

# FEDERAL RESERVE press release



For immediate release

January 13, 1997

The Federal Reserve Board today announced the execution of a Written Agreement by and among The Pan American Bank, Miami, Florida, the Federal Reserve Bank of Atlanta, and the Department of Banking and Finance, Division of Banking, State of Florida.

A copy of the Written Agreement is attached.

Attachment

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

STATE OF FLORIDA  
DEPARTMENT OF BANKING AND FINANCE  
DIVISION OF BANKING  
TALLAHASSEE, FLORIDA

|                                  |                                |
|----------------------------------|--------------------------------|
| Written Agreement by and among ) | Docket No. 96-018-WA/RB-SM     |
| THE PAN AMERICAN BANK )          | Administrative Proceeding No.: |
| Miami, Florida )                 | 3517-b-5/96                    |
| FEDERAL RESERVE BANK )           |                                |
| OF ATLANTA )                     |                                |
| Atlanta, Georgia )               |                                |
| and )                            |                                |
| DEPARTMENT OF BANKING AND )      |                                |
| FINANCE, DIVISION OF )           |                                |
| BANKING, STATE OF FLORIDA )      |                                |
| Tallahassee, Florida )           |                                |

WHEREAS, in recognition of their common goal to maintain the financial soundness of the Pan American Bank, Miami, Florida (the "Bank"), a state member bank, the Federal Reserve Bank of Atlanta (the "Reserve Bank"), the Department of Banking and Finance, Division of Banking of the State of Florida (the "Department") and the Bank have mutually agreed to enter into this Agreement;

WHEREAS, this Agreement is being executed in accordance with the Rules Regarding Delegation of Authority of the Board of Governors of the Federal Reserve System (the "Board of Governors"), specifically 12 C.F.R. 265.11(a)(15), and the Reserve Bank has received the prior approval of the Director of the Division of Banking Supervision and Regulation (the "Director") and the General Counsel of the Board of Governors to enter into this Agreement with the Bank; and

WHEREAS, on 12/17, 1996, the board of directors of the Bank adopted a resolution authorizing and directing Hans C. Mueller, Chief Executive Officer of the Bank, to enter into this Agreement on behalf of the Bank and consenting to compliance with each and every provision of the Agreement 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)).

NOW, THEREFORE, before the taking of any testimony or adjudication of, or finding on, any issue of law or fact herein, and without this Agreement constituting an admission of any allegation made or implied by the Board of Governors, the Reserve Bank or the Department, the Bank, the Reserve Bank and the Department agree as follows:

Dividend and Share Repurchase Restrictions

1. The Bank shall not, directly or indirectly, declare or pay any dividends, make any capital distributions or repurchase any of its shares without the prior written approval of the Director, the Reserve Bank and the Department.

BSA Compliance

2. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department an acceptable written internal compliance program designed to ensure that the Bank has proper policies and procedures in place to comply with the provisions of the Currency and Foreign Transaction Reporting Act (31 U.S.C. 5311 et seq.) and the accompanying regulations issued thereunder by the United States Department of the Treasury (31 C.F.R. 103.11 et seq.) (collectively referred to as the Bank Secrecy Act (the "BSA")) and the provisions of section 655.50, Florida Statutes and Rule 3C-1.022, Florida Administrative Code. At a minimum, the internal compliance program shall:

(a) Address the violations of Regulation H of the Board of Governors (12 C.F.R. Part 208) cited in the Report of Examination of the Bank as of May 24, 1996 (the "Report of Examination");

(b) provide the means by which to detect and monitor all transactions occurring at the Bank (including but not

limited to, through wire transfers, cash deposits or the Bank's overseas pouch);

(c) provide the means to monitor frequent or recurring cash or wire transactions in large balance accounts;

(d) require the maintainance of accurate and complete wire transfer logs of all incoming and outgoing domestic and international wire transfers of funds, which shall be available for review by the Reserve Bank and the Department;

(e) provide and document training to any personnel representing the Bank in the United States and overseas, including but not limited to, tellers, customer service representatives, lending officers, private and personal banking officers and all other personnel engaged in customer contact or BSA monitoring, in all aspects of regulatory and internal policies and procedures related to the BSA and update the training on a regular basis to ensure that all personnel are provided with the most current and up-to-date information;

(f) implement a "know your customer" policy as part of the BSA compliance measures required by this Agreement, and consistent with the Bank's operations, that will enable the Bank to:

(i) Review the adequacy of the Bank's documentation with respect to existing customers, identify and confirm the identity of new customers of the Bank, and prohibit transactions with customers whose identities cannot be confirmed,

(ii) monitor the transactions of each of the customers of the Bank to determine if each transaction is consistent with the customer's regular, ordinary and expected practices,

(iii) monitor the flow of funds to and from the Bank to persons and entities within and outside of the United States, and

(iv) investigate further, and where necessary, prohibit transactions involving customers whose identities or business activities cannot be sufficiently confirmed or whose transactions are inconsistent with the customer's normal practices and no satisfactory explanation exists;

(g) ensure the identification and timely, accurate and complete reporting to law enforcement and supervisory authorities of all instances of suspicious activity or known or suspected criminal activity perpetrated against or involving the Bank, consistent with all applicable federal and

state laws and regulations, including but not limited to, ensuring that Bank personnel with reporting responsibilities are instructed to consult with counsel for the Bank or the Reserve Bank with respect to any circumstances in which the Bank's reporting obligations are not clear;

(h) provide for an internal review process within the Bank to ensure that the Bank is complying with the BSA and "know your customer" policies and procedures, that appropriate personnel possess the requisite knowledge necessary to comply with the BSA and "know your customer" policies and procedures, that all policies and procedures are in writing and that such policies and procedures are complete and accurate and that the results of the internal review are reported to senior management of the Bank; and

(i) provide for independent testing of compliance with the BSA and "know your customer" policies and procedures to be conducted by qualified, trained and experienced independent third parties, who specialize in this subject matter, who are not in any manner affiliated with the Bank or any of the Bank's subsidiaries or affiliates or any of the Bank's institution-affiliated parties or their related interests or family members, and provide that the results of the internal testing program are to be reported to senior management of the Bank.

Risk Management and Internal Controls

3. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department acceptable written policies and procedures designed to strengthen and maintain the Bank's risk management and internal audit and control functions responsive to the criticisms of current policies and procedures set forth in the Report of Examination, including but not limited to:

(a) Acceptable revised, comprehensive policies and procedures to detect and prevent check kiting at or through the Bank by, among other things, identifying the personnel responsible for the detection and prevention of check kiting, describing the methods to be used to detect and prevent check kiting, and setting appropriate parameters for transactions to be reviewed, taking into consideration all of the monetary instruments through which kiting of any nature may be perpetrated at the Bank, such as checks, wire transfers and the Bank's overseas pouch; and

(b) acceptable written policies and procedures governing the Bank's wire transfer activities.

Violations

4. Within 60 days of this Agreement, the Bank shall correct all violations of federal and state laws and regulations

cited in the Report of Examination and initiate an affirmative compliance program in order to ensure compliance with the provisions of all applicable federal and state laws and regulations and this Agreement.

Affiliate Transactions

5. (a) Without the prior review of the Reserve Bank and the Department, the Bank shall not, directly or indirectly, engage, undertake or, in any manner, participate in any financial transaction with: (i) any person or entity that currently is, or was since December 24, 1991, an affiliate of the Bank or Interbank Holding Company, Miami, Florida ("Interbank"), a registered bank holding company (each, a "PAB Affiliate"); (ii) any person or entity that currently is, or was since December 24, 1991, a related party of Interbank or the Bank (each, a "PAB Related Party"); (iii) a subsidiary of Interbank or the Bank; or (iv) any person that currently is, or was since December 24, 1991, an institution-affiliated party of Interbank or the Bank, or a family member or related interest of such a current or former institution-affiliated party, provided, however, that the family members of an outside director of the Bank shall not be subject to this paragraph. Any transaction submitted for review by the Reserve Bank and the Department shall be described in writing and accompanied by a resolution of the board of directors of the Bank approving such transaction, subject to regulatory review.

(b) For purposes of this Agreement, the terms:

(i) "Financial transaction" shall be defined as (A) the extension of credit or the renewal or modification of any extension of credit, as defined in section 215.3 of Regulation O of the Board of Governors, 12 C.F.R. 215.3, including any overdrafts on either a daylight or overnight basis, (B) the direct or indirect payment, guarantee or confirmation of any obligation, (C) the payment of any service or management fee, (D) the transfer, contribution, purchase or sale of any asset, and (E) the transfer of cash or cash-like instruments; it being understood that such term shall not include the acceptance or payment of deposits and the provision of deposit custody services, nor shall it include transactions with a value of \$25,000 or less per transaction, provided that all transactions for that person or entity in the calendar month do not exceed \$50,000.

(ii) "related party" shall be defined as (A) any person holding an ownership interest in excess of 25 percent of Interbank or the Bank, or any of Interbank's or the Bank's subsidiaries or affiliates, (B) any person, or group of persons acting in concert, that controls, is controlled by, or is under common control with Interbank and the Bank, (C) any family member of any person or group of persons holding an ownership interest in Interbank or the Bank, or any of Interbank's or the

Bank's subsidiaries or affiliates, and (D) any company, partnership, trust or other entity controlled by any person described in paragraphs 5(b)(ii)(A)-(D) hereof.

(iii) "control" shall be defined as the power, directly or indirectly, to (A) vote 25 percent or more of the voting shares of a company, excluding situations in which the stock is controlled in a fiduciary capacity, (B) elect a majority of the directors of a company, or (C) as determined by the Board of Governors or the Department, otherwise exercise a controlling influence over the management and policies of a company.

(iv) "person" shall mean a corporation, unincorporated association, partnership, trust, or any other entity or individual.

(v) "related interest" shall be defined as set forth in section 215.2(n) of Regulation O of the Board of Governors (12 C.F.R. 215.2(n)) and section 658.48(4), Florida Statutes.

(vi) "affiliate" shall be defined as set forth in 12 U.S.C. 371c(b)(1).

(vii) "institution-affiliated party" shall be defined as set forth in sections 3(u) and 8(b)(3) of the FDI Act

(12 U.S.C. 1813(u) and 1818(b)(3)) and section 655.005(1)(i), Florida Statutes, provided that, the term "institution-affiliated party" shall not include any employee or former employee below the level of vice president.

(viii) "outside director" shall be defined as a director who does not serve, and has not at any time since December 24, 1991 served, as an officer or employee of the Bank, provided that, for purposes of this Agreement, Luis A. Ortega shall not be considered an outside director of the Bank.

(ix) "family member" shall include an individual's spouse, parents, siblings, children, nieces and nephews, and the spouses thereof.

(c) Notwithstanding the provisions of this paragraph, the Bank shall not, directly or indirectly, engage, undertake or, in any manner, participate in any financial transaction with Interbank without the prior written approval of the Reserve Bank and the Department.

(d) The Bank shall submit to the Reserve Bank and the Department, within five days of the end of each month following the date of this Agreement, an accurate and complete

list of all affiliates of the Bank, current as of the end of the preceeding month.

Representative or Other Overseas Offices

6. (a) Within 30 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department a written description of the activities conducted by the Bank through its representative or other overseas offices.

(b) The Bank shall conduct its overseas activities, whether through representative offices or otherwise, in compliance with all applicable domestic and foreign laws and regulations, including but not limited to, conducting only permissible activities through such offices.

(c) The Bank shall not establish any new representative or other overseas office without the prior approval of the Reserve Bank and the Department.

(d) Within 30 days of this Agreement, the Bank shall enter into written agreements in the English language with any representative or other overseas office from which it currently receives any services or to which it currently provides any services. No new or expanded services shall be received from or provided to any representative or other overseas office of the Bank prior to the execution of a written agreement reflecting

such services. All such agreements shall be on terms and conditions, including but not limited to, the pricing of services, that are no less favorable to the Bank than those available to the Bank by third parties.

Lending Activities

7. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department acceptable enhanced written loan policies and procedures. The policies and procedures shall include, but not be limited to, the following:

(a) Comprehensive policies, procedures and guidelines for international lending, including but not limited to: (i) specific guidance for loans to companies or individuals resident in countries in which the Bank has a concentration of loans (defined as loans in excess of 25 percent of the Bank's Tier 1 capital plus the Bank's allowance for loan and lease losses); (ii) specific guidance for pre-export financing; (iii) a review of specific country limits in light of the Bank's capital and expected future capital needs; and (iv) guidelines to limit, reduce and monitor concentrations of credit, to any one borrower or category of borrowers or to borrowers in any one country;

(b) procedures and guidelines to ensure the identification of the Bank's ultimate borrowing customer and the ultimate uses of borrowed funds, including but not limited to,

receipt of certifications that funds lent to a named borrower have not been received for the benefit of an unnamed borrower and will be utilized only for the purpose stated in the loan application;

(c) internal loan review procedures designed to promptly identify and categorize problem credits, to reduce the number and severity of classified loans at the Bank and to assess and monitor the overall quality of the Bank's loan portfolio; and

(d) procedures for monitoring compliance with the Bank's loan policies and procedures adopted pursuant to this paragraph 7.

Allowance for Loan Losses

8. Within 60 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department an acceptable written description of the Bank's methodologies for establishing an adequate allowance for loan and lease losses in accordance with the Interagency Policy Statement on the Allowance for Loan and Lease Losses, SR 93-70, dated December 22, 1993.

Charge-Off of Assets Classified "Loss"

9. The Bank shall immediately charge-off 100 percent of all assets or portions of assets classified "Loss" in the Report of Examination which have not been previously charged-off

or collected. "Collected" as used in this paragraph shall not include reductions through use of loan proceeds advanced by the Bank. Unless otherwise approved in writing by the Reserve Bank and the Department, the Bank shall, within 30 days from the receipt of any state or federal report of examination, charge-off 100 percent of all assets classified "Loss".

#### Correspondent Banks

10. Within 30 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department a list of all of the banks with which it has correspondent banking relationships. Within 30 days of this Agreement, and at least annually thereafter, the board of directors shall review the Bank's correspondent banks for credit risk and submit to the Reserve Bank and the Department a list of correspondent banks for the following year. The Bank shall conduct all correspondent banking relationships in compliance with Regulation J of the Board of Governors (12 C.F.R. Part 210).

#### Asset/Liability Committee

11. Within 45 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department acceptable, comprehensive asset/liability management policies and procedures, including but not limited to, policies and procedures for monitoring the Bank's assets and liabilities and establishing an appropriate interest rate and maturity gap range for the Bank.

Brokered Deposits

12. (a) The Bank shall not accept brokered deposits except in compliance with the provisions of section 29 of the FDI Act (12 U.S.C. 1831f). The Bank shall notify the Reserve Bank and the Department if the Bank requests any waiver of the restrictions imposed by section 29 from the Federal Deposit Insurance Corporation (the "FDIC") and shall notify the Reserve Bank and the Department of the FDIC's disposition of any request for such a waiver.

(b) Notwithstanding the provisions of paragraph 12(a) hereof, the Bank shall notify the Reserve Bank and the Department in writing at least 5 days prior to its intent to take any action to accept, solicit or place any brokered deposits and, shall, along with the notification, provide the Reserve Bank and the Department with a written statement regarding its proposed sources and uses of brokered funds. The Reserve Bank or the Department may respond to the Bank regarding objections to use any such brokered funds and may require appropriate corrective action.

Capital Plan

13. Within 30 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department an acceptable written plan to maintain an adequate capital position. The plan shall, at a minimum, address and consider:

(a) The Bank's current and future capital requirements, including compliance with the Capital Adequacy Guidelines of the Board of Governors for State Member Banks: Risk Based Measures and Tier 1 Leverage Measures (12 C.F.R. Part 208, Apps. A and B);

(b) the volume and trends of the Bank's adversely classified assets;

(c) the Bank's anticipated levels of retained earnings; and

(d) the source and timing of additional funds to fulfill the future capital and loan loss reserve requirements set forth in this Agreement.

Strategic Planning

14. Within 90 days of this Agreement, the Bank shall submit to the Reserve Bank and the Department a written business plan and budgets, approved by the Bank's board of directors, concerning the Bank's proposed business activities for the 1997 and 1998 fiscal years. This plan shall contain provisions that address the requirements of this Agreement and, at a minimum, include:

(a) Financial performance objectives, including plans for earnings, improvement of the Bank's earning asset base and net interest margin, liquidity (taking into consideration the level of the Bank's involvement in the provision of custodial services to third parties) and capital, supported by detailed, quarterly pro forma financial statements;

(b) a complete analysis of the Bank's overhead expenses, including receipt and review of budgets for each of the Bank's representative offices, with a complete description of the steps to be taken to reduce overhead expenses to peer levels or below;

(c) the anticipated business of the Bank in both the domestic and international loan and deposit markets; and

(d) quarterly review of and necessary revision to the strategic plan.

#### Management Review

15. Within 60 days of this Agreement, the board of directors of the Bank shall conduct and complete a review of the management and personnel responsible for international activities directly reporting to the chief executive officer and shall forward to the Reserve Bank and the Department written findings and conclusions of the management review along with any changes

that may be proposed as a result of the review. The review shall focus on an assessment of the duties performed by each of the officers or employees and the ability of that person to perform competently his or her assigned duties.

Officer/Director Notification

16. During the term of this Agreement, or as otherwise required by law, the Bank shall comply with the provisions of section 32 of the FDI Act (12 U.S.C. 1831i) and Subpart H of Regulation Y of the Board of Governors (12 C.F.R. Part 225, Subpart H), and section 655.0385, Florida Statutes, with respect to the appointment of any new directors or the hiring or promotion of any senior executive officers.

Submission of Plans, Policies, Procedures and Programs

17. The plans, policies, procedures and programs required by paragraphs 2, 3, 7, 8, 11, 13 and 14 hereof shall be submitted to the Reserve Bank and the Department for review and approval. Acceptable plans, policies, procedures and programs shall be submitted to the Reserve Bank and the Department within the required time periods. The Bank shall adopt the approved plans, policies, procedures and programs within 10 days of approval by the Reserve Bank and the Department and then shall fully comply with them. During the term of this Agreement, the approved plans, policies, procedures and programs shall not be

amended or rescinded without the prior written approval of the Reserve Bank and the Department.

Progress Reports

18. Within 30 days after the end of each calendar quarter (December 31, March 31, June 30 and September 30) following the date of this Agreement, the Bank shall furnish to the Reserve Bank and the Department written progress reports detailing the form and manner of all actions taken to secure compliance with this Agreement and the results thereof. Such reports may be discontinued when the corrections required by this Agreement have been accomplished and the Reserve Bank and the Department have, in writing, released the Bank from making further reports.

Communications

19. All communications regarding this Agreement shall be sent to:

- (a) Mr. Marion P. Rivers, III  
Assistant Vice President  
Federal Reserve Bank of Atlanta  
104 Marietta Street, N.W.  
Atlanta, Georgia 30303
  
- (b) Ms. Linda R. Townsend  
Chief, Bureau of Financial Institutions  
Division of Banking  
Office of the Comptroller  
State of Florida  
101 East Gaines Street, Suite 636  
Tallahassee, Florida 32399

(c) Mr. Hans C. Mueller  
Chief Executive Officer  
The Pan American Bank  
888 Brickell Avenue  
Miami, Florida 33131

Miscellaneous Provisions

20. This Agreement shall be binding on the Bank and each of its institution-affiliated parties in their capacities as such, and their successors and assigns.

21. This Agreement shall remain in full force and effect, except to the extent that, and until such time as, any provision of this Agreement shall have been stayed, modified, terminated or suspended by the Board of Governors and the Department.

22. Notwithstanding any provision of this Agreement to the contrary, the Reserve Bank and the Department may, in their sole discretion, grant written extensions of time to the Bank to comply with any provision of this Agreement.

23. The provisions of this Agreement shall not bar, estop or otherwise prevent the Board of Governors, the Reserve Bank, the Department or any federal or state agency or department, from taking any other action affecting the Bank, or its successors or assigns, or any of its current or former institution-affiliated parties, except with respect to the matters addressed in the Board of Governors's and the

Department's outstanding administrative proceedings against the Bank.

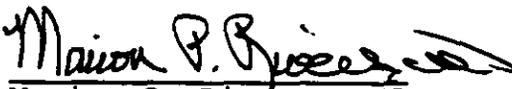
24. This Agreement is a "written agreement" for the purposes of section 8 of the FDI Act (12 U.S.C. 1818).

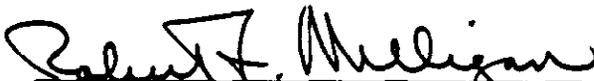
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed this 13th day of January 1997.

The Pan American Bank, Miami, Florida

By   
Hans C. Mueller  
President and Chief Executive  
Officer

Federal Reserve Bank of Atlanta

By   
Marion P. Rivers, III  
Assistant Vice President

  
ROBERT F. MILLIGAN, as Comptroller  
of the State of Florida and head  
of the Department of Banking and  
Finance