**FEDERAL DEPOSIT INSURANCE CORPORATION**
**WASHINGTON, D.C.**

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| In the Matter of: | ) | DECISION AND ORDER TO CEASE AND DESIST AND |
| BANK OF LOUISIANA, NEW ORLEANS, LOUISIANA | ) | ASSESSMENT OF CIVIL MONEY PENALTY |
| (Insured State Nonmember Bank) | ) | FDIC-12-489(b) |
| | ) | FDIC-12-479(k) |

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## I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on December 17, 2019, of a Recommended Decision on Remand ("Recommended Decision" or "R.D.") by Administrative Law Judge Christopher B. McNeil ("the ALJ"). The ALJ found that Respondent, Bank of Louisiana ("Bank"), New Orleans, Louisiana, engaged in unsafe or unsound practices and violations of laws and regulations, including the Bank Secrecy Act ("BSA"), the Electronic Funds Transfer Act ("EFTA"), the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), the National Flood Insurance Program ("NFIP"), and the Home Mortgage Disclosure Act ("HMDA"). The Recommended Decision also found that the Bank had failed to comply with ten of the fifteen provisions in a 2011 Memorandum of Understanding ("2011 MOU") it had entered into with the FDIC two years before the FDIC filed this action following less-than-satisfactory ratings in management, earnings, and asset quality. The Recommended Decision also found that the Bank violated the independence requirement of the FDIC's rules and regulations pertaining to appraisals by allowing the lending officer originating a loan to appraise the collateral underlying the loan, and that the Bank violated Regulation O of the Federal Reserve Board, 12 C.F.R. § 215, when it allowed a high ranking officer to repeatedly overdraw his bank account without being charged overdraft fees.

The ALJ recommended that the Respondent be subject to an order to cease and desist pursuant to section 8(b) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1818(b), and be assessed a civil money penalty ("CMP") of $500,000 pursuant to section 8(i) of the FDI Act, 12 U.S.C. § 1818(i). For the following reasons, the Board affirms the Recommended Decision and issues against Respondent an Order to Cease and Desist and Order to Pay a CMP in the amount of $500,000.

## II. PROCEDURAL HISTORY AND BACKGROUND

The FDIC initiated this action on November 4, 2013, when it issued against Respondent a Notice of Charges and of Hearing, Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice"). The charges in the Notice primarily alleged that (a) the Bank had engaged in unsafe or unsound practices based on its earnings, management practices, and asset quality ratings as set forth in its 2013 Report of Examination ("2013 ROE"); (b) the Bank had engaged in unsafe or unsound practices by failing to comply with most of the 2011 MOU; (c) the Bank had committed numerous violations of law, including but not limited to: Regulation O by allowing a high ranking officer to repeatedly overdraw his account without penalty; Part 323 of the FDIC's rules by not conducting independent property evaluations and appraisals; the EFTA by neither disclosing unauthorized fees nor investigating customer reports of erroneous charges; and the NFIP by not assessing the need for flood insurance and not informing borrowers of the rules surrounding force-placed flood insurance; (d) the Bank had violated the BSA by, among other things, failing to file Suspicious Activity Reports ("SARs") and Currency Transaction Reports ("CTRs"); (e) the Bank had engaged in unsafe or unsound practices by failing to have a meaningful compliance program to ensure that it did not engage in foreign financial transactions with prohibited individuals or entities as identified by the Office of Foreign Asset Control ("OFAC"); and (f) the Bank failed to conduct proper compliance training or maintain an effective audit program for consumer compliance matters, resulting in numerous violations of law that recurred over a number of years. R.D. at 2-5; Notice ¶¶ 5-36.[1]

[1] The Board conducted an independent review of the record, including the underlying supporting evidentiary documents and transcripts. The Board cites to either the numbered pages in the R.D. or to the exhibits "FDIC Exh." (hearing exhibit) or "FDIC SD Exh." (summary disposition exhibit) or "Jt. Exh." (joint exhibits)) or transcripts ("Tr."). Respondent's Exceptions to the R.D. are cited, respectively, as "R. Exceptions" and exhibits, as "Resp. Exh."

The FDIC sought a cease and desist order that included a requirement that the Bank take corrective action in a number of areas ("C&D Order"). R.D. at 1; Notice ¶ 37. The FDIC also sought to impose a CMP of $500,000 against Respondent pursuant to 12 U.S.C. § 1818(i). Notice ¶¶ 42, 45-47.[2]

On January 24, 2014, the Bank filed an Amended and Restated Answer ("Amended Answer") to the Notice. The Amended Answer admitted that earnings were deficient and that the Bank had failed to comply with certain provisions of the BSA and other laws and regulations, denied other allegations, and asserted that none of its admittedly violative practices warranted a C&D Order or the assessment of a CMP. *See generally* Amended Answer.

The FDIC filed a Motion for and Memorandum in Support of Summary and/or Partial Summary Disposition ("FDIC SD Mot.") on August 29, 2014. After full briefing, the ALJ originally assigned to this matter, C. Richard Miserendino ("ALJ Miserendino"),[3] issued a Notice of Intended Ruling on January 28, 2015, informing the parties of his intent to recommend that summary disposition be granted in favor of the FDIC on certain issues. A hearing on the remaining issues was held March 10-17, 2015, in New Orleans. At the hearing, 15 witnesses testified and 240 exhibits were entered into evidence. On May 17, 2016, ALJ Miserendino issued a 115-page Recommended Decision and proposed Orders to Cease and Desist and of Assessment of Civil Money Penalty based on findings that the Bank had engaged in unsafe or unsound practices and had violated the BSA and other applicable laws and regulations. On June 16, 2016, the Bank filed written exceptions to this initial Recommended Decision. On November 15, 2016, the Board issued

[2] The Notice also alleges violations of Section 5 of the Federal Trade Commission ("FTC") Act for unfair and deceptive practices. Notice ¶ 35(a)-(c), p. 45. The FDIC sought a CMP of $40,000 for those violations but subsequently withdrew the FTC claims. *See* Tr. 10-14 (Sept. 24, 2019).

[3] To avoid confusion, the terms "ALJ and "ALJ McNeil" are used to refer to ALJ McNeil and the term "ALJ Miserendino" is used to refer to ALJ Miserendino.

a decision agreeing with the initial Recommended Decision, entered a C&D Order, and assessed the Bank a CMP of $540,000.

The Bank appealed the Board's Order to the United States Court of Appeals for the Fifth Circuit. In 2018, before the Fifth Circuit issued an opinion, the Supreme Court handed down its decision in *Lucia v. Securities & Exchange Commission*, 138 S. Ct. 2044 (2018). *Lucia* held that a U.S. Securities and Exchange Commission ("SEC") ALJ is an "inferior officer" who is required to be appointed consistent with the Appointments Clause of the United States Constitution. After the Supreme Court's ruling, the FDIC Board adopted a Resolution appointing its ALJs and reassigning pending cases to different ALJs. *See* FDIC Resolution Seal No. 085172, Order in Pending Cases (July 19, 2018). Concurrently with the passage of Resolution 085172, the FDIC moved the Fifth Circuit to remand this case to the FDIC so that it could be reheard by a different ALJ. The Fifth Circuit granted the motion on September 5, 2018, and remanded the case. *See* Order, *Bank of Louisiana v. FDIC*, No. 16-60837 (5th Cir. Sept. 5, 2018), *mandate issued* Oct. 29, 2018.

This case was then reassigned to ALJ McNeil. Consistent with the FDIC's Order in Pending Cases, ALJ McNeil afforded the parties thirty (30) days to present any pre-hearing objections to previous pre-hearing rulings by ALJ Miserendino, including ALJ Miserendino's grant of partial summary disposition to the FDIC. Neither party submitted objections to any prior rulings. Although neither party submitted objections, ALJ McNeil reviewed all previous rulings and on March 13, 2019, issued a Reassignment Review decision re-examining factual claims and legal arguments by the parties. In summary, ALJ McNeil granted the FDIC summary disposition on the majority of its arguments but found genuine issues of material fact on other issues thus precluding summary disposition on those issues as well as issues relating to the issuance and the amount of a CMP. ALJ McNeil then set a hearing date and issued an order instructing the parties to submit pre-hearing statements summarizing their anticipated factual and legal arguments as well as their

exhibit and witness lists.[4] Respondent chose not to file a prehearing statement, an exhibit list, or a witness list. R.D. at 4. At the hearing, Respondent's counsel—who is also the Bank's President and CEO—explained that, in the Bank's view, the proceedings were "illegal" and that is why it did not file anything, stating "[i]n fact, that's why I didn't answer [the Court's notice] … how do you answer something that doesn't exist."[5] The hearing proceeded over the course of two days with witness testimony presented by the FDIC. ALJ McNeil issued his Recommended Decision on December 17, 2019, finding for the FDIC and recommending a CMP in the amount of $500,000. Respondent filed exceptions on January 16, 2020. The entirety of the exceptions are as follows:

> These proceedings emanated on November 1, 2013, and without going through the grueling history, suffice it to say the current Findings of Fact, Conclusions of Law, and Recommended Decision on Remand and Proposed Order by Administrative Law Judge McNeil are non-existent. They are non-existent because they were issued by an alleged Administrative Law Judge who was simply an employee of the [FDIC] without any authority. The United States Supreme Court determined that an [ALJ] needs to be constitutionally appointed by the Board of Directors. *Lucia et al v. SEC*, No. 17-130, Decision June 21, 2018.
>
> Allegedly, Messrs. Miserendino and McNeil were appointed by means of a Resolution adopted by the Board of Directors of the [FDIC] on July 19, 2018. There was no valid meeting of the Board of Directors of the [FDIC] on July 19, 2018. Administrative Law Judge McNeil was not a "duly appointed administrative law judge." Accordingly, he had no authority to issue any Findings of Fact or Orders in these proceedings. The burden (of proof) is on the FDIC to sustain its action. § 552b(h)(l).
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> Alternatively, the errors committed were legion which invalidates the Findings of Fact and Proposed Order.
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> It is requested that the Board of Directors vacate these proceedings, or in the alternative, grant Respondent a hearing before the Board.[6]

Pursuant to 12 C.F.R. § 308.40(c)(2), the Executive Secretary on January 22, 2020, transmitted the record in the case to the Board for final decision.

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[4] *See* Order Regarding Responses to Notice of Intention to Conduct a Hearing, Notice of Hearing, and Supplemental Prehearing Orders (May 6, 2019).
[5] Tr. 33:1-19.
[6] R. Exceptions at 1-2.

## III. RESPONDENT'S REQUEST FOR ORAL ARGUMENT

Regarding Respondent's request for a hearing before the Board, "[t]he grant of a request for post-hearing oral argument is an extraordinary matter within the sole discretion of the Board." *Matter of Stephens Security Bank*, FDIC-89-234b, 1991 WL 789326, at *4 (Aug. 9, 1991). A written request must show good cause for oral argument and state the reasons why arguments cannot be presented adequately in writing. 12 C.F.R. § 308.41(b). Respondent's Exceptions fail to demonstrate good cause or explain why arguments cannot be presented in writing.[7] Accordingly, the Board declines to grant Respondent's request for oral argument.

## IV. FACTS

The following discussion summarizes Respondent's misconduct as alleged in the Notice and corroborated by supporting testimonial and documentary evidence in the record.

### A. General Background and the 2011 MOU

The Bank is an insured State nonmember bank subject to federal and state banking laws as well as the rules and regulations of the FDIC. The Bank was founded in 1958 by G. Harrison Scott ("Scott") and his late partner, James Comiskey. R.D. at 36. Scott has been the Chairman of the Bank's Board of Directors since its founding and has served as the Bank's President since 2005. *Id.* The Bank has been under formal or informal enforcement actions for most of the past twenty years. FDIC SD Exh. RMS 01, at FDIC/BOL 0233; Jt. Exh. 8, at 6. In April 2011, the Bank, the FDIC and the Louisiana Office of Financial Institutions entered into the 2011 MOU following an examination that found numerous deficiencies in the Bank's operations. FDIC SD Exhs. RMS 01; RMS 06. In the 2011 MOU, the Bank agreed to address fifteen deficiencies in virtually all of its operations, including its high level of classified assets, its high level of past due loans, deficiencies

[7] The Bank's counsel, who is also its founder and CEO, represented to the ALJ that he was a highly experienced attorney who had tried over 400 cases. Tr. 17:20-18:4.

in its credit administration and internal loan review processes, low earnings, weaknesses in its management, and multiple violations of law. FDIC Exh. 203, at FDIC/BOL 0328-37.

As is standard practice, FDIC examinations and visitations in the ensuing years focused on the Bank's compliance with the 2011 MOU, which was intended to ensure that the Bank operated in a safe and sound manner. *See* RMS Examination Manual § 3-1.2. The examiners found systemic and repeated instances of non-compliance during a visitation in 2012 and an examination in 2013. The FDIC's 2013 ROE concluded that the Bank failed to comply with ten of the fifteen provisions of the 2011 MOU. FDIC SD Exh. RMS 01, at FDIC/BOL 0228-0327. For example, as of 2013, the Bank had failed to reduce its classified assets, cease extending credit on past due assets solely for the payment of interest on existing debt, or stop funding loans without adequate documentation. *Id.* at FDIC/BOL 0235-38. The Bank had also failed to hire qualified personnel to conduct loan reviews, provide a budget with realistic assumptions supported by financial projections, or update its strategic plan. *Id.* at FDIC/BOL 0233-35, 0252, 0257-59.

**B. Risk Management**

The Bank also continued to violate laws. It allowed one of its senior executives to overdraft his account on over a dozen occasions without charging him overdraft fees. *Id.* at FDIC/BOL 0270. The Bank's appraisal practices were also cited by examiners on two grounds. First, the Bank did not obtain appraisals or evaluations on several of the loans sampled by examiners in circumstances where appraisals or evaluations are required by Part 323 of the FDIC's Rules and Regulations and Louisiana law. *Id.* at FDIC/BOL 0271; 12 C.F.R. § 323.3(b). Second, in instances where appraisals were obtained, the appraisals were routinely performed by the lending officers who originated the loans notwithstanding that Part 323.3(b) requires appraisals to be conducted by an independent party. 12 C.F.R. § 323.3(b). The 2013 ROE documented a dozen instances where this

occurred. FDIC SD Exh. RMS 01, at FDIC/BOL 0290-304. The 2013 ROE also discussed the Bank's less-than-satisfactory management, earnings, and asset quality.

### C. BSA

During 2012, examiners also discovered that tellers were not filing CTRs as required under the BSA and its implementing regulations. FDIC SD Exh. BSA 06, at FDIC/BOL 0212. The Bank's BSA program had not been explicitly addressed in the 2011 MOU. A subsequent audit and BSA exam discovered not only widespread failures to file CTRs but also a failure to file SARs and significant deficiencies in all aspects of the Bank's BSA program. These findings included a lack of qualified personnel, a failure to train Bank personnel, and multiple instances of not timely responding to law enforcement subpoenas. *Id.* at FDIC/BOL 0212-26. The examiners concluded that the Bank was in violation of the FDIC's BSA regulations, which require the Bank to have internal controls, conduct independent testing, employ a qualified BSA officer, and train its employees on their BSA responsibilities.

### D. Compliance

The FDIC conducted a compliance visitation in August 2012 that focused on lending and deposit activities at the Bank. Notice ¶ 30; FDIC SD Exh. COMP 24, at FDIC/BOL 0170. The visitation concluded that management and oversight of the Bank's compliance program was deficient. FDIC SD Exh. COMP 24, at FDIC/BOL 0170-73. The visitation also concluded that the Bank had committed numerous violations of consumer protection laws. The FDIC, in its Notice, alleged seventeen violations of law covering eight statutes. Notice ¶ 35(a)-(q). The record reflects that Enforcement Counsel ultimately put on proof of fourteen of the cited violations covering five statutes and their accompanying regulations: (1) EFTA/Regulation E; (2) HMDA/Regulation C; (3) RESPA/Regulation X; (4) TILA/Regulation Z; and (5) NFIP/12 C.F.R. §339. FDIC SD Mot. at 84-

116; FDIC SD Exh. COMP 01, at 003-07, 008-14 (Declaration of Basil Carroll).[8] Several of the violations of law were repeat violations that occurred after the Bank had entered into the 2011 MOU committing to improve its compliance program. FDIC SD Exh. COMP 01 ¶¶ 42, 50, 52, 53, 66-71, 75-76.

In 2013, the present enforcement action was instituted. The FDIC sought a cease-and-desist order to compel the Bank to correct the unsafe and unsound practices and violations of law documented during the 2012 compliance visitation, 2012 BSA examination, and 2013 risk management examination. Many of the terms were similar to the 2011 MOU that the FDIC alleged the Bank had violated. The FDIC also sought a civil money penalty against the Bank due to the continuous and repeated violations of law and unsafe and unsound practices.

## V. ANALYSIS

### A. Respondent's Unsafe and Unsound Practices

An unsafe or unsound banking practice is one that is "contrary to generally accepted standards of prudent operation" whose consequences pose an "abnormal risk of loss or harm" to a bank. *Michael v. FDIC*, 687 F.3d 337, 352 (7th Cir. 2012); *see also Seidman v. Office of Thrift Supervision*, 37 F.3d 911, 932 (3d Cir. 1994) ("imprudent act" posing an "abnormal risk of [financial] loss or damage to an institution, its shareholders, or the agencies administering the insurance funds" is an unsafe and unsound practice (citation omitted)). The failure to comply with significant provisions of an MOU constitutes an unsafe and unsound practice. *See Greene Cty. Bank v. FDIC*, 92 F.3d 633, 636 (8th Cir. 1996) ("In this case, the FDIC concluded that the [b]ank's failure to comply with the MOU constituted an unsafe and unsound banking practice, justifying the

[8] The FDIC did not proceed on the alleged violation for unfair or deceptive acts or practices (15 U.S.C. § 45), the SAFE Act/Regulation X (12 C.F.R. § 1007.105(b)), or ECOA/Regulation B (12 C.F.R. § 1002.5(a)(2)).

issuance of a cease and desist order. As discussed above, the record contains substantial evidence to support the agency's decision."). The Board also may deem a bank to be engaging in unsafe or unsound practices if it receives less-than-satisfactory ratings for asset quality, management, earnings, or liquidity in its report of examination. 12 U.S.C. § 1818(b)(8).

The Board agrees with the ALJ's assessment that Respondent's failure to comply with ten out of fifteen provisions of the 2011 MOU constitutes an unsafe and unsound banking practice. The Board also agrees with the ALJ's assessment that many of the individual instances of non-compliance constitute unsafe and unsound banking practices and that the Bank's less-than-satisfactory ratings in three components constitutes unsafe and unsound practices under the FDI Act. *See Matter of Frontier State Bank*, FDIC-07-228b, 2011 WL 2411399, at *4 (Apr. 12, 2011) ("[T]he Bank's less-than-satisfactory ratings for liquidity and management form independent statutory bases for imposing a cease and desist order under section 8(b)."), *aff'd, Frontier State Bank v. FDIC*, 702 F.3d 588 (10th Cir. 2012); *Matter of Marine Bank & Trust Co.*, FDIC-10-825b, 2013 WL 2456822, at *7 (Mar. 19, 2013) ("[I]n addition to each of the detailed findings described above, the Bank's less-than-satisfactory ratings for three critical components provide an independent basis for the ALJ to conclude that the Bank engaged in unsafe and unsound practices.").[9]

### 1. The Bank Did Not Comply with the 2011 MOU

After undertaking an independent review of the record, the Board agrees with the ALJ's conclusion that the Bank did not comply with the 2011 MOU. The 2013 ROE thoroughly sets forth the provisions of the MOU with which the Bank failed or refused to comply, including: Reduction of Classified Assets, Past Due Loans, Credit Administration, Restrictions on Additional Advances,

[9] As also discussed elsewhere in this Decision and Order, many of the actions described in this section also constitute violations of law, providing an additional basis for the C&D Order and the CMPs.

Loan Review, Allowance for Loan and Lease Losses ("ALLL"), Earnings, Profit Plan and Budget, Strategic Plan, Management, and Violations of Law. *See* FDIC SD Exh. RMS 01, at FDIC/BOL 0233, 0246-53; FDIC Exh. 203, at FDIC/BOL 0328-37.

When it signed the 2011 MOU, the Bank agreed not to extend additional credit solely for the payment of interest on existing loans. FDIC Exh. 203, at FDIC/BOL 0331 (¶ 2). Yet it continued to violate this provision also on multiple occasions. FDIC SD Exh. RMS 01, at FDIC/BOL 0247; FDIC SD Exh. RMS 08. The Bank also agreed to decrease its classified assets. FDIC Exh. 203, at FDIC/BOL 0330 (¶ 1). Instead, it did the opposite by increasing classified assets as a percentage of Tier 1 Capital from 57 percent in 2010 to 90 percent at the time of the 2013 examination. FDIC SD Exh. RMS 01, at FDIC/BOL 0235. The Bank's overall ratio of non-performing assets—11 percent of total assets—was the highest percentage of any bank in Louisiana. *Id.*

Under the 2011 MOU, and consistent with prudent banking practices, the Bank agreed not to fund new loans or extend existing loans unless all appropriate underwriting documentation was obtained, including an analysis of creditworthiness, repayment ability, and cash flow. FDIC Exh. 203, at FDIC/BOL 0331 (¶ 3). During the 2013 examination, 42 percent of the sampled loan documentation did not include complete financial information, particularly with respect to repayment capacity or meaningful information about the value of the underlying collateral. FDIC SD Exh. RMS 01, at FDIC/BOL 0236, 0248.[10] Moreover, the loan files did not contain TILA disclosures in violation of that statute. FDIC SD Exh. RMS 09, at FDIC/BOL 12154-155.

[10] These are unsafe and unsound practices *See Matter of Stephens Security Bank*, FDIC-89-234b, 1991 WL 789326, at *7 (Aug. 9, 1991) (failure to analyze repayment ability or obtain full underwriting documentation are unsafe and unsound practices); *Matter of Grubb*, FDIC-88-282k & 89-111e, 1992 WL 813163, at *29 (Aug. 25, 1992) (same); *First State Bank of Wayne Cty. v. FDIC*, 770 F.2d 81, 82 (6th Cir. 1985) ("extending unsecured credit without first obtaining adequate financial information" and "extending secured

The Bank also had a history of not properly classifying delinquent loans, an issue it was required to address in the 2011 MOU. FDIC Exh. 203, at FDIC/BOL 0332. Eight of the loans sampled by examiners for the 2013 ROE should have been adversely classified but were not, including one loan that was 273 days past due and had no current financial data or collateral evaluations. FDIC SD Exh. RMS 01, at FDIC/BOL 0236. The Bank had extended additional credit on these eight loans without the required detailed statement from the Bank's Board about why failure to advance funds would harm the Bank. FDIC SD Exh. RMS 01; FDIC Exh. 203, at FDIC/BOL 0332 (¶ 4(b)).

The Bank also committed in the 2011 MOU to maintaining an appropriate ALLL. FDIC Exh. 203, at FDIC/BOL 0333 (¶¶ 6-7). Yet, after entering into the 2011 MOU, the Bank continued its practice of not validating its ALLL. It also used an inadequate and imprecise methodology to set projected losses for the years at issue as evidenced by the fact that its anticipated losses were projected to be exactly the same amount year-after-year. FDIC SD Exh. RMS 01, at FDIC/BOL 0237; FDIC SD Exh. RMS 12, at FDIC/BOL 0420.

In light of the pervasive deficiencies in lending practices and asset administration, the 2011 MOU required the Bank to conduct a Loan Review using a qualified auditor. FDIC Exh. 203, at

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credit without obtaining complete supporting documentation" constitutes unsafe and unsound practice); *Gulf Fed. Sav. & Loan Ass'n v. FHLBB*, 651 F.2d 259, 264 (5th Cir. 1981) (legislative history of section 1818(e) indicates that "disregarding a borrower's ability to repay" is an unsafe and unsound practice); *Matter of Clark, Sr.*, FDIC-89-199e, 1991 WL 757819, at *4 (Jan. 29, 1991) (failure to follow "standard underwriting practices regarding the determination of a borrower's ability to pay" constituted unsafe and unsound practice); *Matter of *** Bank of *** Cty.*, FDIC-83-132b, 1984 WL 273927 (June 18, 1984) (unsecured loans without adequate financial information on obligors and secured loans without complete supporting documentation is an unsafe and unsound practice); *Matter of Marine Bank & Trust*, FDIC-10-825b, 2013 WL 2456822, at *6 (Mar. 19, 2013) (operating with excessive classified assets is an unsafe or unsound practice); *Matter of First State Bank*, FDIC-02-069b, 2003 WL 21307613 (Apr. 25, 2003) (inadequate loan review constitutes unsafe or unsound practice); *Matter of Stephens Security Bank*, FDIC-89-234b, 1991 WL 789326 (Aug. 9, 1991) (excessive classified assets and inadequate underwriting are unsafe or unsound practices).

FDIC/BOL 0332 (¶ 5). The Bank admitted that it did not comply with the MOU when it chose an auditor without any prior banking experience to conduct the review. *See* Amended Answer ¶ 6(j)(ii). The Bank also failed to provide a budget with realistic assumptions in contravention of the 2011 MOU and set its internal goal for Leveraged Capital Ratio at 7 percent without even realizing that it was below the 9 percent minimum it had agreed to maintain in the 2011 MOU. FDIC Exh. 203, at FDIC/BOL 0333-34 (¶¶ 7, 9); FDIC SD Exh. RMS 01, at FDIC/BOL 0239.

Lastly, the Bank has a lengthy history of violations of law. FDIC SD Exh. RMS 01, at 0232-32, 0235, 0270-81. The 2011 MOU required that the Bank adopt procedures to prevent recurrences and to correct all violations cited in the 2011 ROE. FDIC Exh. 203, at FDIC/BOL 0336 (¶ 13). Yet numerous recurring violations were detected during the 2012 and 2013 examinations. These violations of law—which are also violations of the MOU—are discussed following in other subsections of this section V.

### 2. The Bank's Less-Than-Satisfactory Ratings

The Bank received less-than-satisfactory examination ratings in asset quality, management, and earnings in its 2013 ROE. As summarized below, and as discussed in detail by the ALJ, the record supports these ratings. R.D. at 10, 13, 18, 27-29, 31-32, 34. The Bank did not contest any of these findings in its Exceptions.

#### *a) Management*

The FDIC's Risk Management Manual of Examination Procedures ("Risk Manual") explains regulatory concerns in what are often referred to as "One Man Banks" or "dominant" officials. Risk Management Manual of Examination Policies § 4.1-10, https://www.fdic.gov/regulations/safety/manual/manual_examinations_full.pdf. In summary, incapacitation of the dominant officer may result in a management void and "mismanagement" situations "are more

difficult to solve . . . because the bank's problems are often attributed to the one individual that dominates the bank." *Id.*

The 2013 ROE cited weaknesses in board oversight, including its failure to ensure compliance with the 2011 MOU, and management's failure to stem repeated violations of law. The record demonstrated that CEO Scott dominated management of the Bank and failed to seek or heed input from the Bank's board on a wide range of issues including personnel matters, disposal of Bank-owned real estate, and decisions regarding technology updates and investments. In a letter to the FDIC, the Bank's Board confirmed Scott's dominant status and reported that the Board was unable to counteract him, stating "[t]he Board is essentially with out [sic] power to effect change," and that "Scott has been unwilling to consider other opinions and trumps the Board whenever he is not in complete agreement." FDIC SD Exh. RMS 02, at FDIC/BOL 063924, 063926. A Vice President and a member of the Bank's Board authored a memo to CEO Scott in 2013 telling Scott that he was "completely resistant to change," suffered from a "God complex," and believed the Board and management were stupid. FDIC Exh. 201, at 2. The memo was forwarded to the Bank's Board with a cover letter stating it was a last resort to get Scott to "consider changing the direction of management." *Id.* Scott responded with a memo of his own in which he made it clear that he, not the Bank's Board, was the final decision-maker for the Bank and that the individuals should either get on board or resign. FDIC Exh. 171.

Moreover, the Bank's Board and its management failed to ensure compliance with the 2011 MOU. The FDIC Board agrees with the examiner's findings and the ALJ's conclusions that the failure to ensure compliance with the 2011 MOU supports the less-than-satisfactory management rating. The 2011 MOU was a commitment by the Bank to its regulators to undertake a variety of corrective measures to cure acknowledged corporate governance issues and to stem repeated violations of law. It was agreed to and signed by the Bank's Board. When a bank flagrantly

disregards multiple provisions of an MOU, it is a reflection on the bank's management and grounds for an enforcement action. Otherwise, a bank would be free to make empty promises to its regulators without consequence.

*b) Earnings*

At the time of the Notice, the Bank had a net operating loss and a negative return on assets. FDIC SD Exh. RMS 01, at FDIC/BOL 0238. The Bank's branch operations were not profitable, its expenses as a percentage of assets were more than twice that of its peer banks, and its assets per employee were in the lowest one percent of its peer group. *Id.* The Bank admitted that its earnings were "deficient and insufficient to adequately support operations and augment capital and the ALLL." FDIC SD Exh. RMS 01, at FDIC/BOL 0238*;* Notice ¶¶ 11-12; Amended Answer ¶¶ 11-12.

*c) Asset Quality*

Respondent's loan documentation and financial tracking system were severely lacking. Because the Bank did not obtain current financial information on borrowers, it was unable to determine the financial condition and repayment capacity of many of its borrowers. This led to a high level of exceptions and many instances of granting loan extensions without complete factual information. FDIC SD Exh. RMS 01, at FDIC/BOL 0235-36.

The Bank failed to adequately state the magnitude of potential losses associated with its adversely classified assets, failed to use proper metrics to measure asset quality, and failed to establish or recommend individual action plans for problem loans. FDIC SD Exh. RMS 01, at FDIC/BOL 0235; Notice ¶ 15(b)(vi). Adversely classified assets represented 90 percent of Tier 1 capital plus ALLL, and the Bank's nonperforming assets were 11 percent of its total assets, the highest ratio of any bank in the state at that time. FDIC SD Exh. RMS 01, at FDIC/BOL 0235; Amended Answer ¶ 9(d). The Bank's limited strategies to evaluate and address both

nonperforming loans and assets that needed to be liquidated adversely affected its "ability to prevent further deterioration in asset quality." FDIC SD Exh. RMS01, at FDIC/BOL 0235, 0285.

### 3. Gulf Federal

During the administrative proceeding, the Bank argued that it did not engage in unsafe or unsound practices because its actions were not unsafe or unsound under the standard established in *Gulf Federal Savings & Loan Association v. Federal Home Loan Bank Board*, 651 F.2d 259 (5th Cir. 1981). In *Gulf Federal*, the Fifth Circuit held that "unsafe or unsound practices" are limited to "practices with a reasonably direct effect on an association's financial soundness." *Id.* at 264. The Bank did not raise this issue again in its Exceptions, the Board addresses *Gulf Federal* here.

First, the Board has not adopted the *Gulf Federal* definition and is not bound by the decision. *See Matter of Adams*, OCC AA-EC-11-50, 2014 WL 8735096, at *3-5 (Sept. 30, 2014) (rejecting the *Gulf Federal* standard and explaining why the Law of the Circuit Doctrine did not bind the Office of the Comptroller of the Currency ("OCC") to apply it). *Gulf Federal's* "financial condition" limitation is neither included in the FDI Act nor supported by its legislative history, which states only that an "unsafe or unsound practice" is "contrary to generally accepted standards of prudent operation," and, "if continued," would pose an abnormal risk of loss or damage to an institution, its shareholders, or the agencies administering the insurance funds." 112 Cong. Rec. S26474 (1966). This definition does not specify a minimum loss that must be met to render a practice unsafe or unsound. A rule requiring that the loss caused by the actions at issue be large enough to drive a bank to the brink of insolvency would have perverse and unintended results. An employee at a large financial institution could steal or run up overdrafts of millions of dollars, without being subject to the FDIC's enforcement authority, while an employee at a smaller bank who committed the same transgressions on a smaller scale would.

Second, unlike *Gulf Federal*, the FDI Act defines the Bank's less-than-satisfactory ratings in earnings, management, and asset quality as unsafe or unsound. 12 U.S.C. § 1818(b)(8). Thus *Gulf Federal* provides no guidance on these types of issues that are raised in this case.

Third, as explained in the Recommended Decision, the actions here did have a direct effect on the soundness of the Bank. R.D. at 32-36. Earnings were deficient, noninterest expenses were well above those of its peer banks, and branch operations were unprofitable and in the lowest one percent of its peer group. FDIC SD Exh. RMS 01, at FDIC/BOL 0238. Other practices that threatened the Bank's financial condition are presented in the 2013 ROE. *Id.* at FDIC/BOL 0233-38. The Bank's BSA and OFAC violations (discussed following) could subject a bank to significant monetary penalties and even criminal prosecution. When the totality of the behavior is examined here, including the BSA violations and other violations of law, there can be no doubt that the conduct jeopardized the condition of the Bank.

Finally, *Gulf Federal* addresses only the definition of an "unsafe or unsound practice." It does not address violations of law. The plain language of Section 1818(b)(1) authorizes the FDIC to impose a C&D Order whenever a bank "is violating or has violated, or the agency has reasonable cause to believe that the depository institution . . . is about to violate, a law, rule or regulation." Because the plain text of the statute authorizes the FDIC to impose a C&D Order for violations of law without any requirement of an impact on the Bank's financial stability, we agree with the ALJ that the myriad violations of law in this case provide an independent basis for a C&D Order. R.D. at 29, 31-32.

### B. Respondent's Violations of Law[11]

#### 1. Regulation O Violations

The Federal Reserve Board's Regulation O prohibits a bank from paying overdraft fees incurred by a bank director or officer and requires that a bank charge the officer or director the same fee charged to any other customer of the bank who overdraws their account. 12 C.F.R. § 215.4(e), *made applicable by* 12 U.S.C. § 1828(j). In other words, bank management may not give itself preferential treatment that it would not extend to normal bank customers.

In 2010 and 2011, a Bank Vice President was permitted to overdraw his account on twelve occasions but was never charged for the overdrafts. FDIC SD Exh. RMS 01, at FDIC/BOL 0253, 0270. As of the 2013 ROE, the same bank officer had not been charged or paid any overdraft fees. Moreover, he overdrew his account again in 2012 without charge notwithstanding the Bank's commitment in the 2011 MOU to correct past violations and adopt procedures to prevent recurrences. FDIC SD Exh. RMS 01, at FDIC/BOL 0253, 0270.

#### 2. Part 323 Appraisal Violations

The Bank violated FDIC regulations governing real estate appraisals and documentation requirements by not maintaining proper paperwork and by allowing the same loan officers underwriting or servicing a loan to appraise the underlying property in violation of the independence requirement of 12 C.F.R. § 323.3. FDIC SD Exh. RMS 01, at FDIC/BOL 0271, 0282-83. The FDIC documented twelve instances of this violation. *Id.*; R.D. at 20-21. The Bank's appraisal processes also violated Louisiana law, which requires annual appraisals of property valued over $250,000 and an annual "evaluation" of property valued under $250,000. LA. STAT.

[11] BSA violations are discussed following at § V(D).

ANN. § 6:243(C). In three of the loans sampled during the 2013 examination, no annual appraisals or evaluations had been performed. FDIC SD Exh. RMS 01, at FDIC/BOL 0281.

### 3. Electronic Funds Transfer Act Violations

Regulation E requires banks to make certain initial disclosures to customers, including information such as the bank's business days, fees charged for electronic fund transfers, and descriptions of the customer's liability and rights in the event of an error. 12 C.F.R. § 1005.7(b). The regulation also requires banks to investigate reports of erroneous charges, to keep records of the reports, and to provide provisional credits for reported erroneous charges under certain circumstances. 12 C.F.R. §§ 1005.7, 1005.11, 1005.13; 12 C.F.R. Part 1005, Supp. I. The Bank's EFTA disclosure form omitted several required terms and several of the account statements sampled by examiners showed that customers were charged an undisclosed monthly debit card fee. FDIC SD Exh. COMP 01 ¶¶ 21-24, 52-64; FDIC SD Exhs. COMP 29-32. Timely credit was not provided in at least two instances, FDIC SD Exhs. COMP 03-05, and the Bank required an affidavit and police report from the alleged victim before it would investigate any alleged erroneous charge or provide provisional credit. FDIC SD Exh. COMP 01 ¶¶ 21-23, 54-55.

While the regulations allow a bank to require written confirmation of an orally reported error, the regulations do not prescribe that the "written confirmation" be in the form of an under oath attestation before the bank investigates or provides a provisional credit. Instead, a bank is required to investigate a report that meets three minimum requirements: (1) it is timely made; (2) it allows the bank to identify the allegedly impacted account; and (3) it indicates why the customer believes an error exists. 12 C.F.R. § 1005.11(b)(1); 12 C.F.R. Part 1005, Supp. I. Nothing in the written report section allows a bank to add any additional qualifications. 12 C.F.R. § 1005.11(c)(2).

There are any number of forms of "written confirmation" that could allow a bank to identify the impacted account and explain the circumstances behind why a customer believes an error exists,

such as a coherent email, letter, or a legibly handwritten report composed and signed by the customer at the branch itself. To be sure, an affidavit could fulfill the requirements or it could not depending on how it is written and what information it contains[12]—but there is no basis for a bank to declare such an affidavit to be the sole form of qualifying written confirmation, much less to also require the under oath attestation be accompanied by a police report. This requirement deters unsophisticated bank customers from reporting erroneous charges in the first place.

**4. RESPA Violations**

RESPA is the primary federal law directly addressing residential mortgage settlements. RESPA mandates certain disclosures in connection with the home loan closing process so that consumers in real estate transactions receive timely information about the nature and cost of the settlement process. 12 U.S.C. § 2601; RESPA of 1974, Pub. L. No. 93-533, §(a), 88 Stat. 1724. In order to effectuate that goal, RESPA's implementing regulation, Regulation X, requires loan originators—such as the Bank—to provide Good Faith Estimates to potential borrowers within three business days of receiving a loan application and to furnish all of the information necessary to complete the HUD-1 settlement form. 12 C.F.R. §§ 1024.7(a)(1), 1024.8(b).

The record demonstrates that the Bank violated RESPA by failing to provide potential borrowers with accurate and complete Good Faith Estimates and HUD-1 closing statements within the required three-day period in two of the seven loan files reviewed. FDIC SD Exh. COMP 24, at FDIC/BOL 0186; FDIC SD Exh. COMP 01 ¶¶ 30(c), 70. The record also demonstrates that the

[12] We note that the regulations provide for flexibility in furnishing information that could allow a bank to ascertain the account at issue: "The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a Social Security number or other unique means of identification." 12 C.F.R. Part 1005, Supp. I, § 1005.11(b)(1).

Bank failed to complete the required Good Faith Estimates for several of the sampled loans. *Id.* These were repeat violations that occurred in multiple years. *Id.*

**5. TILA Violations**

The Bank violated TILA and its implementing regulation, Regulation Z. First, it failed to provide Good Faith Estimates at least seven days before closing. *See* 15 U.S.C. § 1638(b)(2)(A); 12 C.F.R. § 1026.35(b). Second, it did not establish escrow accounts for high priced mortgages. *See* FDIC SD Exh. COMP 01 ¶¶ 72-73, 75.

**6. NFIP Violations**

The NFIP requires banks to ensure that properties securing loans have flood insurance if they are located in an area with special flood hazards. 42 U.S.C. § 4012a(b); 12 C.F.R. § 339.3(a). Banks are to determine whether a property is in a special area. 42 U.S.C. § 4104b(c); 12 C.F.R. § 339.6. If a borrower's property is within such an area, and the borrower does not obtain flood insurance on his or her own, NFIP regulations require the bank to send borrowers timely notice that it intends to purchase force-placed flood insurance for borrower's properties, and to purchase force-placed flood insurance in the Bank's name, not the borrower's name. 12 C.F.R. § 339.7.

The 2012 compliance examination revealed that, although the Bank's written policies were consistent with these regulatory requirements, its actual practices were not. The Bank failed to obtain current flood insurance determinations, failed to send borrowers timely notice, and failed to purchase force-placed insurance when required. FDIC SD Exh. COMP 01 ¶ 77.

**7. HMDA Violations**

The HMDA requires that the public be provided with information about the manner in which a bank is serving community housing needs. 12 U.S.C. § 2801(b); 12 C.F.R. § 1003.1(b)(1). To effectuate this goal, HMDA requires that banks report certain information to government agencies about home mortgage applications, including the purpose of the loan, the type of property,

the loan amount, and demographic information about the borrower. 12 C.F.R. § 1003.4(a). We agree with the ALJ that the Bank violated HMDA for a number of years. The data it was required to submit to multiple federal agencies showed an error rate in 2009 of 67.6 percent. FDIC SD Exh. COMP 02, at FDIC/BOL 0161-62. In 2010, the error rate was 46 percent. *Id.* at FDIC/BOL 0162. In 2011, after the examiners gave the Bank the opportunity to correct its errors, the error rate was 34 percent. *Id*. at FDIC/BOL 0161-62. Moreover, nine of the twenty HMDA samples reviewed by examiners during the 2011 examination were deficient. FDIC SD Exh. COMP 24, at 016 (FDIC/BOL 0185); FDIC SD Exh. COMP 01, at 004-05 (¶ 26). FDIC examiners informed Bank management of the errors and afforded the Bank an opportunity to correct them. Yet in 2012, eight of the sixteen samples were deficient. *Id.* The unacceptably high error rates further evidence the violations.

### C. Respondent's Compliance Program was Inadequate

An adequate compliance management system consists of three inter-related components: board and management oversight, a compliance program, and a compliance audit. FDIC SD Exh. COMP 01, at 002 (¶11). These three components help ensure that a financial institution and its employees learn about and understand their compliance responsibilities and take corrective action as necessary. The ALJ found that the Bank's compliance program was deficient. R.D. at 46-51. The Board agrees.

The lack of management and oversight is evidenced by the repeat violations discussed above. The evidence in the record demonstrates that both the Bank's Board and its senior management lacked the knowledge, commitment, and ability to support the compliance program, that no meaningful operating guidelines had been established, that record-keeping was inadequate, and that its internal audits failed to detect violations. For example, internal audits did not even cover areas in which past violations had occurred, including RESPA and the EFTA, and did not even identify

the many violations of law. FDIC SD Exh. COMP 24, at 004-05 (FDIC/BOL 0173-74). Moreover, the Bank employee who conducted the internal audits also served as the Bank's compliance officer, a clear conflict of interest. FDIC SD Exh. COMP 24, at 006 (FDIC/BOL 0175).

The Bank's failure to institute or maintain an effective compliance program constitutes an unsafe or unsound practice. *See, e.g.*, *Matter of Cross River Bank*, FDIC-17-0123b, 2018 WL 1811094, at *1 (Mar. 28, 2018) (Consent Order) ("The FDIC also determined that the Bank engaged in unsafe or unsound banking practices by failing to ensure an adequate compliance management system was in place …."). The Bank's program was "contrary to generally accepted standards of prudent operation" and posed an "abnormal risk of loss or harm" by violating multiple statutes and regulations. *Michael v. FDIC*, 687 F.3d 337, 352 (7th Cir. 2012); *De La Fuente v. FDIC*, 332 F.3d 1208, 1222 (9th Cir. 2003).

### D. Respondent's BSA Violations

Pursuant to 12 U.S.C. § 1818(s), the Board is required to prescribe regulations requiring insured depository institutions to establish and maintain effective BSA compliance programs and to issue a C&D Order against a bank if it determines that the bank did not establish and maintain procedures required by regulation to ensure compliance with the BSA or failed to correct any problem with its procedures that was previously reported to the bank by the FDIC. *See* 12 U.S.C. § 1818(s)(1). In this case, the ALJ found, and the Board agrees, that the Bank engaged in numerous BSA violations.

#### 1. The Bank Violated 12 C.F.R. § 326.8—Pillars

The FDIC's BSA regulations establish the four "pillars" to an effective BSA compliance program: (1) a system of internal controls to assure ongoing compliance; (2) independent testing for compliance by bank personnel or an outside party; (3) designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) training for personnel

performing BSA duties. 12 C.F.R. § 326.8(c). The Notice alleged that the Bank was in violation of all four pillars of an effective program. *See* Notice ¶¶ 17-29. The ALJ found violations with respect to all four pillars. R.D. at 36-41.

*a) The Bank Lacked Adequate Internal Controls*

The Bank is located in one of the 28 high intensity drug trafficking areas ("HIDTAs") designated by the Office of National Drug Control Policy ("ONDCP"). Tr. 53. Banks that operate in HIDTA's should be particularly sensitive to potential financing of drug trafficking and should conduct enhanced monitoring activities. Tr. 53-54.[13]

As set forth in the 2012 and 2013 ROEs, the Bank failed to maintain any meaningful system of internal controls to assure ongoing BSA compliance. The ROEs document the following shortcomings: (1) lack of continuity; (2) no segregation of duties; (3) no controls and monitoring for identifying and filing SARs as well as a refusal to monitor employees' bank owned credit cards for suspicious activity; (4) no meaningful review of SARs to ensure that they contain statutorily required information; (5) no explanation for not filing SARs; (6) failure to file CTRs when the Bank was required to do so; and (7) failure to maintain a BSA system that could aggregate currency transactions across branches (*i.e.*, a system that could total a $9,900 transaction at branch 1 and a $9,900 transaction at branch 2 on the same day).[14] The majority of these violations were evident during both the 2012 and 2013 examinations.[15]

[13] In 2012, over 7,000 SARs were filed in the New Orleans area, totaling approximately $1.9 billion in transactions. Tr. 53-54.
[14] *See* 2013 ROE, FDIC SD Exh. RMS 01, at FDIC/BOL 0263; 2012 BSA ROE, Jt. Exh. 16, at FDIC/BOL 0210-27.
[15] FDIC SD Exh. RMS 01, at FDIC/BOL 0258, 0261-66.

*b) The Bank Did Not Conduct Independent Testing*

FDIC BSA regulations require that banks conduct independent testing of their BSA program. 12 C.F.R. § 326.8(c)(2). The Bank purported to conduct an independent test of its BSA program in 2012, yet the test was performed by an auditor who lacked the necessary skills and the test itself was not meaningful. The testing did not involve any sampling of customer accounts to review for suspicious activity, a fundamental tenet of BSA compliance. *See* FFIEC BSA/AML InfoBase, BSA/AML Manual, Compliance Program, BSA/AML Compliance Program, https://bsaaml.ffiec.gov/docs/manual/02_ComplianceProgram/03.pdf ("Independent testing should, at a minimum, include: . . . Appropriate risk-based transaction testing . . . (e.g., SARs, CTS . . .)."). The "independent test" also failed to include a review of currency transaction logs—even though the Bank has a history of not filing CTRs—or a test of whether the Bank reconciled teller slips with its automated computer system, another area of past failure.[16]

*c) The Bank Did Not Employ a Qualified BSA Officer During the Relevant Time.*

FDIC BSA regulations require that a bank designate an individual responsible for coordinating and monitoring BSA compliance on a daily basis. 12 C.F.R. § 326.8(c)(3). The mere appointment of a BSA compliance officer is not sufficient if that person lacks the expertise, authority, or time to satisfactorily complete the job. FDIC Exh. 375, at 37; Jt. Exh. 16, at 3. The Bank's BSA Officer at the time of the FDIC's 2012 BSA examination also acted as both a branch manager and a loan officer whose loan portfolio consisted of 10 percent of the Bank's total assets. Jt. Exh. 16, at 4. The officer did not review important reports and had no documentation for those he claimed to have reviewed. FDIC Exh. 299, at 1-2; FDIC SD Exh. RMS 01, at FDIC/BOL 0259-60. He did not, for example, review a report that showed if any of the Bank's tellers overrode the

[16] FDIC SD Exh. RMS 01; Jt. Exh. 16.

CTR reporting prompt even though the Bank's previous assistant BSA Officer had been terminated for assisting a Bank customer in a fraudulent check cashing scheme by routinely overriding the Bank's reporting prompt. Jt. Exh. 16, at 4; Jt. Exh. 18, at 20-22. When the Bank eventually relieved the individual of his responsibility as the BSA Officer, it left the position vacant for four months before appointing another one of its branch managers as the BSA Officer.[17] In this instance too, the Bank did not relieve her of her branch manager responsibilities. Moreover, she was neither qualified nor trained for the position. FDIC SD Exh. RMS 01, at FDIC/BOL 0242, 0260.

*d) The Bank Failed to Adequately Train Its Employees on Their BSA Responsibilities.*

FDIC BSA regulations require banks to provide BSA training to appropriate personnel. 12 C.F.R. § 326.8(c). The Bank failed to train its employees on Bank policy and procedures, and in the few limited instances it did conduct in-person training at its branches, the training failed to cover several key components of a bank's BSA duties, including customer due diligence (*i.e.*, knowing your customer), procedures for monitoring high-risk customers, or procedures for ensuring compliance with OFAC requirements. FDIC SD Exh. RMS 01, at FDIC/BOL 0261.

**2. The Bank Violated the BSA and Regulations Governing the Filing of CTRs, SARs, and its Duty to Respond to Requests from Law Enforcement.**

The ALJ also found that the Bank violated multiple BSA regulations, none of which the Bank contests. After an independent review of the record, the Board agrees with the ALJ's findings that the Bank committed legal violations with respect to its CTR and SAR reporting obligations as well as its duty to respond to law enforcement requests in a timely manner.

[17] Individual board members of the Bank raised concerns about the lack of time the BSA Officer devoted to BSA duties but the Bank's CEO delayed taking action.

First, BSA regulations require that banks file CTRs for transactions above $10,000 within fifteen days of the transaction. 31 C.F.R. §§ 1010.311, 1010.306(a)(1). The Bank failed to file CTRs on dozens of occasions, and even when it did file CTRs it failed on at least a dozen documented occasions to file them in a timely fashion. Moreover, BSA CTR regulations require that banks treat multiple currency transactions as a single transaction if the bank knows they are on behalf of the same person and would, in the aggregate, exceed $10,000. 31 C.F.R. § 1010.313. This is necessary to combat "structuring" transactions—the practice of breaking into smaller transactions a sum of currency that would otherwise exceed the $10,000 reporting threshold.[18] Any person who structures or assists in structuring transactions to avoid CTR reporting requirements is subject to criminal penalties. 31 U.S.C. § 5324 ("Structuring Transactions to Evade Reporting Requirements Prohibited"). The Bank repeatedly failed to report transactions that should have been aggregated. FDIC SD Exhs. RMS 01, at FDIC/BOL 0242, 0261-65, 0277-78; BSA 06, at FDIC/BOL 0219-21. Moreover, while BSA regulations contain a carve-out that permits banks to forego filing CTRs with respect to certain customers, it requires banks to review the eligibility of exempt persons at least once a year to ensure that they meet the qualifications for the reporting and record-keeping exemptions. 31 C.F.R. § 1020.315(d). The Bank failed to perform the annual reviews on at least eleven customers and completely failed to monitor these customers. FDIC SD Exh. RMS 01, at FDIC/BOL 0280.

Second, BSA regulations require that a bank respond in a timely fashion to requests for information from the Financial Crimes Enforcement Network ("FinCEN"). 31 C.F.R. §1020.520. The Bank failed to respond to multiple FinCEN requests in 2012 and 2013 and failed to even maintain a record-keeping system for how or whether the requests were handled. Notice ¶ 24(a)-

[18] *See, e.g.*, 31 C.F.R. §§ 1010.314, 1010.100(xx); FDIC BSA Manual at 8.1-38, https://www.fdic.gov/regulations/safety/manual/section8-1.pdf

(h); FDIC SD Exh. RMS 01, at FDIC/BOL 0280; FDIC SD Exh. BSA 12, at 003 (FDIC/BOL 073376); FDIC SD Exh. BSA 09, at 019-20; FDIC SD Exh. BSA 19.

Third, BSA regulations require that banks file a SAR for any transaction that: (1) has no business or apparent lawful purposes or is not the sort of transaction in which the particular customer would normally be expected to engage, and (2) where the bank knows of no reasonable explanation for the transaction after examining the available facts. 12 C.F.R. § 353.3(a)(4)(iii). The Bank repeatedly failed to file SARs when they should have been filed. FDIC SD Exhs. RMS 01, at FDIC/BOL 0273-75; BSA 06, at FDIC/BOL 0221-25.

### E. Respondent's OFAC Violation

The OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.[19] Each bank is required to ensure that it complies with OFAC regulations—*i.e.*, to have a robust compliance program that guards against terrorists and international drug dealers gaining access to the U.S. financial system. 12 U.S.C. § 1813(q)(2)(A); 31 C.F.R. Ch. V. The FDIC, as the "appropriate Federal banking agency" for any State nonmember bank, is charged with evaluating each financial institution under its supervision for compliance with federal law and regulations, including OFAC regulations. 12 U.S.C. § 1813(q)(2)(A); 31 C.F.R. Part 501.

The record demonstrates that the Bank's OFAC compliance program was woefully inadequate. It had not performed an OFAC risk assessment even though an OFAC risk assessment is "[a] fundamental element of a sound OFAC compliance program . . . ."[20] The Bank's OFAC

[19] *See* 31 C.F.R. Ch. V.; Notice ¶ 26; FFIEC BSA/AML Examination Manual, at 6-7, https://bsaaml ffiec.gov/manual
[20] FFIEC BSA/AML Examination Manual, at 145, https://bsaaml.ffiec.gov/docs/manual/03_RegulatoryRequirements/15.pdf

compliance policy states that an OFAC risk assessment is to be performed on all new customer accounts. In 2012, the Bank's internal audit found that the Bank failed to perform OFAC searches on all 12 of 12 new checking accounts sampled. In 2013, FDIC examiners found that the Bank failed to perform OFAC searches on 8 of the 10 new checking accounts sampled during the examination. Moreover, the Bank did not regularly conduct OFAC searches on wire transfers or generate daily reports of potential OFAC matches on ACH transactions. In 2012, the Bank's compliance software identified 57 transactions involving parties who were potentially on the OFAC list. As of the 2013 examination, these 57 potential hits had not been investigated—*i.e.*, "cleared"—meaning the Bank did not take any steps before the examination to determine if they had processed transactions with prohibited entities or individuals. *See* FDIC SD Exhs. BSA 01, at 40-41; BSA 09, at 20; BSA 12; BSA 13; BSA 16, at 6.

**F. The Cease-and-Desist Order is Appropriate**

A C&D Order is appropriate when a bank has engaged in one or more "unsafe or unsound practices," conduct "deemed contrary to accepted standards of banking operations which might result in abnormal risk or loss to a banking institution or shareholder." *Greene Cty. Bank*, 92 F.3d at 636 (citations omitted); *Matter of Frontier State Bank*, 2011 WL 2411399, at *5 ("In the case of a cease-and-desist action, the authority of the FDIC includes the power to craft a remedy requiring that affirmative action be taken to correct the conditions resulting from cited unsafe or unsound practices."). A C&D Order is also appropriate when a bank has committed violations of law. 12 U.S.C. § 1818(b)(1); *see, e.g.*, *Matter of California Pacific Bank*, FDIC-13-094b, 2016 WL 2997645 (Feb. 17, 2016); *Matter of* ***, FDIC-83-252b&c, 1984 WL 273950, at *36 (Nov. 20, 1984) ("Under Section 8(b) of the Act, Congress empowered the FDIC to initiate an action for the issuance of a cease and desist order for a violation of a law, rule or regulation."). The Bank

violated multiple statutes and regulations, many of which were repeat violations that occurred after it committed to correct its practices.

In this case, where the Bank unquestionably engaged in unsafe and unsound practices and violations of law, it is appropriate and necessary for the FDIC to order it to cease-and-desist from such practices and/or to take affirmative action to remedy their negative effects. The C&D Order that the Board is issuing requires that the Bank implement policies and procedures designed to mitigate risk and promote safe and sound practices. The conditions in the C&D Order are consistent with the legislative purpose of section 8(b) of the FDI Act and are "reasonably related" to the 2011 MOU, the unsafe and unsound practices, and the many violations of law committed by the Bank. *Matter of Frontier State Bank*, 2011 WL 2411399, at *5 ("[T]he appropriate inquiry [for the Board] is whether the remedy proposed by the ALJ is reasonably related to and in accordance with the legislative purpose of section 8(b) of the FDI Act."); 12 U.S.C. § 1818(b)(1), (6); FDIC SD Exh. COMP 24, at 006 (FDIC/BOL 0175).

**G. The CMP Assessment is Appropriate**

The ALJ recommended a first-tier CMP of $500,000[21] and the Board concludes that the evidence in the record supports a CMP in that amount. Respondent has not taken exception to the amount of the CMP, arguing only that there is no legal basis for a CMP order for the same reasons that there is no legal basis for a cease and desist order. The Board rejects that argument for the reasons set forth previously.

A first tier CMP may be imposed against a party who commits any violation of law, regulation, or certain orders or written conditions imposed by regulators. 12 U.S.C. § 1818(i)(2)(A); 12 C.F.R. § 308.132(c)(3)(i). The FDI Act authorizes a CMP up to $7,500 for each

[21] *See* R.D. at 52-58.

day the violation, practice, or breach continues, subject to adjustments for inflation. 12 U.S.C. § 1818(i)(2)(A); 28 U.S.C. § 2461; 12 C.F.R. § 509.103.

The Board discussed previously Respondent's unsafe or unsound banking practices, including its disregard for the 2011 MOU and violations of numerous law and regulations, including anti-money laundering regulations. Respondent is subject to a first tier CMP as a result of its many violations of statutes and regulations and the repeated pattern of maintaining these violations year after year. Because Respondent's misconduct persisted throughout the relevant period, the $500,000 penalty recommended by the ALJ is well within the authorized limit.

Moreover, the Board agrees with the ALJ's analysis of the statutory mitigating factors in 12 U.S.C. § 1818(i)(2)(G), which include: (1) the gravity of the violation, (2) history of previous violations, and (3) the Respondent's financial resources and lack of good faith. R.D. at 53-58. The gravity of the violations and Respondent's financial resources support a significant CMP, and the record does not support a finding that Respondent has acted in good faith. The Board therefore adopts the ALJ's recommendation of a $500,000 CMP.

## VI. THE BANK'S EXCEPTIONS TO THE RECOMMENDED DECISION

Respondent challenges only one aspect of the ALJ's decision. Respondent argues that the presiding ALJ was not constitutionally appointed because the FDIC Board appointed ALJ McNeil through a "notational" vote and did not appoint him at an in-person Board meeting. R. Exceptions at 1. Because we conclude that ALJ McNeil was properly appointed, the exception is denied.

### A. The FDIC's Appointment of the Current ALJ Was Proper.

This case was reassigned to ALJ McNeil in July 2018 following the Supreme Court's decision in *Lucia v. Securities & Exchange Commission*, 138 S. Ct. 2044 (2018). In that case, the Court held that ALJs at the SEC were "Officers of the United States" under the Appointments Clause of the United States Constitution. *See Lucia*, 138 S. Ct. at 2055; U.S. Const. art. II, §2, cl. 2. Because the SEC ALJ in the case had been appointed by SEC staff instead of by the head of the agency, the Supreme Court held that the appointment violated the Appointments Clause. 138 S. Ct. at 2053-54. The Court further held that the appropriate remedy was to require a new hearing before either the full five-member body of the SEC or a constitutionally appointed ALJ other than the ALJ who had presided over the enforcement proceeding. *Id*. at 2055.

Although *Lucia* did not address FDIC ALJs, the FDIC Board decided to afford the same relief prescribed by the Court in *Lucia*. The FDIC Board formally appointed ALJ McNeil, and reassigned this case to him. *See* FDIC Resolution Seal No. 085172, Order in Pending Cases (July 19, 2018).[22] The Board appointed ALJ McNeil by notational vote on July 19, 2018. *Id.*

Appointment by notational vote is an entirely legal and very well-accepted practice for government agencies.[23] Respondent has not cited a single case, nor is the Board aware of any such

[22] It is beyond dispute that the FDIC Board possesses the authority to appoint its ALJs, and the FDIC is not subordinate to or contained within any other component of the Executive Branch. 12 U.S.C. § 1812(a) ("The management of the [FDIC] shall be vested in a Board of Directors . . . ."); 12 U.S.C. § 1819 (prescribing corporate powers, including the power to appoint officers); 5 U.S.C. § 3105 (permitting agencies to appoint their own ALJs). Thus, the FDIC is a "Department" for purposes of the Appointments Clause. *See Free Enter. Fund v. Pub. Co. Accounting Oversight Bd.*, 561 U.S. 477, 510-11 (2010) (a component of the Executive Branch that is "not subordinate to or contained within any other such component . . . constitutes a 'Departmen[t]' for the purposes of the Appointments Clause"); 5 U.S.C. § 105 (an "Executive Agency" under Title 5 includes a Government corporation and an independent establishment, such as the FDIC).

[23] R. Exceptions at 1. We note that Respondent's exceptions do not comply with the FDIC's Uniform Rules of Practice, which require that all exceptions set forth "the legal authority relied upon to support each exception." 12 C.F.R. § 308.39(c)(2). Respondent did not cite to a single case to support its argument that a federal agency cannot take action through a notational vote.

case, holding that agency action must be conducted solely through an in-person meeting of the agency's governing body. It is well-established that agencies may "conduct agency business through notational voting." *McChesney v. FEC*, 900 F.3d 578, 585 (8th Cir. 2018); *Pacific Legal Foundation v. Council on Envtl. Quality*, 636 F.2d 1259, 1266 (D.C. Cir. 1980) ("Congress intended to permit agencies to consider and act on agency business by circulating written proposals for sequential approval by individual agency members without formal meetings."); *AMREP Corp. v. FTC*, 768 F.2d 1171, 1178 (10th Cir. 1985) (the law "does not require agencies to hold meetings, and it permits them to continue to do business by sequential or notational written voting."); *Common Cause v. Nuclear Regulatory Comm'n*, 674 F.2d 921, 935 n.42 (D.C. Cir. 1982) ("The Sunshine Act does not . . . prevent agencies from making decisions by sequential notational voting rather than by gathering at a meeting for deliberation and decision."); *Railroad Comm'n of Texas v. United States*, 765 F.2d 221 (D.C. Cir. 1985) ("The final procedural question raised by the Railroad Commission is the propriety of the ICC's use of notational voting. Notational voting is a management device whereby the several members of a multi-member agency or commission vote individually and separately, as opposed to a vote taken at a meeting of the members of the agency . . . The Sunshine Act does not require that meetings be held in order to conduct agency business . . . ." Thus, there was no impropriety.). Accordingly, there was no impropriety whatsoever in the Board's use of notational voting to appoint ALJ McNeil, and the exception is denied.

Moreover, in *Lucia*, the Supreme Court remanded the enforcement proceeding to the agency with instructions to reassign the matter to an ALJ directly appointed by the SEC itself—a constitutionally appointed ALJ—and that the ALJ not be the same ALJ who presided over the original proceeding. *Lucia*, 138 S. Ct. at 2055. That is what the FDIC did here. The FDIC Board directly appointed ALJ McNeil and reassigned this matter to him (as noted earlier, a different ALJ had presided over the original hearing). Thus, even though the *Lucia* decision does not apply

directly to FDIC-appointed ALJs, the FDIC's actions following *Lucia* are entirely consistent with that decision.

## VII. CONCLUSION

After a thorough review of the record in this proceeding, and for the reasons set forth in this Decision, the Board finds that an Order to Cease-and-Desist and Assessment of a CMP is warranted against Respondent. The record demonstrates that Respondent repeatedly engaged in unsafe and unsound banking practices in numerous facets of its operations. The record further demonstrates that Respondent violated the BSA and many other statutes and regulations intended to protect the banking system, consumers, and this country and that it did so repeatedly and even after signing the 2011 MOU in which it committed to altering its practices. In light of Respondent's unsafe and unsound practices and violations of law, the Board is persuaded that a cease-and-desist order should issue. In addition—and also based on the record—the Board concludes that the $500,000 CMP imposed is appropriate and consistent with the statute's purpose.

**FEDERAL DEPOSIT INSURANCE CORPORATION**
**WASHINGTON, D.C.**

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| In the Matter of: | ) | DECISION AND ORDER TO CEASE AND DESIST AND |
| BANK OF LOUISIANA,<br>NEW ORLEANS, LOUISIANA | ) | ASSESSMENT OF CIVIL MONEY PENALTY |
| (Insured State Nonmember Bank) | ) | FDIC-12-489(b)<br>FDIC-12-479(k) |

On November 5, 2013, the Federal Deposit Insurance Corporation ("FDIC") issued a NOTICE OF CHARGES AND OF HEARING, NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("Notice") against Respondent BANK OF LOUISIANA, NEW ORLEANS, LOUISIANA ("Bank"). Respondent filed a timely Amended Answer to the NOTICE.

On December 17, 2019, the duly appointed Administrative Law Judge issued a Recommended Decision on Remand, containing findings of fact, conclusions of law, and a recommendation that the Cease and Desist order presented in the Notice of Charges be issued.

Upon the Board of Directors of the FDIC considering the premises presented in the Recommended Decision on Remand, and having considered the record as a whole, and pursuant to 12 U.S.C. § 1818(b):

IT IS ORDERED that the Bank, institution-affiliated parties of the Bank, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following unsafe or unsound banking practices:

1. Operating the Bank without adequate supervision and direction by the Bank's

Board;

2. Operating the Bank with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;

3. Operating the Bank with inadequate earnings to fund growth;

4. Operating the Bank with inadequate earnings to support dividend payments and augment capital;

5. Operating the Bank with an excessive level of adversely classified assets;

6. Operating the Bank without an effective Compliance Management System ("CMS");

7. Operating the Bank without an effective Bank Secrecy Act compliance program; and

8. Operating the Bank in violation of applicable laws, regulations, and regulatory guidance and policy statements.

IT IS FURTHER ORDERED, that the Bank, its institution-affiliated parties and its successors and assigns take affirmative action as follows:

MANAGEMENT – BOARD SUPERVISION

1. Within 30 days after the effective date of this ORDER, the Bank's Board shall increase its participation in the affairs of the Bank by assuming full responsibility for the approval of the Bank's policies and objectives and for the supervision of the Bank's management, including all of the Bank's activities. The Board's participation in the Bank's affairs shall include, at a minimum, monthly meetings in which the following areas shall be reviewed and approved by the Board: CMS components, reports of income and expenses; new, overdue, renewed, insider, charged-off, delinquent, nonaccrued, and

recovered loans; operating policies; and individual committee actions. The Board shall increase its level of participation in the Bank Secrecy Act ("BSA") compliance program and take affirmative steps to ensure compliance with all applicable BSA laws and regulations. The Bank's Board minutes shall fully document the Board's reviews and approvals, including the names of any dissenting directors.

MANAGEMENT - INDEPENDENT DIRECTORS

2. (a) Within 60 days after the effective date of this ORDER, the Bank shall add to its Board at least one new member who is an Independent Director. For purposes of this ORDER, a person who is an Independent Director shall be any individual:

(1) Who is not an officer of the Bank, any subsidiary of the Bank, or any of its affiliated organizations;

(2) Who does not own more than 5 percent of the outstanding shares of the Bank;

(3) Who is not related by blood or marriage to an officer or director of the Bank or to any shareholder owning more than 5 percent of the Bank's outstanding shares, and who does not otherwise share a common financial interest with such officer, director or shareholder; and

(4) Who is not indebted to the Bank directly or indirectly by blood, marriage or common financial interest, including the indebtedness of any entity in which the individual has a substantial financial

interest in an amount exceeding 5 percent of the Bank's total Tier 1 Capital and Allowance for Loan and Lease Losses ("ALLL"); or

(5) Who is deemed to be an Independent Director for purposes of this ORDER by the FDIC Dallas Regional Office Regional Director ("Regional Director") and the Louisiana Office of Financial Institutions ("OFI") Commissioner ("Commissioner"). The addition of any new Bank directors required by this paragraph may be accomplished, to the extent permissible by state statute or the Bank's bylaws, by means of appointment or election at a regular or special meeting of the Bank's shareholders.

(b) While this ORDER is in effect, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in any of the Bank's Board. Prior to the addition of any individual to the Board, the Bank shall comply with the requirements of Section 32 of the FDI Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 303.100 - 303.103

MANAGEMENT – SPECIFIC POSITIONS

3. (a) Within 90 days after the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include:

(1) A chief executive officer with a demonstrated ability in managing a bank of comparable size and shall have prior experience in upgrading a low quality loan portfolio;

(2) A new senior lending officer with an appropriate level of lending, collection, and loan supervision experience for the type and quality of the Bank's loan portfolio; and

(3) A new chief financial officer/cashier with demonstrated ability in all financial areas relevant to a Bank of comparable size including, but not limited to, accounting, regulatory reporting, budgeting and planning, management of the investment function liquidity management, and interest rate risk management.

(4) Such person(s) shall be provided the necessary written authority to implement the provisions of this ORDER.

The qualifications of management shall be assessed on its ability to:

(5) Comply with the requirements of this ORDER;

(6) Operate the Bank in a safe and sound manner;

(7) Comply with applicable laws and regulations; and

(8) Restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, and management effectiveness.

(b) While this ORDER is in effect, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in any of the Senior Executive Officers. For purposes of this ORDER, "Senior Executive Officer" is defined as in Section 303.101(b) of the FDIC's Rules and Regulations, 12 C.F.R. § 303.101(b). Prior to the employment of any individual as a Senior Executive Officer, the Bank shall comply with the requirements of Section 32 of the FDI

Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 303.100 - 303.103.

STRATEGIC PLAN

4. (a) Within 120 days after the effective date of this ORDER, the Bank shall prepare and adopt a comprehensive strategic plan ("Strategic Plan"). The Strategic Plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and shall, at a minimum, include:

(1) A mission statement that forms the framework for the establishment of strategic goals and objectives;

(2) A description of the Bank's targeted market(s) and an assessment of the current and projected risks and competitive factors in its identified target market(s);

(3) The strategic goals and objectives to be accomplished;

(4) The specific actions designed to improve Bank earnings and accomplish the identified strategic goals and objectives;

(5) The identification of Bank personnel to be responsible and accountable for achieving each goal and objective of the Plan, including specific time frames;

(6) A financial forecast, to include projections for major balance sheet and income statement accounts, targeted financial ratios, and growth projections over the period covered by the Strategic Plan;

(7) A description of the assumptions used to determine financial projections and growth targets;

(8) An identification and risk assessment of the Bank's present and planned future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in the Strategic Plan, with the requirement that the risk assessment of new product lines must be completed prior to the offering of such product lines;

(9) A description of control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's markets;

(10) An evaluation of the Bank's internal operations, staffing requirements, Board and management information systems, and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives established in the Strategic Plan;

(11) A management employment and succession program to promote the retention and continuity of capable management;

(12) Assigned responsibilities and accountability for the strategic planning process, new products, growth goals, and proposed changes in the Bank's operating environment; and

(13) A description of systems designed to monitor the Bank's progress in meeting the Strategic Plan's goals and objectives.

(b) If the Bank's Strategic Plan under this paragraph includes a proposed sale or merger of the Bank, the Strategic Plan shall, at a minimum, address the steps that will be taken and the associated timeline to implement that alternative.

(c) The Bank shall submit the Strategic Plan to the Regional Director and the Commissioner for review and comment. After consideration of all such comments, the Bank shall approve the Strategic Plan, which approval shall be recorded in the minutes of the Bank's Board meeting. Thereafter, the Bank shall implement and follow the Strategic Plan.

(d) Within 30 days after the end of each calendar quarter following the effective date of this ORDER, the Bank's Board shall evaluate the Bank's performance in relation to the Strategic Plan required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Bank's Board meeting at which such evaluation is undertaken.

(e) The Strategic Plan required by this ORDER shall be revised and submitted to the Regional Director and the Commissioner for review and comment 30 days after the end of each calendar year for which this ORDER is in effect. Within 30 days after receipt of all such comments from the Regional Director and the Commissioner and after consideration of all such comments, the Bank shall

approve the revised Strategic Plan, which approval shall be recorded in the minutes of the Bank's Board meeting. Thereafter, the Bank shall implement the revised Strategic Plan.

CLASSIFIED ASSETS - CHARGE-OFF AND PLAN FOR REDUCTION

5. (a) Within 10 days after the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss by the FDIC and the OFI as a result of its examination of the Bank as of January 14, 2013. Elimination or reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to reduce the remaining assets classified Substandard as of January 14, 2013 ("Classified Asset Plan") to the Regional Director and the Commissioner for review. The Classified Asset Plan shall address each asset so classified with an aggregate balance of $250,000 or greater. The Classified Asset Plan shall include any classified assets identified subsequent to the January 14, 2013 examination by the Bank internally or by the FDIC or the OFI in a subsequent visitation or examination. For each identified asset, the Classified Asset Plan should provide the following information:

(1) The name under which the asset is carried on the books of the Bank;

(2) Type of asset;

(3) Actions to be taken in order to reduce the classified asset; and

(4) Time frames for accomplishing the proposed actions.

The Classified Asset Plan shall also include, at a minimum:

(5) A review of the financial position of each such borrower, including the source of repayment, repayment ability, and alternate repayment sources; and

(6) An evaluation of the available collateral for each such credit, including possible actions to improve the Bank's collateral position.

In addition, the Bank's Classified Asset Plan shall contain a schedule detailing the projected reduction of total classified assets on a quarterly basis. Further, the Classified Asset Plan shall contain a provision requiring the submission of monthly progress reports to the Bank's Board and a provision mandating a review by the Bank's Board.

(c) The Bank shall present the Classified Asset Plan to the Regional Director and the Commissioner for review. Within 30 days after the Regional Director's and the Commissioner's response, the Classified Asset Plan, including any requested modifications or amendments shall be adopted by the Bank's Board, which approval shall be recorded in the minutes of the meeting of the Bank's Board. The Bank shall then immediately initiate measures detailed in the Classified Asset Plan to the extent such measures have not been initiated.

(d) For purposes of the Classified Asset Plan, the reduction of adversely classified assets as of January 14, 2013, shall be detailed using quarterly targets

expressed as a percentage of the Bank's Tier 1 Capital plus the Bank's ALLL and may be accomplished by:

(1) Charge-off;

(2) Collection;

(3) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC or the OFI; or

(4) Increase in the Bank's Tier 1 Capital.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified Loss as determined at any future visitation or examination conducted by the FDIC or the OFI. The Bank shall also update the Classified Asset Plan as needed to reflect any assets subsequently classified as Doubtful or Substandard by the Bank internally or by the FDIC or the OFI.

RESTRICTION ON ADVANCES TO CLASSIFIED BORROWERS

6. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose existing credit has been classified Loss by the FDIC or the OFI as the result of its examination of the Bank, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not

prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified Substandard by the FDIC or the OFI as the result of its examination of the Bank, either in whole or in part, and is uncollected, unless the Bank's Board has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable Bank's Board meeting.

REDUCTION OF DELINQUENCIES

7. (a) Within 60 days after the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and the Commissioner for review and comment a written plan for the reduction and collection of delinquent loans ("Delinquency Plan"). Such Delinquency Plan shall include, but not be limited to, provisions which:

(1) Prohibit the extension of credit for the payment of interest;

(2) Delineate areas of responsibility for implementing and monitoring the Bank's collection policies;

(3) Establish specific collection procedures to be instituted at various stages of a borrower's delinquency;

(4) Establish dollar levels to which the Bank shall reduce delinquencies by March 31st, June 30th, September 30th, and December 31st of each calendar year, and

(5) Provide for the submission of monthly written progress reports to the Bank's Board for review and notation in minutes of the meetings of the Bank's Board.

(b) For purposes of the Delinquency Plan, "reduce" means to:

(1) Charge-off; or

(2) Collect.

(c) After the Regional Director and the Commissioner have responded to the Delinquency Plan, the Bank's Board shall adopt the Delinquency Plan as amended or modified by the Regional Director and the Commissioner. The Delinquency Plan will be implemented immediately to the extent that the provisions of the Delinquency Plan are not already in effect at the Bank.

TECHNICAL EXCEPTIONS

8. (a) Within 30 days after the effective date of this ORDER, the Bank shall correct the technical exceptions listed in the Report of Examination as of January 14, 2013. Where efforts are unsuccessful, the Bank shall document the loan file to memorialize the corrective efforts attempted.

(b) Within 30 days after the effective date of this ORDER, the Bank shall implement a system of monitoring and correcting loan documentation exceptions identified either by the Bank internally or by the FDIC or the OFI in subsequent

visitations or examinations to reduce the occurrence of such exceptions in the future.

LOAN REVIEW REQUIREMENTS

9. (a) Within 60 days of the date of this ORDER, the Board shall implement procedures to strengthen the Bank's internal loan review program ("Loan Review Program"). The improved Loan Review Program shall provide for an independent loan review process, with monthly reports submitted to the Board. The monthly reports shall include, but should not be limited to, a discussion of following: (1) the quality of the loan portfolio; (2) the identification, by type and amount, of problem or delinquent loans; (3) the identification of all loans not in conformance with the Bank's lending policy; and (4) the identification of all loans made to officers, directors, principal shareholders or their related interests. The Loan Review Program shall also put in place procedures to determine and correct file documentation deficiencies and ensure that loans recommended for adverse classification or increased monitoring by the regulators or external loan review contractors are included on the Bank's watch list. The guidelines contained in Attachment 1 of the 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses shall be utilized in formulating this review and revision process. The Bank's Board shall review the reports submitted and monitor the Loan Review Program's accomplishments and/or findings monthly. Such reviews shall be recorded in the minutes of the meeting of the Bank's Board and shall detail the action taken by the Bank's Board, as appropriate, to address and resolve all areas of concern noted in the Loan Review Program reports.

(b) Within 30 days of this ORDER, the Board shall contract with a consulting firm acceptable to the Regional Director and the Commissioner to perform a comprehensive external loan review, which encompasses at a minimum, loan relationships of $100,000 or more. The consulting firm shall also evaluate the Bank's loan underwriting, administration, and review processes and shall provide, as warranted, recommendations for improvement. The comprehensive loan review shall be completed within 120 days of the date of this ORDER, with a written report generated by the consulting firm. The Board's written response to the consulting firm's report shall detail the action steps to be taken to address the findings and the recommendations included in the consulting firm's report, and shall include a timeline for implementation of the consulting firm's recommendations. A copy of the consulting firm's report and the Board's response to the consulting firm's report shall be submitted to the Regional Director and the Commissioner for review and opportunity to comment. The Board shall then implement the recommendations set forth in the report to the extent such recommendations have not been previously implemented.

LOAN POLICY

10. (a) Within 60 days after the effective date of this ORDER, and annually thereafter, the Bank's Board shall review the Bank's loan policies and procedures for effectiveness and, based upon this review, shall make all necessary revisions to the Bank's policies in order to strengthen the Bank's lending procedures and abate additional loan deterioration. The revised written loan policies shall be

submitted to the Regional Director and the Commissioner for review and comment upon their completion.

(b) The initial revisions to the Bank's loan policies required by this paragraph, at a minimum, shall include provisions:

(1) Designating the Bank's normal trade area;

(2) Establishing review and monitoring procedures to ensure that all lending personnel are adhering to established lending procedures and that the directorate is receiving timely and fully documented reports on loan activity, including any deviations from established policy;

(3) Requiring that all extensions of credit originated or renewed by the Bank be supported by current credit information and collateral documentation, including lien searches and the perfection of security interests; have a defined and stated purpose; and have a predetermined and realistic repayment source and schedule. Credit information and collateral documentation shall include current financial information, profit and loss statements or copies of tax returns, and cash flow (including global cash flow) projections, and shall be maintained throughout the term of the loan;

(4) Requiring loan committee review and monitoring of the status of repayment and collection of overdue and maturing loans, as well as all loans classified "Substandard" in the Report of Examination;

(5) Requiring the establishment and maintenance of a loan grading system and internal loan watch list;

(6) Requiring a written plan to lessen the risk position in each line of credit identified as a problem credit on the Bank's internal loan watch list;

(7) Prohibiting the capitalization of interest or loan-related expenses unless the Bank's Board formally approves such extensions of credit as being in the best interest of the Bank and provides detailed written support of its position in the Bank's Board minutes;

(8) Requiring that extensions of credit to any of the Bank's executive officers, directors, or principal shareholders, or to any related interest of such person, be thoroughly reviewed for compliance with all provisions of Regulation O, 12 C.F.R. Part 215 and Section 337.3 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3. For purposes of this paragraph, the term "related interest" is defined as in section 215.2(n) of Regulation O, 12 C.F.R. § 215.2(n);

(9) Requiring a non-accrual policy in accordance with the Federal Financial Institutions Examination Council's Instructions for the Consolidated Reports of Condition and Income;

(10) Requiring accurate reporting of past due loans to the Bank's Board on at least a monthly basis;

(11) Addressing concentrations of credit and diversification of risk, including goals for portfolio mix, establishment of limits within loan and other asset categories, and development of a tracking and monitoring system for the economic and financial condition of specific geographic locations, industries, and groups of borrowers;

(12) Requiring guidelines and review of out-of-territory loans which, at a minimum, shall include complete credit documentation, approval by a majority of the Bank's Board prior to disbursement of funds, and a detailed written explanation of why such a loan is in the best interest of the Bank;

(13) Establishing standards for extending unsecured credit;

(14) Incorporating collateral valuation requirements, including:

a. Maximum loan-to-collateral-value limitations;

b. A requirement that the valuation be completed prior to a commitment to lend funds;

c. A requirement for periodic updating of valuations; and

d. A requirement that the source of valuations be documented in Bank records;

(15) Establishing standards for initiating collection efforts;

(16) Establishing guidelines for timely recognition of loss through charge-off;

(17) Establishing officer lending limits and limitations on the aggregate level of credit to any one borrower which can be granted without the prior approval of the Bank's Board;

(18) Requiring that collateral appraisals be completed prior to the making of secured extensions of credit, and that periodic collateral valuations be performed for all secured loans listed on the Bank's internal watch list, criticized in any internal or outside audit report of the Bank, or criticized in any Report of Examination of the Bank by the FDIC or the OFI;

(19) Prohibiting the payment of any overdraft in excess of $2,500 without the prior written approval of the Bank's Board, and imposing limitations on the use of the Cash Items account;

(20) Establishing limitations on the maximum volume of loans in relation to total assets; and

(21) Establishing review and monitoring procedures to ensure compliance with FDIC's regulation on appraisals pursuant to Part 323 of the FDIC's Rules and Regulations, 12 C.F.R. Part 323.

(c) The Bank shall submit the foregoing policies to the Regional Director and the Commissioner for comment. After the Regional Director and the Commissioner have responded to the policies, the Bank's Board shall adopt the policies as amended or modified by the Regional Director and the Commissioner. The policies will be implemented immediately to the extent that they are not already in effect at the Bank.

## ALLL AND AMENDED CALL REPORTS

11. (a) Prior to the end of each calendar quarter, the Bank's Board shall review the adequacy of the Bank's ALLL. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and non-accrual loans and prevailing and prospective economic conditions. The minutes of the Bank's Board meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the ALLL.

(b) Within 30 days after the effective date of this ORDER, the Bank shall review the Consolidated Reports of Condition and Income filed with the FDIC on or after December 31, 2012, and amend said reports if necessary to accurately reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain a reasonable ALLL. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

(c) The Bank must use Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC") Numbers 450 and 310 (formerly Statements Numbers 5 and 114 respectively) for determining the Bank's ALLL reserve adequacy. Provisions for loan losses must be based on the inherent risk in the Bank's loan portfolio. The directorate must document with written reasons any decision not to require provisions for loan losses in the Bank's Board minutes.

PROFIT PLAN

12. (a) Within 90 days after the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the Bank's Board shall develop a written profit plan ("Profit Plan") consisting of goals and strategies for improving the earnings of the Bank for each calendar year. The written Profit Plan shall include, at a minimum:

(1) Identification of the major areas in, and means by, which the Board will seek to improve the Bank's operating performance;

(2) Realistic and comprehensive budgets;

(3) A budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections on not less than a quarterly basis; and

(4) A description of the operating assumptions that form the basis for and support major projected income and expense components.

(b) Such written Profit Plan and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days after the receipt of any comment from the Regional Director and the Commissioner, the Bank's Board shall approve the written Profit Plan, which approval shall be recorded in the meeting minutes of the Bank's Board. Thereafter, the Bank, its directors, officers, and employees shall follow the written profit plan and/or any subsequent modification.

CAPITAL MAINTENANCE

13. (a) Within 30 days after the effective date of this ORDER and while this ORDER is in effect, the Bank, after reviewing the adequacy of the Bank's ALLL as required pursuant to paragraph 11 of this ORDER, shall maintain its Tier 1 Leverage Capital ratio equal to or greater than 9 percent of the Bank's Average Total Assets; shall maintain its Tier 1 Risk-Based Capital ratio equal to or greater than 11 percent of the Bank's Total Risk-Weighted Assets; and shall maintain its Total Risk-Based Capital ratio equal to or greater than 13 percent of the Bank's Total Risk Weighted Assets.

(b) If any such capital ratios are less than required by the ORDER, as determined as of the date of any Report of Condition and Income or at an examination by the FDIC or the OFI, the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director or the Commissioner, present to the Regional Director and the Commissioner a plan ("Capital Plan") to increase the Bank's Tier 1 Capital or to take such other measures to bring all the capital ratios to the percentages required by this ORDER. After the Regional Director and the Commissioner respond to the Capital Plan, the Bank's Board shall adopt the Capital Plan, including any modifications or amendments requested by the Regional Director and the Commissioner.

(c) Thereafter, to the extent such measures have not previously been initiated, the Bank shall immediately initiate measures detailed in the Capital Plan, to increase its Tier 1 Capital by an amount sufficient to bring all the Bank's capital

ratios to the percentages required by this ORDER within 60 days after the Regional Director and the Commissioner respond to the Capital Plan. Such increase in Tier 1 Capital and any increase in Tier 1 Capital necessary to meet the capital ratios required by this ORDER may be accomplished by:

(1) The sale of securities in the form of common stock; or

(2) The direct contribution of cash subsequent to January 14, 2013, by the directors and/or shareholders of the Bank or by the Bank's holding company; or

(3) Receipt of an income tax refund or the capitalization subsequent to January 14, 2013, of a bona fide tax refund certified as being accurate by a certified public accounting firm; or

(4) Any other method approved by the Regional Director and the Commissioner.

(d) If all or part of the increase in Tier 1 Capital required by this ORDER is to be accomplished by the sale of new securities, the Bank's Board shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with Federal securities

laws. Prior to the implementation of the plan, and in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 Capital is to be provided by the sale of non-cumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director and the Commissioner for prior approval.

(e) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(f) In addition, the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, App. A.

(g) For purposes of this ORDER, all terms relating to capital shall be calculated according to the methodology set forth in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325.

DIVIDEND RESTRICTION

14. While this ORDER is in effect, the Bank shall not declare or pay any cash dividend without the prior written consent of the Regional Director and the Commissioner.

INTERNAL AUDIT CONTROL PROGRAM

15. Within 45 days after the effective date of this ORDER, the Bank's Board shall implement an effective program for internal audit and control. The audit program shall provide procedures to test the validity and reliability of operating systems, procedural controls, and resulting records, and shall comply with the Interagency Policy Statement on the Internal Audit Function and its Outsourcing. The Bank's Internal Auditor shall have the appropriate level of independence, resources, requisite skills, and training for the position and shall report quarterly to the Bank's Board. The Internal Auditor's report and any comments made by the directors regarding the Internal Auditor's report shall be noted in the minutes of the Bank's Board meeting.

BUSINESS PLAN

16. While this ORDER is in effect, the Bank shall not enter into any new line of business without the prior written consent of the Regional Director and Commissioner.

BSA COMPLIANCE PLAN

17. Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt and implement a revised written plan ("BSA Compliance Plan") for the continued

administration of the Bank's BSA Compliance Program and the Bank's Customer Identification Program ("CIP") designed to ensure and maintain compliance with the BSA and its implementing rules and regulations ("Regulations"). The revised written BSA Compliance Plan shall incorporate the requirements noted in provisions numbered 18 through 21 below. The Bank shall submit the revised BSA Compliance Plan to the Regional Director and the Commissioner for review and comment. Upon receipt of comments from the Regional Director and the Commissioner, if any, the Bank's Board shall review and approve the revised BSA Compliance Plan. The review and approval of the BSA Compliance Plan by the Bank's Board shall be recorded in the minutes of the Bank's Board meeting. Thereafter, the Bank shall implement the revised BSA Compliance Plan.

BSA OFFICER

18. Within 30 days from the effective date of this ORDER, the Bank shall designate a qualified individual or individuals ("BSA Officer") responsible for coordinating and monitoring day-to-day compliance with the BSA pursuant to Section 326.8 of the FDIC's Rules and Regulations, 12 C.F.R. § 326.8. The BSA Officer shall:

(a) Have sufficient executive authority to monitor and ensure compliance with the BSA and its implementing Regulations;

(b) Be responsible for determining the adequacy of BSA/Anti-Money Laundering ("AML") staffing and for supervising such staff in complying with the BSA and its implementing rules and regulations;

(c) Report directly to the Bank's Board;

(d) Report to the Bank's Audit Committee on a regular basis, not less than quarterly, with respect to any BSA/AML matters;

(e) Be responsible for assuring the proper filing of Currency Transaction Reports ("CTRs"), Reports of International Transportation of Currency or Monetary Instruments, and Suspicious Activity Reports ("SARs") relating to the BSA;

(f) Provide monthly comprehensive written reports to the Bank's Board regarding the Bank's adherence to the BSA Compliance Plan and this ORDER; and

(g) Be evaluated on their ability to promote compliance with this ORDER and all applicable BSA laws and regulations.

BSA INTERNAL CONTROLS

19. Within 60 days from the effective date of this ORDER, the Bank shall provide for a system of internal controls sufficient to comply in all material respects with the BSA and its implementing Regulations and establish a plan for implementing such internal controls ("BSA Internal Controls Plan"). The BSA Internal Controls Plan shall provide, at a minimum:

(a) Procedures for conducting a risk-based assessment of the Bank's customer base to identify the categories of customers whose transactions and banking activities are routine and usual; and determine the appropriate level of enhanced due diligence necessary for those categories of customers whose transactions and banking activities are not routine and/or usual ("high-risk accounts");

(b) Policies and procedures with respect to high-risk accounts and customers identified through the risk assessment conducted pursuant to subparagraph 19(a), including the adoption of adequate methods for conducting enhanced due diligence on high-risk accounts and customers at account opening and on an ongoing basis, and for monitoring high-risk client relationships on a transaction basis, as well as by account and customer;

(c) Policies, procedures, and systems for identifying, evaluating, monitoring, investigating, and reporting suspicious activity in the Bank's products, accounts, customers, services, and geographic areas, including:

(1) Establishment of meaningful thresholds for identifying accounts and customers for further monitoring, review, and analyses;

(2) Periodic testing and monitoring of such thresholds for their appropriateness to the Bank's products, customers, accounts, services, and geographic areas;

(3) Review of existing systems to ensure adequate referral of information about potentially suspicious activity through appropriate levels of management, including a policy for determining action to be taken in the event of multiple filings of SARs on the same customer, or in the event a correspondent or other customer fails to provide due diligence information. Such procedures shall describe the circumstances under which an account should be closed.

(4) Procedures and/or systems for each subsidiary and business area of the Bank to produce periodic reports designed to identify unusual or suspicious activity, to monitor and evaluate unusual or suspicious activity, and to maintain accurate information needed to produce these reports with the following features:

a. The Bank's procedures and/or systems should be able to identify related accounts, countries of origin, location of the customer's businesses and residences to evaluate patterns of activity; and

b. The periodic reports should cover a broad range of time frames, including individual days, a number of days, and a number of months, as appropriate, and should segregate transactions that pose a greater than normal risk for non-compliance with the BSA;

(5) Documentation of management's decisions to file or not to file a SAR; and

(6) Systems to ensure the timely, accurate, and complete filing of required SARs and any other similar or related reports required by law.

(d) Policies and procedures with respect to wire transfer recordkeeping, including requirements for complete information on beneficiaries and senders, as required by 31 C.F.R. § 1020.410;

(e) Policies and procedures for transactions involving non-customers, including, but not limited to, wire transfer services, traveler's check services, and foreign exchange services;

(f) Policies and procedures to establish controls and systems for filing CTRs and CTR exemptions;

(g) Policies and procedures designed to supervise employees that handle currency transactions, complete reports, grant exemptions, monitor for suspicious activity, or engage in any other activity covered by the BSA and its implementing Regulations;

(h) Policies that incorporate BSA compliance into the job descriptions and performance evaluations of appropriate Bank personnel; and

(i) Policies and procedures with respect to the Information Sharing provisions of Section 314(a) of the USA PATRIOT ACT, as required by 31 C.F.R. § 1020.520.

BSA TESTING

20. Within 60 days from the effective date of this ORDER, the Bank shall provide for the periodic and independent testing of the Bank's BSA Compliance Program by developing an independent testing plan ("Independent Testing Plan"). At a minimum, the Independent Testing Plan shall:

(a) Provide for independent testing for compliance by the Bank with the BSA and its Regulations to be conducted by either:

(1) A qualified outside party with the requisite ability to perform such testing and analysis; or

(2) Qualified Bank personnel who have no BSA responsibilities at the Bank.

(b) Such testing shall be done on an annual basis with the first independent test to be completed within 60 days of the formation of the Independent Testing Plan.

(c) The Independent Testing Plan shall, at a minimum:

(1) Test the Bank's internal procedures for monitoring compliance with the BSA and its implementing rules and regulations, including interviews of employees who handle cash transactions;

(2) Sample large currency transactions followed by a review of the CTR filings;

(3) Test the validity and reasonableness of the customer exemptions granted by the Bank;

(4) Test the Bank's recordkeeping system for compliance with the BSA and its Regulations, including, but not limited to:

a. Testing to ensure all reportable transactions have been identified;

b. Testing to ensure Bank personnel is reviewing all applicable reports, including monitoring reports for structuring activities; and

c. Testing to ensure compliance with the Office of Foreign Assets Control ("OFAC") provisions.

(5) Test the Bank's CIP procedures;

(6) Test the adequacy of the Bank's BSA training program;

(7) Assess the overall process for identifying and reporting suspicious activity to include testing to ensure the effectiveness of the Bank's suspicious activity monitoring systems used for BSA compliance;

(8) Assess the integrity and accuracy of management information systems used in the BSA Compliance Program; and

(9) Document the scope of the testing procedures performed and the findings of the testing.

The results of each independent test, as well as any apparent exceptions noted during the testing, shall be presented to the Bank's Board. The Bank's Board shall record the steps taken to correct any exceptions noted and address any recommendations made during each independent test in the minutes of the Bank's Board meeting.

BSA TRAINING

21. Within 60 days from the effective date of this ORDER, the Bank shall develop an effective BSA training program ("BSA Training Program") for management and staff on all relevant aspects of laws, regulations, and Bank policies and procedures relating to the Bank's BSA Compliance Plan. The BSA Training Program shall ensure that all appropriate personnel are aware of, and can comply with, the requirements of the BSA and its implementing rules and regulations, including the currency and monetary instruments reporting requirements and the reporting requirements associated with SARs, as well as all applicable USA PATRIOT ACT and OFAC requirements. The BSA Training Program shall include the following:

(a) Bank-specific BSA policies and procedures, and new rules and requirements as they arise;

(b) A requirement that the Board fully document the BSA training of each Bank employee, officer, and director, including the additional training provided to the designated BSA Compliance Officer; and

(c) A requirement that BSA training shall be conducted no less frequently than annually.

BSA STAFFING STUDY

22. (a) With the assistance of a qualified and independent third party, the Board shall conduct a BSA staffing study ("BSA Staffing Study") in order to ensure that the Bank employs qualified personnel capable of implementing and overseeing all aspects of the Bank's BSA Compliance Program. The BSA Staffing Study shall take into account the type and complexity of the Bank's products and shall include the following:

(1) Identification of both the type and number of officer and staff positions needed to properly manage and supervise the Bank's BSA Compliance Program;

(2) Evaluation of BSA Compliance Program management and staff to determine whether the individuals assigned to the Bank's BSA Compliance Program area possess the ability, experience, training, and other qualifications required to perform their present and anticipated duties, including the development, implementation of, and adherence to the Bank's BSA policies and procedures, and an

ability to restore and maintain the Bank's BSA Compliance Program to a safe and sound condition;

(3) A plan to recruit and hire any additional or replacement personnel with the requisite ability, experience, training, and other qualifications to supplement or replace any Bank employees as necessary to perform any present or anticipated duties with respect to the Bank's BSA Compliance Program as noted in subparagraph 22(a)(2) above;

(4) A BSA management succession and continuity plan; and

(5) Job descriptions for each Bank employee designated to work in the Bank's BSA Compliance Program area.

(b) The BSA Staffing Study shall be completed within 90 days of the effective date of this ORDER, with a copy of the BSA Staffing Study to be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days from the receipt of any comments from the Regional Director and the Commissioner, and after the adoption of any recommended changes to the BSA Staffing Study by the Regional Director and the Commissioner, the Bank's Board shall approve the BSA Staffing Study and record its approval in the Board minutes. Thereafter, the Board shall ensure that the Bank, its directors, officers, and employees implement the BSA Staffing Study recommendations within 30 days of Board approval.

LOOK BACK REVIEW

23. (a) Within 45 days from the effective date of this ORDER, the Bank shall develop a written plan detailing how it will conduct, through an independent and qualified auditor, a review of deposit account and transaction activity from December 1, 2011, through the effective date of this ORDER, in order to identify and report any transactions or series of transactions that may require the filing of SARs or CTRs ("Look Back Review").

(b) The plan for the Look Back Review and the subsequent contract or engagement letter entered into with the auditor performing the Look Back Review shall at a minimum:

(1) Discuss the qualifications of the auditor selected and set forth the auditor's knowledge and experience with the filing of both SARs and CTRs;

(2) Set forth the scope of the Look Back Review by specifying the types of accounts and transactions to be reviewed and making sure that the review includes the Bank's high-risk account customers;

(3) Discuss the methodology for conducting the Look Back Review, including any sampling procedures to be followed;

(4) Discuss the Bank's resources and expertise to be dedicated to the Look Back Review;

(5) Set forth the anticipated start date as well as the anticipated date of completion of the Look Back Review;

(6) Include a provision in the engagement letter for unrestricted examiner access to auditor work papers; and

(7) Include a provision in the engagement letter that the auditor will present the auditor's findings from the Look Back Review directly to the Bank's Board.

(c) The plan for the Look Back Review shall be submitted to the Regional Director and the Commissioner for review and comment prior to the implementation of the Look Back Review plan. Upon receipt of comments from the Regional Director and the Commissioner, the Board shall approve the Look Back Review plan, which approval shall be recorded in the minutes of Bank's Board.

(d) Within 10 days of the Board's approval of the Look Back Review plan, the Bank shall implement the Look Back Review plan.

(e) By the tenth day of each month while the Look Back Review is being conducted, the Bank shall provide to the Regional Director and the Commissioner a written report detailing the actions taken under the Look Back Review and the results obtained since the prior report.

(f) Within 30 days of the completion of the auditor's portion of the Look Back Review plan, the Bank shall provide a list to the Regional Director and the Commissioner specifying all outstanding matters or transactions identified by the auditor as part of the Look Back Review which have yet to be reported and detailing when and how these matters will be reported in accordance with applicable law and regulation.

OFAC COMPLIANCE

24. Within 60 days from the effective date of this ORDER, the Board shall evaluate the Bank's OFAC programs and screening procedures to determine if such activities are designed to ensure compliance with OFAC regulations and develop an OFAC compliance program ("OFAC Compliance Program"). The OFAC Compliance Program should include the following:

(a) An OFAC risk-assessment for the Bank's various products, customers, and departments;

(b) The identification of a qualified individual to monitor and oversee OFAC compliance;

(c) Written Bank-specific policies and procedures for screening transactions and new Bank customers for possible OFAC matches;

(d) Guidelines and internal controls to ensure periodic screening of all existing customer accounts;

(e) Bank-specific procedures for obtaining and maintaining up-to-date OFAC lists of blocked countries, entities, and individuals;

(f) Methods to be utilized to timely convey OFAC updates throughout the Bank;

(g) Procedures for identifying, handling, and reporting prohibited OFAC transactions;

(h) Guidance for filing SARs on OFAC matches, if appropriate;

(i) Training for all appropriate Bank personnel on OFAC compliance and the newly developed Bank OFAC policies and procedures; and

(j) Procedures and timelines for internal reviews or audits of the OFAC processes in each affected department of the Bank.

CORRECTION OF VIOLATIONS AND CONTRAVENTIONS

25. Within 60 days after the effective date of this ORDER, the Bank's Board shall eliminate and/or correct all violations of law or regulation identified in the Joint Report of Examination dated January 14, 2013, and implement procedures designed to ensure the Bank's future compliance with all applicable laws, regulations and statements of policy.

COMPLIANCE MANAGEMENT SYSTEM

26. (a) Within ninety (90) days after the effective date of this ORDER, the Bank shall develop and implement a CMS that is commensurate with the level of complexity of the Bank's operations. The CMS shall:

(1) Include oversight by the Bank's board of directors and senior management that includes the following actions:

a. Ensures adherence with all the provisions of this ORDER and recommendations for corrective actions contained in the FDIC's Compliance Visitation Report dated August 13, 2012 ("Report");

b. Ensures the Bank operates with an adequate CMS as described in the Federal Deposit Insurance Corporation's Compliance Examination Manual, Tab II ("Compliance Examinations"), pages II-2.1-4 ("Compliance Management System"); and

c. Ensures that the Bank's Compliance Officer receives ongoing training, sufficient time, authority, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS.

(2) Include the development and implementation of a compliance program that is reviewed and approved annually by the Bank's Board, with the Board's approval reflected in the Board minutes. The Compliance Program shall include written policies and procedures that shall:

a. Provide Bank personnel with all the information that is needed to perform a business transaction; and

b. Reflect changes, based on periodic updates, in the Bank's business and regulatory environment.

(3) Include the implementation and maintenance of a training program related to applicable consumer protection laws for all Bank personnel, including senior management and the Bank's Board, commensurate with their individual job functions and duties. The Compliance Officer shall be responsible for the administration of this program, and shall provide training to officers and employees on a continuing basis.

(4) Include compliance monitoring procedures that have been incorporated into the normal activities of every department. At a

minimum, monitoring procedures should include ongoing reviews of:

a. Applicable departments and branches; including Electronic Fund Transfers, to monitor transactions such as ACH transactions and debit card point of sale transactions;

b. Disclosures and calculations for various loan and deposit products; including Initial Disclosures for deposit accounts and loan products;

c. Document filing and retention procedures;

d. Marketing literature and advertising; and

e. Internal compliance communication system that provides to Bank personnel appropriate updates resulting from revisions to applicable Consumer Laws.

(5) Require an annual independent, comprehensive, and written audit. The Bank's Board shall document its efforts, including the review of corrective measures made pursuant to the audit's findings, in the Board minutes. The audit shall:

a. Provide for sufficient transactional testing, as appropriate, for all areas of significant compliance risk, including those areas identified in the Report; and

b. Identify the causes that resulted in the violations of law or exceptions noted in the Audit Report, if any, with sufficient

detailed information to provide management with direction in formulating corrective action.

CORRECTION OF CONSUMER VIOLATIONS

27. Within 90 days after the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of consumer laws and regulations identified in the Report, and ensure that the Bank's CMS will facilitate compliance with all consumer laws and regulations in the future. The Bank's actions under this section shall include, at a minimum:

(a) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement systems and controls to ensure compliance with the Electronic Fund Transfers Act ("EFTA"), 15 U.S.C. §§ 1693 et seq., and Regulation E of the Federal Reserve Board, 12 C.F.R. Part 205, including error resolution procedures. In addition, the following shall be completed within 90 days:

(1) Deliver a copy of the Bank's error resolution policy to all bank customers; revise existing procedures, including ACH Procedures, to comply with the regulatory requirements; provide training to applicable Bank personnel; and implement review procedures to identify and correct any future issues; and

(2) Develop and maintain a Regulation E consumer error dispute log which records the date of notification, either oral or written, whichever is earlier, and records the dates of provisional and final credit given to customers regarding error disputes.

COMPLIANCE COMMITTEE

28. Within 30 days after the effective date of this ORDER, the Bank's Board, or a subcommittee of the Bank's Board, shall be charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. If a subcommittee is established, the subcommittee shall report monthly to the entire Bank Board. A copy of any report and any discussion related to the report or the ORDER shall be included in the Bank's Board minutes. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

PROGRESS REPORTS

29. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by the ORDER have been accomplished and the Regional Director and the Commissioner have released the Bank in writing from making additional reports.

SHAREHOLDER NOTIFICATION

30. After the effective date of this ORDER, the Bank shall send a copy of this ORDER, or otherwise furnish a description of this ORDER, to its shareholders (1) in conjunction with the Bank's next shareholder communication, and also (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC

Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review at least 20 days prior to dissemination to shareholders. Any changes requested by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

The provisions of this ORDER shall not bar, stop, or otherwise prevent the FDIC, OFI, the State, or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the FDIC and the OFI.

Issued pursuant to delegated authority this 21st day of April, 2020.

## ORDER TO PAY CIVIL MONEY PENALTY

The Board, having considered the entire record in this proceeding, and taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of Respondent, the gravity of the violations, and such other matters as justice may require, hereby ORDERS and DECREES that:

1. A civil money penalty is assessed against Bank of Louisiana in the amount of $500,000 pursuant to 12 U.S.C. § 1818(i).

2. This ORDER shall be effective and the penalty shall be final and payable thirty (30) days from the date of its issuance.

The provisions of this ORDER will remain effective and in force except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Decision and Order shall be served on Respondent Bank of Louisiana, FDIC Enforcement Counsel, the Administrative Law Judge, and the Louisiana Office of Financial Institutions.

By Order of the Board of Directors.

Dated at Washington, D.C. this 21st day of April, 2020.


/s/

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation

**086489**