L.P.

signed  
\_\_\_\_\_  
John Viola  
Vice President

12/27/05  
\_\_\_\_\_  
Date

**IN WITNESS WHEREOF**, the undersigned, as a duly appointed and authorized officer of TPG Advisors IV, Inc., has hereto set his hand on behalf of TPG Advisors IV, Inc.

signed  
\_\_\_\_\_  
John Viola  
Vice President

12/27/05  
\_\_\_\_\_  
Date

**APPENDIX A**  
**OPERATING AGREEMENT**

**By and Between**

**The Private Trust Company, N.A., Cleveland, Ohio,**

**LPL Holdings, Inc., Boston, Massachusetts**

**and**

**The Office of the Comptroller of the Currency**

**WHEREAS**, pursuant to 12 C.F.R. § 5.50, any person seeking to acquire control of a national bank shall provide sixty (60) days prior notice of a change in control to the Office of the Comptroller of the Currency (“OCC”);

**WHEREAS**, BD Investment Holdings, Inc. (“BDIH”), an entity organized under the laws of Delaware, and Hellman & Friedman Capital Partners V, L.P., Hellman & Friedman Capital Partners V (Parallel), L.P., Hellman & Friedman Investors V, LLC, TPG Partners IV, L.P., TPG Genpar IV, L.P., TPG Advisors IV, Inc. (the “investment affiliates”) submitted a notice (“Change in Control Notice”) to the OCC to acquire control of The Private Trust Company, N.A. (the “Bank”), a national bank chartered by the OCC and wholly-owned directly by PTC Holdings, Inc. (“PTC Holdings”) and indirectly by LPL Holdings, Inc. (“LPL”);

**WHEREAS**, the Bank and the OCC seek to ensure that the Bank operate in a safe and sound manner, in accordance with all applicable laws, rules and regulations;

**WHEREAS**, BDIH and the investment affiliates committed to certain undertakings memorialized in an agreement entered into between BDIH and the investment affiliates and the OCC on or about December 27, 2005;

**WHEREAS**, those undertakings specified, inter alia, that after BDIH and the investment affiliates had acquired control of the Bank, the Bank would operate in a safe and sound manner, in accordance with all applicable laws, rules and regulations;

**WHEREAS**, on or about December 27, 2005, the OCC issued its non-objection to the Change in Control Notice; and

**WHEREAS**, BDIH and its investment affiliates intend to acquire control of LPL, thereby acquiring control of the Bank.

**NOW THEREFORE**, in consideration of the above premises, the OCC, by and through its authorized representative, the Bank, by and through its duly elected Board of Directors (“Board”), and LPL, by and through its duly elected Board of Directors (“LPL’s Board”), agree as follows (“Agreement”):

**ARTICLE I**  
**JURISDICTION**

(1) LPL is an “institution-affiliated party” (“IAP”) of the Bank within the meaning of 12 U.S.C. § 1813(u)(1).

(2) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1) and 1818(e).

(3) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. §§ 1818(e)(1) and 1818(i)(2).

(4) By virtue of 12 U.S.C. § 1818(b)(5), all of the provisions of 12 U.S.C. § 1818 apply to the Bank.

(5) Pursuant to 12 C.F.R. § 5.3(g)(4), the Bank shall continue to be an eligible bank for the purposes of 12 C.F.R. part 5 unless otherwise informed in writing by the OCC.

(6) Pursuant to 12 C.F.R. § 5.51(c)(6)(ii), this Order shall not subject the Bank to the requirements of 12 C.F.R. § 5.51 unless otherwise informed in writing by the OCC.

(7) Pursuant to 12 C.F.R. § 359.1(f)(1)(ii)(C) and 12 C.F.R. § 5.51(c)(6)(ii), this Order shall not subject the Bank to the requirements of 12 C.F.R. part 359 unless otherwise informed in writing by the OCC.

(8) Pursuant to 12 C.F.R. § 24.2(e)(4), the Bank shall continue to be an eligible bank for the purposes of 12 C.F.R. part 24 unless otherwise informed in writing by the OCC.

(9) This Agreement shall not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4.

(10) All correspondence related to this Agreement, and any information, documentation, reports, plans or other written submissions which the Bank or its Board have agreed to submit pursuant to this Agreement shall be forwarded, by overnight mail, to:

Assistant Deputy Comptroller  
Cleveland Field Office  
3 Summit Park Drive, Suite 530  
Independence, Ohio 44131

(11) The OCC may, by thirty (30) days written notice, change the OCC’s designated recipient listed in paragraph (10) of this Article.

## **ARTICLE II**

### **CAPITAL AND LIQUIDITY MAINTENANCE**

(1) Effective seven (7) business days after the effective date of this Agreement, the Bank shall at all times maintain minimum capital of: (a) \$10 million in Tier 1 Capital, or such

other higher amount as may be required by the OCC pursuant to the exercise of its regulatory authority under 12 C.F.R. Part 3, Subparts C or E.; or (b) in the event the Bank is required to establish and fund a Liquidity Reserve Deposit Account (“LRD”) pursuant to Article IV, paragraph (6) of this Agreement, the minimum capital requirement established in (a) plus the amount of assets deposited in the LRD Account.

(2) Effective five (5) business days after the effective date of this Agreement the Bank shall at all times maintain an amount of Liquid Assets, as that term is defined in Article XI that is at least equal to the greater of (a) \$8 million; or (b) the Bank’s projected operating expenses for the next twenty-four (24) months plus any other expenses that the Bank will incur within those twenty-four (24) months, which shall be calculated annually based on the operating budget required to be submitted pursuant to Article III of this Agreement, or more frequently if directed to do so by the OCC.

(3) If, at any time, the Bank’s Tier 1 Capital falls below the minimum capital required under Paragraph (1) of this Article, or the Bank’s Liquid Assets fall below the amount required under Paragraph (2) of this Article, then the Bank shall be deemed “undercapitalized,” and the Bank and LPL shall take such corrective measures as the OCC may direct from among the provisions applicable to undercapitalized depository institutions under 12 U.S.C. § 1831o(e) and 12 C.F.R. Part 6. For purposes of this requirement, an action “necessary to carry out the purpose of this section” under section 1831o(e)(5) shall include restoration of the Bank’s Tier 1 capital and/or liquid assets to the required minimum levels, and any other action deemed advisable by the OCC to address the Bank’s Tier 1 capital or liquid asset deficiency or the safety and soundness of its operations.

(4) Within five (5) business days from the effective date of this Agreement, the Bank and LPL shall execute a Capital Assurance and Liquidity Maintenance Agreement (“CALMA”), in a form to which the OCC has no supervisory objection that, among other things, ensures: (i) the maintenance of Tier 1 Capital in accordance with Paragraph (1) of this Article; (ii) the maintenance of liquidity in accordance with Paragraph (2) of this Article; and (iii) LPL’s agreement to pledge all necessary collateral, and/or provide all necessary security to guarantee LPL’s performance under the CALMA. Not later than three (3) days after the Bank’s Board and LPL’s Board executes the CALMA, the Bank and LPL shall provide the OCC with copies of : (i) the fully executed CALMA entered into between the Bank and LPL; and (ii) the resolutions adopted by the Bank’s Board and LPL’s Board evidencing their respective approvals and authorizations to enter into and be bound by the CALMA.

(5) The Bank shall take all actions necessary to exercise its rights and enforce the terms of the CALMA, if and when necessary. Any Bank demand or request to LPL for compliance with the CALMA shall be in writing, and the Bank shall provide the OCC with a copy of such written demand or request within one (1) business day after delivery to LPL.

(6) The Bank shall notify the OCC in writing within one (1) business day after the Bank discovers any breach or violation of the CALMA by LPL, or the Bank determines that a future breach or violation by LPL is probable.

(7) The Bank shall not modify, amend or terminate, nor agree or consent to a modification, amendment or termination of a CALMA without obtaining a prior written non-objection from the OCC.



(8) At all times while the CALMA is in effect, LPL shall not make dividend payments to BDIH or its investment affiliates if such dividend payments would cause LPL's total stockholder's equity to drop below \$217 million.

(9) The Board and management of the Bank shall ensure that capital and liquidity are adequate and that appropriate capital and liquidity planning processes are in place. This shall include ensuring compliance with the conditions set forth in this Agreement and considering ongoing capital and liquidity needs. Failure to maintain adequate capital or liquidity is an unsafe and unsound banking practice. In order to evaluate capital and liquidity adequacy, management shall prepare, and directors shall review, a quarterly capital and liquidity analysis report.

(10) Board-approved capital and liquidity policies shall outline the Board's philosophy and articulate responsibilities and expectations for bank management in the day-to-day management of capital and liquidity. Policies shall also define compliance limits, establish a regular monitoring program, and include contingent liquidity and capital plans that identify alternatives for meeting unanticipated needs. Management and the Board shall refer to OCC Bulletin 2000-26, Supervision of National Trust Banks for additional information on developing an appropriate capital and liquidity program.

### **ARTICLE III** **STRATEGIC PLAN**

(1) Within forty-five (45) days from the effective date of this Agreement, and annually thereafter, the Bank shall submit to the OCC a Board-adopted Strategic Plan covering at least a three (3) year period.

(2) The Strategic Plan shall include the following as a minimum:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) an assessment of the Bank's current and future operating environment;
- (c) identification of the Bank's short and long-term strategic goals, and the present and future market segments, business and product lines that the Bank will promote to achieve those goals;
- (d) a detailed analysis of how the Bank intends to accomplish the goals identified in (2)(c) of this Article, including executive management responsibilities and target dates for achievement;
- (e) an evaluation of the Bank's internal operations, staffing requirements, Board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (2)(c) of this Article;
- (f) a financial forecast for the 3-year period covered by the Strategic Plan, broken down on a monthly basis for the first year of the budget and annually for the remaining budget periods, to include projected balance sheets, income statements, and cash flow statements (collectively, an "Operating Budget");
- (g) the specific business assumptions forming the basis of the Operating Budget, and a process for Bank management to track and address changes to those assumptions throughout the period covered by the Operating Budget;

- (h) any specific plans to outsource functions and responsibilities to third parties and any anticipated changes in outsourcing arrangements;
- (i) control systems to mitigate risks associated with planned new products, new services, alterations or modifications to existing products or services, growth, outsourcing arrangements, or any proposed changes in the Bank's operating environment;
- (j) provisions for the maintenance and growth of the Bank's earnings, capital, and liquidity, so as to ensure compliance with Article II of this Agreement;
- (k) provisions for Board review and assessment of the adequacy of the Bank's earnings, capital position, liquidity position, fidelity bond insurance and errors and omissions insurance;
- (l) an analysis of how any proposed acquisitions or mergers involving the Bank or any of its affiliates will impact the Bank financially and operationally; and
- (m) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(3) Prior to making any changes that may have a material impact on the Strategic Plan, the Bank shall give the OCC sixty (60) days advance written notice of such changes, and shall not implement such changes without obtaining a written non-objection from the OCC. For purposes of this paragraph, changes that may have a material impact on the Strategic Plan include, but are not limited to, any significant deviations from or material changes consistent with the description in PPM 5400-9, Appendix B:

- (a) material deviations or changes in the bank's projected growth, strategy or philosophy, lines of business, funding sources, scope of activities, asset mix, deposit structure, or any other changes in personnel or operations that may have a material impact on the Bank's operations or financial performance; and/or
- (b) failure to maintain projected capital levels contained in the Business Plan or Operating Budget submitted pursuant to this Agreement.

(5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the Strategic Plan and ensure that the Strategic Plan is updated annually, within sixty (60) days of the anniversary of the effective date of this Agreement, to cover the next three (3) year period.

#### **ARTICLE IV** **LETTER OF CREDIT**

(1) No later than four (4) business days from the effective date of this Agreement, LPL shall establish and fund a pre-paid letter of credit on behalf of the Bank. Provided:

- (a) the letter of credit shall be in an amount equal to \$10 million;
- (b) the terms of the letter of credit shall provide that the Bank be the sole beneficiary;
- (c) LPL shall at all times ensure that the letter of credit, or a renewed or replacement letter of credit on terms no less favorable to the Bank and on the same terms and conditions provided in this Article, is funded and maintained in place until such time that the letter of credit is drawn upon in full by the Bank;

- (d) the letter of credit shall be issued by an insured depository institution acceptable to the OCC; and
- (e) the letter of credit shall be irrevocable during its term; and shall be on other terms acceptable to the OCC, such acceptance shall not be unreasonably withheld.

(2) The Bank shall monitor the status of the letter of credit to ensure that it continuously remains in effect and provides financial coverage to the Bank in the event of liquidation, receivership, or conservatorship of the Bank and shall notify the OCC within one (1) business day if it becomes aware of a lapse in coverage or a probable lapse in coverage of the letter of credit.

(3) Not later than thirty (30) days before the next scheduled renewal date or termination date of the letter of credit, LPL shall notify the OCC in writing whether the letter of credit has been or will be renewed by its terms or replaced with a letter of credit on terms no less favorable to the Bank and on the same terms and conditions provided in this Article.

(4) Prior to the expiration of the letter of credit, the Bank shall draw down in full the letter of credit, or LPL shall renew the letter of credit by its terms or replace the letter of credit on terms no less favorable to the Bank and on the same terms and conditions provided in this Article.

(5) Except as otherwise provided in paragraph (4) of this Article, the Bank shall only draw upon the letter of credit after LPL has failed to comply with its obligations under the CALMA, entered into pursuant to Article II of this Agreement, or has obtained the prior written approval of the OCC.

(6) In the event the Bank draws upon the letter of credit, the Bank shall establish a Liquidity Reserve Deposit Account (“LRD”) pursuant to an agreement with a third party insured depository institution and the OCC. The terms of the agreement and the depository institution shall be acceptable to the OCC and shall maintain the OCC as a party to the LRD. The Bank shall deposit all funds obtained under the letter of credit into the LRD.

**ARTICLE V**  
**DISPOSITION PLAN**

(1) The Board shall, within five (5) business days following notice from the OCC, prepare and submit to the OCC a Disposition Plan acceptable to the OCC, if the OCC determines, in its sole discretion, that:

- (a) an existing or probable breach or violation identified pursuant to Article II, of this Agreement is deemed to be significant or a change in the financial condition of LPL is such that it is insufficient to fulfill LPL’s obligations under a CALMA;
- (b) the letter of credit that was required pursuant to this Agreement and the Agreement between the OCC and BDIH and its investment affiliates has lapsed;
- (c) the Bank has (i) failed to submit an acceptable Strategic Plan as required by Article III of this Agreement; (ii) failed to implement or adhere to the Bank’s specific, measurable and verifiable objectives included in the Strategic Plan to which the OCC has not objected pursuant to Article III; or (iii) significantly deviated from, or materially changed, the Strategic Plan or Operating Budget without first obtaining the OCC’s written non-

objection to such deviation or change as required by Article III of this Agreement; and has not cured the default within thirty (30) days of receiving written notice of such default from the OCC;

- (d) LPL's total stockholder's equity has dropped below \$217 million for three consecutive months; or
- (e) the Bank or LPL has engaged in a significant violation of this Agreement.

(2) The Disposition Plan shall detail in writing the Bank Board's proposal to: (i) sell; (ii) merge; and/or (iii) liquidate the Bank's operations. In the event that the Disposition Plan submitted by the Bank's Board outlines a sale or merger of the Bank, the Disposition Plan, at a minimum, shall address the steps that will be taken to ensure that the sale or merger occurs not later than thirty (30) calendar days after the issuance of the OCC's written determination of supervisory non-objection and all necessary regulatory approvals. If the Disposition Plan outlines a liquidation of the Bank, the Disposition Plan shall detail the actions and steps necessary to accomplish the liquidation in conformance with 12 U.S.C. §§ 181 and 182, without loss or cost to the OCC, and the dates by which each step of the liquidation shall be completed, including the date by which the Bank will terminate its national bank charter. In the event of liquidation, the Bank shall hold a shareholder vote pursuant to 12 U.S.C. § 181 within thirty (30) days of receiving supervisory non-objection to the Disposition Plan.

(3) Upon obtaining a written non-objection from the OCC, the Board shall immediately implement and shall thereafter ensure adherence to the Disposition Plan.

(4) The Disposition Plan shall include provisions addressing any potential harm caused or likely to be caused to the Bank's clients, the steps the Bank will take to mitigate such harm, and the steps the Bank will take to compensate clients for harm that is not mitigated.

(5) Upon receiving notice from the OCC that the Bank is required to submit a Disposition Plan, the Bank shall not engage in any new business.

(6) Failure to submit a timely Disposition Plan that is acceptable to the OCC, or failure to implement and adhere to the Disposition Plan after the Board obtains a written non-objection from the OCC, may be deemed by the OCC to constitute a violation of this Agreement.

**ARTICLE VI**  
**FINANCIAL INFORMATION ON LPL**

(1) Beginning March 31, 2006, LPL shall provide the following financial information on LPL within thirty (30) days of its release:

- (a) unaudited quarterly financial statements, including the Consolidated Statement of Financial Performance, the Consolidated Statement of Financial Position and the Consolidated Statement of Cash Flows, and Supporting Financial Notes, all of which shall fully disclose LPL's financial performance for the three preceding months;
- (b) audited annual financial statements, including the Consolidated Statement of Financial Performance, the Consolidated Statement of Financial Position and the Consolidated Statement of Cash Flows, and Supporting Financial Notes, all of which shall fully disclose LPL's financial performance for the preceding year; and
- (c) such other information requested by the OCC.



(2) All financial information provided in accordance with paragraph (1), shall be maintained at the Bank and OCC personnel shall have prompt and unrestricted access to such financial information and documentation.

(3) Prior to making any changes to the services that LPL provides to the Bank or changes to the cost of those services, LPL shall give the OCC sixty (60) days advance written notice of such changes, and shall not implement such changes without obtaining a written non-objection from the OCC.

**ARTICLE VII**  
**CHANGES IN DIRECTORS OR SENIOR EXECUTIVE OFFICERS**

(1) For a period of two years beginning on the effective date of this Agreement, prior to the appointment of any individual to a position of senior executive officer or the appointment of any individual to the Bank's Board, the Bank shall obtain a written non-objection from the OCC. The Bank shall submit to the OCC the following information on any individual proposed as a senior executive officer or director of the Bank:

- (a) documentation of the Bank's investigation of the proposed individual, which is no less detailed than that provided in the Management Review Guidelines ("Guidelines") of the *Background Investigations* booklet of the *Comptroller's Licensing Manual*, provided however, the Bank may limit the information in item 1 of the Guidelines to the information sought in pages 1 through 4, inclusive, of the Interagency Biographical and Financial Report.

- (b) a written statement of the Board's reasons for selecting the proposed individual;
- (c) a written description of the proposed individual's duties and responsibilities; and
- (d) any other documentation related to the proposed individual that the OCC may require.

(2) The OCC's written non-objection to any proposed senior executive officer or director shall not constitute an approval or endorsement of such individual.

**ARTICLE VIII**  
**CORPORATE STRUCTURE AND GOVERNANCE**

(1) The Bank shall maintain and adhere to policies and procedures that delineate lines of reporting within the Bank, and specify requirements for information to be supplied to the Board of the Bank.

(2) The Board shall maintain and ensure Bank adherence to policies and procedures that preserve the Bank's separate corporate identity, including, without limitation, the maintenance of books and records that are separate and apart from any Servicer or affiliate, under the control of the Bank, and readily available to OCC personnel upon request.

(3) Within ninety (90) days the Bank shall establish an Independent Audit Committee which shall be comprised of at least three Bank directors who are not officers or employees of the Bank, and a majority of whom are not officers, directors or employees of any affiliate or subsidiary of the Bank, BDIH, the investment affiliates, or LPL.

(4) The Board shall ensure adherence to independent internal and external audit functions in accordance with the Comptroller's Handbook titled "Internal and External Audits"

dated April 2003. The Bank's internal and external audit functions shall include regular audits of the Bank's compliance with each requirement of this Agreement.

**ARTICLE IX**  
**AFFILIATE TRANSACTIONS**

(1) The Board shall ensure that all contracts, agreements and transactions between the Bank and any affiliate are fair and equitable to the Bank and are in compliance with 12 U.S.C. §§ 371c and 371c-1, and 12 C.F.R. Part 223 ("Regulation W") (hereinafter "affiliate laws").

(2) Within ninety (90) days from the effective date of this Agreement and continuing at least yearly thereafter, the Board shall review all contracts and agreements with affiliates, whether then existing or proposed, and whether written or otherwise, to determine whether each contract and agreement is fair and equitable to the Bank, complies with the affiliate laws, and provides that in the event of liquidation, receivership, or conservatorship of the Bank the affiliates agree to continue to fulfill their obligations under the contract or agreement, on commercially reasonable terms, if so requested by the OCC, receiver, or conservator. The Board shall document its conclusions from each review in its minutes. Documentation and conclusions from subsequent reviews shall be maintained at the Bank and OCC personnel shall have prompt and unrestricted access to such documentation.

(3) Within thirty (30) days of determining that any contract or agreement with an affiliate is not in writing, the Bank shall reduce such contract or agreement to writing and a copy shall be submitted to the OCC.

(4) Within sixty (60) days and continuing thereafter, the Bank shall maintain, in a centralized location, a listing of all contracts, agreements and transactions with any affiliate, and

records and documentation showing that such contracts, agreements and transactions are fair and equitable to the Bank, are in compliance with the affiliate laws, and provide that in the event of liquidation, receivership, or conservatorship of the Bank the affiliates agree to continue to fulfill their obligations under the contract or agreement, on commercially reasonable terms, if so requested by the OCC, receiver, or conservator. Such listing, records and documentation shall be updated no less frequently than each month. OCC personnel shall have prompt and unrestricted access to such listing, records and documentation.

(5) Within thirty (30) days of the date that the Bank determines that any contract or agreement is not fair and equitable to the Bank, is not in compliance with the affiliate laws, or does not provide that in the event of liquidation, receivership, or conservatorship of the Bank that the affiliates agree to continue to fulfill their obligations under the contract or agreement, on commercially reasonable terms, if so requested by the OCC, receiver, or conservator, the Bank shall:

- (a) renegotiate the terms of such contract or agreement to ensure that it is fair and equitable to the Bank, in compliance with the affiliate laws, and provides that in the event of liquidation, receivership, or conservatorship of the Bank the affiliates agree to continue to fulfill their obligations under the contract or agreement, on commercially reasonable terms, if so requested by the OCC, receiver, or conservator; and/or
- (b) take other steps acceptable to the OCC to address the issues raised by the terms of the contract or agreement.

(6) Within thirty (30) days of the date that the OCC provides the Bank with an objection to any contract or agreement, the Bank shall renegotiate the terms of such contract or agreement, or take other steps acceptable to the OCC, to resolve such objection.

(7) The Bank shall not enter into any new contract, agreement or transaction with any of its affiliates, unless the contract, agreement or transaction:

- (a) is in writing;
- (b) is fair and equitable to the Bank;
- (c) is in compliance with the affiliate laws;
- (d) has been approved in advance by the Board in writing; and
- (e) provides that in the event of liquidation, receivership, or conservatorship of the Bank the affiliates agree to continue to fulfill their obligations under the contract or agreement, on commercially reasonable terms, if so requested by the OCC, receiver, or conservator.

## **ARTICLE X** **COMPLIANCE REPORTS**

(1) On a quarterly basis following the effective date of this Agreement, the Bank's Board of Directors shall require the submission of a written progress report to them setting forth in detail:

- (a) actions taken to comply with each Article of this Agreement; and
- (b) the results of those actions.

(2) A copy of this report, with any additional comments by the board, shall be maintained at the Bank, and OCC personnel shall have prompt and unrestricted access to such documentation.

**ARTICLE XI**  
**DEFINITIONS**

- (1) For purposes of this Agreement, the following terms shall have the below-described meanings:
- (a) The term “Capital Assurance and Liquidity Maintenance Agreement” shall mean that certain agreement entered into between the Bank and LPL pursuant to the terms of this Agreement;
  - (b) The term “Liquid Assets” shall mean: (i) cash deposits; (ii) overnight federal funds sold; (iii) Type I Securities under 12 C.F.R. § 1.2; and (iv) such other assets as to which the Bank has obtained a non-objection from the OCC. The term Liquid Assets shall not include any assets that are pledged in any manner, nor any assets that are not free and kept free from any lien, encumbrance, charge, right of set off, credit or preference in connection with any claim against the Bank.
  - (c) The term “affiliate” shall be defined as set forth in 12 U.S.C. § 371c(b)(1) and 12 C.F.R. § 223.
  - (d) The term “business day” shall mean any day other than Saturday, Sunday, a “legal public holiday,” as listed in 5 U.S.C. § 6103(a) or any successor statute, as either may be amended or modified, or any day the OCC has permitted the Bank to be closed; provided, however, if a January 1, July 4, November 11, or December 25 falls on a Sunday, the next Monday is not a business day.

- (e) The term “senior executive officer” shall be defined as set forth in 12 C.F.R. § 5.51(c)(3).

**ARTICLE XII**  
**TERM OF AGREEMENT**

- (1) This Agreement shall become effective immediately upon its execution by all parties (“effective date”).
- (2) This Agreement will remain in full force and effect as between the OCC and the Bank until the OCC, in its sole discretion, elects to terminate the Agreement.
- (3) This Agreement will remain in full force and effect as between the OCC and LPL until the earlier of the time that (i) the OCC, in its sole discretion, elects to terminate the Agreement or (ii) LPL ceases to own or control the Bank for purposes of 12 C.F.R. § 5.50.

**ARTICLE XIII**  
**CONCLUDING PROVISIONS**

- (1) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.
- (2) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement, unless otherwise provided. Such time requirements may be extended in writing by the Comptroller or his duly authorized representative for good cause upon written application by the Board.

(3) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller or his duly authorized representative.

(4) The conditions imposed in connection with the Bank's charter approval dated August 18, 1995 remain in full force and effect, except to the extent that they conflict with the terms of this Agreement, in which case, the provisions of this Agreement shall control;

(5) In each instance in this Agreement in which the Bank's Board or LPL's Board is required to act, both Boards shall be obligated to take such measures within the scope of their authority necessary to accomplish such act, and, to the extent that such measures involve directions to management of the Bank or LPL, both Boards shall be obligated to ensure that management of the Bank and management of LPL follows such directions.

(6) This Agreement is intended, and shall be construed to be a supervisory "written agreement entered into with the agency" as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the OCC or the United States of America. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank and LPL under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the OCC has any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States of America, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract



affecting the OCC's exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

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

*Signed*

*December 29, 2005*

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Lance J. Cioli  
Assistant Deputy Comptroller  
Cleveland Field Office

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Date

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

Signed	12/23/05
_____ Richard E. Beeman	_____ Date
Signed	12/23/05
_____ Lawrence Hatch	_____ Date
Signed	December 23, 2005
_____ Willis I. Else	_____ Date
Signed	12/23/05
_____ Richard T. Garret	_____ Date
Signed	12/27/05
_____ Mark S. Casady	_____ Date
Signed	12/27/05
_____ Stephanie Brown	_____ Date
Signed	12/23/05
_____ James S. Putnam	_____ Date
Signed	12-23-05
_____ Thomas Berry	_____ Date

**IN WITNESS WHEREOF**, the undersigned, as the duly elected and acting President and Chief Executive Officer of LPL Holdings, Inc, has hereunto set his hand on behalf of the Company.

LPL Holdings, Inc.

12-23-05

\_\_\_\_\_  
Date

Signed

By: \_\_\_\_\_  
Mark S. Casady, President and CEO