

Bank; and Respondent's unsafe or unsound practices and/or breaches of his fiduciary duty were part of a pattern of misconduct and/or caused or are likely to cause more than a minimal loss to the Bank and/or resulted in pecuniary gain or other benefit to the Respondent.

The FDIC, therefore, institutes this proceeding for the purpose of determining whether an appropriate order should be issued against the Respondent under the provisions of section 8(e) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1818(e), prohibiting the Respondent from further participation in the conduct of the affairs of the Bank, and 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 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 ("NOTICE OF PROHIBITION") pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e), and NOTICE OF CHARGES ("NOTICE OF CHARGES") pursuant to section 8(b)(6) of the Act, 12 U.S.C. § 1818(b)(6), and this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES ("NOTICE OF ASSESSMENT") pursuant to section 8(i) of the Act, 12 U.S.C. § 1818(i), FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, and NOTICE OF HEARING, and the FDIC's Rules of Practice and Procedure (the "FDIC Rules"), 12 C.F.R. Part 308, and alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Allegations

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of North Carolina, having its principal place of business at Winston-Salem, North Carolina.

2. The Bank was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831y, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of North Carolina.

3. Respondent worked at the Bank from June 7, 1985, until his employment was terminated on October 20, 2011.¹ At the time of his termination, Respondent held the position of Regional Corporate Banker III, Senior Vice President. Respondent's duties included generating and managing commercial loans and commercial deposit accounts.

4. At all times pertinent to the charges herein, Respondent was an "institution-affiliated party" 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).

5. The FDIC has jurisdiction over the Bank, Respondent, and the subject matter of this proceeding.

II. Manipulation of Incentive Plan

6. During the time of Respondent's employment with the Bank, the Bank maintained

¹ Respondent had a prior period of employment with the Bank between 1982 and 1985 with a brief hiatus to pursue other opportunities within the banking industry.

that certain Commercial Community Banking Incentive Plan (the "Incentive Plan").

7. Essentially, the purpose of the Incentive Plan was to motivate eligible employees to generate new business for the Bank.

8. The Incentive Plan defined who was an eligible employee to participate in the plan and also defined what constituted new business.

9. To be an employee eligible to participate in the Incentive Plan, an employee must have a performance rating of "Performer" or better under the terms of that employee's Personal Development Plan agreed to with the Bank. Since the Incentive Plan is an annual plan, the employee must maintain the performance rating of Performer for the entire year of the Incentive Plan as well as up to the date of payout under the plan which occurs by February 28th in the year following the end of the plan.

10. The Incentive Plan sets forth specific definitions and examples so that what constitutes new business is unambiguous. Effectively, new business involves bringing new money into the Bank or new clients.

11. The Incentive Plan contains separate definitions for new money regarding deposit accounts and new money regarding certificates of deposit accounts.

12. Regarding deposit accounts, "[n]ew money is defined as money that is completely new to BB&T. Money that is transferred from another BB&T account or BB&T line of business is NOT considered new money. Deposits that are generated from Loan Proceeds are **not** considered new money."

13. Based on his position as a Regional Corporate Banker III, Senior Vice President, Respondent self-reported new business to be considered under the Incentive Plan on an automated tracking system.

14. Respondent sought to manipulate the Incentive Plan by falsely reporting existing business as new business in the automated tracking system over a period of years which resulted in the Bank paying Respondent incentive payments to which he was not entitled in the amount of approximately \$323,593.

15. In January 2011, the Regional President to whom Respondent reported retired and was replaced by Regional President [REDACTED]

16. On September 2, 2011, [REDACTED] began reviewing Respondent's job performance for the first half of calendar year 2011.

17. As a result, the Bank began an internal investigation of Respondent's performance.

18. During the review of Respondent's portfolio, the Bank discovered entries within Respondent's incentive reports which were inconsistent with the rules of the Incentive Plan as to what constitutes new business.

A. UHS Certificate of Deposit

19. UHS maintained a \$5,200,000 certificate of deposit ("CD"), which was opened on August 24, 2009 and was scheduled to mature on August 31, 2011. UHS was a client of Respondent and he serviced the UHS account.

20. On August 31, 2011, Respondent completed a CD withdrawal ticket to close out the UHS CD Account # XXXX7662 in the amount of \$5,202,000. The CD withdrawal ticket lists the preparer as John R. Lamm and is signed in the client signature block with the name JR Lamm.

21. On August 31, 2011, Respondent obtained BBT Official Check #XXXX8234 in the amount of \$5,202,000 with the proceeds of the UHS CD. Respondent later opened a non-

interest bearing checking account under the UHS profile and funded the account with the Official Check. On October 3, 2011, the newly opened checking account was closed and the entire \$5,202,000 balance was transferred to BBT CD # XXXX0535,

22. On October 27, 2011, Respondent contacted UHS representative [REDACTED] Treasurer ([REDACTED]) upon the maturing of the CD and offered to open a new interest-bearing account at .55% interest. [REDACTED] agreed to this modification believing Respondent was most knowledgeable of how to best treat their investments. Respondent contacted [REDACTED] again in September 2011 and offered to transfer the balance of the funds to a 24-month CD offering 1.00% interest if she would forego the .55% interest previously offered. [REDACTED] agreed to this additional change offered by Respondent.

23. Through these actions, Respondent deceived representatives of UHS and mishandled the maturing CD. Respondent should have "rolled over" the maturing CD directly into another similar CD rather than closing the account, depositing the proceeds into a non-interest bearing account for nearly a month, and then transferring the proceeds into a new CD. Respondent lied to [REDACTED] when he explained that the UHS funds would be deposited into an account bearing .55% interest, when he in fact deposited the funds into a non-interest bearing account and later converted those funds to the 1% interest CD.

24. Respondent's action caused a short-term loss of interest to UHS which would have been earned had Respondent deposited the funds as promised. As a result, BBT was forced to make the customer whole upon discovery of the deceit.

25. Respondent's action created the appearance of the issuance of a new CD and the creation of a high-balance deposit account, both of which would have resulted in higher

incentive payouts to Respondent if he had not been terminated prior to scheduled incentive payouts.

B. RAC

26. Over a period of several years, Respondent repeatedly booked existing business as “new money” for transactions involving the Bank’s long-time customer, RAC.

27. In 2006, RAC increased its line-of-credit from \$10,000,000 to \$11,000,000. Under the Bank’s incentive matrix, Respondent should have been credited for 75% of the expected utilization of the “new money”, which in this case was the additional \$1,000,000. As such, Respondent should have been credited with \$750,000 towards his incentive program. Instead, Respondent claimed that the entire \$11,000,000 was “new money” and claimed a 125% credit which resulted in a credit of \$13,750,000 towards his incentive program.

28. In 2007, in a separate act, the line-of-credit was renewed and Respondent again claimed the \$11,000,000 line as “new money” and again received the \$13,750,000 credit towards his incentive program by booking it as “new money”.

29. Because of the discovery of the UHS and RAC matters in which Respondent so clearly manipulated existing loans and deposits to falsely enhance his production of new business in violation of the explicit procedures of the Incentive Plan, the Bank conducted a formal internal investigation of all of Respondent’s activities related to incentive production.

C. Bank Audit of Lamm’s Incentive Production

30. The Bank audited Respondent’s claimed loan production versus his actual loan production covering the years 2006 through 2010, which relate to incentive payments for 2007 through 2011. The audit revealed that through manipulation and false entries on the incentive matrix, Respondent received incentive compensation to which he was not entitled.

YEAR	INCENTIVE PRODUCTION CLAIMED	ACTUAL INCENTIVE PRODUCTION	INCENTIVE COMPENSATION PAID	INCENTIVE COMPENSATION ACTUALLY DUE
2006	\$101,610,625	\$45,483,738	\$77,240	\$12,690
2007	\$95,923,341	\$58,471,472	\$110,018	\$13,105
2008	\$135,162,804	\$22,152,551	\$114,286	\$21,513
2009	\$54,517,698	\$15,251,749	\$23,266	\$17,900
2010	\$121,114,228	\$25,508,000	\$89,416	\$25,425

31. The total amount of incentive compensation Respondent received to which he was not entitled (Incentive Compensation Paid minus Incentive Compensation Actually Due) is approximately \$323,593.

32. The audit of Respondent's incentive entries caused the Bank to terminate Respondent's employment on October 20, 2011. The Bank cited Respondent's falsification of incentive information dating back to, at least, 2009, as a basis for his termination.

33. Based on an affidavit of Secret Service Agent [REDACTED] filed under seal, on May 2, 2012, the United States of America filed that certain Complaint for Forfeiture In Rem against \$323,595 in a bank account held by Respondent in the United States District Court for the Eastern District of North Carolina which was assigned Civil Case Number 5:12-cv-00245-BR (the "Forfeiture Action").

34. Respondent, Respondent's spouse and the Bank filed claims in the Forfeiture Action alleging that each of them was entitled to funds in the account.

35. The Bank contended that it was entitled to the funds in the bank account since Respondent received the funds by overstating his production credit numbers which resulted in the Bank paying Respondent incentive compensation to which he was not entitled.

36. On January 22, 2015, Respondent, his spouse and the United States of America entered into a Settlement Agreement with respect to the Forfeiture Action which was approved by the court. Pursuant to the terms of the Settlement Agreement, Respondent and his spouse forfeited \$254,236.78 to the United States of America. Respondent and his spouse received the balance of the funds in the bank account in the amount of \$69,358.22.

37. Subsequently, the United States of America recognized the Bank's claim to both the forfeited funds and the funds paid to Respondent. By letter dated August 14, 2015, the United States Department of Justice informed the Bank that its Petition for Remission of Forfeiture was granted in the amount of \$323,596.50.

III. Concluding Allegations

38. By reason of the unsafe or unsound practices and breaches of fiduciary duty described in paragraphs 6 through 37 above, Respondent received financial gain or other benefit.

39. By reason of the unsafe or unsound practices described in paragraphs 6 through 37 above, Respondent has been unjustly enriched in the amount of \$69,356.22.

40. By reason of the unsafe or unsound practices and breaches of fiduciary duty described in paragraphs 6 through 37 above, the Bank suffered financial loss or other damage.

41. As a result of the Respondent's foregoing acts, omissions and/or practices, the Respondent has engaged and/or participated in unsafe or unsound banking practices in connection with the Bank.

42. As a result of the Respondent's foregoing acts, omissions and/or practices, the Respondent breached his fiduciary duty to the Bank.

43. The acts, omissions and/or practices of the Respondent as set forth in paragraphs 6 through 37 demonstrate a willful or continuing disregard for the safety or soundness of the

Bank and/or evidence Respondent's personal dishonesty.

PRAYER FOR RELIEF PURSUANT TO 12 U.S.C. § 1818(e)

44. Based on the charges and the acts, omissions and/or practices described above, the FDIC requests an order prohibiting Respondent from participating, in any manner, in the conduct of the affairs of the Bank, or any other insured depository institution, organization or agency specified 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/or other appropriate Federal financial institutions regulatory agency, as defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D).

PRAYER FOR RELIEF PURSUANT TO 12 U.S.C § 1818(b)

45. Based on the charges and the acts, omissions and/or practices described above, the FDIC requests an order directing Respondent to pay restitution in the amount of \$69,356.22 to the Bank pursuant to section 8(b)(6) of the Act, 12 U.S.C. § 1818(b)(6).

NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY,
FINDINGS OF FACT AND CONCLUSIONS OF LAW

46. Paragraph 1 through 43 are restated and incorporated herein by reference and constitute FINDINGS OF FACT AND CONCLUSIONS OF LAW for purposes of this NOTICE OF ASSESSMENT.

47. By reason of the allegations contained herein, Respondent has engaged in unsafe or unsound practices in conducting the affairs of the Bank, within the meaning of 12 U.S.C. § 1818(i)(2)(B)(i)(II).

48. By reason of the allegations contained herein, Respondent has demonstrated a pattern of misconduct.

49. By reason of the allegations contained herein, Respondent has breached his fiduciary duties to the Bank within the meaning of 12 U.S.C. § 1818(i)(2)(B)(i)(III).

50. 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 12 U.S.C. § 1818(i)(2)(B)(ii)(II).

51. 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 12 U.S.C. § 18(i)(2)(B)(ii)(III).

ORDER TO PAY

52. By reason of Respondent's engagement in unsafe or unsound practices, and breaches of fiduciary duties, that resulted in loss to the Bank and pecuniary gain or other benefit to Respondent, as set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to sections 12 U.S.C. §§ 1818(i)(2)(B)(i) and 1818(i)(2)(B)(ii). After taking into account the appropriateness of the penalties with respect to the size of Respondent's financial resources and good faith, the gravity of the practices and breaches, the history of previous unsafe or unsound practices or breaches of fiduciary duties, and other matters as justice may require, it is:

53. ORDERED, that a penalty be and hereby is assessed against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) in the amount of \$140,000; and

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

OPPORTUNITY FOR HEARING

55. IT IS ORDERED that a hearing on the NOTICE OF PROHIBITION and

NOTICE OF CHARGES will be public, and in all respects conducted in accordance with the provisions of the Act, 12 U.S.C. §§ 1811-1831y, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and the FDIC's 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 for the purpose of taking evidence on the charges set forth in the NOTICE OF PROHIBITION and NOTICE OF CHARGES. The exact time and precise location of the hearing will be determined by the Administrative Law Judge.

56. WITH RESPECT TO THE NOTICE OF ASSESSMENT, RESPONDENT MUST SPECIFICALLY REQUEST A HEARING WITHIN 20 DAYS PURSUANT TO SECTION 12 U.S.C. § 1818(i)(2)(H) AND 12 C.F.R. § 308.19. IF RESPONDENT FAILS TO FILE A REQUEST FOR A HEARING WITHIN 20 DAYS OF THE SERVICE OF THE NOTICE OF ASSESSMENT ON HIM, THE PENALTY ASSESSED AGAINST HIM PURSUANT TO THE ORDER TO PAY WILL BE FINAL AND SHALL BE PAID WITHIN 60 DAYS AFTER THE NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY IS SERVED ON HIM.

57. Respondent is hereby directed to file an answer to this NOTICE OF PROHIBITION and NOTICE OF CHARGES within 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. In the event Respondent requests a hearing on the NOTICE OF ASSESSMENT, Respondent is directed to file an answer thereto within twenty 20 days from the date of service as provided by the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. 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 Drive,

Suite VS-D8116, Arlington, Virginia 22226-3500, pursuant to section 308.10 of the FDIC's 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, Legal Division, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, and upon Andrea Fulton Toliver, Regional Counsel, Atlanta Regional Office, Federal Deposit Insurance Corporation, Ten 10th Street NE, Suite 800, Atlanta, Georgia 30309-3906.

Pursuant to delegated authority.

Dated at Washington, D.C., this 7th day of December, 2015.

/S/

Christopher J. Newbury
Associate Director
Division of Risk Management Supervision