

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of)	NOTICE OF INTENTION TO
ASHTON J. RYAN, JR. and WILLIAM J.)	PROHIBIT FROM FURTHER
BURNELL, individually, and as institution-)	PARTICIPATION, NOTICE OF
affiliated parties of)	ASSESSMENT OF CIVIL MONEY
FIRST NBC BANK,)	PENALTIES, FINDINGS OF FACT,
NEW ORLEANS, LOUISIANA)	CONCLUSIONS OF LAW, ORDERS TO
)	PAY, AND NOTICE OF HEARING
)	FDIC-19-0119e
)	FDIC-20-0032k
(INSURED STATE NONMEMBER BANK))	FDIC-19-0004e
(IN RECEIVERSHIP))	FDIC-19-0086k
_____)	

The Federal Deposit Insurance Corporation (FDIC) has determined that ASHTON J. RYAN, JR. (Ryan) and WILLIAM J. BURNELL (Burnell), as institution-affiliated parties of FIRST NBC BANK, NEW ORLEANS, LOUISIANA (Bank), have directly or indirectly participated or engaged in violations of law and regulation, unsafe or unsound practices, and acts, omissions, or practices that constitute breaches of their fiduciary duties as officers and employees of the Bank; that the Bank has suffered or probably would have suffered financial loss or other damage; that the FDIC as receiver for the Bank, as the Bank's successor, has suffered financial loss or other damage; that the interests of the Bank's depositors were prejudiced; that Ryan received financial gain or other benefit; and that the violations, practices, and breaches of fiduciary duties involved personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank. The FDIC, therefore, institutes this proceeding for the purpose of determining whether appropriate orders should be issued against Ryan and Burnell under the provisions of 12 U.S.C. § 1818(e) prohibiting Ryan and Burnell

from further participation in the conduct of the affairs of the Bank and any other insured depository institution or organization listed in 12 U.S.C. § 1818(e)(7)(A) without the prior written approval of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D), and ordering Ryan and Burnell to each pay a civil money penalty under 12 U.S.C. § 1818(i)(2).

The FDIC hereby issues this NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION (NOTICE OF PROHIBITION) under 12 U.S.C. § 1818(e) and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308, and this NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES and ORDERS TO PAY (NOTICE OF ASSESSMENT) under 12 U.S.C. § 1818(i)(2) and 12 C.F.R. Part 308. In support thereof, the FDIC alleges as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction

1. At all times pertinent to the charges herein, the Bank was a corporation existing and doing business under the laws of the State of Louisiana, having its principal place of business in New Orleans, Louisiana.
2. At all times pertinent to the charges herein, the Bank was an insured State nonmember bank, subject to the Federal Deposit Insurance Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III, and the laws of the State of Louisiana.
3. At all times pertinent to the charges herein, Ryan served as the Bank's President, Chief Executive Officer (CEO) (until December 6, 2016), and Chairman of the Board of Directors (until September 28, 2016).

4. At all times pertinent to the charges herein, Burnell served as the Bank's Chief Credit Officer (CCO) and a Senior Executive Vice President of the Bank.

5. At all times pertinent to the charges herein, Ryan and Burnell were "institution-affiliated parties" of the Bank as that term is defined in 12 U.S.C. § 1813(u) and for purposes of 12 U.S.C. §§ 1818(e)(7), 1818(i), and 1818(j).

6. At all times pertinent to the charges herein, the Bank was subject to 12 C.F.R. part 215 (Regulation O), which was made applicable to state nonmember banks by 12 U.S.C. § 1828(j).

7. Regulation O governed extensions of credit to Bank insiders.

8. Ryan was an executive officer under Regulation O as defined in 12 C.F.R. § 215.2(e)(1).

9. The FDIC has jurisdiction over the Bank, Ryan, Burnell, and the subject matter of this proceeding.

10. On April 28, 2017, the Louisiana Office of Financial Institutions (OFI) declared the Bank insolvent and closed the Bank the same day.

11. Also on April 28, 2017, the OFI appointed the FDIC as the receiver for the Bank (FDIC-Receiver).

Loan Approval Process

12. The Bank Loan Policy had various loan approval authorities, which were based on the total aggregate debt that the Bank had committed to an individual borrowing relationship.

13. Ryan had loan approval authority up to \$7.5 million.

14. Only Ryan could approve overdrafts over \$25,000.

15. Burnell had loan approval authority up to \$1.5 million for secured loans and \$250,000 for unsecured loans.

16. Besides the individual lending authorities of certain individuals, including Ryan and Burnell, loan approval at the Bank was maintained by two committees and the Board of Directors:

- a. The Senior Loan Committee (SLC), of which Burnell was the Co-Chairman and Ryan was a member together with other Bank officers, had loan approval authority up to \$15 million.
- b. The Board Loan Committee (BLC), of which Ryan and Burnell were members together with various Bank directors, had loan approval authority up to \$25 million.
- c. The Board of Directors had loan approval authority of \$25 million and higher.
- d. Until September 1, 2016, Ryan could approve \$1 million incremental loans once per customer relationship until submitted to the SLC or BLC for review, a process that did not require a vote.
- e. The SLC reviewed most of the incremental loans approved by Ryan.
- f. The BLC, on a secondary basis, reviewed some of the SLC's reviews of incremental loans approved by Ryan.
- g. Once reviewed by the SLC or, on rare occasions, the BLC, Ryan's incremental loan authority was renewed for that loan relationship, which allowed him to make an additional incremental loan to that same loan relationship.
- h. Incremental loans were designed to be used for emergency credit needs only.

- i. Beginning on September 1, 2016, Ryan's incremental loans had to be affirmatively renewed by the BLC before he could make an additional incremental loan to a loan relationship.

17. For most loan approvals, including incremental loans, there was a Loan Package, which typically included a Credit Memorandum, Credit Analysis, and other written underwriting materials. These documents typically detailed, among other things, the loan amount, the loan purpose, information about the borrower's financial condition, cash-flow information, collateral information, a risk rating, and potential risks.

18. Burnell's Credit Department prepared the Credit Analyses.

19. When approving a loan, the approving officer received or prepared a Loan Package.

20. When reviewing a loan request or incremental loan, the SLC, BLC, or Board received a Loan Package.

21. As the CCO, Burnell had significant responsibilities concerning lending practices at the Bank, including, but not limited to:

- a. The content and timely updating of the Bank Loan Policy;
- b. Overseeing the Bank Credit Department, including the proper underwriting of loans and preparing documents for Loan Packages;
- c. Personally risk rating loans over \$1,000,000 using a 1 through 10 scale, with 1 being the weakest and 10 being the strongest;
- d. Reviewing loans for impairment analysis to ensure an appropriate Allowance for Loan and Lease Losses (ALLL);
- e. Recommending the ALLL to Ryan for approval; and

- f. Together with Ryan, approving Criticized Asset Action Plans (CAAPs), which were used to monitor the status of problematic loans and submitted to the BLC and Board.
- 22. Before risk rating a loan, Burnell received a Loan Package.

Loan Policy

23. From January 2015 through December 2016, the Bank Loan Policy underwent two major revisions: the first revision was effective October 21, 2015, and the second revision was effective February 24, 2016.

24. At all times pertinent to the charges herein, the Bank Loan Policy, among other things:

- a. Required the primary criterion when evaluating a credit request to be the financial condition of the borrower and, specifically, the cash flow available to service the debt. Other relevant factors included the business purpose and collateral value, but the principal analysis was the borrower's ability to repay from proven sources of cash flow;
- b. Prohibited the capitalization of interest; and
- c. Required current financial statements from borrowers.

Ryan and Burnell's Regulation O Violations, Unsafe or Unsound Practices,

and Breaches of Fiduciary Duties

25. In 2015 and 2016, Ryan and Burnell repeatedly engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions in connection with some of the major credits and customers at the Bank, including, but not limited

to: Borrower 1, Borrower 2, Borrower 3, Gregory St. Angelo, Borrower 4, Borrower 5, Borrower 6, Borrower 7, Borrower 8, and Customer 1.

26. For many of these relationships, Ryan abused his incremental authority by repeatedly making incremental loans without demonstrable emergency credit needs even though the loans exhibited unsafe or unsound characteristics.

27. Burnell repeatedly failed to object when these incremental loans were presented to the SLC and BLC.

28. Burnell's repeated failures to object enabled Ryan to have his incremental authority renewed each time a loan was presented for review, which allowed Ryan to continue making unsafe or unsound loans.

29. Ryan violated Regulation O in connection with Borrower 1, Borrower 4, and Customer 1, and Burnell caused the Bank to violate Regulation O in connection with Borrower 1.

30. Burnell approved loans with unsafe or unsound characteristics in connection with Borrower 1 and Borrower 3.

31. Ryan and Burnell caused the Bank to file false or misleading Consolidated Reports of Condition and Income (Call Reports).

Borrower 1

32. At all times pertinent to the charges herein, Ryan and Borrower 1 were co-owners of XXX Estates, LLC and of XXX Estates, II, LLC.

33. XXX Estates, LLC owned a 92-acre real estate development known as XXX Estates in XXX Parish, Louisiana, and XXX Estates II, LLC owned a clay pit in XXX Parish, Louisiana.

34. Because of the conflict of interest between Ryan and Borrower 1, Ryan delegated his lending authority for Borrower 1 and his related interests (collectively, Borrower 1) to Burnell, including for the loans discussed below.

35. The Bank Loan Policy did not authorize Ryan to delegate his lending authority to Burnell.

36. Despite the conflict of interest, Ryan still helped facilitate the loans discussed below.

37. Burnell approved the loans below by signing as an additional approving officer.

July 17, 2015 Loan

38. On or about July 17, 2015, Burnell approved a \$412,000 loan to Borrower 1, which included a renewal and a \$162,000 increase. The loan purpose was to increase working capital for various commercial projects.

39. The Credit Analysis that was in the Loan Package reflected numerous unsafe or unsound characteristics, including the following:

- a. Borrower 1 had a net loss for 2013;
- b. Borrower 1 had a debt-to-income ratio of negative 240 percent;
- c. Borrower 1 had a credit score of 578, which was well below the standard set by the Bank Loan Policy;
- d. Borrower 1's deposit accounts were overdrawn;
- e. Despite current financials having been requested by the Bank, Borrower 1 did not provide the Bank with the requested financials; and
- f. Borrower 1's personal cash after debt service was negative \$177,000.

40. In addition to these unsafe or unsound characteristics, the loan-to-value ratio was stated at 75 percent based only on, as disclosed, the possibility of a judgment in favor of Borrower 1. At the time of this loan, there was no judgment in place, meaning that this loan was unsecured. Burnell nevertheless approved this loan despite Borrower 1's difficulties in making timely payments to the Bank on other loans.

41. The Loan Package also reflected that Borrower 1 had two outstanding federal tax liens.

42. Despite all of the foregoing unsafe or unsound characteristics, Burnell approved this loan.

43. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated this loan a "6, acceptable with care" even though this rating was reserved for a loan of overall acceptable credit quality.

February 17, 2016 Loan

44. On or about February 4, 2016, Burnell approved a \$250,000 unsecured loan to Borrower 1 to cover business expenses. This loan closed on or about February 17, 2016.

45. The Credit Analysis that was in the Loan Package reflected many of the same unsafe or unsound characteristics as the other loans to Borrower 1, including the following:

- a. Borrower 1's businesses had net losses for 2013;
- b. Borrower 1's debt-to-income ratio was 280 percent;
- c. Borrower 1's credit score was 621, which was below the standard set by the Bank Loan Policy;
- d. Financial statements were of poor quality;

- e. More recent financial statements were sought by the Bank, but they were not provided by Borrower 1;
- f. Borrower 1's outside net worth was negative; and
- g. Several of Borrower 1's related accounts were overdrawn.

46. In addition, the global debt service coverage (DSC) ratio in the Credit Analysis was improperly calculated. The Bank claimed Borrower 1's DSC ratio was 1.48 in 2014 and was projected to be 1.89 in 2015. The 2014 and 2015 calculations were incorrect as the Bank impermissibly included loan proceeds of \$270,000 in Borrower 1's cash available for debt service in violation of the Bank Loan Policy. If the loan proceeds had been properly excluded from the calculations, Borrower 1's DSC ratio would have been 0.46 instead of 1.48 in 2014 and 0.43 instead of 1.89 in 2015.

47. The correctly calculated negative DSC ratios evidenced Borrower 1's inability to service this loan.

48. The Loan Package also reflected that Borrower 1 had two outstanding federal tax liens: one was for \$89,290 and the second one was for \$479,000.

49. Despite all of the foregoing unsafe or unsound characteristics, Burnell approved this loan.

50. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated this loan a "6, acceptable with care."

51. Borrower 1 used at least \$60,926 of the loan proceeds to issue two checks to XXX Estates, LLC, which were endorsed by Ryan.

52. As a co-owner of XXX Estates, LLC, Ryan received the tangible economic benefit of \$60,926 in loan proceeds as defined in 12 C.F.R. § 215.3(f) without satisfying the

requirements of Regulation O set forth in 12 C.F.R. part 215, including, for example, complying with the requirements for executive officers in 12 C.F.R. § 215.5(d).

53. Burnell made this loan without satisfying the requirements of Regulation O set forth in 12 C.F.R. part 215, including, for example, complying with the requirements for executive officers in 12 C.F.R. § 215.5(d).

February 25, 2016 Consolidation Loan

54. On or about February 25, 2016, Burnell approved a \$678,000 loan to Borrower 1. This loan renewed the loan described in paragraph 44 and a February 11, 2015 loan that had a principal sum of \$425,000.

55. The Credit Analysis that was in the Loan Package reflected many of the same unsafe or unsound characteristics as the loans being renewed had upon origination, including the following:

- a. Borrower 1's businesses had a net loss for 2013;
- b. Borrower 1's debt-to-income ratio was 280 percent;
- c. Borrower 1's credit score was below the standard set by the Bank Loan Policy at 621;
- d. The financial statements provided were of poor quality;
- e. More recent financial statements were sought by the Bank, but Borrower 1 failed to provide them;
- f. Borrower 1's outside net worth was negative; and
- g. Several of Borrower 1's related accounts were overdrawn.

56. The global DSC ratio in the Credit Analysis was again improperly calculated. The Bank claimed Borrower 1's DSC ratio was 1.48 in 2014 and was projected to be 1.89 in

2015. The 2014 and 2015 calculations were incorrect as the Bank impermissibly included loan proceeds of \$270,000 in Borrower 1's cash available for debt service in violation of the Bank Loan Policy. If the loan proceeds had been properly excluded from the calculations, Borrower 1's DSC ratio would have been 0.46 instead of 1.48 in 2014 and 0.43 instead of 1.89 in 2015.

57. The correctly calculated negative DSC ratios evidenced Borrower 1's inability to service this loan.

58. The Loan Package also reflected that Borrower 1's two federal tax liens were still outstanding.

59. Despite all of the foregoing unsafe or unsound characteristics, Burnell approved this loan.

60. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated this loan a "6, acceptable with care."

November 29, 2016 Loan

61. On or about November 29, 2016, Burnell approved a \$70,000 unsecured loan to Borrower 1 for temporary working capital.

62. The Credit Analysis that was in the Loan Package reflected many of the same unsafe or unsound characteristics as the other loans to Borrower 1, including the following:

- a. Borrower 1's business had a net loss for 2013;
- b. Borrower 1's debt-to-income ratio was 280 percent;
- c. Borrower 1's credit score was 621, which was below the standard set by the Bank Loan Policy;
- d. Borrower 1 did not provide current or recent financial statements; and
- e. Borrower 1's outside net worth was negative.

63. The Loan Package also reflected that Borrower 1's two federal tax liens were still outstanding.

64. In addition, the Credit Memorandum falsely stated the loan purpose was temporary working capital to allow time for underwriting and the permanent financing of real estate. The true, undisclosed loan purpose, as Burnell knew at the time this loan was originated, was primarily to provide Borrower 1 with funds to make past-due payments to the Bank.

65. Despite all of the foregoing unsafe or unsound characteristics, Burnell approved this loan.

66. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated this loan a "6, acceptable with care."

Borrower 1 Summary

67. Burnell engaged in unsafe or unsound practices and breached his fiduciary duties to the Bank through his actions and inactions related to Borrower 1.

68. As a result of Burnell's misconduct related to Borrower 1, the Bank probably would have suffered financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost at least \$667,599.03.

69. Burnell's misconduct related to Borrower 1 exhibited personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

70. Ryan violated Regulation O for the loan to Borrower 1 described in paragraph 44.

71. Burnell caused the Bank to violate Regulation O for the loan to Borrower 1 described in paragraph 44.

72. In connection with the Regulation O violation, Ryan received at least \$60,926 through XXX Estates, LLC.

Borrower 2

73. Borrower 1 was one of the owners of Borrower 2, a real estate company.

74. In February 2016, Borrower 2 had an outstanding loan at the Bank with a balance of \$2,446,000.

75. The loan was secured by real estate valued at approximately \$1,680,000 and by a brokerage account at another institution with a balance of \$400,000, for a total collateral value of approximately \$2,080,000.

76. On or about February 16, 2016, Burnell, on behalf of the Bank, accepted a Dation En Paiement on the outstanding loan from Borrower 2.

77. As part of the Dation En Paiement, which was akin to a deed in lieu of foreclosure, the Bank received title to all of the collateral securing Borrower 2's loan, including the real estate and the \$400,000 brokerage account.

78. Without any authorization and in contravention of safe and sound banking practices, Ryan gave \$300,000 of the collateral from the brokerage account to Borrower 1 through Borrower 3.

79. Before the fraudulent transfer occurred, Burnell knew that Borrower 1 was going to receive \$300,000 from the brokerage account.

80. One of Burnell's responsibilities as the CCO was to recommend the level of the ALLL to Ryan, which included determining whether Borrower 2's loan needed to be impaired based on the value of collateral that the Bank collected compared to the outstanding balance of the loan.

81. Despite Burnell's ALLL responsibilities and oversight of the Dation En Paiement, he failed to ensure that any of the \$2,080,000 in collateral from the Dation En Paiement was properly credited to Borrower's 2 loan.

82. Upon crediting the \$2,080,000 to Borrower 2's loan, the Bank should have charged off at least \$366,000, which represented the difference between the amount of collateral that the Bank collected and the outstanding balance of the loan.

Borrower 2 Summary

83. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to Borrower 2.

84. As a result of Burnell's misconduct related to Borrower 2, the Bank improperly avoided at least \$366,000 in loss that it would have suffered had it appropriately recognized the loss on the loan to Borrower 2.

85. As a result of Ryan's misconduct related to Borrower 2, the Bank lost \$300,000.

86. Ryan and Burnell's misconduct related to Borrower 2 exhibited personal dishonesty and demonstrated a willful disregard for the safety or soundness of the Bank.

Borrower 3

87. Borrower 1 was the principal of Borrower 3, a shell company that was supposed to engage in real estate activities.

88. Because of the conflict of interest between Ryan and Borrower 1, Ryan delegated his lending authority for Borrower 3 to Burnell, including for the loans below.

89. The Bank Loan Policy did not authorize Ryan to delegate his lending authority to Burnell.

90. Despite the conflict of interest, Ryan still helped facilitate the loans discussed below.

91. Burnell approved the loans below by signing as an additional approving officer.

March 2016 Loan

92. On or about March 31, 2016, about one month after the Dation En Paiement described in paragraphs 76 to 77, Burnell approved a \$2,446,000 undersecured loan to Borrower 3 for future business investments.

93. The Credit Memorandum falsely stated that the loan purpose was future business expenses. The true, undisclosed purpose, as Burnell knew or should have known when this loan was originated, was to pay Borrower 2's loan described in paragraph 74.

94. By means of the purported loan to Borrower 3, the Bank avoided the \$366,000 charge-off that it should have taken on the loan to Borrower 2.

95. In addition to listing a false loan purpose, the Loan Package reflected the following unsafe or unsound characteristics:

- a. The borrower did not have the financial capacity to repay the loan;
- b. The loan was undersecured despite Borrower 3's lack of capacity to repay; and
- c. The guarantor, Borrower 1, provided no financial support.

96. Despite all of the foregoing unsafe or unsound characteristics, Burnell approved this loan.

97. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated this loan a "6, acceptable with care."

July 29, 2016 Renewal

98. Four months later, on or about July 29, 2016, Burnell approved the renewal of the loan to Borrower 3 described in paragraph 92 with a \$400,000 increase, for a total balance of \$2,846,000.

99. The Loan Package reflected the following unsafe or unsound characteristics:

- a. Borrower 3 did not have the financial capacity to repay the loan;
- b. The properties in which Borrower 3 invested were mostly the same properties that had secured the loan to Borrower 2, which had failed to generate sufficient income to service Borrower 2's loan; and
- c. The guarantor, Borrower 1, provided no financial support based on the following non-exclusive reasons: Borrower 1's businesses had net losses for 2013; his debt-to-income ratio was 192 percent; his credit score was 621; and he had failed to provide recent financial statements.

100. Despite all of the foregoing unsafe or unsound characteristics, Burnell approved this loan.

101. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated this loan a "6, acceptable with care."

Borrower 3 Summary

102. Burnell engaged in unsafe or unsound practices and breached his fiduciary duties to the Bank through his actions and inactions related to Borrower 3.

103. As a result of Burnell's misconduct related to Borrower 3, the Bank improperly avoided at least \$366,000 in loss that it would have suffered had it appropriately recognized the loss on the loan to Borrower 2 described in paragraph 74, the Bank probably would have

suffered additional financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost at least \$308,829.96.

104. Burnell's misconduct related to Borrower 3 exhibited personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Gregory St. Angelo

105. Gregory St. Angelo was the Bank's General Counsel from almost the inception of the Bank until on or about September 30, 2016.

106. During this timeframe, the Bank made to St. Angelo and his related interests numerous loans with an approximate total balance as of December 2016 of \$49.8 million.

Fraudulent Tax Credit Sale

107. Throughout 2015 and 2016, Ryan kept the loans to St. Angelo and his related interests current by authorizing overdrafts for St. Angelo, issuing additional loans to St. Angelo, including loans to clear overdrafts, or purchasing alleged tax credits from St. Angelo on behalf of the Bank.

108. The St. Angelo loans were part of a series of unrelated loan relationships commonly referred to at the Bank as "DORKS," which many times, at the end of each month, required the Bank to use the various methods cited above to keep the loans current.

109. The St. Angelo loans were the "S" in "DORKS."

110. Ryan and Burnell knew how the Bank used the various methods cited above to keep the St. Angelo loans current.

111. For example, on or about May 26, 2015, Ryan signed an Agreement to Purchase Tax Credits to authorize the Bank to purchase from St. Angelo, through a falsely claimed related interest, tax credits on the property at XXX Street, New Orleans, Louisiana (XXX),

despite the fact that St. Angelo never owned XXX and never had authority from the owner of XXX to sell the tax credits.

112. On or about May 26, 2015, pursuant to the Agreement to Purchase Tax Credits, the Bank paid St. Angelo or his related interests \$315,732 for alleged federal and state tax credits.

113. The Bank was unable to claim the tax credits because St. Angelo did not have authority to sell them to the Bank.

114. The Bank lost the \$315,732 that it paid under the Agreement to Purchase Tax Credits.

115. Most of the funds from this tax credit sale were used to bring current a loan to a related interest of St. Angelo.

116. Ryan knew that St. Angelo did not have the authority to sell tax credits for XXX.

117. Burnell knew or should have known that St. Angelo did not have the authority to sell tax credits for XXX.

118. In a December 2014 email regarding the availability of “tax credits for XXX,” Burnell acknowledged that “as long as we have a sharp pencil we are never out of tax credits.”

Unearned Compensation

119. On or about June 30, 2016, the Bank received a \$10 million wire that the Bank incorrectly thought came from a borrower whose loan was in a foreclosure being handled by St. Angelo.

120. Based on this misunderstanding, Ryan authorized the Bank to pay St. Angelo \$150,000 as legal fees for the \$10 million recovery, Burnell debited the \$150,000 from the Bank's general ledger, and Ryan signed the \$150,000 check.

121. The next day, the Bank discovered the mistake and reversed the \$10 million credit; however, the Bank did not request that St. Angelo return the unearned \$150,000 fee.

122. Although Burnell was asked by the Chief Accounting Officer to recoup the unearned \$150,000 from St. Angelo, Burnell did not do so.

123. Ryan also did not request that St. Angelo return the unearned \$150,000.

124. According to St. Angelo, either Ryan or Burnell told him to keep the funds.

St. Angelo Summary

125. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to St. Angelo.

126. As a result of Ryan and Burnell's misconduct related to St. Angelo, the Bank lost at least \$465,732.

127. Ryan and Burnell's misconduct related to St. Angelo exhibited personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Borrower 4

128. Borrower 4 is a Louisiana limited liability company that engages in earth-moving services.

129. From May 2015 through December 2016, Ryan used his incremental authority to originate 11 increases to Borrower 4's revolving line of credit totaling \$9 million.

130. These loans increased Borrower 4's indebtedness to the Bank on the line of credit from \$13,500,000 to \$22,500,000.

131. The first nine loans were presented to the SLC for review and sometimes later presented to the BLC for a secondary review.

132. After September 1, 2016, when Ryan's incremental authority changed, the last two loans were presented to the BLC to determine whether or not Ryan's incremental authority should be formally renewed.

133. Ryan abused his incremental authority by using it to routinely fund Borrower 4 without a demonstrable emergency credit need even though the loans exhibited unsafe or unsound characteristics.

134. Burnell repeatedly failed to object when these incremental loans were presented to the SLC and BLC.

Ryan's Self-Dealing

135. On or about January 6, 2014, XXX Estates, LLC entered into a construction contract with Borrower 4 under which Borrower 4 performed work for the XXX Estates real estate development in XXX Parish, Louisiana.

136. As part of the deal, Ryan agreed to repay Borrower 4 upon the sale of the XXX Estates development and to pay Borrower 4's overdrafts.

137. After the deal was made, Ryan acted out of self-interest when he approved hundreds of thousands of dollars of overdrafts for Borrower 4, made incremental loans to pay for some of those overdrafts, and reversed \$93,398 in Borrower 4's overdraft fees.

138. XXX Estates, LLC was required, by a separate contract, to perform certain work on the XXX Estates real estate development, and Ryan was personally liable for the performance of this portion of the work.

139. Borrower 4 used at least \$294,053.80 of the loan proceeds to pay a subcontractor to perform the work and thus relieve Ryan of his liability under the contract.

140. Ryan received the tangible economic benefit as defined in 12 C.F.R. § 215.3(f) of at least \$294,053.80 of the loan proceeds to Borrower 4 without satisfying the requirements of Regulation O set forth in 12 C.F.R. part 215, including, for example, complying with the requirements for executive officers in 12 C.F.R. § 215.5(d).

141. Ryan misrepresented the loan purpose in the Credit Memoranda for the loans to Borrower 4 by listing the purpose as “increase working capital line of credit.” The true, undisclosed loan purpose, as Ryan knew at the time these loans were originated, was primarily to make payments on Borrower 4’s loans, clear Borrower 4’s overdrafts, and pay a subcontractor to complete work that Ryan was contractually obligated to have performed.

Collateral

142. Each of the loans to Borrower 4 was secured by Borrower 4’s accounts receivable.

143. Under the Bank Loan Policy, the total loan balance for loans secured by accounts receivable could not exceed 80 percent of the value of the receivables.

144. The Credit Memoranda for many of these loans, however, reflected that the total loan balances were more than 80 percent of the pledged receivables, in violation of the Bank Loan Policy.

145. The Bank Loan Policy also required that accounts receivable serving as collateral be aged. Under the aging process, receivables that were outstanding for over 90 days were ineligible to be used as collateral.

146. Despite the terms of the Bank Loan Policy, Ryan told Borrower 4 that it did not have to age the accounts receivable securing the loans.

147. The Bank also did not age the accounts receivable serving as collateral for these loans.

148. Aging would have revealed that many, if not all, of the underlying receivables were outstanding for more than 90 days and thus ineligible to serve as collateral under the Bank Loan Policy.

149. The Loan Packages did not show any aging because the listed receivables securing the loans did not state how long each receivable had been outstanding.

150. As a result of the Bank Loan Policy violations, the Bank did not have adequate collateral on the loans to Borrower 4.

151. Despite the violations of the Bank Loan Policy and resulting collateral deficiencies, Ryan continued to make incremental loans to Borrower 4.

152. Although the Loan Packages revealed the lack of aging, Burnell failed to ensure that staff aged the receivables before risk rating the loans.

153. Despite the lack of aging and resulting collateral deficiencies, Burnell inaccurately risk rated each of the loans to Borrower 4 as “6, acceptable with care.”

Ryan’s Conflict of Interest

154. Two of the accounts receivable listed as collateral for the loans to Borrower 4 were from entities co-owned by Ryan: XXX Estates, LLC and XXX Estates II, LLC.

155. The total of the receivables from XXX Estates, LLC and XXX Estates II, LLC that Borrower 4 pledged as collateral for these loans consistently accounted for more than one-third of Borrower 4's total receivables securing the loans.

156. Ryan had an egregious conflict of interest when he approved the loans to Borrower 4 because a substantial portion of the accounts receivable securing the loans were from companies that he owned and that had failed to pay Borrower 4.

157. Despite this conflict of interest, Ryan continued to make incremental loans to Borrower 4.

Borrower 4 Summary

158. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to Borrower 4.

159. Ryan also violated Regulation O when he originated loans to Borrower 4.

160. As a result of Ryan and Burnell's misconduct related to Borrower 4, the Bank probably would have suffered financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost at least \$8,681,043.58.

161. As a result of Ryan's misconduct related to Borrower 4, Ryan received at least \$294,053.80 in the form of work performed by a subcontractor.

162. Ryan and Burnell's misconduct related to Borrower 4 demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

163. Ryan's misconduct related to Borrower 4 also exhibited personal dishonesty.

Borrower 5

164. Borrower 5 engaged in various investments following Hurricane Katrina in 2005.

165. Among Borrower 5's investments was a clay pit consisting of approximately 20.14 million cubic yards or approximately 27.18 million tons of clay, per a 2013 engineering letter; however, the letter did not assign a value to the material.

166. Ryan was in charge of the Borrower 5 lending relationship but implemented decisions through a designated loan officer.

167. From August 2015 through August 2016, Ryan approved nine incremental loans to Borrower 5 totaling \$6,087,785.39.

168. These loans raised Borrower 5's total indebtedness to the Bank from \$14,850,069.97 to \$20,937,855.36.

169. These loans were presented to the SLC for review and sometimes later presented to the BLC for a secondary review.

170. Ryan abused his incremental authority by using it to routinely fund Borrower 5 without a demonstrable emergency credit need even though the loans exhibited unsafe or unsound characteristics.

171. Burnell repeatedly failed to object when these incremental loans were presented to the SLC and BLC.

172. Ryan also regularly approved Borrower 5's overdrafts, which were often repaid with these incremental loans.

March 2016 Incremental Loan

173. For example, in March 2016, Ryan originated a \$1,700,000 incremental loan to Borrower 5, which was a renewal with a \$450,000 increase.

174. This loan increased Borrower 5's total loan exposure to the Bank to \$19,444,999.18.

175. At the time of this loan, Borrower 5 was not creditworthy because he did not have sufficient cash flow to service his debt to the Bank as evidenced by his frequent use of overdrafts at the Bank.

176. In a memorandum in the Loan Package dated March 10, 2016, the loan officer admitted that this loan brought Borrower 5's DSC ratio further below 1.00. Borrower 5's DSC ratio was already below 1.00 before this loan was made.

177. In the same memorandum, the loan officer acknowledged that Borrower 5 did not exhibit cash flow sufficient to service the existing or proposed debt.

178. In the Credit Analysis that was in the Loan Package for this loan, Borrower 5's global DSC ratio was listed as 0.36. The Credit Analysis also noted that Borrower 5 did not have liquidity as he had only \$6,000 in liquid assets against contingent debt of \$14,849,000 at the Bank and a credit card balance of \$113,000.

179. Despite these cash-flow deficiencies, Ryan used his incremental authority to make this loan.

180. Despite these cash-flow deficiencies, Burnell failed to object when this loan was presented to the SLC.

181. Despite these cash-flow deficiencies, Burnell inaccurately risk rated this loan a "6, acceptable with care."

Unsafe or Unsound Characteristics

182. Generally, the Loan Packages for the nine loans to Borrower 5 reflected many, if not all, of the following unsafe or unsound characteristics:

- a. Borrower 5 did not have the financial capacity to service the loans;
- b. The loans lacked sufficient collateral;

- c. Borrower 5's deposit accounts at the Bank were consistently overdrawn, and many of the loans were made, at least in part, to clear these overdrafts;
- d. Borrower 5 needed interest reserves;
- e. Lack of principal reduction;
- f. Repeated loan renewals to keep loans current;
- g. Outdated and unsupported personal financial statement of December 2012; and
- h. Borrower 5's line of credit was at the maximum allowed limit and increased since origination with minimal principal pay down.

183. Despite all of the foregoing unsafe or unsound characteristics, Ryan continued to approve overdrafts for Borrower 5.

184. Despite all of the foregoing unsafe or unsound characteristics, Ryan continued to make incremental loans to Borrower 5.

185. Despite all of the foregoing unsafe or unsound characteristics, Burnell failed to object when these loans were presented to the SLC and BLC.

186. Despite all of the foregoing unsafe or unsound characteristics, Burnell inaccurately risk rated six of these loans a "6, acceptable with care."

Borrower 5 Summary

187. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to Borrower 5.

188. As a result of Ryan and Burnell's misconduct related to Borrower 5, the Bank probably would have suffered financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost at least \$4,514,674.32.

189. Ryan and Burnell's misconduct related to the loans to Borrower 5 demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Borrower 6

190. Throughout its existence, Ryan used his incremental authority to originate many loans to Borrower 6 and his related companies (collectively, Borrower 6).

191. Borrower 6 leased a beignet shop located at XXX Street, New Orleans, Louisiana.

192. On or about August 27, 2014, Ryan used his incremental authority to originate an unsecured \$1,555,000 loan to Borrower 6, which included a renewal and a \$980,000 increase.

193. The Credit Memoranda in the Loan Package for the 2014 loan stated that the loan purpose was to finance renovations to a property at XXX Street and to three gas stations.

194. The Loan Package for the 2014 loan included a memorandum authored by Ryan. According to the memorandum, \$350,000 of the loan proceeds would be used to enclose the patio at XXX Street, and the renovations could be completed in four to five weeks.

195. On or about December 23, 2015, Ryan used his incremental authority to originate an unsecured \$2,055,000 loan to Borrower 6, which included a renewal of the 2014 loan and a \$500,000 increase.

196. The Credit Memoranda in the Loan Package for the 2015 loan again stated that the loan purpose was to finance renovations to the property at XXX Street and to three gas stations.

197. The Loan Package for the 2015 loan included a memorandum authored by Ryan. According to the memorandum, \$350,000 of the loan proceeds would be used to enclose the patio at XXX Street, and the renovations could be completed in four to five weeks.

198. On or about March 29, 2016, Ryan used his incremental loan authority to originate a \$2,555,000 loan to Borrower 6, which included a renewal of the 2015 loan and a \$500,000 increase.

199. The Credit Memoranda in the Loan Package for the 2016 loan stated that the loan purpose was to finance renovations to properties located in New Orleans, including the property at XXX Street.

200. The reported purposes for the 2014, 2015, and 2016 loans were false.

201. The proceeds of the three loans were put in Borrower 6's accounts at the Bank instead of being disbursed to the construction company to enclose the patio at XXX Street.

202. The patio at XXX Street was never enclosed.

203. Ryan falsified documents in the Loan Packages for Borrower 6.

204. Ryan failed to ensure that the loan proceeds extended to Borrower 6 were used for their stated purposes.

205. The Loan Packages for the loans to Borrower 6 also reflected many, if not all, of the following unsafe or unsound characteristics:

- a. No collateral to secure the debt;
- b. Continuing cash flow shortfalls;
- c. Speculative prospects for Borrower 6; and
- d. Outdated personal financial statements.

206. Despite all of the foregoing unsafe or unsound characteristics, Ryan continued to make incremental loans to Borrower 6.

207. Despite the absence of a demonstrable emergency credit need, Ryan continued to make incremental loans to Borrower 6.

Borrower 6 Summary

208. Ryan engaged in unsafe or unsound practices and breached his fiduciary duties to the Bank through his actions and inactions related to Borrower 6.

209. As a result of Ryan's misconduct related Borrower 6, the Bank probably would have suffered financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost thousands of dollars.

210. Ryan's misconduct related to Borrower 6 exhibited personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Borrower 7

211. From May 2015 to November 2016, Ryan approved approximately 40 \$1 million incremental loans to Borrower 7 or one of his related companies (collectively, Borrower 7).

212. Between May 31, 2015, and November 30, 2016, Borrower 7's total loan balance grew from approximately \$74 million to approximately \$123 million.

213. Robert Calloway was the loan officer for Borrower 7's loans.

214. The incremental loans were presented to the SLC for review and sometimes later presented to the BLC for a secondary review.

215. During this timeframe, the full Board approved several loan requests to Borrower 7.

216. Ryan abused his incremental authority by using it to rapidly fund Borrower 7 without a demonstrable emergency credit need even though the loans exhibited unsafe or unsound characteristics.

217. Burnell repeatedly failed to object when these incremental loans were presented to the SLC and BLC.

False or Misleading Loan Packages

218. From May 2015 through September 2016, Ryan and Calloway submitted false or misleading Loan Packages for Borrower 7 to the SLC, BLC, and full Board.

219. For example, the Credit Memoranda nearly always reported approximately a 91 percent loan-to-value ratio, which significantly inflated the available collateral for Borrower 7's loans even as new loans continued to grow the total balance.

220. Ryan knew or should have known that the reported collateral was false or misleading.

221. Burnell's risk ratings of the loans to Borrower 7 failed to account for the collateral shortfall.

222. The Credit Memoranda also incorrectly reported the loan purpose as working capital, soft costs, or predevelopment costs when the real purpose was to cover loan payments, overdrafts, or personal expenses.

223. Ryan knew or should have known that the reported loan purposes were false or misleading.

False or Misleading CAAPs

224. Ryan and Burnell approved false or misleading CAAPs for Borrower 7 that were submitted to the BLC and full Board.

225. During 2015 and 2016, Ryan and Burnell signed eight CAAPs for Borrower 7's loans.

226. In all of the CAAPs, Ryan falsely certified that Borrower 7's loans did not have a collateral shortfall.

227. In all of the CAAPs, Burnell certified that Borrower 7's loans did not have a collateral shortfall without ensuring that this certification was correct.

228. In all of the CAAPs, Ryan and Burnell falsely certified that the loans were performing as agreed.

229. This certification was false because the loans were only kept current due to incremental loans that Ryan kept extending to Borrower 7 to make principal and interest payments.

Borrower 7 Summary

230. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to Borrower 7.

231. As a result of Ryan and Burnell's misconduct related to Borrower 7, the Bank probably would have suffered financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost at least \$41,112,496.90.

232. Ryan and Burnell's misconduct related to Borrower 7 exhibited personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Borrower 8

233. During 2015 and 2016, the Bank had a significant oil and gas credit relationship with two related companies partially owned by Borrower 8 (collectively, Borrower 8).

234. To repay the Bank, Borrower 8 needed to produce and sell oil or natural gas from its wells.

235. Ryan was in charge of the Borrower 8 lending relationship and implemented decisions through a designated loan officer.

236. During 2015 and 2016, the loan officer was in constant contact with Borrower 8.

237. The loan officer kept Ryan and Burnell well apprised of developments with Borrower 8's wells and other aspects of the relationship.

238. In the 2015 Report of Examination (2015 ROE), the FDIC and OFI criticized Borrower 8's loans in great detail.

239. In the 2015 ROE, Borrower 8's loans were adversely classified Substandard (\$40,627,000) and Doubtful (\$14,662,000) based upon a lack of repayment in accordance with original terms, a collateral shortfall, and the inability of the companies to demonstrate enough cash flow to service interest payments on the debt.

240. Another major criticism of Borrower 8's loans in the 2015 ROE was the lack of oil and gas lending guidelines in the Bank Loan Policy.

241. After the exam results, from May 2015 to November 2016, Ryan approved approximately 56 \$1 million incremental loans to Borrower 8.

242. Between June 30, 2015, and October 31, 2016, Borrower 8's total balance grew from approximately \$64 million to approximately \$111 million.

243. The loans were presented to the SLC for review and sometimes later presented to the BLC for a secondary review.

244. Ryan abused his incremental authority by using it to rapidly fund Borrower 8 without a demonstrable emergency credit need even though the loans exhibited unsafe or unsound characteristics, including those identified in the 2015 ROE.

245. Despite these issues, Burnell participated in the overall lending strategy to Borrower 8.

Loan Policy Violations

246. On or about October 21, 2015, the Bank added an oil and gas policy to its Loan Policy.

247. Under the terms of the initial Bank oil and gas policy, a relationship's total loan balance was limited to the following types of proved oil and gas reserves: 100 percent of Proved Developed Producing Properties (PDPP), 75 percent of Proved Developed Non-Producing Properties (PDNP), encompassing Shut-in and Behind Pipe Properties, and 50 percent of Proved Undeveloped Properties (PUP). Also under the terms of the initial Bank oil and gas policy, the overall advance rate of credit could not exceed 65 percent of the sum of these proved reserves.

248. The Bank made these calculations based on an engineering report provided by a third party that assessed the different types of available reserves.

249. Regardless of these calculations, the Bank oil and gas policy required that PDPP reserves make up at least 80 percent of a relationship's total balance.

250. On or about February 25, 2016, the Bank revised its oil and gas policy to remove the provision in paragraph 249 to instead require that PDPP and PDNP reserves make up a "significant portion of the total borrowing base."

251. Despite the limitations in the Bank oil and gas policy, Ryan repeatedly originated \$1 million incremental loans to Borrower 8 even though the total indebtedness exceeded the allowable borrowing limits set forth in the Bank oil and gas policy.

252. As a result, the Bank did not have adequate collateral on the loans to Borrower 8.

253. Burnell risk rated the loans to Borrower 8 and was aware of Borrower 8's lack of progress in producing oil or natural gas but did not properly ensure that the loans complied with the allowable borrowing limits set forth in the Bank oil and gas policy.

Unsafe or Unsound Characteristics

254. The Loan Packages for the loans to Borrower 8 exhibited many of the unsafe or unsound characteristics that were identified in the 2015 ROE, including the following:

- a. Lack of cash flow to service the loans;
- b. Outdated and/or unaudited financial statements;
- c. Deficit working capital;
- d. Insolvency; and
- e. Collateral dependency.

255. Although Borrower 8 needed to produce and sell oil or natural gas to repay the Bank, Ryan and Burnell knew that Borrower 8 was only able to produce oil or natural gas for less than two months toward the end of 2016.

256. Ryan and Burnell knew that Borrower 8 encountered many difficulties as it tried to successfully produce oil or natural gas.

257. Ryan and Burnell knew that, due to Borrower 8's lack of success and weak financial position, Borrower 8 was unable to get an equity partner.

258. Despite all of the foregoing unsafe or unsound characteristics, Ryan continued to rapidly make incremental loans to Borrower 8.

259. Despite all of the foregoing unsafe or unsound characteristics, Burnell continued to participate in the overall lending strategy to Borrower 8.

Borrower 8 Summary

260. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to Borrower 8.

261. As of result of Ryan's misconduct related to Borrower 8, the Bank probably would have suffered financial loss or other damage had it remained open, and the FDIC-Receiver, as the Bank's successor, lost at least \$50,589,950.38.

262. Ryan and Burnell's misconduct related to Borrower 8 demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Customer 1

263. Customer 1 had a demand deposit account (DDA) at the Bank.

264. In 2016, contrary to the terms of the Deposit Agreement, Burnell debited the DDA for a total of at least \$950,000.

265. In contravention of safe and sound banking practices, Burnell failed to verify Customer 1's authorization before debiting almost one million dollars and instead relied on the oral representations of St. Angelo.

266. All of the offsetting credits to Burnell's debits to the DDA went to benefit Ryan.

267. On or about September 9, 2016, Ryan approved a \$200,000 overdraft by XXX, LLC, a related interest of St. Angelo, on a check payable to Customer 1.

268. On or about October 1, 2016, Ryan approved a \$500,000 overdraft by XXX, LLC on a check payable to Customer 1.

269. On or about November 2, 2016, Ryan approved a \$200,000 overdraft by XXX, LLC on a check payable to Customer 1.

270. When the three checks were written, neither XXX, LLC nor St. Angelo owed Customer 1 any money.

271. Instead, the three checks totaling \$900,000 went to reduce Ryan's indebtedness to Customer 1.

272. Ryan had an egregious conflict of interest when he approved these overdrafts.

273. Ryan received the tangible economic benefit of the three checks totaling \$900,000 as defined in 12 C.F.R. § 215.3(f) without satisfying the requirements of Regulation O set forth in 12 C.F.R. part 215, including, for example, complying with the requirements for executive officers in 12 C.F.R. § 215.5(d).

Customer 1 Summary

274. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to Customer 1.

275. Ryan violated Regulation O in connection with the \$900,000 in overdrafts that he approved for XXX, LLC.

276. As a result of the debits to Customer 1's DDA, the Bank had a risk of loss of \$950,000, Ryan gained \$950,000, and Customer 1 was prejudiced.

277. In connection with the Regulation O violations, Ryan gained \$900,000.

278. Ryan's misconduct related to Customer 1 exhibited personal dishonesty and demonstrated a willful and continuing disregard for the safety or soundness of the Bank.

Other Misconduct

279. From May 2015 through 2016, and as described above, Burnell repeatedly misused his position as the CCO and a member of the SLC and BLC, including, but not limited to, through the following actions and inactions:

- a Allowing Ryan to repeatedly abuse his incremental authority and then have his incremental lending authority renewed despite the fact that the underlying borrowers were not creditworthy, the loans lacked sufficient collateral, and the rapid use of Ryan's incremental authority did not comport with the intended purpose of incremental lending;
- b Overstating the risk rating for numerous loan relationships, including, but not limited to, Borrower 1, Borrower 3, Borrower 4, and Borrower 5, which allowed Burnell to avoid conducting impairment analyses that would have revealed the Bank was not getting repaid in accordance with the loan terms;
- c By overstating the risk ratings and avoiding impairment analyses, Burnell masked the past-due status of numerous loan relationships, which allowed Ryan to continue making additional unsafe or unsound loans to make those relationships appear current; and
- d Failing to designate loans as impaired and use the subsequent impairment as a provision expense against the Bank's ALLL, which resulted in the overstatement of the Bank's income and capital on the Bank's 2015 and 2016 Call Reports, as well as the understatement of losses and past-due loans on these same Call Reports.

280. Throughout 2015 and 2016, and as described above, Ryan repeatedly misused his position as President, CEO, and Chairman of the Board, including, but not limited to, through the following actions and inactions:

- a Abusing his incremental lending authority by rapidly making incremental loans despite the fact that the underlying borrowers were not creditworthy, the loans

lacked sufficient collateral, and the rapid use of his incremental authority did not comport with the intended purpose of incremental lending;

- b. Overstating the current performance of numerous loan relationships by masking their past-due status through the making of additional loans, including loans to clear overdrafts, to make those loans appear current;
- c. Failing to designate loans as impaired and use the subsequent impairment as a provision expense against the Bank's ALLL, which resulted in the overstatement of the Bank's income and capital on the Bank's 2015 and 2016 Call Reports, as well as the understatement of losses and past-due loans on these same Call Reports; and
- d. Circumventing the loan authority of the BLC or full Board by making incremental loans when the relationships in question had an aggregate balance of over \$15 million or \$25 million, which required approval by the BLC or full Board, respectively, as described in paragraph 16.

Other Misconduct Summary

281. Ryan and Burnell engaged in unsafe or unsound practices and breached their fiduciary duties to the Bank through their actions and inactions related to the additional misconduct.

282. As a result of Ryan and Burnell's additional misconduct, the Bank suffered or probably would have suffered financial loss or other damage had it remained open, the FDIC-Receiver, as the Bank's successor, lost millions of dollars, and the Bank's depositors were prejudiced.

283. Ryan and Burnell's additional misconduct involved a willful and continuing disregard for the safety or soundness of the Bank.

Summary of Financial Loss and Gain

284. As a result of Ryan's misconduct described above, the Bank lost at least \$765,732.

285. As a result of Ryan's misconduct described above, the FDIC-Receiver, as the Bank's successor, lost at least \$104,898,165.18.

286. As a result of Burnell's misconduct described above, the Bank lost at least \$465,732.

287. As a result of Burnell's misconduct described above, the FDIC-Receiver, as the Bank's successor, lost at least \$55,284,643.79.

288. As a result of Ryan's misconduct described above, Ryan received financial gain or other benefit of at least \$2,204,980.

PRAYER FOR ORDERS OF PROHIBITION FROM FURTHER PARTICIPATION

The FDIC prays that an Order of Prohibition from Further Participation under 12 U.S.C. § 1818(e) be issued against Ryan.

The FDIC prays that an Order of Prohibition from Further Participation under 12 U.S.C. § 1818(e) be issued against Burnell.

ACTION REQUIRED TO CONTEST THE NOTICE OF PROHIBITION

Under 12 C.F.R. § 308.19, if Ryan or Burnell wants to contest the NOTICE OF PROHIBITION, each individual must file his own Answer to the allegations in the NOTICE OF PROHIBITION within twenty (20) calendar days of service of the NOTICE OF PROHIBITION. Failure to file an Answer to the allegations in the NOTICE OF PROHIBITION within the 20-day

period shall result in a waiver of the right to appear and contest the NOTICE OF PROHIBITION and may result in a default order under 12 C.F.R. § 308.19(c). If a default order is issued, the administrative law judge (ALJ) shall recommend to the FDIC Board of Directors that the failure to submit an Answer to the allegations in the NOTICE OF PROHIBITION be deemed a consent to an Order of Prohibition from Further Participation based on the allegations set forth above in support of the NOTICE OF PROHIBITION.

NOTICE OF ASSESSMENT

Jurisdiction

289. Paragraphs 1 through 11 are realleged and incorporated herein by reference.

Findings of Fact and Conclusions of Law

290. Paragraphs 12 through 288 are realleged and incorporated herein by reference.

Grounds for the Assessment of Civil Money Penalties

291. As a result of Ryan and Burnell's misconduct set forth above, Ryan and Burnell violated or caused the Bank to violate Regulation O.

292. As a result of Ryan and Burnell's misconduct set forth above, Ryan and Burnell recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

293. As a result of Ryan and Burnell's misconduct set forth above, Ryan and Burnell breached their fiduciary duties to the Bank.

294. Ryan and Burnell's violations, reckless engagement in unsafe or unsound practices in conducting the affairs of the Bank, and breaches of their fiduciary duties to the Bank were part of a pattern of misconduct that caused thousands of dollars in loss to the Bank, caused millions of dollars in loss to the FDIC-Receiver, as the Bank's successor, and were likely to cause more than a minimal loss to the Bank.

295. Ryan's violations, reckless engagement in unsafe or unsound practices in conducting the affairs of the Bank, and breaches of fiduciary duty also resulted in pecuniary gain or other benefit to Ryan.

ORDERS TO PAY

By reason of the misconduct set forth in the NOTICE OF PROHIBITION and NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against Ryan and Burnell, respectively, pursuant to 12 U.S.C. § 1818(i)(2).

After taking into account the appropriateness of the penalty with respect to the size of financial resources and the good faith of Ryan, the gravity of the violations, the history of previous violations, and such other matters as justice may require, it is:

ORDERED, that by reason of the violations, reckless unsafe or unsound practices, and breaches of fiduciary duties set forth in paragraphs 12 through 295 hereof, a penalty of \$5,000,000 be, and hereby is, assessed against Ryan pursuant to 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to Ryan until 20 days after the date of service of the NOTICE OF ASSESSMENT.

After taking into account the appropriateness of the penalty with respect to the size of financial resources and the good faith of Burnell, the gravity of the violations, the history of previous violations, and such other matters as justice may require, it is:

ORDERED, that by reason of the violations, reckless unsafe or unsound practices, and breaches of fiduciary duties set forth in paragraphs 12 through 295 hereof, a penalty of \$200,000 be, and hereby is, assessed against Burnell pursuant to 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to Burnell until 20 days after the date of service of the NOTICE OF ASSESSMENT.

ACTION REQUIRED TO CONTEST THE NOTICE OF ASSESSMENT AND ORDERS
TO PAY

Under 12 U.S.C. § 1818(i)(2)(H) and 12 C.F.R. § 308.19, if Ryan or Burnell wants to contest the NOTICE OF ASSESSMENT and respective ORDER TO PAY, within twenty (20) calendar days of service of the NOTICE OF ASSESSMENT and respective ORDER TO PAY, each individual must file **both**:

- 1) A Request for Hearing on the NOTICE OF ASSESSMENT; and
- 2) An Answer to the allegations in the NOTICE OF ASSESSMENT.

Filing an Answer to the allegations in the NOTICE OF ASSESSMENT, or filing an Answer to the allegations in the NOTICE OF PROHIBITION, without filing a clear and unambiguous Request for Hearing on the NOTICE OF ASSESSMENT WILL NOT preserve the right to contest the NOTICE OF ASSESSMENT and respective ORDER TO PAY.

Thus, to contest the NOTICE OF PROHIBITION, NOTICE OF ASSESSMENT, and respective ORDER TO PAY, each individual must file his own: 1) Answer to the allegations in the NOTICE OF PROHIBITION; 2) Answer to the allegations in the NOTICE OF ASSESSMENT; and 3) Request for Hearing on the NOTICE OF ASSESSMENT.

If Ryan fails to file a Request for Hearing on the NOTICE OF ASSESSMENT within twenty (20) calendar days of service, the penalty assessed against Ryan pursuant to the ORDER

TO PAY will be final and unappealable under 12 U.S.C. § 1818(i)(E)(ii) and 12 C.F.R. § 308.19(c)(2) and shall be paid within sixty (60) calendar days of the date of service of the NOTICE OF ASSESSMENT.

If Burnell fails to file a Request for Hearing on the NOTICE OF ASSESSMENT within twenty (20) calendar days of service, the penalty assessed against Burnell pursuant to the ORDER TO PAY will be final and unappealable under 12 U.S.C. § 1818(i)(E)(ii) and 12 C.F.R. § 308.19(c)(2) and shall be paid within sixty (60) calendar days of the date of service of the NOTICE OF ASSESSMENT.

PLACE AND MANNER OF FILING

All documents filed in these proceedings must be filed with the Office of Financial Institution Adjudication (OFIA), ofia@fdic.gov, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA, 22226-3500, in the manner specified under 12 C.F.R. § 308.10. Also, copies of all documents filed in these proceedings shall be served upon: the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Room F-1058, Washington, D.C. 20429; Andrea Winkler, Acting Assistant General Counsel, and Sam Ozeck, Supervisory Counsel, Enforcement Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429; and Stephen C. Zachary, Regional Counsel, Federal Deposit Insurance Corporation, Dallas Regional Office, 1601 Bryan St., 37th Floor, Dallas, Texas 75201.

OPPORTUNITY FOR HEARING

Any hearing requested will be held before an ALJ assigned by OFIA under 5 U.S.C. § 3105. The hearing will be open to the public, unless the FDIC determines that an open hearing would be contrary to the public interest, and in all respects will be conducted in compliance with the provisions of 12 U.S.C. §§ 1811-1831aa and 12 C.F.R. Part 308. The hearing will be held in

New Orleans, Louisiana, within sixty (60) calendar days from the date of service of the NOTICE OF PROHIBITION on Ryan and Burnell or on such other date and at such other place designated by the ALJ.

The purpose of the hearing will be for the taking of evidence on the allegations in the NOTICE OF PROHIBITION to determine whether a permanent order should be issued to prohibit Ryan and Burnell, respectively, from further participation in the conduct of the affairs of the Bank and any insured depository institution or organization listed in 12 U.S.C. § 1818(e)(7)(A) without the prior permission of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in 12 U.S.C. § 1818(e)(7)(D).


If Ryan timely files (1) a Request for Hearing on the NOTICE OF ASSESSMENT and (2) an Answer to the allegations in the NOTICE OF ASSESSMENT, evidence on the allegations shall also be taken at a hearing to determine whether the ORDER TO PAY assessed against Ryan should be sustained. The hearing on the NOTICE OF ASSESSMENT may be consolidated with the hearing on the NOTICE OF PROHIBITION, and evidence may be taken at a hearing on the allegations in both Notices.

If Burnell timely files (1) a Request for Hearing on the NOTICE OF ASSESSMENT and (2) an Answer to the allegations in the NOTICE OF ASSESSMENT, evidence on the allegations shall also be taken at a hearing to determine whether the ORDER TO PAY assessed against Burnell should be sustained. The hearing on the NOTICE OF ASSESSMENT may be consolidated with the hearing on the NOTICE OF PROHIBITION, and evidence may be taken at a hearing on the allegations in both Notices.

Pursuant to delegated authority.

Dated this 21 day of May, 2020.

**PATRICIA
COLOHAN**

 Digitally signed by PATRICIA
COLOHAN
Date: 2020.05.21 15:19:11
-04'00'

Patricia A. Colohan
Associate Director
Division of Risk Management Supervision