

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of:)	
MICHAEL R. SAPP, individually	)	NOTICE OF INTENTION TO PRO-
and as an institution-affiliated	)	HIBIT FROM FURTHER PARTICI-
party of	)	PATION, AND NOTICE OF AS-
TENNESSEE COMMERCE BANK	)	SESSMENT OF CIVIL MONEY
FRANKLIN, TENNESSEE	)	PENALTY, FINDINGS OF FACT
(INSURED STATE NONMEMBER BANK)	)	AND CONCLUSIONS OF LAW, OR-
	)	DER TO PAY, AND NOTICE OF
	)	HEARING
)	
	)	FDIC-13-477(e)
	)	FDIC-13-478(k)
)	
)	

The Federal Deposit Insurance Corporation ("FDIC") has determined that MICHAEL R. SAPP ("Respondent"), as an institution-affiliated party of Tennessee Commerce Bank, Franklin, Tennessee ("Bank"), engaged in violations of law and/or unsafe or unsound banking practices, and/or acts, omissions or practices which constitute breaches of his fiduciary duty as the President, Chief Executive Officer, and as a Director of the Bank; that the Bank has suffered financial loss or other damage, that the interests of the Bank's depositors have been or could be prejudiced; and that such practices and/or breaches of fiduciary duty demonstrate Respondent Sapp's personal dishonesty and/or his willful and/or continuing disregard for the safety or soundness of the Bank.

Further, the FDIC has determined that Respondent's reckless, unsafe or unsound practices and/or breaches of his fiduciary duty were part of a pattern of misconduct and/or caused more than a minimal loss to the Bank.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against the Respondent pursuant to the provisions of section 8(e) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e), prohibiting Respondent from further participation in the conduct of the affairs of any insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

Further, the FDIC institutes this proceeding for the assessment of a civil money penalty against Respondent pursuant to the provisions of section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, AND NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("NOTICE") pursuant to the provisions of section 8(e) of the Act, 12 U.S.C. § 1818(e),

section 8(i) of the Act, 12 U.S.C. § 1818(i), and Part 308 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308, and alleges as follows:

I.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the State of Tennessee, having its principal place of business in Franklin, Tennessee.

2. At all times pertinent to the charges herein, the Bank was an insured State nonmember bank, as defined in section 3(e) of the Act, 12 U.S.C. § 1813(e), and, as such, was subject to the Act, 12 U.S.C. § 1811 *et seq.*, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Tennessee.

3. On January 27, 2012, the Bank was closed by the Tennessee Department of Financial Institutions and placed into FDIC receivership.

4. At all times pertinent to the charges herein, the Bank was wholly owned by Tennessee Commerce Bancorp, Inc. ("Holding Company"), a one-bank holding company.

5. At all times pertinent to the charges herein, the Holding Company was an affiliate of the Bank as defined in 12 U.S.C. § 371c(b)(1)(A).

6. At all times pertinent to the charges herein, Tennessee Commerce Commercial Asset Services, Inc. ("CAS") was wholly owned by the Holding Company.

7. At all times pertinent to the charges herein, CAS was an affiliate of the Bank as defined in 12 U.S.C. § 371c(b)(1)(A).

8. At all times pertinent to the charges herein, the Bank owned a 50 percent interest in Landmark Consulting, LLC, a Tennessee Limited Liability Company ("Landmark").

9. At all times pertinent to the charges herein, Landmark was an affiliate of the Bank as defined in 12 U.S.C. § 371c(e).

10. At all times pertinent to the charges herein, Respondent was an "institution-affiliated party" of the Bank as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e) and 8(i) of the Act, 12 U.S.C. § 1818(e) and 1818(i).

11. The FDIC is the "appropriate Federal banking agency" with respect to the Bank within the meaning of section 3(q)(3) of the Act, 12 U.S.C. § 1813(q)(3).

12. At all times pertinent to the charges herein, the FDIC maintained jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

II.

HISTORY AND ORGANIZATION

13. Tennessee Commerce Bank received its deposit insurance and opened for business on January 14, 2000. The Bank had its headquarters in Franklin, Tennessee. The Bank had no branches.

14. The Bank failed on January 27, 2012, at which time it had total assets of approximately \$1.0 billion.

15. Throughout its existence, the Bank pursued a business strategy of rapid asset growth, with an emphasis on Commercial and Industrial loans ("Commercial Loans"), made to companies and individuals involved in the transportation industry. Many of these loans were used to purchase trucks, busses, and other commercial use vehicles.

III.

ACTIONABLE CONDUCT

A.

Using Bank funds, Respondent engaged in, caused, or allowed violations of law and a series of unsafe and unsound actions designed to conceal the Bank's losses on the Diversified Financial Resources, Inc. and DDI Leasing, Inc. Loans

Background

16. One of the Bank's loan customers was Diversified Financial Resources, Inc. ("Diversified").

17. Diversified was a leasing company that, among other

things, purchased manufacturing equipment and leased it to manufacturers.

18. One of Diversified's commercial customers was Wildwood Industries, Inc. ("Wildwood Industries").

19. The principal owner of Wildwood Industries was Gary Kenneth Wilder ("Gary Wilder").

20. Gary Wilder was married to Toni Jo Wilder (Toni Wilder").

21. On or about September 25, 2006, Wildwood Industries, (as Lessee) and Diversified (as Lessor) entered into General Equipment Lease 06-412L ("Diversified Equipment Lease").

22. The Diversified Equipment Lease was unconditionally guaranteed by Gary Wilder and Toni Wilder.

23. On December 15, 2006, the Bank originated Loan #9388 in the amount of \$931,423.40 to Diversified ("Diversified Loan 9388").

24. Diversified Loan 9388 was extended without recourse to Diversified.

25. The proceeds of Diversified Loan 9388 were used to purchase and lease to Wildwood Industries a Synthetic Highend Filtration Media Laminator-Pleater for Highend Furnace. Serial/VIN: # 2006-0101 ("Loan 9388 Equipment").

26. Diversified Loan 9388 was secured by a Security Agreement ("Loan 9388 Security Agreement") dated December 15,

2006, between Diversified and the Bank.

27. The collateral pledged under the Loan 9388 Security Agreement was: (i) Loan 9388 Equipment, (ii) the Diversified Equipment Lease and (iii) all lease payments due to Diversified from Wildwood Industries related to the Loan 9388 Equipment.

28. On December 18, 2006, the Bank originated Loan #9389 in the amount of \$517,774.60 to Diversified ("Diversified Loan 9389").

29. Diversified Loan 9389 was extended without recourse to Diversified.

30. The proceeds of Diversified Loan 9389 were used to purchase and lease to Wildwood Industries a Hudson Automated Pleating Finish Line with Computer Cut to Length Processing System. Serial: # 2006-0102 ("Loan 9389 Equipment").

31. Diversified Loan 9389 was secured by a Security Agreement ("Loan 9389 Security Agreement") dated December 18, 2006, between Diversified and the Bank.

32. The collateral pledged under the Loan 9389 Security Agreement was (i) the Loan 9389 Equipment, (ii) the Diversified Equipment Lease and (iii) all lease payments due to Diversified from Wildwood Industries related to the Loan 9389 Equipment.

33. On December 18, 2006, the Bank originated Loan #9392

in the amount of \$517,774.60 to Diversified ("Diversified Loan 9392").

34. The proceeds of Diversified Loan 9392 were used to purchase and lease to Wildwood Industries a Hudson Automated Pleating Finish Line with Computer Cut to Length Processing System. Serial: # 2006-0104 ("Loan 9392 Equipment").

35. Diversified Loan 9392 was extended without recourse to Diversified.

36. Diversified Loan 9392 was secured by a Security Agreement ("Loan 9392 Security Agreement") dated December 18, 2006, between Diversified and the Bank.

37. The collateral pledged under the Loan 9392 Security Agreement was (i) the Loan 9392 Equipment, (ii) the Diversified Equipment Lease and (iii) all lease payments due to Diversified from Wildwood Industries related to the Loan 9392 Equipment.

38. On March 14, 2007, the Bank originated Loan #10006 in the amount of \$1,567,263.85 to Diversified ("Diversified Loan 10006").

39. The proceeds of Diversified Loan 10006 were used to purchase and lease to Wildwood Industries a Hudson Production System for Synthetic Reinforced Media for Vacuum Bag Production. Serial: # 2007-0017 ("Loan 10006 Equipment").

40. Diversified Loan 10006 was extended without recourse

to Diversified.

41. Diversified Loan 10006 was secured by a Security Agreement ("Loan 10006 Security Agreement") dated March 14, 2007, between Diversified and the Bank.

42. The collateral pledged under the Loan 10006 Security Agreement was (i) the Loan 10006 Equipment, (ii) the Diversified Equipment Lease and (iii) all lease payments due to Diversified from Wildwood Industries related to the Loan 10006 Equipment.

43. On or about October 19, 2007, the Bank sold a 100% Participation in Diversified Loan 10006 to Peoples State Bank of Commerce ("Peoples State Bank"), Nolensville, Tennessee ("Peoples State Bank Loan 10006 Participation Purchase").

44. The Bank continued to service Diversified Loan 10006 on behalf of Peoples State Bank after the Peoples State Bank Loan 10006 Participation Purchase.

45. Another Bank loan customer was DDI Leasing, Inc. ("DDI").

46. DDI was a leasing company that, among other things, purchased manufacturing equipment and leased it to manufacturers.

47. One of DDI's commercial customers was Wildwood Industries.

48. On or about May 21, 2007, Wildwood Industries, (as

Lessee) and DDI (as Lessor) entered into Master Equipment Lease TSM02136NE ("DDI Equipment Lease").

49. The DDI Equipment Lease was unconditionally guaranteed by Gary Wilder and Toni Wilder.

50. On May 23, 2007, the Bank originated Loan #10536 in the amount of \$1,367,762.11 to DDI ("DDI Loan 10536").

51. DDI Loan 10536 was extended without recourse to DDI.

52. The proceeds of DDI Loan 10536 were used to purchase and lease to Wildwood Industries a Hudson Production System for Reinforced Gussetted and Laminated Industrial Vacuum Bags. **Serial: # 2007-0028** ("Loan 10536 Equipment").

53. DDI Loan 10536 was secured by a Security Agreement ("Loan 10536 Security Agreement") dated May 23, 2007, between DDI and the Bank.

54. The collateral pledged under the Loan 10536 Security Agreement was: (i) Loan 10536 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 10536 Equipment.

55. On May 30, 2007, the Bank originated Loan #10592 in the amount of \$1,324,464.41 to DDI ("DDI Loan 10592").

56. DDI Loan 10592 was extended without recourse to DDI.

57. The proceeds of DDI Loan 10592 were used to purchase and lease to Wildwood Industries a Hudson Tri-Lock Inner Kraft Paper Laminating For Wear Sheet Production. **Serial: # 2007-**

0035 ("Loan 10592 Equipment").

58. DDI Loan 10592 was secured by a Security Agreement ("Loan 10592 Security Agreement") dated May 30, 2007, between DDI and the Bank.

59. The collateral pledged under the Loan 10592 Security Agreement was: (i) Loan 10592 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 10592 Equipment.

60. On or about June 1, 2007, the Bank sold a 100% Participation Interest in DDI Loan 10592 to Tennessee Bank & Trust ("TB&T"), a division of Farmers Bank & Trust, Blytheville, Arkansas ("TB&T Participation Purchase").

61. The Bank continued to service DDI Loan 10592 on behalf of TB&T after the TB&T Participation Purchase.

62. On June 7, 2007, the Bank originated Loan #10660 in the amount of \$882,754.18 to DDI ("DDI Loan 10660").

63. DDI Loan 10660 was extended without recourse to DDI.

64. The proceeds of DDI Loan 10660 were used to purchase and lease to Wildwood Industries a Vacuum Bag Converting Line With Square Bottom Capability. Serial: # 2007-0229 ("Loan 10660 Equipment").

65. DDI Loan 10660 was secured by a Security Agreement ("Loan 10660 Security Agreement") dated June 7, 2007, between DDI and the Bank.

66. The collateral pledged under the Loan 10660 Security Agreement was: (i) Loan 10660 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 10660 Equipment.

67. On or about June 18, 2007, the Bank sold a 100% Participation Interest in DDI Loan 10660 to Peoples State Bank ("Peoples State Bank Loan 10660 Participation Purchase").

68. The Bank continued to service DDI Loan 10660 on behalf of Peoples State Bank after the Peoples State Bank 10660 Loan Participation Purchase.

69. On June 7, 2007, the Bank originated Loan #10661 in the amount of \$1,230,507.31 to DDI ("DDI Loan 10661").

70. DDI Loan 10661 was extended without recourse to DDI.

71. The proceeds of DDI Loan 10661 were used to purchase and lease to Wildwood Industries a Double Wall Laminated Kraft Paper Refuse Container manufacturing System With Inline Return Collar Folding Components. Serial: # 2007-0033 ("Loan 10661 Equipment").

72. DDI Loan 10661 was secured by a Security Agreement ("Loan 10661 Security Agreement") dated June 7, 2007, between DDI and the Bank.

73. The collateral pledged under the Loan 10661 Security Agreement was: (i) Loan 10661 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wild-

wood Industries related to the Loan 10661 Equipment.

74. On June 7, 2007, the Bank originated Loan #10662 in the amount of \$909,496.93 to DDI ("DDI Loan 10662").

75. DDI Loan 10662 was extended without recourse to DDI.

76. The proceeds of DDI Loan 10662 were used to purchase and lease to Wildwood Industries a Fiber Glass Furnace Filter Assembly Line With Shanklin Shrink Tool. Serial: # 2007-0238 ("Loan 10662 Equipment").

77. DDI Loan 10662 was secured by a Security Agreement ("Loan 10662 Security Agreement") dated June 7, 2007, between DDI and the Bank.

78. The collateral pledged under the Loan 10662 Security Agreement was: (i) Loan 10662 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 10662 Equipment.

79. On or about June 15, 2007, the Bank sold a 100% Participation Interest in DDI Loan 10662 to CedarStone Bank ("CedarStone Bank Loan 10662 Participation Purchase").

80. The Bank continued to service DDI Loan 10662 on behalf of CedarStone Bank after the CedarStone Bank 10662 Loan Participation Purchase.

81. On August 24, 2007, the Bank originated Loan #11152 in the amount of \$1,159,721.89 to DDI ("DDI Loan 11152").

82. DDI Loan 11152 was extended without recourse to DDI.

83. The proceeds of DDI Loan 11152 were used to purchase and lease to Wildwood Industries a Hudson Inline Production System for Gusseted Lined Fine Filtration Vacuum Bags. Serial: # 2007-0060 ("Loan 11152 Equipment").

84. DDI Loan 11152 was secured by a Security Agreement ("Loan 11152 Security Agreement") dated August 24, 2007, between DDI and the Bank.

85. The collateral pledged under the Loan 11152 Security Agreement was: (i) Loan 11152 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11152 Equipment.

86. On August 24, 2007, the Bank originated Loan #11153 in the amount of \$1,317,867.96 to DDI ("DDI Loan 11153").

87. DDI Loan 11153 was extended without recourse to DDI.

88. The proceeds of DDI Loan 11153 were used to purchase and lease to Wildwood Industries a Hudson Inline Tri-Lock Converting System. Serial: # 2007-0058 ("Loan 11153 Equipment").

89. DDI Loan 11153 was secured by a Security Agreement ("Loan 11153 Security Agreement") dated August 24, 2007, between DDI and the Bank.

90. The collateral pledged under the Loan 11153 Security Agreement was: (i) Loan 11153 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11153 Equipment.

91. On August 24, 2007, the Bank originated Loan #11154 in the amount of \$959,387.53 to DDI ("DDI Loan 11154").

92. DDI Loan 11154 was extended without recourse to DDI.

93. The proceeds of DDI Loan 11154 were used to purchase and lease to Wildwood Industries a Hudson Fiber Glass Furnace Filter Production Line. **Serial:** # 2007-0057 ("Loan 11154 Equipment").

94. DDI Loan 11154 was secured by a Security Agreement ("Loan 11154 Security Agreement") dated August 24, 2007, between DDI and the Bank.

95. The collateral pledged under the Loan 11154 Security Agreement was: (i) Loan 11154 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11154 Equipment.

96. On October 29, 2007, the Bank originated Loan #11779 in the amount of \$1,266,661.15 to DDI ("DDI Loan 11779").

97. DDI Loan 11779 was extended without recourse to DDI.

98. The proceeds of DDI Loan 11779 were used to purchase and lease to Wildwood Industries a Hudson Tube Style Bag Machine. **Serial:** # 2007-0072 ("Loan 11779 Equipment").

99. DDI Loan 11779 was secured by a Security Agreement ("Loan 11779 Security Agreement") dated October 29, 2007, between DDI and the Bank.

100. The collateral pledged under the Loan 11779 Security

Agreement was: (i) Loan 11779 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11779 Equipment.

101. On October 29, 2007, the Bank originated Loan #11781 in the amount of \$1,055,518.92 to DDI ("DDI Loan 11781").

102. DDI Loan 11781 was extended without recourse to DDI.

103. The proceeds of DDI Loan 11781 were used to purchase and lease to Wildwood Industries a Hudson HVAC Fiberglass Production Line. **Serial:** # 2007-0074 ("Loan 11781 Equipment").

104. DDI Loan 11781 was secured by a Security Agreement ("Loan 11781 Security Agreement") dated October 29, 2007, between DDI and the Bank.

105. The collateral pledged under the Loan 11781 Security Agreement was: (i) Loan 11781 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11781 Equipment.

106. On October 29, 2007, the Bank originated Loan #11782 in the amount of \$1,055,518.92 to DDI ("DDI Loan 11782").

107. DDI Loan 11782 was extended without recourse to DDI.

108. The proceeds of DDI Loan 11782 were used to purchase and lease to Wildwood Industries a Hudson HVAC Fiberglass Production Line. **Serial:** # 2007-0076 ("Loan 11782 Equipment").

109. DDI Loan 11782 was secured by a Security Agreement ("Loan 11782 Security Agreement") dated October 29, 2007, be-

tween DDI and the Bank.

110. The collateral pledged under the Loan 11782 Security Agreement was: (i) Loan 11782 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11782 Equipment.

111. On or about November 21, 2007, the Bank sold a 100% Participation Interest in DDI Loan 11782 to Legends Bank ("Legends Bank Loan 11782 Participation Purchase").

112. The Bank continued to service DDI Loan 11782 on behalf of Legends Bank after the Legends Bank 11782 Loan Participation Purchase.

113. On October 29, 2007, the Bank originated Loan #11783 in the amount of \$1,319,422.68 to DDI ("DDI Loan 11783").

114. DDI Loan 11783 was extended without recourse to DDI.

115. The proceeds of DDI Loan 11783 were used to purchase and lease to Wildwood Industries a Hudson Tube Style Bag Machine. **Serial:** # 2007-0079 ("Loan 11783 Equipment").

116. DDI Loan 11783 was secured by a Security Agreement ("Loan 11783 Security Agreement") dated October 29, 2007, between DDI and the Bank.

117. The collateral pledged under the Loan 11783 Security Agreement was: (i) Loan 11783 Equipment, (ii) the DDI Equipment Lease and (iii) all lease payments due to DDI from Wildwood Industries related to the Loan 11783 Equipment.

118. On or about November 21, 2007, the Bank sold a 100% Participation Interest in DDI Loan 11783 to Legends Bank ("Legends Bank Loan 11783 Participation Purchase").

119. The Bank continued to service DDI Loan 11783 on behalf of Legends Bank after the Legends Bank 11783 Loan Participation Purchase.

120. Diversified Loan 9388, Diversified Loan 9389, Diversified Loan 9392, Diversified Loan 10006, DDI Loan 10536, DDI Loan 10592, DDI Loan 10660, DDI Loan 10661, DDI Loan 10662, DDI Loan 11152, DDI Loan 11153, DDI Loan 11154, DDI Loan 11779, DDI Loan 11781, DDI Loan 11782, and DDI Loan 11783 shall hereinafter be collectively referred to as the "Wildwood Asset Loans".

121. While DDI or Diversified was the borrower on each of the loan transactions listed above, the Bank's only recourse under each of the loans was to the equipment being leased to Wildwood Industries, Inc.; the lease payments owed under the DDI Equipment Lease or the Diversified Equipment Lease; and the right to pursue either Gary Wilder or Toni Wilder as guarantors of the Wildwood Industries equipment leases.

122. Wildwood Industries failed to make Lease payments due on the Diversified Equipment Lease due on October 1, 2008.

123. Wildwood Industries failed to make Lease payments due on the DDI Equipment Lease due on October 1, 2008.

124. As a result of Wildwood Industries' failure to make the lease payments due October 1, 2008 under both the DDI Equipment Lease and the Diversified Equipment Lease, the Wildwood Asset Loans became past due.

125. Wildwood Industries did not make any regularly scheduled monthly payments on the Wildwood Asset Loans after September 2008.

126. On or about January 7, 2009, the Bank sent Wildwood Industries and Gary and Toni Wilder a "Default and Demand" letter.

127. On or about March 3, 2009 the Bank placed all Wildwood Asset Loans on nonaccrual.

128. On March 5, 2009, Wildwood Industries was placed into involuntary bankruptcy by a group of creditors.

129. By email dated April 10, 2009, the Bank's counsel reported to Bank Officer Thomas Crocker ("Crocker") that the security for the Wildwood Asset Loans might be non-existent and said: "Looks like a lot of potential fraud. We should know more next week."

130. Crocker forwarded the Attorney's email to Respondent.

131. On April 15, 2009 attorneys for the Wildwood Bankruptcy creditors informed all Lenders, including the Bank, that "everyone on this list for the purposes of this discus-

sion should consider their clients unsecured."

132. At the time the Bank's counsel informed the Bank that it was essentially an unsecured creditor in the Wildwood Industries bankruptcy, the Bank was owed approximately \$13,920,097 on the Wildwood Asset Loans, with a "net" exposure (after subtracting the participation interests in the Wildwood Industries Loans previously sold by the Bank to other financial institutions) of approximately \$8,300,000.

133. On or about April 17, 2009, Gary Wilder and Toni Wilder, the only guarantors of the Wildwood Asset Loans, were placed into involuntary bankruptcy by a group of creditors ("Wilder Bankruptcy").

134. Based on the schedules filed by the guarantors in their bankruptcy petition, little, if any, monetary support was expected from the guarantors on the Wildwood Asset Loans.

135. Despite overwhelming evidence the Wildwood Asset Loans were severely impaired, Respondent caused or allowed the Bank to only charge off \$3,000,000 of the \$8,300,000 principal balance of the Wildwood Asset Loans owned by the Bank in May 2009.

136. Between May 31, 2009, and July 1, 2009, the Bank made an additional \$1,500,000 special provision to the Bank's Allowance for Loans and Lease Losses Account related to the Wildwood Asset Loans.

The Scheme

137. Faced with charging off most, or all, of the remaining approximately \$4,300,000 principal balance of the Wildwood Asset Loans, Respondent engaged in, and/or caused or allowed employees of the Bank to engage in a series of unsafe and unsound actions, entailing violations of law and/or regulation, that were designed to conceal the Bank's true exposure on the Wildwood Asset Loans and to deceive the Bank's Board, as well as State and Federal bank regulators.

138. At the time the Wildwood Asset Loans were made, none were secured by Life Insurance on the life of Gary Wilder.

139. At the time the Wildwood Asset Loans went into default, none were secured by Life Insurance insuring the life of Gary Wilder.

140. After Wildwood Industries was placed into bankruptcy, and the Wilder Bankruptcy commenced, Respondent learned that Gary Wilder was the insured on five large life insurance policies totaling approximately \$64,000,000.

141. One of the five policies insuring the life of Gary Wilder was issued by American General Life Companies and was in the amount of \$24,000,000 ("\$24,000,000 Wilder Term Life Insurance Policy").

142. American General Life Companies was only obligated to pay the \$24,000,000 if the \$24,000,000 Wilder Term Life In-

insurance Policy was in effect at the time of Gary Wilder's death.

143. Respondent also learned that Gary Wilder was suffering from tongue cancer and his prognosis allegedly was not good.

144. On or about May 4, 2009, Respondent caused or allowed the Bank to wire \$69,846.05 to American General Life Companies to pay the quarterly premium due on the \$24,000,000 Wilder Term Life Insurance Policy. At the time the Bank made this payment, the Bank was not obligated to pay the premiums on any of the policies insuring the life of Gary Wilder.

145. On September 22, 2009, the Trustee in the Wilder Bankruptcy began the auction process to auction to the highest bidder the \$24,000,000 Wilder Term Life Insurance Policy.

146. On September 26, 2009, Respondent caused or allowed the Bank to bid \$2,510,000 to purchase the \$24,000,000 Wilder Term Life Insurance Policy. At the time Respondent caused or allowed the Bank to bid \$2,510,000 to purchase the \$24,000,000 Wilder Term Life Insurance Policy, Respondent knew or should have known that FDIC approval was required prior to making this type of investment. Respondent did not obtain FDIC's consent to make this investment.

147. The Bank was the successful bidder for the \$24,000,000 Wilder Term Life Insurance Policy.

148. On September 30, 2009, the Bank notified its attorneys at Waller Lansden Dortch & Davis, LLP ("Waller Lansden") that it had won the bidding for the \$24,000,000 Wilder Term Life Insurance Policy.

149. On October 1, 2009, Waller Lansden notified the Bank that it could not purchase the \$24,000,000 Wilder Term Life Insurance Policy without first obtaining the FDIC's approval or the Bank would be in violation of 12 C.F.R. Part 362.

150. Despite the warning not to proceed by Waller Lansden, on October 9, 2009, a motion to approve the sale of the \$24,000,000 Wilder Term Life Insurance Policy was filed with the Court handling the Wilder Bankruptcy.

151. Simultaneously with the filing of the October 9, 2009, Motion to approve the sale of the \$24,000,000 Wilder Term Life Insurance Policy to the Bank, Respondent caused or allowed the Bank to deposit the \$2,510,000 purchase price into escrow.

152. On October 22, 2009, Respondent informed the Bank's Board that Crocker was continuing to work with the Bankruptcy court to resolve the Wilder Asset Loans.

153. Respondent failed to inform the Bank's Board during the October 22, 2009, Bank Board meeting that the Bank had bid for and was the successful bidder for the \$24,000,000 Wilder Term Life Insurance Policy; that the Bank had already deposit-

ed the \$2,510,000 purchase price into escrow; and that the Bank was in the process of forming Landmark Consulting, LLC.

154. On October 23, 2009, Landmark Consulting, LLC ("Landmark") was incorporated as a Tennessee LLC.

155. The Bank owned 50% of Landmark.

156. Other parties in the Wilder Bankruptcy case filed objections to the price the Bank agreed to pay for the \$24,000,000 Wilder Term Life Insurance Policy.

157. On October 29, 2009, the Court hearing the Wilder Bankruptcy issued an Order confirming the sale of the \$24,000,000 Wilder Term Life Insurance Policy to the Bank for \$3,510,000 instead of \$2,510,000.

158. The Bank then deposited the full \$3,510,000 into escrow pursuant to the Court's Order.

159. On November 13, 2009, the Bank and James West, the "General Partner" of Landmark, entered into an operating agreement related to the operation of Landmark.

160. The Bank then assigned its rights to purchase the \$24,000,000 Wilder Term Life Insurance Policy to Landmark.

161. On November 13, 2009, the Bank originated and partially funded an \$8,000,000 loan to Landmark (the "\$8,000,000 Landmark Loan").

162. Landmark used approximately \$3,510,000 of the loan proceeds to repay the Bank the money the Bank had deposited

with the Bankruptcy Court in connection with its purchase of the \$24,000,000 Wilder Term Life Insurance Policy. The balance of the \$8,000,000 Landmark Loan was used to pay the monthly premiums on the \$24,000,000 Wilder Term Life Insurance Policy and to pay the interest due to the Bank related to the \$8,000,000 Landmark Loan.

163. James West signed the Bank loan documents on behalf of Landmark.

164. James West was paid the sum of \$250,000 from the Bank Loan proceeds.

165. In the event of the death of Gary Wilder and the payment to Landmark of the proceeds of the \$24,000,000 Wilder Term Life Insurance Policy, James West was entitled to an additional \$250,000 distribution, with the remainder of the policy (\$23,750,000) to be released to the Bank.

166. On November 19, 2009, the escrow funds previously deposited by the Bank were disbursed to the Bankruptcy Court.

167. On or about November 19, 2009, Landmark became the owner (and beneficiary) of the \$24,000,000 Wilder Term Life Insurance Policy.

168. By December 1, 2009, Respondent knew or should have known that all the equipment that secured the Wildwood Asset Loans was non-existent.

169. By December 1, 2009, Respondent knew or should have

known that only a small distribution could be expected from the Wilder Bankruptcy.

170. On or about December 23, 2009 (just prior to the bank's year-end Call Report deadline), Respondent, along with Crocker, and another Bank officer approved a second loan to Landmark, in the amount of \$8,500,000 (the "\$8,500,000 Landmark Asset Purchase Loan").

171. A portion of the proceeds of the \$8,500,000 Landmark Asset Purchase Loan was used to purchase (at face value) the remaining (approximately) \$4,186,000 balance of the Wildwood Asset Loans still carried on the Bank's books as an asset even though those loans - unsecured and with the guarantors in bankruptcy - were worth a fraction of that amount, thereby allowing the Bank to avoid writing them off.

172. The remainder of the \$8,500,000 Landmark Asset Purchase Loan was used to pay the monthly interest payment due on this loan.

The Violations.

173. Landmark was created, in part, to purchase the \$8,500,000 Wildwood Asset Loans still carried on the Bank's books as an asset so the Bank could avoid an additional charge off of approximately \$4,186,000.

174. Landmark was created, in part, to purchase and hold the \$24,000,000 Wilder Term Life Insurance Policy, which was

an impermissible investment without prior FDIC consent.

175. Respondent failed to obtain the required regulatory approvals from the FDIC prior to the Bank making the investment in Landmark.

176. Landmark was a "financial subsidiary" of the Bank within the meaning of 12 U.S.C. §§ 371c(e).

177. Respondent caused or allowed the Bank to violate 12 U.S.C. §§ 371c and 371c-1 when the Bank extended the \$8,000,000 Landmark Loan.

178. Respondent caused or allowed the Bank to violate 12 C.F.R. Part 362 when Landmark purchased the \$24,000,000 Wilder Term Life Insurance Policy.

179. Respondent engaged in unsafe and unsound conduct when the Bank extended the \$8,000,000 Landmark Loan.

180. Respondent caused or allowed the Bank to violate 12 U.S.C. §§ 371c and 371c-1 when the Bank extended the \$8,500,000 Landmark Asset Purchase Loan.

181. Respondent engaged in unsafe and unsound conduct when the Bank extended the \$8,500,000 Landmark Asset Purchase Loan.

182. Respondent engaged in unsafe and unsound behavior, and misrepresented the condition of the Bank to both the outside directors and the Bank's regulators, when the Respondent caused Landmark to purchase the \$4,186,000 balance of the

Wildwood Asset Loans still carried on the Bank's books as an asset - thereby making the loans appear to be current and productive and permitting the bank to carry them as assets on its balance sheet - at a time when the Respondent knew, or should have known, the Wildwood Assets Loans were virtually worthless.

The Loss

183. After learning that Wilder's cancer was in remission, the Bank caused Landmark to sell the \$24,000,000 Wilder Term Life Insurance Policy for \$776,937.62 on January 7, 2012.

184. Proceeds from the sale of the \$24,000,000 Wilder Term Life Insurance policy were applied to the outstanding principal balance in the amount of \$5,061,937.62 on the \$8,000,000 Landmark Loan.

185. The remaining principal balance of the \$8,000,000 Landmark Loan was written off by the Bank in January 2012.

186. But for the Respondent's misconduct, the Bank would not have extended the \$8,000,000 Landmark Loan.

187. But for the Respondent's misconduct, the Bank would not have lost \$4,285,000 on the \$8,000,000 Landmark Loan.

B.

Respondent engaged in unsafe and unsound actions, caused or allowed a materially false TARP Application to be filed, and personally profited from the manipulation of the Bank's Allowance For Loans and Lease Losses Accounts

Background

188. In 2008 the Bank allowed certain executive officers of the Bank to participate in a year-end cash bonus pool ("2008 Executive Bonus Pool").

189. The 2008 Executive Bonus Pool paid each member of the pool a defined percentage of their annual compensation, in cash, for each benchmark ("Performance Metric") met at the Bank's year end.

190. If all eight defined Performance Metrics were met, the members of the Bank's 2008 Executive Bonus Pool could earn 100% of their annual compensation in the form of a cash bonus.

191. Respondent was a member of the group entitled to participate in the Bank's 2008 Executive Bonus Pool.

192. Respondent's annual compensation in 2008 was \$400,000.

193. One Performance Metric of the 2008 Executive Bonus Pool required that the Bank achieve Total Assets of \$1.2 billion dollars ("Total Assets Metric").

194. The members of the Executive Bonus Pool would each be paid 10% of their salary, in cash, if the Total Asset Metric was met.

195. Another Performance Metric of the 2008 Executive Bonus Pool required that the Bank achieve Return on Average Assets ("ROAA") of .82% at the Bank level for all of 2008 ("ROAA Performance Metric").

196. The members of the Executive Bonus Pool would each be paid 10% of their salary, in cash, if the ROAA Performance Metric was met.

197. Another Performance Metric of the 2008 Executive Bonus Pool required that the 2008 Diluted Earnings Per Share be equal to or greater than \$1.56 ("Diluted EPS Performance Metric").

198. The members of the Executive Bonus Pool would each be paid 20% of their salary, in cash, if the Diluted EPS Performance Metric was met.

199. Another Performance Metric of the 2008 Executive Bonus Pool required that the Bank achieve Operating Expense as a percentage of average assets of 2.15% or less ("Operating Expense Performance Metric").

200. The members of the Executive Bonus Pool would each be paid 10% of their salary, in cash, if the Operating Expense Performance Metric was met.

201. Another Performance Metric of the 2008 Executive Bonus Pool would be achieved if the Bank had Assets per employee of at least \$10 million ("Assets Per Employee Performance Met-

ric").

202. The members of the Executive Bonus Pool would each be paid 10% of their salary, in cash, if the Assets Per Employee Performance Metric was met.

203. Another Performance Metric of the 2008 Executive Bonus Pool required that the Bank achieve an efficiency ratio equal to or less than 48% ("Efficiency Ratio Performance Metric").

204. The members of the Executive Bonus Pool would each be paid 10% of their salary, in cash, if the Efficiency Ratio Performance Metric was met.

205. Another Performance Metric of the 2008 Executive Bonus Pool required that the Bank's net charge offs as a percentage of average assets should be equal to or less than .65% ("Net Charge Offs Performance Metric").

206. The members of the Executive Bonus Pool would each be paid 20% of their salary, in cash, if the Net Charge Offs Performance Metric was met.

207. The final Performance Metric of the 2008 Executive Bonus Pool required that the Bank's classified assets as a percentage of total assets should be equal to or less than 1.15% ("Classified Asset Performance Metric").

208. The members of the Executive Bonus Pool would each be paid 10% of their salary, in cash, if the Classified Asset

Performance Metric was met.

209. The Bank was required by regulation to maintain an account entitled Allowance for Loans and Lease Losses ("ALLL Account").

210. The ALLL Account is a reserve maintained to absorb potential losses in a Loan and Lease portfolio.

211. The ALLL Account is composed of two types of reserves.

212. One reserve component is established under Financial Accounting Standards Board No. 5, as codified in ASC 450 ("FAS 5").

213. A second reserve component is established under Financial Accounting Standards Board No. 114, as codified in ASC 310 ("FAS 114").

214. FAS 5 requires a bank to establish a reserve for all of the unimpaired loans held by a bank.

215. FAS 114 requires a bank to establish an individual allocation for loans a bank holds that are impaired.

216. The ALLL account is funded to the required level primarily through a charge to the bank's provision for Loans and Lease Losses Account - a bank expense account.

217. Shortly after the end of each calendar quarter, the Bank was required to sign and file a document entitled "Consolidated Reports of Condition and Income for A Bank with Do-

mestic Offices Only - FFIEC 041" ("CALL Report").

218. The CALL Report is a snapshot of the Bank's condition at the end of each calendar quarter.

219. The instructions that accompany a CALL Report set forth how to report the value of foreclosed assets.

220. Beginning in late 2007 and continuing through 2008 the Bank began experiencing a large increase in defaults in its loan portfolio.

221. One spreadsheet prepared for internal Bank use lists 597 loans that defaulted and that were foreclosed or repossessed in 2008 ("2008 Repossessed Truck Loans").

222. The 2008 Repossessed Truck Loans were secured by 826 trucks or trailers.

223. The Bank's book value of the 2008 Repossessed Truck Loans was \$36.2 Million.

224. Despite the fact that rapidly depreciating assets were held as security for the 2008 Repossessed Truck Loans, the Bank charged off only \$3.4 million, or less than 10% of the value of these loans.

225. On or about November 21, 2008, Crocker prepared a spreadsheet (the "Crocker 124 Loan Charge-off List") that listed 124 loans with proposed charge offs of \$6.4 million and sent that list to the Bank's executive management team for action.

226. Under Tennessee Code Annotated § 45-2-607, the Bank was required to liquidate the repossessed personal property (the trucks and trailers) within six months or write down the value of the repossessed items to zero.

227. Repossessed assets are required to be listed on the CALL Report at fair market value at the time of repossession.

228. When an asset backed loan is impaired, FAS 114 requires a bank to establish an individual allocation for that loan.

229. A loan 90 days past due is required to be placed on nonaccrual and evaluated to determine any impairment allocation required under FAS 114.

The Scheme

230. Faced with losing some, or all, of the year end cash bonus available under the 2008 Executive Bonus Pool, the Respondent caused or allowed a series of unsafe and unsound actions, entailing violations of law and/or regulation, that were designed to conceal the Bank's true financial condition and to deceive other members of the Bank's Board, as well as State and Federal bank regulators.

231. The Bank assigned false values to the collateral being placed in the Bank's Repossessed Assets account.

232. The Bank valued the 826 trucks or trailers acquired from the 2008 Repossessed Truck Loans at a substantial premium

over their actual value.

233. Faced with liquidating the overvalued 826 trucks or trailers held in Repossessed Assets within the timeframes of Tennessee Code Annotated § 45-2-607, Respondent caused or allowed the Bank to make loans far in excess of the collateral's true value to uncreditworthy borrowers ("Uncreditworthy Loans") for the purpose of purchasing the trucks from the Bank.

234. The Uncreditworthy Loans were inherently unsafe and unsound at inception.

235. The Uncreditworthy Loans exposed the Bank to additional loan losses.

236. The Uncreditworthy Loans were booked as performing loans at inception.

237. The Uncreditworthy Loans masked the Bank's true financial condition.

238. The Uncreditworthy Loans were necessary if the Respondent had any hope of meeting the eight defined Performance Metrics under the 2008 Executive Bonus Pool.

239. As previously noted, on or about November 21, 2008, Crocker prepared the Crocker 124 Loan Charge-off List and delivered that list to the Bank's executive management team.

240. Crocker, or Bank employees under his direction, evaluated the loans contained in the Crocker 124 Loan Charge-

off List and recommended the charge offs.

241. Respondent's failure to cause the Bank to timely charge off the amounts listed in the Crocker 124 Loan Charge-off List was an unsafe and unsound act.

242. Respondent's failure to cause the Bank to timely charge off the amounts listed in the Crocker 124 Loan Charge-off List caused the Bank to file a false CALL Report for the fourth quarter of 2008.

243. Respondent's failure to cause the Bank to timely charge off the amounts listed in the Crocker 124 Loan Charge-off List masked the Bank's true financial condition and misled both state and federal regulators.

244. Respondent's failure to cause the Bank to timely charge off the amounts listed in the Crocker 124 Loan Charge-off List allowed the Bank to meet most of the eight defined Performance Metrics under the 2008 Executive Bonus Pool.

245. On October 3, 2008, President George W. Bush signed into law the Troubled Asset Relief Program ("TARP").

246. On or about October 23, 2008, the Holding Company filed an application ("TARP Application") to obtain money under the TARP.

247. The Holding Company's recently hired Chief Financial Officer, Frank Perez, signed the TARP Application on behalf of the Holding Company.

248. The TARP Application required certain Representations and Warranties be made by the Holding Company as of the filing date and the funding date.

249. As previously noted, on or about November 21, 2008, the Crocker 124 Loan Charge-off List was delivered to the Bank's executive management team for action.

250. The Crocker 124 Loan Charge-off List listed \$6.4 million dollars of potential Charge-offs.

251. On December 19, 2008, the Bank's TARP application was approved and TARP wired \$30,000,000 in new "capital" to the Bank's Holding Company.

252. Respondent failed to disclose to the Holding Company the \$6.4 million in potential charge-offs identified in the Crocker 124 Loan Charge-off List.

253. The \$6.4 million in potential charge-offs contained in the Crocker 124 Loan Charge-off List was material information.

254. Respondent caused or allowed the Holding Company to file a false certification with the United States Department of the Treasury in order to obtain the \$30,000,000 in TARP funding.

255. On or about May 16, 2008, the Bank's Holding Company created a company called TCB Commercial Asset Services, Inc. ("CAS").

256. On December 30, 2008, the Bank's Holding Company used \$5,000,000 of the TARP transaction proceeds to provide additional capital to CAS.

257. CAS then used some of the capital provided from the TARP to purchase, at the Bank's book value, previously repossessed trucks, trailers, and other equipment.

258. The trucks, trailers, and other equipment CAS purchased on December 31, 2008, were significantly overvalued on the Bank's books.

259. By transferring the overvalued assets to CAS on December 31, 2008, the Respondent avoided any additional write-downs at the Bank level, thus helping to ensure the Bank would meet the Performance Metrics necessary for the Respondent to be awarded a cash bonus under the Bank's 2008 Executive Compensation Plan.

The Gain to Respondent

260. On or about January 28, 2009, Tennessee Commerce Bancorp, Inc. issued a press release stating, in part: "Tennessee Commerce [Bank] outperformed the majority of its peer group during 2008 ... Net income rose 12.4% to a record \$7.8 million ..."

261. The failure to charge off the \$6.4 million listed on the Crocker 124 Loan Charge Off List caused the Bank's \$7.8 million dollar "net" income to be overstated by \$6.4 million

dollars.

262. Based on the financial performance reported at the end of 2008 by the Bank, the Bank's Executive Compensation Committee determined that the members of the Bank's 2008 Executive Bonus Pool had met seven of the eight Performance Metrics and were entitled to a cash bonus equaling 90% of their annual pay.

263. In January 2009 Respondent was paid a cash bonus of \$360,000 based on the Bank's 2008 financial performance.

C.

Respondent Approves and/or allows the Bank to make Loans in Violation of Section 23A/23B

264. As previously noted, on or about May 16, 2008, the Bank's Holding Company formed CAS.

265. Respondent was elected as CAS President on May 16, 2008.

266. As previously noted, On December 30, 2008, the Bank's Holding Company used \$5,000,000 of the TARP transaction proceeds to provide additional capital to CAS.

267. CAS then used some of the capital provided from the TARP to purchase, at the Bank's book value, previously repossessed trucks, trailers, and other equipment.

268. The trucks, trailers, and other equipment CAS purchased on December 31, 2008, were significantly overvalued on

the Bank's books.

269. On May 22, 2009, a Bank executive officer sent Crocker an email ("May 2009 email") regarding American Bank Leasing ("ABL").

270. ABL was a company that was selling trucks, trailers, and Equipment owned by both the Bank and CAS.

271. Crocker replied to the May 2009 email and said, in part:

"Trucks are a gigantic pain in the ass, but we are locked into how we have to sell them right now because the other ways are not a viable option without putting us out of business because of the enormous charge off that would be required with auction or wholesale. I cannot seem to get that through - there is no other option, none - on trucks."

272. At the time the May 2009 email exchange took place, the Bank had approximately \$23,000,000 in repossessed trucks for sale.

273. At the time the May 2009 email exchange took place, Crocker projected an additional \$7,000,000 in repossessed trucks before the end of the month.

274. Bank employees prepared various financial statements for CAS.

275. One such Income Statement showing year to date results was prepared for CAS as of August 31, 2009 ("August 2009 Income Statement").

276. The August 2009 Income Statement detailed that CAS

had purchased \$9,433,286.42 worth of trucks, trailers, and equipment from the Bank between January 1, 2009, and August 31, 2009.

277. The August 2009 Income Statement detailed that CAS had sold trucks, trailers, and equipment for \$3,467,256 year to date.

278. The August 2009 Income Statement detailed that CAS had lost \$1,117,030.32 on the sale of the trucks, trailers, and equipment that had been sold for \$3,467,256.

279. Based on the financial results contained in the August 2009 Income Statement, the Respondent knew, or should have known, that the trucks, trailers, and equipment purchased from the Bank at the Bank's book value were substantially overvalued.

280. Respondent knew or should have known the Bank's Other Assets account containing the repossessed trucks, trailer, and equipment was substantially overvalued.

281. By allowing the Bank to carry repossessed assets at substantially inflated prices, Respondent caused or allowed the Bank to file false Call Reports for every quarter the overstated trucks, trailers, and equipment remained on the Bank's books.

282. In order to sell the trucks, trailers, and equipment at the retail level, CAS had the Bank provide the financing.

283. Many of the retail buyers of trucks, trailers, or equipment from CAS were uncreditworthy.

284. The uncreditworthy loans made to purchasers of CAS assets were inherently unsafe and unsound at inception.

285. The uncreditworthy loans made to purchasers of CAS assets exposed the Bank to additional loan losses.

286. The uncreditworthy loans made to purchasers of CAS assets were booked as performing loans at inception.

287. The uncreditworthy loans made to purchasers of CAS assets masked the Bank's true condition.

288. Respondent caused or allowed the Bank to violate 12 U.S.C. §§ 371c and 371c-1 when the Bank extended the uncreditworthy loans to purchasers of CAS assets.

IV.

RESPONDENT'S ACTS, OMISSIONS, AND PRACTICES ARE GROUNDS FOR A SECTION 8(e) REMOVAL AND PROHIBITION ORDER

289. As a result of the Respondent's foregoing acts, omissions, and practices, the Respondent has engaged in unsafe or unsound banking practices and/or breached his fiduciary duty to the Bank, as set forth in paragraphs 16-288 above, within the meaning of section 8(e)(1)(A), 12 U.S.C. § 1818(e)(1)(A).

290. As a result of the foregoing acts, omissions, and practices, the Bank suffered financial loss of at least \$5,320,000 and the interests of the Bank's depositors were

prejudiced, all within the meaning of section 8(e)(1)(B), 12 U.S.C. § 1818(e)(1)(B).

291. Respondent's acts, omissions, and practices as set forth herein demonstrate Respondent's personal dishonesty and his willful or continuing disregard for the safety or soundness of the Bank within the meaning of section 8(e)(1)(C)(i) and (ii), 12 U.S.C. § 1818(e)(1)(C)(i), (ii).

V.

RESPONDENT'S ACTS, OMISSIONS, AND PRACTICES ARE GROUNDS FOR A SECTION 8(i) ASSESSMENT OF A CIVIL MONEY PENALTY

292. Paragraphs 1 through 288 are restated and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for the purposes of this NOTICE OF ASSESSMENT.

293. By reason of the allegations contained herein, Respondent has recklessly engaged in unsafe or unsound practices and breached his fiduciary duties in conducting the affairs of the Bank, within the meaning of section 8(i)(2)(B)(i) of the Act, 12 U.S.C. § 1818(i)(2)(B)(i).

294. By reason of the allegations contained herein, Respondent's practices and breaches constitute a pattern of misconduct within the meaning of section 8(i)(2)(B)(ii)(I) of the Act, 12 U.S.C. § 1818(i)(2)(B)(ii)(I).

295. By reason of the allegations contained herein, Respondent's practices and breaches caused more than a minimal

loss to the Bank within the meaning of section

8(i)(2)(B)(ii)(II) of the Act, 12 U.S.C.

§ 1818(i)(2)(B)(ii)(II).

296. By reason of the allegations contained herein, Respondent's practices and breaches resulted in pecuniary gain or other benefit to Respondent within the meaning of section 8(i)(2)(B)(ii)(III) of the Act, 12 U.S.C.

§ 1818(i)(2)(B)(ii)(III).

VI.

ORDER TO PAY AND NOTICE OF HEARING

By reason of Respondent's reckless unsafe or unsound practices and/or breaches of fiduciary duty, which constituted a pattern of misconduct that caused more than a minimal loss to the Bank, as set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B). After taking into account the appropriateness of the penalty with respect to the size of Respondent's financial resources and good faith, the gravity of the practices, the history of previous unsafe or unsound practices, and such other matters as justice may require, it is:

ORDERED, that a penalty in the amount of \$485,000 be, and hereby is, assessed against Respondent pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B).

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

IF RESPONDENT FAILS TO FILE A REQUEST FOR A HEARING WITHIN TWENTY (20) DAYS OF THE SERVICE OF THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY ON HIM, THE PENALTY ASSESSED AGAINST HIM PURSUANT TO THE ORDER TO PAY WILL BE FINAL AND UNAPPEALABLE PURSUANT TO SECTION 8(i)(e)(ii) OF THE Act, 12 U.S.C. § 1818(i)(e)(ii), AND SHALL BE PAID WITHIN SIXTY (60) DAYS AFTER RECEIPT OF THIS NOTICE OF ASSESSMENT.

IT IS FURTHER ORDERED, that if Respondent requests a hearing with respect to the charges alleged in the NOTICE OF ASSESSMENT, and in any event with respect to the NOTICE OF REMOVAL AND PROHIBITION, the hearing shall commence sixty (60) days from the date of receipt of the NOTICE OF ASSESSMENT AND NOTICE OF REMOVAL AND PROHIBITION at Nashville, Tennessee, or

on such other date or at such place upon which the parties to this proceeding and the Administrative Law Judge shall mutually agree. The purpose of the hearing will be for the taking of evidence on the charges, findings, and conclusions herein specified, in order to determine: (i) whether a permanent order should be issued to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization enumerated in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D); and (ii) whether the FDIC's Order to Pay should be sustained.

The hearing will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308. The hearing will be held before an Administrative Law Judge appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105.

Respondent is hereby directed to file an answer to the NOTICE OF REMOVAL AND PROHIBITION within twenty (20) days from the date of service, as provided by section 308.19 of the

FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.
If Respondent requests a hearing on the Notice of Assessment,
Respondent is hereby directed to file an answer within twenty
(20) days from the date of service, as provided by section
308.19 of the FDIC's Rules of Practice and Procedure, 12
C.F.R. § 308.19.

An original and one copy of all papers filed in this pro-
ceeding shall be served upon the Office of Financial Institu-
tion Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Ar-
lington, Virginia 22226-3500; Robert E. Feldman, Executive
Secretary, Federal Deposit Insurance Corporation, 550 17th
Street N.W., Room F-1058, Washington, D.C. 20429; A.T. Dill,
III, Assistant General Counsel, Legal Division, Enforcement
Unit, Federal Deposit Insurance Corporation, 550 17th Street
N.W., Room MB-2042, Washington, DC, 20429; and upon Stephen C.
Zachary, Regional Counsel, Federal Deposit Insurance Corpora-
tion, 1601 Bryan Street, Dallas, Texas 75201, at the addresses
listed above

Pursuant to delegated authority.

Dated at Washington, D. C., this 11th day of April, 2014.

/s/

Christopher J. Newbury
Associate Director
Division of Risk Management
Supervision