FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of ROBERT B. CALLOWAY, individually and as an institution-affiliated party of FIRST NBC BANK NEW ORLEANS, LOUISIANA (INSURED STATE NONMEMBER BANK IN RECEIVERSHIP)	NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION, NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING FDIC-19-0029e FDIC-19-0030k

The Federal Deposit Insurance Corporation (FDIC) has determined that Robert B. Calloway (Respondent), individually and as an institution-affiliated party of First NBC Bank, New Orleans, Louisiana (Bank), has recklessly participated or engaged in unsafe or unsound banking practices and breaches of his fiduciary duty; that Respondent's actions were part of a pattern of misconduct; and that Respondent's recklessly unsafe or unsound practices and breaches of fiduciary duties: (1) caused the Bank to suffer more than a minimal financial loss; and (2) involved personal dishonesty and demonstrated Respondent's willful or continuing disregard for the safety or soundness of the Bank.

The FDIC, therefore, instituted this proceeding for the purpose of determining whether appropriate orders should be issued against Respondent pursuant to the provisions of 12 U.S.C. §§ 1818(e) and (i)(2), prohibiting Respondent from further participation in the conduct of the affairs of any insured depository institution or organization listed in 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 12 U.S.C. § 1818(e)(7)(D), and ordering Respondent to pay a civil money penalty.

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION pursuant to 12 U.S.C. § 1818(e) and the FDIC's Rules of Practice and Procedure (FDIC's Rules), 12 C.F.R. Part 308 and NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER TO PAY pursuant to 12 U.S.C. § 1818(i)(2)(B) and the FDIC's Rules.[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Allegations

A. Jurisdiction

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

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

3. At all times pertinent to this proceeding, Respondent was an "institution-affiliated party" as that term is defined in 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. sections 1818(e)(7), 1818(i) and 1818(j).

[1] The NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION and the NOTICE OF ASSESSMENT OF CIVIL MONETARY PENALTY are collectively referred to in this document as the "NOTICE."

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

B. Respondent

5. Respondent was employed by the Bank from June 2006 until its failure on April 28, 2017.

6. From 2006 through 2014, Respondent was a Senior Vice President and Commercial Relationship Manager at the Bank.

7. From 2014 until April 2017, Respondent was an Executive Vice President and Commercial Relationship Manager with tax credit specialization at the Bank.

8. For approximately one week prior to the Bank's failure on April 28, 2017, Respondent was the Bank's Chief Credit Policy Officer.

9. During his employment with the Bank, Respondent was always a member of the Bank's Senior Loan Committee.

10. Respondent regularly attended meetings held by the Bank's Senior Loan Committee.

11. Respondent regularly attended meetings held by the Bank's Board Loan Committee.

12. Respondent also attended meetings held by the Board of Directors (Board) upon request or when presenting loans for Board approval.

II. Respondent's Responsibilities as the Account Officer for Bank Customer Borrower 1 and His Related Business Entities

13. Respondent managed the Bank's lending relationship with Borrower 1 and

numerous business entities owned and operated by Borrower 1.

14. Borrower 1 and his business entities were involved in property development projects in Tennessee and Arkansas.

15. Borrower 1 carried out his development activities through an LLC (CPI).

16. CPI collected development fees from development projects as they were earned.

17. In all but a few instances, the loans from the Bank discussed herein were to Borrower 1 and CPI, jointly as borrowers.

18. In the few instances that CPI was not the borrower, Borrower 1 remained a co-borrower and/or guarantor for the loans.

19. At the time of the Bank's failure, Borrower 1, CPI, and his related business entities had loans from the Bank totaling approximately $123 million.

20. From September 2014 through the end of 2016, the relevant time frame of the events described herein, the Bank's loans to Borrower 1 and his related business entities were within Respondent's portfolio that he managed on a day-to-day basis.

21. Respondent was the Relationship Manager and Account Officer for Borrower 1 and his related business entities.

22. The Bank's Board-approved Loan Policy Manual designated that, among other things, a Relationship Manager's responsibilities included:

i. Thoroughly analyzing the credit quality of each proposed borrower;

ii. Ensuring that adequate financial information was received and reviewed on a consistent basis;

iii. Ensuring that the loans were adequately secured with proper margins and monitored on an ongoing basis;

iv. Advising Bank management and the Credit Department of the deterioration of credits; and

v. Conducting appropriate collateral review and re-valuations as appropriate.

III. Respondent's Role In Facilitating Approval of the Borrower 1 Loans

23. From 2014 through 2016, Respondent regularly prepared and signed supporting loan Credit Memoranda as the "Approving Officer" for numerous loans to Borrower 1 and his related business entities (collectively, Borrower 1 Loans).

24. Respondent also gathered and prepared loan documents accompanying the Credit Memoranda in support of the proposed Borrower 1 Loans (collectively, Borrower 1 Credit Packages).

25. In general, the Borrower 1 Credit Packages prepared by Respondent consisted of a Credit Memorandum, summary of the Bank's outstanding loans to Borrower 1, separate memorandum describing the structure and purpose of the proposed loan, and supporting financial statements.

26. From 2014 through 2016, the committees reviewing and/or approving the Borrower 1 Loans included the Senior Loan Committee, Board Loan Committee, and Board of Directors.

27. When reviewing and/or approving the Borrower 1 Loans, the Senior Loan Committee, Board Loan Committee, and Board of Directors relied upon the Borrower 1 Credit Packages prepared and submitted by Respondent.

IV. Approval Process for the Borrower 1 Loans

28. Due to the size of the aggregate balances of the outstanding Bank loans to Borrower 1, the Borrower 1 Loans exceeded Respondent's authority during the relevant time

period.

29. Because the Borrower 1 Loans exceeded Respondent's authority, Ashton J. Ryan, Jr. (Ryan), the Bank's President and Chief Executive Officer, also signed the Credit Memoranda as "Additional Approving Officer."

30. The Credit Memoranda for the Borrower 1 Loans designated Respondent as the "Credit Officer" and "Account Officer" for the Borrower 1 relationship.

31. These designations indicated Respondent had prepared the Credit Memoranda and the Borrower 1 Loans were within his portfolio.

32. From 2014 through 2016, unless Respondent was otherwise unavailable, he attended and presented the Borrower 1 Loans to the Senior Loan Committee, Board Loan Committee, and Board of Directors for review and/or approval.

V. Respondent's Misrepresentations to the Senior Loan Committee

33. During the relevant time frame, the Bank's Senior Loan Committee had authority to approve loans to borrowers up to an aggregate balance of $15,000,000.

34. In addition to its lending authority, until September 1, 2016, the Senior Loan Committee reviewed incremental loans approved by President/CEO Ryan.

35. Until September 1, 2016, the Bank's Loan Policy Manual authorized Ryan to make and fund incremental loans up to $1,000,000 without prior Senior Loan Committee, Board Loan Committee, or Board approval.

36. According to the Loan Policy Manual, these incremental loans were generally intended to be used for "emergency credit needs."

37. Ryan's incremental lending authority could be used once per customer relationship until submitted to the Senior Loan Committee (until September 1, 2016) or Board

Loan Committee for "review," a process that was not defined and did not require a vote.

38. Once reviewed by the Senior Loan Committee or Board Loan Committee, Ryan's incremental authority was refreshed, and the process could be repeated (i.e., Ryan had authority to lend up to an additional $1,000,000 to the same borrower).

39. As of September 1, 2016, the Board implemented provisions of an adopted resolution mandating that Ryan's incremental loans be submitted to the Board Loan Committee, not the Senior Loan Committee. Pursuant to the Board resolution, the Board Loan Committee "vote[d] to refresh, or not refresh, the CEO's [incremental lending authority] with respect to the customer relationship under review."

40. Although Ryan approved the incremental loans to Borrower 1 and his related business entities, Respondent prepared the supporting Borrower 1 Credit Packages submitted to and reviewed by the Senior Loan Committee.

41. The Senior Loan Committee relied upon the Credit Package prepared and submitted by Respondent when reviewing the incremental Borrower 1 Loans and refreshing Ryan's incremental authority.

42. The Senior Loan Committee also relied upon presentations given by Respondent during the meetings when reviewing the incremental Borrower 1 Loans and refreshing Ryan's authority.

43. From September 2014 through August 2016, Respondent submitted 45 incremental loans for Borrower 1 and his related business entities to the Senior Loan Committee for review and refreshment of Ryan's incremental authority.

44. Beginning in September 2014, the Credit Packages supporting the incremental loans to Borrower 1 and his related business entities, each prepared and submitted by

Respondent, represented that the loan-to-value of the Borrower 1 relationship was either 91 percent or "approximately" 91 percent.

45. The loan relationship to Borrower 1 and his related business entities grew from approximately $59 million to $121 million from September 2014 through August 2016.

46. Despite the increase in the size of the relationship during this time period, Respondent's Credit Memoranda and other supporting documents included in the Credit Packages never indicated that the 91 percent loan-to-value changed.

47. Although some collateral was added to the Borrower 1 relationship during this time period, Respondent's representation that the loan-to-value was 91 percent or "approximately" 91 percent, even from the outset in September 2014, was always materially false.

48. The 91 percent or "approximately" 91 percent representations were false or misleading because the collateral, even as of September 2014, was overvalued, speculative, and/or non-existent, resulting in a collateral shortfall and unsecured debt.

49. Respondent knew or should have known that the collateral valuations included in the Credit Memoranda and other supporting documents included in the Borrower 1 Credit Packages submitted to the Senior Loan Committee in support of the Borrower 1 Loans were false or misleading.

50. From September 2014 through August 2016, the Senior Loan Committee relied upon Respondent's false or misleading statements during its review of the Borrower 1 Loans and refreshment of Ryan's incremental lending authority.

51. The Credit Memoranda and other supporting documents included in the Borrower 1 Credit Packages drafted and submitted by Respondent to the Senior Loan Committee also

represented that the loan purpose was to provide funds to Borrower 1 and his related business entities for "working capital," "soft costs," and/or "predevelopment costs."

52. Contrary to Respondent's representation, a significant portion of the loan proceeds were used to cover overdrafts in Borrower 1's Bank deposit accounts and make loan payments on Borrower 1's existing Bank loans because Borrower 1 otherwise could not support the debt.

53. Respondent knew that the Borrower 1 Loan proceeds were intended for this purpose at the time he drafted Credit Memoranda and supporting documents for the Borrower 1 Loans prior to loan funding and failed to disclose this material information to the Senior Loan Committee.

54. The Senior Loan Committee's refreshment of Ryan's incremental authority, in reliance upon the false or misleading statements in Respondent's Credit Memoranda and Borrower 1 Credit Packages, caused the Borrower 1 Loans to increase from approximately $59 million in September 2014 to $121 million in August 2016.

VI. Respondent's Misrepresentations to the Board Loan Committee

55. From at least September 2014, the Board Loan Committee was authorized to approve loans to an individual loan relationship up to $23,000,000 until December 2014, after which its authority increased to $25,000,000.

56. Loans exceeding the Board Loan Committee's authority required approval of the full Board of Directors.

57. From September 2014 through December 2016, Respondent attended 23 regularly held Board Loan Committee meetings.

A. October 26, 2016 $500,000 Incremental Loan Reviewed by the Board Loan Committee

58. During the Board Loan Committee's October 26, 2016 meeting, a $500,000 incremental loan to Borrower 1 was presented.

59. Including the new $500,000 incremental loan proceeds, the Borrower 1 Loans totaled $123,201,098 in outstanding balance.

60. Respondent attended the Board Loan Committee's October 26, 2016 meeting.

61. The Board Loan Committee reviewed the $500,000 incremental loan to Borrower 1 to determine whether to refresh Ryan's incremental lending authority.

62. In support of the $500,000 incremental loan, Respondent signed the supporting Credit Memorandum as the "Approving Officer."

63. The Credit Memorandum also designated Respondent as the "Credit Officer" and "Account Officer."

64. The Credit Memorandum prepared and signed by Respondent stated that the loan-to-value for the Borrower 1 relationship was "Approximately 91%."

65. A separate document titled "Incremental Credit Approval Support Statement" was included with this Borrower 1 Loan Package, which asked several questions, one of which was "Does sufficient collateral exist or will additional collateral be offered?" Next to this question, an "X" was marked indicating "No."

66. There was no explanation in this document or anywhere else in the Borrower 1 Credit Package, however, as to whether this "No" answer related to the existence of insufficient collateral or whether additional collateral would be offered, or, if the answer was to be understood to indicate collateral shortfall, the extent of such a shortfall.

67. Respondent knew or should have known that the loan-to-value included in his Credit Memorandum was false or misleading.

68. The Credit Memorandum prepared by Respondent also stated the loan purpose was "[w]orking capital for general operations and soft costs associated with various developments in planning."

69. Respondent knew or should have known that the loan purpose stated in his Credit Memorandum and Borrower 1 Credit Package was false or misleading. Respondent failed to disclose this material fact to the Board Loan Committee.

70. Based upon the loan as presented, which included the Credit Memorandum and Borrower 1 Credit Package prepared by Respondent, the Board Loan Committee refreshed Ryan's incremental authority, enabling Ryan to make another $500,000 incremental loan on or about November 30, 2016 to Borrower 1 and his related entities.

B. Criticized Asset Action Plans Reviewed by the Board Loan Committee

71. From September 2014 through October 2016, the Board Loan Committee reviewed nine (9) Criticized Asset Action Plans (CAAPs) associated with Borrower 1 and his related business entities (Borrower 1 CAAPs).

72. The Board Loan Committee relied upon the Borrower 1 CAAPs to remain informed about the current status of the loans, a recommended course of action, and target goals to achieve management's desired resolution.

73. All of the CAAPs relating to Borrower 1 and his business entities were reviewed by the Board Loan Committee and designated Respondent as the Account Officer.

74. Respondent's signature as Account Officer appears on eight of the nine above-referenced Borrower 1 CAAPs.

75. The minutes of the Board Loan Committee meetings at which the Borrower 1 CAAPs were reviewed reflect Respondent's attendance.

76. All of the Borrower 1 CAAPs indicate the following relating to the collateral securing the Borrower 1 Loans: "Collateral Shortfall: None," and "Collateral Shortfall/Impairment: No additional reserves required."

77. The representation in the Borrower 1 CAAPs that there was no collateral shortfall was false or misleading.

78. As the Relationship Manager, Account Officer, and Credit Officer for the Borrower 1 Loans, Respondent knew or should have known that there was a collateral shortfall.

79. From September 2014 through October 2016, Respondent repeatedly failed to inform the Board Loan Committee that there was a collateral shortfall for the Borrower 1 Loans and/or misrepresented the Bank's collateral position in the Borrower 1 CAAPs.

VII. Respondent's Misrepresentations to the Board of Directors

A. March 21, 2016 $3 Million Loan Approved by the Board of Directors

80. On March 23, 2016, the Board of Directors reviewed a loan submitted for approval by Respondent, as Account Officer, in the amount of $3 million to Borrower 1.

81. Respondent's Credit Memorandum falsely indicated the loan-to-value was "approximately 91%."

82. Respondent knew or should have known that the loan-to-value was false and misleading and there was in fact a substantial collateral shortfall.

83. Respondent failed to disclose this material information to the Board of Directors during his attendance at the March 23, 2016 meeting when he presented the loan for approval and the Board subsequently approved it.

B. September 28, 2016 $2.81 Million Loan Approved by the Board of Directors

84. During the Board's September 28, 2016 meeting, Respondent presented a $2.81 million loan request for Borrower 1.

85. The September 28, 2016 Board meeting minutes reflect that Respondent's presentation of the $2.81 million loan detailed "the purpose, collateral and financial analysis of the transactions."

86. In support of the $2.81 million Borrower 1 loan, the Credit Package included a Credit Memorandum signed by Respondent as "Approving Officer," and a separate memorandum to the Board from Respondent recommending approval.

87. The Credit Memorandum stated the loan-to-value of the Borrower 1 lending relationship was "Approximately 91%."

88. The Credit Memorandum stated the loan purpose was "[w]orking capital for general operations and soft costs associated with various developments in planning."

89. Respondent's accompanying memorandum to the Board, dated September 27, 2016, stated the loan purpose was "to cover general working capital needs for [Borrower 1] and his related entities and projects."

90. Contrary to Respondent's representation in the Credit Memorandum, the loan-to-value of the Borrower 1 lending relationship was not 91 percent, but was, in fact, significantly larger, resulting in a substantial collateral shortfall.

91. Respondent knew or should have known that the 91 percent loan-to-value included in his Credit Memorandum was false or misleading and there was a significant collateral shortfall.

92. Respondent failed to disclose this material information to the Board.

93. Respondent knew or should have known that the loan purpose included in his Credit Memorandum was false or misleading because some of the proceeds were intended to cover debt service for the Borrower 1 Loans.

94. Respondent failed to disclose this material information to the Board.

95. The Board relied upon Respondent's material misstatements and omissions of fact relating to loan purpose and collateral value during its review and approval of the $2.81 million loan to Borrower 1.

VIII. Respondent Caused Financial Loss to the Bank

96. Respondent's mismanagement of the Borrower 1 Loans caused the Bank to suffer financial loss.

97. From September 2014 through October 2016, Respondent misrepresented the value of the collateral and loan purpose of the Borrower 1 Loans to the Senior Loan Committee, Board Loan Committee, and Board of Directors.

98. By reason of Respondent's misconduct from September 2014 through October 2016, the Borrower 1 relationship increased from approximately $59 million to approximately $123 million, an increase of approximately $64 million.

99. Borrower 1 has not repaid the full amount of the increase in the relationship amount for loans Respondent caused the Bank to make after September 2014.

100. By reason of Respondent's misconduct, the Bank or the FDIC as receiver for the Bank suffered millions of dollars of financial loss.

IX. Grounds for a Prohibition Order

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

102. Further, as a result of the foregoing acts, omissions, and/or practices, Respondent has breached his fiduciary duty as an officer of the Bank.

103. As a result of the foregoing acts, omissions, and/or practices as specified in paragraphs 5 through 100, the Bank has suffered financial loss.

104. The acts, omissions, and/or practices of Respondent as set forth in paragraphs 5 through 96 demonstrate a willful or continuing disregard for the safety and soundness of the Bank and evidence Respondent's personal dishonesty.

X. Grounds for the Assessment of Civil Money Penalty

105. As a result of the foregoing facts and conclusions, the FDIC concludes that Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

106. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondent breached his fiduciary duty to the Bank.

107. As a result of the foregoing facts and conclusions, the FDIC concludes that Respondent's reckless unsafe or unsound practices and breaches of fiduciary duty to the Bank were part of a pattern of misconduct.

108. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondent's reckless unsafe or unsound practices and breaches of fiduciary duty to the Bank caused more than a minimal loss to the Bank.

ORDER TO PAY

By reason of the reckless unsafe or unsound practices and breaches of fiduciary duty set forth in the NOTICE, the FDIC has concluded that a civil money penalty should be assessed against Respondent pursuant to 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, the history of previous violations, and such other matters as justice may require, it is:

ORDERED, that by reason of the unsafe or unsound practices and breaches of fiduciary duty set forth in paragraphs 5 through 96 hereof, a penalty of $125,000 be, and hereby is, assessed against Respondent pursuant to 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 and request a hearing pursuant to 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of 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, VA 22226-3500, pursuant to section 308.10 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.10. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. Also, copies of all papers filed in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; A.T. Dill, III, Assistant General Counsel, and Sam Ozeck, Supervisory Counsel, Enforcement Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and Stephen C. Zachary, Regional Counsel, Federal Deposit Insurance Corporation, 1601 Bryan Street, Dallas, Texas 75201.

If Respondent fails to file a request for a hearing within twenty (20) days from the date of receipt of this NOTICE, the penalty assessed against Respondent, pursuant to this

ORDER TO PAY, will be final and unappealable and shall be paid within sixty (60) days after the date of receipt of this NOTICE OF ASSESSMENT.

NOTICE OF HEARING

IT IS FURTHER ORDERED that, if Respondent requests a hearing with respect to the charges alleged in the NOTICE, the hearing shall commence 60 days from the date of receipt of this NOTICE in New Orleans, Louisiana.

The hearing will be public and shall be conducted in accordance with the provisions of the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1831aa, 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 assigned by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105.

In the event Respondent requests a hearing, Respondent shall also file an answer to the charges in this NOTICE within 20 days after the date of receipt of the NOTICE OF HEARING in accordance with section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19.

Failure of Respondent to request a hearing shall render the civil money penalty assessed in this NOTICE final and unappealable pursuant to 12 U.S.C. § 1818(i)(E)(ii), and section 308.19(c)(2) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19(c)(2).

PRAYER FOR RELIEF

The FDIC prays for relief in the form of issuance of an ORDER OF PROHIBITION pursuant to 12 U.S.C. § 1818(e) against Respondent and an ORDER TO PAY pursuant to § 1818(i) requiring that Respondent pay a civil money penalty in the amount of $125,000.

Pursuant to delegated authority.

Dated at Washington, D.C., this 17th day of July, 2019.

/s/
Patricia A. Colohan
Associate Director
Division of Risk Management Supervision