

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against Respondent under the provisions of section 8(e) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(e), prohibiting him from further participation in the conduct of the affairs of the Bank, or any other 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 approval 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 under the provisions of section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION AND BACKGROUND

A. Preliminary Allegations Regarding the Bank

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of New Jersey, having its principal place of business at Cranford, New Jersey.

2. The Bank has been, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the FDIC Rules and Regulations, 12 C.F.R. Chapter III; and the laws of the State of New Jersey. Pursuant to 12 U.S.C. § 1828(i)(2) and 12 C.F.R. § 337.3, the Bank was, at all times pertinent to this proceeding, subject to Federal Reserve Board Regulation O, 12 C.F.R. § 215 *et seq.* (“Regulation O”).

B. Preliminary Allegations Regarding Respondent

3. From January 2006 through October 2011, Respondent served as Chairman of the Board of Directors (the “Board”) at the Bank. Beginning in October 2006 through October 2010, Respondent also served as the Chief Executive Officer (“CEO”) of the Bank.

4. At all times pertinent to this proceeding, Respondent held the positions of Chairman of the Board and CEO, and as such was a “director” and “insider” of the Bank as those terms are defined in Regulation O, 12 C.F.R. §§ 215.2(d)(1) and 215.2(h).

5. At all times pertinent to this proceeding, Respondent was an “institution-affiliated party” (“IAP”) 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)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

6. At all times pertinent to this proceeding, as Chairman of the Board and CEO, Respondent served on the Executive Loan Committee of the Board and attended Board meetings. As a member of the Executive Loan Committee of the Board, Respondent approved loans for the Bank.

7. At all times pertinent to this proceeding, while Respondent was an IAP of the Bank subject to the jurisdiction of the FDIC, he was also the principal and 100% owner of JDN

Properties [REDACTED], a New Jersey limited liability company engaged in real estate development. JDN Properties at [REDACTED] was a “related interest” of Respondent as defined in section 215.2(n) of Regulation O, 12 C.F.R. § 215.2(n), and was an “insider” as that term is defined in section 215.2(h) of Regulation O, 12 C.F.R. § 215.2(h).

C. Factual Allegations Regarding Douglas V. Conover

8. From January 2006 through September 2009, Douglas V. Conover (“Conover”) served as Executive Vice-President and Chief Lending Officer (“CLO”) of the Bank.

9. At all times pertinent to this proceeding, as the CLO, Conover’s responsibilities included supervising loan department employees, recommending new loans, and attending executive loan committee meetings.

10. At all times pertinent to this proceeding, Conover was an IAP as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u).

D. Jurisdiction

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), and has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

12. On October 14, 2011, the New Jersey Department of Banking and Insurance closed the Bank and appointed the FDIC as receiver.

II. MISCONDUCT

A. Regulatory Standard Governing Extensions of Credit to Bank Insiders

13. Under section 215.3(a) of Regulation O, 12 C.F.R. § 215.3(a), an extension of credit is a making or renewal of any loan, a granting of a line of credit, or an extending of credit in any manner whatsoever, and includes “issuance of a standby letter of credit (or other similar

arrangement regardless of name or description)” or “any other similar transaction as a result of which a person becomes obligated to pay money (or its equivalent) to a bank, whether the obligation arises directly or indirectly, or because of an endorsement on an obligation or otherwise, or by any means whatsoever.” 12 C.F.R. § 215.3(a)(3) and (7).

14. Under section 215.3(f) of Regulation O, 12 C.F.R. § 215.3(f), extensions of credit are considered made to an insider of the Bank to the extent the proceeds are transferred to or for the tangible economic benefit of the insider.

15. Under section 215.4(a)(1) of Regulation O, 12 C.F.R. § 215.4(a)(1), extensions of credit to insiders must be made on substantially the same terms (including interest rates and collateral) as with other persons and does not involve more than the normal risk of repayment or present other unfavorable features.

16. As will be set forth in more detail in the following paragraphs, Respondent violated or caused the Bank to violate Regulation O by causing an extension of credit to be made for his tangible economic benefit, on terms that were not substantially similar to extensions of credit made to other persons, and presenting more than the normal risk of repayment.

B. Issuance of Letter of Credit which Led to the Extension of Credit that Violated Regulation O and Caused the Bank’s Loss

17. Beginning in August 2007, as part of an ongoing civil litigation commenced by a [REDACTED], plaintiff, against “JDN LLC at [REDACTED], JDN Properties, LLC, Joseph Natale, [REDACTED], and [REDACTED].” (“[REDACTED]”), the Superior Court of New Jersey (“Court”) mandated that defendant JDN Properties at [REDACTED] post bonds totaling \$750,000 to be held in escrow pending outcome of the civil litigation.

Subsequently, the Court allowed JDN Properties [REDACTED], [REDACTED] to post the bonds in the form of letters of credit.

18. On March 3, 2008, Conover was listed as the lending officer on the Bank's Loan Approval Document, which stated that approval was being sought from the Board for a \$250,000 unsecured credit line to be issued to JDN Properties at [REDACTED], [REDACTED] based upon the personal guaranty of Respondent.

19. According to the Bank's Loan Approval Document, the \$250,000 unsecured credit line was to be used to support a Letter of Credit to be issued by Atlantic Central Bankers Bank ("ACBB"), Camp Hill, Pennsylvania, on behalf of JDN Properties at [REDACTED].

20. Although the Bank's Loan Approval Document described the Bank's line of credit to support the \$250,000 Letter of Credit to be issued by ACBB as unsecured, ACBB sought collateral to support its issuance of the \$250,000 Letter of Credit that the Bank requested on behalf of JDN Properties at [REDACTED].

21. On March 10, 2008, the Bank entered into a Security Agreement with ACBB, which was signed by Conover, in which he agreed to pledge \$250,000 in marketable securities owned by the Bank and held by ACBB, to support the issuance of the \$250,000 Letter of Credit on behalf of JDN Properties at [REDACTED].

22. On March 10, 2008, Conover signed an acknowledgement and acceptance of a letter from ACBB issued to the Bank which stated that pursuant to ACBB's issuance of a \$250,000 Letter of Credit "for the account of JDN Properties at [REDACTED]," the Bank agrees to pay ACBB "immediately upon the occurrence of any draw upon the letter of credit."

23. On March 10, 2008, ACBB issued a \$250,000 Letter of Credit to Respondent's attorney, to mature on March 5, 2009, which stated the following, "[b]y order of our client, JDN

Properties [REDACTED], as principal, we hereby establish this Irrevocable Letter of Credit ... for an amount up to but not exceeding the aggregate sum of ... \$250,000.”

24. The ACBB \$250,000 Letter of Credit also stated in pertinent part that “[f]unds under this Letter of Credit are available to [Respondent’s attorney] ... [if] accompanied by a statement signed by [Respondent’s attorney] that [his] principal has failed to abide by the terms of the Court order ... in the matter entitled “[REDACTED] vs. *JDN Properties* [REDACTED] [REDACTED] *et al.*”

25. According to Conover, no other customer at the Bank was provided a line of credit using the Bank’s own assets as collateral.

26. According to the Bank’s Loan Policy, “in all cases, Board approval will be required” for extensions of credit to any of its executive officers, principal shareholders, or directors, and “the affiliated party must abstain from the discussion and voting.”

27. The Bank’s Loan Policy also stated that “all loans to executive officers, principal shareholders or directors and their affiliates will be disclosed monthly to the Board.”

28. The Bank’s Loan Policy also stated that “under no circumstances will a direct or indirect loan be made to an executive employee, director, or affiliated person under terms and conditions more favorable than those available to the general public. All such loans shall be governed by Regulation O and applicable state statute.”

29. A review of the Bank’s Board minutes for 2008 evidenced that the request for \$250,000 line of credit used to support the issuance of the ACBB \$250,000 Letter of Credit for the benefit of Respondent and his related interest, JDN Properties at [REDACTED], was not presented to the Board.

30. A review of the Bank's Board minutes indicate that Respondent was present for the meetings, and Conover signed the Board minutes as Secretary for the following dates: January 10, 2008, February 14, 2008, March 6, 2008, April 10, 2008, and May 8, 2008.

31. In violation of Regulation O, Conover facilitated a \$250,000 ACBB Letter of Credit for the benefit of Respondent (and his related interest, JDN Properties [REDACTED]), who received the tangible economic benefit of having the Bank extend to Respondent an unsecured \$250,000 line of credit to support the issuance of the ACBB \$250,000 Letter of Credit, which was secured by assets owned by the Bank and held by ACBB.

32. On March 5, 2009, the ACBB \$250,000 Letter of Credit matured without being called for payment.

33. On April 1, 2013, Respondent appeared at the New York Regional Office of the FDIC and asserted his right against self-incrimination and refused to answer any questions about the \$250,000 line of credit issued by the Bank or the ACBB \$250,000 Letter of Credit.

C. Letter of Credit which Violated Regulation O and Caused the Bank's Loss

34. The Paragraphs 1 through 33 above are re-alleged and incorporated herein by reference.

35. On July 15, 2008, the Bank entered into a Loan Participation Agreement and Certificate with ACBB, dated July 15, 2008, to mature on July 15, 2009, in the amount of \$500,000, accepted by an underwriter at the Bank, and witnessed by Conover.

36. The Participation Agreement and Certificate, dated July 15, 2008, stated that the borrower was Customer XYZ, the lender was the Bank, the participant was ACBB, and that the collateral for the \$500,000 commitment from ACBB was a "minimum of \$500,000 in marketable securities pledged from [the Bank] to ACBB, which are to be held by ACBB."

37. Customer XYZ is the daughter of Respondent's business partner who is also a co-defendant in the [REDACTED] Litigation.

38. On July 15, 2008, the Bank entered into a Security Agreement with ACBB that listed the "debtor" as the Bank and was signed by Conover. Conover agreed to pledge \$500,000 in marketable securities owned by the Bank and held by ACBB, to support the issuance of a \$500,000 Letter of Credit by ACBB on behalf of Customer XYZ.

39. On July 15, 2008, Conover signed an acknowledgement and acceptance of a letter from ACBB issued to the Bank which stated that pursuant to "ACBB's issuance of a Standby Letter of Credit in the amount of \$500,000 secured by a minimum of \$500,000 in marketable securities pledged from [the Bank] to ACBB, which will be held by ACBB," the Bank agrees to pay ACBB "immediately upon the occurrence of any draw upon the letter of credit."

40. On July 15, 2008, ACBB issued a \$500,000 Letter of Credit to Respondent's attorney that stated "[b]y order of our client, customer XYZ, as principal, we hereby establish this Irrevocable Letter of Credit ... for an amount up to but not exceeding the aggregate sum of ... \$500,000", and that such Letter of Credit will remain in effect for one year and will be "automatically extended for subsequent annual anniversaries of July 15."

41. The ACBB \$500,000 Letter of Credit also stated in pertinent part that, "[f]unds under this Letter of Credit are available to [Respondent's attorney] ... [if] accompanied by a statement signed by [Respondent's attorney] that [his] principal has failed to abide by the terms of the Court order ... in the matter entitled "[REDACTED] vs. *JDN Properties* [REDACTED] [REDACTED]"

42. A review of the Bank's Board minutes for the period of 2008 evidences that neither the request for the \$500,000 line of credit nor the use of the Bank's own assets to support issuance of the ACBB \$500,000 Letter of Credit was presented to the Board.

43. A review of the Bank's Board minutes indicates that Respondent was present for the meetings for the following dates: July 3, 2008, July 9, 2008, July 10, 2008, July 22, 2008, and August 6, 2008.

44. On February 25, 2011, Respondent's attorney issued a letter to ACBB stating that "this is my direction to [ACBB] that my principal, JDN Properties [REDACTED], has failed to abide by the terms of the Court order ... in the matter entitled "[REDACTED] vs. JDN Properties [REDACTED] et al." and "shall pay all sums due under the referenced Letter of Credit to ... attorneys for [REDACTED] as full payment under the Letter of Credit, and that ACBB's "draft for \$500,000 made payable to [Respondent's attorney] is to be sent to [his] attention..."

45. On March 2, 2011, ACBB notified the Bank that ACBB made the required payment under the ACBB \$500,000 Letter of Credit pursuant to the letter from Respondent's attorney dated February 25, 2011. Further on March 2, 2011, ACBB liquidated the collateral supporting the letter of credit and consisting of the Bank's assets, in the amount of approximately \$500,000.

46. On April 1, 2013, Respondent appeared at the New York Regional Office of the FDIC and asserted his right against self-incrimination and refused to answer any questions about the \$500,000 line of credit issued by the Bank or the ACBB \$500,000 Letter of Credit.

**D. Violation of Regulation O, Unsafe and Unsound Practices, and Breach of
Fiduciary Duty**

47. According to the Bank's Loan Policy, in compliance with Regulation O, the request for the \$500,000 line of credit should have been presented to the Bank's full Board for approval since Respondent was the Chairman of the Board and CEO of the Bank who received the benefit of an extension of credit from the Bank through Customer XYZ.

48. According to the Bank's Loan Policy, in compliance with Regulation O, the Bank should not have extended credit for the benefit of Respondent under terms and conditions more favorable than those available to the general public.

49. Respondent was the beneficiary and received the tangible economic benefit of the Bank extending to him and his related interest, JDN Properties [REDACTED], a line of credit in the name of Customer XYZ and a pledge of Bank assets to support the issuance by ACBB of a \$500,000 Letter of Credit.

50. Conover has acknowledged that no other person received an extension of credit from the Bank, directly or indirectly, backed by the Bank's own assets as collateral. In addition, the extension of credit posed more than the normal risk that it would not be repaid. Therefore, the above-described extension of credit to Respondent violated Regulation O. Respondent additionally violated Regulation O by, among other things, failing to notify the Board of Directors or its committees that Respondent was the beneficiary of the extension of credit or the use of the Bank's assets as collateral.

51. Based upon the above-stated facts, the extension of credit extended for the benefit of Respondent breached his fiduciary duty to the Bank. Respondent was the Chairman of the Board and CEO of the Bank. He breached his duty to the Bank by, among other things, failing to notify the Board of Directors of the above facts, failing to require that the extension of credit be made on terms available to other potential borrowers, and failing to ensure that the collateral was

adequate and did not increase the Bank's exposure. This breach of fiduciary duty led to the \$500,000 loss suffered by the Bank, as well as ACBB attorney fees in the amount of \$87,263.

52. Based upon the above-stated facts, the Respondent's receipt of an extension of credit that violated Regulation O was an unsafe or unsound practice. The unsafe and unsound practice exposed the Bank to abnormal risk of loss, and the Bank suffered an actual loss of \$500,000. Furthermore, Respondent knew that the ACBB \$500,000 Letter of Credit was for his benefit, and knew that the Bank's assets were being used as collateral for the \$500,000 Letter of Credit issued by ACBB, yet failed to disclose these material facts to the Bank's Board of Directors.

III. Grounds for Section 8(e) Prohibition Order

53. As a result of Respondent's foregoing acts, omissions and/or practices, Respondent has violated Regulation O, 12 C.F.R. § 215 *et seq.* and 12 C.F.R. § 337.3.

54. As a result of the Respondent's foregoing acts, omissions and/or practices, the Respondent has breached his fiduciary duties to the Bank and/or recklessly engaged in unsafe or unsound practices.

55. By reason of the Respondent's violations, practices and/or breaches alleged herein, the Bank has suffered financial loss and other damage, as well as risk of loss, and Respondent received a pecuniary gain or other benefit.

56. Respondent's violations, acts, omissions and/or practices alleged herein demonstrate personal dishonesty and a willful or continuing disregard for the safety or soundness of the Bank.

IV. Grounds for Section 8(i)(2) Civil Money Penalty

57. As a result of the foregoing facts and conclusions, Respondent's violations of law and/or regulations, reckless unsafe or unsound practices and/or breaches of fiduciary duty caused more than a minimal loss to the Bank, and Respondent received a pecuniary gain or other benefit.

58. As a result of the foregoing facts and conclusions, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank, causing more than a minimal loss to the Bank, and Respondent received a pecuniary gain or other benefit.

59. As a result of the foregoing facts and conclusions, Respondent breached his fiduciary duty to the Bank.

ORDER TO PAY

60. By reason of the violations, reckless unsafe or unsound practices and/or breaches of fiduciary duty set forth in this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("NOTICE"), the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of Respondent, the gravity of the violations, reckless unsafe or unsound practices and/or breaches of fiduciary duty, and such other matters as justice may require, it is:

ORDERED, that by reason of the violations, reckless unsafe or unsound practices and/or breaches of fiduciary duty set forth in the NOTICE, a penalty of \$75,000 be, and hereby is, assessed against Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2);

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to Respondent until 20 days after the date of receipt of the NOTICE by Respondent, during which time Respondent may file an answer to the charges in the NOTICE and request a hearing 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 20 days of receipt of this NOTICE, the penalty assessed against Respondent, pursuant to this ORDER TO PAY, will be final and shall be paid within 60 days after the date of receipt of this NOTICE.

NOTICE OF HEARING

61. IT IS FURTHER ORDERED, that, if Respondent requests a hearing with respect to the charges alleged in this NOTICE, and, the hearing shall commence sixty (60) days from the date of receipt of this NOTICE, in New York, New York, or at such other date or place upon which the parties to this proceeding and the Administrative Law Judge may agree. The purpose of the hearing will be for the taking of evidence on the charges, findings and conclusions stated herein in order to determine: (1) whether a permanent order should be issued to prohibit the 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 permission 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 (2) whether the FDIC's ORDER TO PAY should be sustained.

62. 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 to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

63. In the event Respondent requests a hearing, Respondent is hereby directed to file an answer to this NOTICE within 20 days from the date of service as provided by section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

64. An original and one copy of the answer, any such request for a hearing, and all other documents in this proceeding must be filed in writing with the Office of Financial Institution Adjudication, 3501 N. Fairfax Dr., Suite VS-D8116, Arlington, Virginia 22226-3500, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Also, copies of all papers filed in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, A. T. Dill III, Assistant General Counsel, Supervision Branch, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, and upon Ashby G. Hilsman, Regional Counsel, New York Regional Office, Federal Deposit insurance Corporation, 350 Fifth Avenue, Suite 1200, New York, New York, 10118.

PRAYER FOR RELIEF

65. The FDIC prays that an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) be issued against Respondent and, unless the penalty assessed against Respondent by the foregoing ORDER TO PAY becomes final and unappealable pursuant to 12 U.S.C. § 1818(i)(2)(E)(ii), that an Order to Pay Civil Money Penalty pursuant to 12 U.S.C. § 1818(i) in the amount of \$75,000 be issued against Respondent.

Pursuant to delegated authority.

Dated at Washington, D.C., this 5th day of December, 2013

/s/

Christopher J. Newbury
Associate Director
Division of Risk Management Supervision