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Comptroller of the Currency  
Administrator of National Banks

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Northeastern District Office  
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New York, N.Y. 10036

Licensing Division  
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## **Conditional Approval #611 December 2003**

November 18, 2003

Mr. Anthony Costa  
Empire State Bank, N.A. (Proposed)  
2044 Route 32, Suite 6  
Modena, New York 12548

Re: Empire State Bank, N.A. (Proposed)  
CAIS Control Number 2003-NE-01-010

Dear Mr. Costa:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national bank with the title of Empire State Bank, National Association. On November 18, 2003, the OCC granted preliminary conditional approval of your charter application after a determination that your proposal met certain regulatory and policy requirements.

This preliminary conditional approval is granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the application and by the Bank's representatives. We also made our decision to grant preliminary conditional approval with the understanding that the proposed Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC).

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until all preopening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this preliminary conditional approval should the OCC deem any interim development to warrant such action.

This preliminary conditional approval is subject to the following condition:

1. The Bank: (i) shall give the New York Field Office at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from its business plan or operations<sup>1</sup> and (ii) shall obtain the OCC's written determination of no objection before the Bank engages in any significant deviation or change from its business plan or operations. For the first three years of operation, the Bank also must provide a copy of such written notice to the FDIC's New York Regional Office.

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<sup>1</sup> If such deviation is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

This condition of approval is a condition "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818. As such, the condition is enforceable under 12 USC 1818.

The Bank's initial paid-in capital, net of all organizational and preopening expenses, shall be no less than \$11 million. The manner in which capital is raised must not deviate from that described in the business plan without prior written OCC notification. If the capital for the Bank is not raised within 12 months or if the Bank is not opened for business within 18 months from the preliminary conditional approval date, this approval expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances and when the OCC determines that the delay is beyond the applicant's control. The organizers are expected to proceed diligently, consistent with their application, for the Bank to open for business as soon as possible.

The OCC poses no objection to the following persons serving as executive officers, directors, and/or organizers as proposed in the application:

<b>Anthony P. Costa</b>	<b>Organizer, Chairman, and Chief Executive Officer</b>
<b>Leslie M. Apple</b>	<b>Organizer, Director</b>
<b>William W. Davenport</b>	<b>Organizer, Director</b>
<b>Peter B. Ferrante</b>	<b>Organizer, Director</b>
<b>Andrew G. Finkelstein</b>	<b>Organizer, Director</b>
<b>Gale L. Foster</b>	<b>Organizer, Director</b>
<b>David Freer Jr.</b>	<b>Organizer, Vice Chairman</b>
<b>Philip Guarnieri</b>	<b>Organizer, President, Chief Operating Officer, Director</b>
<b>Harold L. Kahn</b>	<b>Organizer, Director</b>
<b>David N. Mesches</b>	<b>Organizer, Director</b>
<b>Albert Pagano</b>	<b>Organizer, Director</b>
<b>Peter J. Savago</b>	<b>Organizer, Director</b>
<b>Roderick O. Dressel</b>	<b>Organizer</b>
<b>Theresa Guarnieri</b>	<b>Organizer</b>
<b>J.A. Klein</b>	<b>Organizer</b>
<b>Michael Ostrow</b>	<b>Organizer, Director</b>
<b>David K. Roehrs</b>	<b>Organizer</b>
<b>Richard B. Rowley</b>	<b>Organizer</b>
<b>George Sifre</b>	<b>Organizer</b>
<b>Emil Mian</b>	<b>SVP, Chief Credit Officer</b>
<b>Richard Rooney</b>	<b>SVP, Chief Financial Officer/Chief Technology Officer</b>
<b>Branca Gatto</b>	<b>SVP, Operations, Mortgage Division</b>

Prior to the Bank's opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers or executive officers, or directors appointed or elected before the person assumes the position. For a two-year period after the Bank commences business, the Bank must file an Interagency Biographical and Financial Report with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

Some of the background checks requested by the OCC with respect to the above named individuals have not been received yet. Accordingly, the continued service of these individuals will be dependent on satisfactory completion of the background investigation process.

The "Corporate Organization" booklet in the *Comptroller's Licensing Manual* provides guidance

for organizing your bank. The booklet is located at the OCC's web site: [www.occ.treas.gov/corpbook/group1/public/pdf/corporg.pdf](http://www.occ.treas.gov/corpbook/group1/public/pdf/corporg.pdf). The booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward Articles of Association and the Organization Certificate to Kerry Rice, Licensing Analyst in this office for our review and acceptance. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval. The Bank may not begin the business of banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

After reading the instructions for the organization of a new national bank, it is suggested that the spokesperson or other designated representative consult with Kerry Rice, Licensing Analyst at (212) 790-4055 to discuss the organization process. The OCC believes that such a meeting can contribute to a more efficient and effective organization process and help avoid common mistakes that have delayed or prevented other banks from opening.

Enclosed are standard requirements and minimum policies and procedures for new national banks. The Bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

In addition to the standard requirements for all new national banks, the following special requirements must be satisfied prior to the Bank's request for a preopening examination and before the OCC will grant final charter approval:

1. The Bank shall obtain and implement an interest rate risk ("IRR") model that will assist in providing ongoing analysis of the impact of IRR before and after transactions are consummated.
2. The Bank shall revise its IRR policy to include a description of the modeling program that will be utilized, IRR controls and limits, and contingency funding plans.
3. The OCC will review Atlantic States Mortgage Company to ensure no irregularities have occurred and the purchase value is still appropriate, given any changes in activity during the "in organization" phase of the bank.

We understand that the Bank plans a transactional web site during the first year of operation. Prior to commencing this activity, the Bank must submit to the New York Field Office for review, and prior written determination of no supervisory objection, a complete description of the Bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items:

- Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

The Bank must have performed an independent security review and test of its electronic banking platform. The Bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the Bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirements listed herein. The review must be conducted by an objective, qualified independent source (Reviewer). The scope should cover:

- All access points, including the Internet, Intranet, or remote access.
- The adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access.

By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, see "The Internet and the National Bank Charter" booklet of the *Comptroller's Licensing Manual*, sections "Risk Considerations -- Information System Security" and "Appendix A: Sample Business Guidelines - Records, Systems, and Controls." The booklet is located at the Electronic Banking section of the OCC's web site: [www.occ.treas.gov/netbank/letters.htm](http://www.occ.treas.gov/netbank/letters.htm).

The Bank must have a security program in place that complies with the "Interagency Guidelines Establishing Standards for Safeguarding Customer Information" specified at 12 CFR 30, Appendix B.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the Comptroller's Licensing Manual, which is available only in electronic form at our web site: <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

This preliminary conditional approval 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 (U.S.), any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

Direct any questions concerning this preliminary conditional approval to Kerry Rice, Licensing Analyst at (212) 790-4055.

Sincerely,

*/s/ Anthony P. DosSantos*

Anthony P. DosSantos  
Licensing Manager

Enclosures: Standard Requirements  
Minimum Policies and Procedures