

## FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of

FRANK WILLIAM BONAN, II, individually  
and as institution-affiliated party of

GRAND RIVERS COMMUNITY BANK  
GRAND CHAIN, ILLINOIS

(INSURED STATE NONMEMBER BANK)

RESPONDENT NMLS UI# N/A

NOTICE OF INTENTION TO  
PROHIBIT FROM FURTHER  
PARTICIPATION, NOTICE OF  
ASSESSMENT OF CIVIL  
MONEY PENALTIES,  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
ORDER TO PAY, AND NOTICE  
OF HEARING

FDIC-16-0254e

FDIC-16-0256k

The Federal Deposit Insurance Corporation (“FDIC”) determined that Frank William Bonan II, (“Respondent” or “Bonan II”), was Chairman of the Board at Grand Rivers Community Bank, Grand Chain, Illinois (“Bank”), and an institution-affiliated party of the Bank. Respondent, directly or indirectly, recklessly participated or engaged in unsafe or unsound practices in connection with the Bank and breached fiduciary duties owed to the Bank. Respondent’s practices and breaches were part of a pattern of misconduct and caused the Bank to suffer or probably suffer financial loss or other damage. Respondent’s reckless practices and breaches involved personal dishonesty and demonstrate Respondent’s willful and continuing disregard for the safety or soundness of the Bank.

## NOTICE OF INTENTION TO PROHIBIT FROM FURTHER PARTICIPATION

The FDIC issues this Notice of Intention to Prohibit from Further Participation and the Findings of Fact and Conclusions of Law (collectively “Notice of Charges”) under 12 U.S.C. § 1818(e) and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, subparts A and B.

This proceeding will determine whether an order should be issued against Respondent under the Federal Deposit Insurance Act, 12 U.S.C. § 1818(e), to prohibit Respondent from further participation in the conduct of the affairs of any insured depository institution or organization listed in 12 U.S.C. §1818(e)(7)(A), without the prior written approval of the FDIC and other appropriate Federal financial institutions regulatory agency.

### **NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY**

The FDIC further issues this Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, and Order to Pay (collectively “Notice of Assessment”) under 12 U.S.C. § 1818(i)(2) and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, subparts A and B. This Notice of Assessment assesses a \$105,000 civil money penalty against the Respondent under 12 U.S.C. § 1818(i)(2) unless the Respondent timely requests a hearing under 12 U.S.C. § 1818(i)(2)(H).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The FDIC makes the following allegations against Respondent:

#### **I. Jurisdiction**

1. At all times pertinent to the charges within, the Bank was a corporation existing and doing business under the laws of the State of Illinois, having its principal place of business at Grand Chain, Illinois.

2. At all times pertinent to the charges within, 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 Illinois.

3. At all times pertinent to the charges within, Bonan II served as the chairman of the Bank's board of directors ("Board"). He was also at all times a member of the Bank's executive/loan committee.

4. At all times pertinent to the charges within, Bonan II also served as president of a division for a National Bank ("National Bank"), in Illinois. At the same time, Bonan II also served as a member of the board of directors and as a member of the executive loan committee for National Bank.

5. At all times pertinent to the charges within, Respondent was an "institution-affiliated party" of the Bank as that term is defined 12 U.S.C. § 1813(u) and for purposes 12 U.S.C. §§ 1818(e)(7), 1818(i), and 1818(j).

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

## **II. Bonan II was a Dominant Manager and Policymaker Within the Bank**

7. From at least the start of the September 15, 2014, examination of the Bank, Bonan II was a dominant manager and policymaker within the Bank.

8. In the late summer of 2015, National Bank and the Bank began discussions for a merger in which National Bank would acquire the Bank. In late October 2015, Bonan II, abruptly resigned from the Board and caused National Bank to pause the merger discussions. In subsequent discussions between National Bank and the Bank regarding Bonan II's return to the Board and continuation of the merger, Bonan II predicated his support of the merger on greater control of the Bank, including his ability to select the members of the board and to set his own salary.

9. To keep the proposed merger between National Bank and the Bank on track,

Bonan II's demands were accepted. Bonan II selected J.C. (initials only throughout, to preserve confidentiality), W.S., G.G., and L.P. to become members of the board.

### **III. The Common Borrower Loan Relationship with the Bank and National Bank**

10. In September 2015, Common Borrower 1, an Indiana company, Common Borrower 2, and other co-borrowers ("Related Entities"), collectively controlled by G.E. and his daughter, A.E., (collectively "G.E. and A.E."), had outstanding loans with the Bank and National Bank of approximately \$11.7 million (the "Common Borrower Loan Relationship").

11. In September 2015, Common Borrower 1 and Common Borrower 2 owed the Bank approximately \$1.2 million.

12. In September 2015, Common Borrower 1, Common Borrower 2, and the Related Entities owed National Bank approximately \$10.5 million.

13. Some of the collateral securing loans to Common Borrower 1 and Common Borrower 2 was pledged by G.E. and A.E. to the Bank and National Bank.

14. In January 2013, both National Bank and the Bank made loans to Common Borrower 1 to facilitate its acquisition of a Cabot 900 Series self-propelled drilling rig, known as Rig 23. National Bank loaned Common Borrower 1 approximately \$1 million to facilitate its purchase of Rig 23. National Bank acknowledged the Bank's purchase money security interest ("PMSI") lien for \$490,000. G.E. and A.E. and Common Borrower 1 pledged Rig 23 to secure loans with the Bank and National Bank.

15. In 2013, the Bank acquired its PMSI in Rig 23 by advancing \$490,000 to the equipment seller, which enabled Common Borrower 1 to purchase the carrier portion of the rig. National Bank had a prior blanket UCC lien securing all its loans to Common Borrower 1. In 2013, National Bank took its security interest in Rig 23 through a filed blanket UCC-1 subject to

the Bank's \$490,000 PMSI.

16. A commercial warehouse in Carmi, Illinois ("Carmi Warehouse"), was collateral pledged by G.E. and A.E. and Common Borrower 2 to secure loans with the Bank and National Bank. In 2010, National Bank took a first mortgage lien against the Carmi Warehouse to secure its loan to Common Borrower 2. In 2014, the Bank took a second mortgage lien against the Carmi Warehouse to secure its loan to Common Borrower 2.

#### **IV. National Bank Determines the Common Borrower's Loan Relationship is Impaired**

17. On or about February 2015, Common Borrower 1's loans with National Bank were renewed by Bonan II but were placed on interest only for six months with the understanding that Common Borrower 1 would reduce its debt to National Bank by \$1 million by August 5, 2015.

18. On February 28, 2015, Bonan II informed A.E. that National Bank had approved a \$900,000 increase to Common Borrower 1's line of credit but that the larger commercial loan at National Bank had been placed on interest only for six months. Bonan II stated that National Bank expected Common Borrower 1 to sell \$1 million of non-critical assets within the next six months.

19. By August 5, 2015, Common Borrower 1's loans with National Bank matured, and Common Borrower 1 had still not made the \$1 million reduction of its debt to National Bank.

20. On or about August 7, 2015, S.C., the National Bank loan officer for the Common Borrower 1 loans, raised concerns with Bonan II about Common Borrower 1's financial condition, noting Common Borrower 1's inadequate debt service coverage ("DSC") and the need to present a plan for Common Borrower 1 to National Bank's Watch Loan Committee.

21. On or about August 7, 2015, in response, Bonan II informed S.C. that National Bank needed to move Common Borrower 1 to nonaccrual status and start selling its assets.

22. Throughout August 2015, Bonan II and others at National Bank, including W.B., president, general counsel, chairman of the board of directors at National Bank, K.B., a director at National Bank and the Bank who was also Common Borrower 1's accountant, and S.C., continued to express concerns about the significant financial difficulties facing Common Borrower 1 and its ability to service its debt with National Bank.

23. In late August 2015, on behalf of National Bank, Bonan II proposed a forbearance plan to G.E. and Common Borrower 1 pursuant to which Common Borrower 1 would sell specific collateral in specific intervals over twelve months, and the National Bank loans to Common Borrower 1 and the Related Entities would be renewed on interest only payment terms.

24. On September 30, 2015, National Bank identified \$5.9 million of its loans to Common Borrower 1 as substandard and placed them on nonaccrual. As a result, National Bank's loans to Common Borrower 1 were impaired.

25. As of September 30, 2015, National Bank reported the \$5.9 million Common Borrower 1 nonaccrual amount on Schedule RC-N of its Call Report.

## **V. Bonan II Develops a Plan for the Common Borrower Loan Relationship**

26. In September 2015, Bonan II prepared a written "Plan For the Common Borrower" ("Plan") that involved the sale of collateral, refinancing, and paying down approximately \$5.4 million of the \$11.7 million debt of the Common Borrower Relationship.

27. Bonan II's Plan included: a) the sale of the Carmi Warehouse to FWBII Holdings, LLC ("FWBII-H"), Bonan II's limited liability company; b) the sale of Rig 24, which partially secured Common Borrower 1's loans with National Bank; c) the sale-and-leaseback of other

collateral (Rigs 19 and 20) with a new \$1.7 million loan from the Bank; d) a \$1.8 million loan from the Bank to A.E. secured by G.E. security trading account.

28. If the Carmi Warehouse sold for \$1.1 million, the Bank would receive approximately \$641,350 loan payoff, and National Bank would receive approximately \$358,309 payoff.

29. Bonan II's Plan also included a new limited liability company ("new LLC" or "A.E.'s LLC") owned by A.E. Common Borrower 1 and A.E.'s LLC would enter into a purchase and leaseback arrangement whereby A.E.'s LLC would purchase Rigs 19 and 20 from Common Borrower 1 for \$2 million.

30. Under the Plan, the Bank would finance \$1.7 million of the \$2 million purchase by making two loans: one to A.E., personally, and the other to A.E.'s LLC. Rigs 19 and 20 would be leased back to Common Borrower 1 by A.E.'s LLC at 1.2 times the debt payment. Common Borrower 1's lease payments to A.E.'s LLC would be the source of funds used by A.E. and A.E.'s LLC to repay their loans with the Bank.

31. The last piece of the Plan would be that the Bank would make another loan to A.E.'s LLC for \$1.8 million. This loan would be secured by a securities trading account owned by G.E. that he would assign to the Bank as collateral after National Bank released its assignment.

## **VI. Bonan II Attempts to Implement the Plan for the Common Borrower Loan Relationship**

32. In early October 2015, Bonan II directed G.G. to prepare written commercial loan requests from A.E. and A.E.'s LLC to be presented to the Bank's executive loan committee ("Loan Committee") made up of Bonan II, B.C., and K.B., who had been given authority by the

Board to make loans up to the legal lending limit of the Bank.

33. On October 7, 2015, without the benefit of a personal financial statement from A.E., Bonan II directed G.G. to send out three separate loan requests to the members of the Bank's Loan Committee. The three loans totaled \$3.5 million. Two of the three loans were to be made to A.E.'s LLC, and the third loan to A.E.

34. The first A.E.'s LLC loan was for \$1.8 million to be used to refinance existing Common Borrower 1 debt with National Bank. This loan was secured by an assignment of marketable securities from G.E. valued at \$1.8 million, provided that National Bank released its prior assignment in exchange for Common Borrower 1's debt reduction of the \$1.8 million using the loan proceeds from A.E.'s LLC.

35. The second loan to A.E.'s LLC for \$850,000 and the third loan to A.E. for \$850,000 were to be used by A.E.'s LLC to purchase certain oil rigs and equipment from Common Borrower 1. These loans required that National Bank release its prior liens against the specific oil rigs and equipment in exchange for a \$1.7 million reduction of Common Borrower 1's debt. The release of National Bank's liens would permit A.E.'s LLC, as the purchaser, to pledge these purchased oil rigs and equipment as collateral to secure the second and third loan from the Bank.

36. After purchasing the specific oil rigs and equipment from Common Borrower 1, A.E.'s LLC would then leaseback the same oil rigs and equipment to Common Borrower 1, which would generate lease income to repay its three loans with the Bank.

37. The Bank's two loans, each for \$850,000, to A.E.'s LLC and A.E., were structured in an attempt to avoid the Bank's legal lending limit for loans to one borrower.

38. Bonan II acknowledged in an email to B.C., K.B., G.G., and others dated October



8, 2015, that A.E.'s LLC was purchasing the oil rigs and equipment from Common Borrower 1, and the \$850,000 loan to A.E. would be used by A.E.'s LLC together with its loan for \$850,000 to fund the purchase.

39. K.B. initially voted to approve the A.E.'s LLC but rescinded his vote and abstained due to his professional relationship as the accountant for Common Borrower 1.

40. B.C. requested more information addressing his concerns of if the Bank would have enough collateral and the "ultra low" fees relative to the perceived risk.

41. Bonan II responded to B.C.'s concerns by saying that the loan was a good loan.

42. After getting Bonan II's response, B.C. ultimately approved the loans.

43. Although Bonan II was privy to the negative credit information pertaining to Common Borrower 1's loans with National Bank, including the \$5.9 million substandard classification and nonaccrual, inadequate DSC, and forbearance negotiations, he did not disclose any of this negative credit information to B.C.

44. G.G. advised A.E. that the A.E.'s LLC had been approved by the Loan Committee, but the Bank still had to get releases from National Bank.

45. On October 19, 2015, H.B. (a National Bank board member), told K.B. that National Bank would not be releasing its Common Borrower collateral until Bonan II told National Bank where the money to pay down the Common Borrower debt at National Bank was coming from.

46. Earlier on October 19, 2015, S.C. had informed G.G. that because National Bank's Common Borrower 1 loan was in collections, he could not do anything regarding the Common Borrower 1's equipment being purchased by A.E.'s LLC until Bonan II got approval to allow Common Borrower 1 to sell the equipment.

47. K.B. directed W.S. not to fund the A.E.'s LLC until Bonan II disclosed the source of the funds being used to reduce Common Borrower's debt with National Bank.

48. The Bank's loans to A.E.'s LLC and A.E., although approved by the Loan Committee, were never funded.

**VII. Bonan II Structures the Sale of Common Borrower 2's Collateral and Arranges Financing to Uncreditworthy Borrowers**

49. On or about September 8, 2015, Bonan II advised S.C. that Bonan II sold the Carmi Warehouse for Common Borrower 2, which would net them \$1.1 million to pay down its National Bank debt.

50. On or about September 14, 2015, Bonan II informed D.O., his assistant with National Bank, A.S., an attorney for the Bank, and G.G. that he thought he would buy and leaseback the Carmi Warehouse from Common Borrower 2 using his own company FWBII-H. Bonan II explained that the purchase price would be \$1.25 million, but the net at closing to Common Borrower 2 would be \$1.1 million because Common Borrower 2 would give him \$150,000 at closing which would be held as a reserve to pay the closing costs and the first two years of rent from Common Borrower 2 to FWBII-H. Bonan II would use the \$150,000 towards his twenty percent (20%) down payment, which would be \$250,000. Bonan II further explained that after the \$150,000 reserve for lease payments was exhausted, Common Borrower 2 would then pay FWBII-H \$8,250 monthly for 60 months. Bonan II directed G.G. to find a bank that would do this transaction.

51. On or about September 22, 2015, Bonan II arranged for the Bank's attorney, P.H. to prepare a Purchase and Sale Agreement between Common Borrower 2, as the seller, and FWBII-H, as the buyer, for the sale of the Carmi Warehouse for \$1.25 million.

52. On or about September 22, 2015, Bonan II also arranged for P.H. to prepare a

Lease Agreement between Common Borrower 2, as lessee, and FWBII-H, as lessor, for the Carmi Warehouse.

53. On or about October 16, 2015, Bonan II requested a loan from State Bank (“State Bank”), to finance the sale and leaseback involving FWBII-H’s purchase of the Carmi Warehouse from Common Borrower 2.

54. On or about October 16, 2015, Bonan II directed G.G. to provide C.D. from State Bank with Bonan II’s financial information so the latter could begin its internal process to review FWBII-H’s loan request.

55. On October 16, 2015, G.G., on behalf of Bonan II, sent C.D. an email regarding the “Bonan Loan Request” as well as various Bonan II financial statements, including a signed personal financial statement (“PFS”). G.G. also sent C.D. unsigned copies of a Lease Agreement and Purchase and Sale Agreement between Common Borrower 2 and FWBII-H.

56. On October 19, 2015, C.D. indicated there was strong interest at State Bank to consider the Bonan loan request and requested financials on Common Borrower 2 as they were the sole tenant.

57. On November 5, 2015, State Bank made a conditional commitment to Bonan II to loan up to \$1 million to FWBII-H to finance the sale and leaseback of the Carmi Warehouse.

58. After some negotiations, Bonan II made handwritten changes to State Bank’s commitment letter and returned the signed, revised commitment on November 15, 2015.

59. The revised deal increased the proposed loan to \$1.15 million, and the additional \$150,000, representing a 24-month lease payment reserve, would be held by State Bank as collateral but would not be applied to FWBII-H’s loan payments for 24 months. Instead, FWBII-H would make loan payments totaling \$150,000 for 24 months.

60. The property was appraised at \$1.245 million, which was \$5,000 below the purchase contract price, so State Bank would have required Bonan II to pay the \$5,000 difference between the appraised value and the purchase contract price.

61. Bonan II abandoned the State Bank loan proposal.

62. On or before December 16, 2015, Bonan II arranged for two of his employees, A.T. and J.H., instead of FWBII-H, to purchase the Carmi Warehouse, and to obtain financing from the Bank.

63. Beginning on or about December 17, 2015, on behalf of Bonan II, G.G. and K.W., the Head of Loan Operations for the Bank, began preparing a \$1.25 million loan request for A.T. and J.H. acting through a yet-to-be-formed limited liability company.

64. On December 18, 2015, K.W. sent the Bank's directors a \$1.25 million loan request for A.T. and J.H. acting through a yet-to-be-formed limited liability company to be named Carmi Warehouse Purchaser.

65. J.C. questioned the appraised value of the Carmi Warehouse. J.C. also noted that the five-year lease agreement between Carmi Warehouse Purchaser and Common Borrower 2 set out in the loan request as a cash flow source for repayment of the loan was meaningless because the lessee, Common Borrower 2, was in a cash flow bind due to the depressed oil business.

66. After initially voting to approve the loan to A.T. and J.H./Carmi Warehouse Purchaser on December 22, 2015, Bonan II informed K.W. that he had to abstain from voting because A.T. and J.H. worked for him.

67. J.C. continued to oppose the \$1.25 million loan request from A.T. and J.H./Carmi Warehouse Purchaser unless Common Borrower 2 used \$500,000 received from the sale of the Carmi Warehouse to pay down Common Borrower 1's loan with the Bank.

68. On December 23, 2015, Bonan II incorrectly informed J.C. that National Bank only had a second mortgage on the Carmi Warehouse that had to be paid off. However, National Bank had a first mortgage, and the Bank had a second mortgage.

69. Bonan II told J.C. that the loan to A.T. and J.H., acting through Carmi Warehouse Purchaser, would pay off Common Borrower 2's loan with the Bank. Bonan II also told J.C. that the payoff of roughly \$630,000 of Common Borrower 2's loan to the Bank would reduce the debt the Bank's shareholders would have to assume through the Bank's holding company upon the proposed merger between National Bank and the Bank. Under the terms of the proposed merger, National Bank would not assume any loans the Bank had made to Common Borrower 1 and Common Borrower 2.

70. Bonan II spoke with J.C. to persuade him to vote to approve the A.T. and J.H./Carmi Warehouse Purchaser loan request and represented that he already had the votes from the other directors to approve the loan request.

71. Although Bonan II misleadingly represented to J.C. that he already had the votes from the other directors to approve the loan request from A.T. and J.H., the other directors had not yet approved the loan.

72. When Bonan II made his misleading representation to J.C., W.S. had already told him that she would abstain from voting for the approval of Carmi Warehouse Purchaser loan request. G.G. voted to approve the Carmi Warehouse Purchaser but felt he had no choice because Bonan II would have fired him if did not vote to approve the loan request.

73. After receiving the representation from Bonan II, J.C. withdrew his opposition and voted to approve the \$1.25 million loan to Carmi Warehouse Purchaser. L.P., who had been waiting for J.C.'s decision, then also voted to approve.

74. Bonan II knew about Common Borrower 1's negative credit position with National Bank. He knew that National Bank had placed \$5.9 million of its \$10.5 million loan relationship on nonaccrual and internally classified that nonaccrual portion as substandard. He also knew about the November 3, 2015, loan extension agreement ("Extension Agreement") between National Bank and Common Borrower 1 and Bonan II did not disclose any of this information to J.C. or the other members of the Board who were asked to approve the \$1.25 million loan to Carmi Warehouse Purchaser.

75. Other than rent payments it would receive from Common Borrower 1 for the use of the Carmi Warehouse, Common Borrower 2 did not have income or other cash flow from which it could pay its lease obligations to A.T. and J.H., acting through Carmi Warehouse Purchaser, after the initial reserve of \$150,000 was exhausted. A.T. and J.H. could not personally pay the \$7,753 monthly loan obligation to the Bank.

76. The \$1.25 million loan to Carmi Warehouse Purchaser was approved by the Board on December 23, 2015, even though Carmi Warehouse Purchaser had not yet been formed under Illinois law and the appraisal used to support the loan request was addressed to State Bank instead of the Bank.

77. On January 3, 2016, Bonan II told G.G. that G.E. and A.E. wanted to keep \$100,000 from the Carmi Warehouse sale proceeds for operations. Bonan II directed G.G. to figure out with S.C. how much money the Bank and National Bank would then receive from the Carmi Warehouse sale proceeds.

78. The purchase and sale agreement and lease agreement between Common Borrower 2 and Carmi Warehouse Purchaser were not executed until January 7, 2016. The purchase and sale agreement between Common Borrower 2 and Carmi Warehouse Purchaser

was backdated to November 1, 2015 (prior to Carmi Warehouse Purchaser's formation and prior to the Bank's approval of the loan to purchase the Carmi property).

79. On January 7, 2016, the Bank's loan to Carmi Warehouse Purchaser was funded after A.T. and J.H., on behalf of Carmi Warehouse Purchaser, signed the Bank's promissory note in the amount \$1,262,109.75, which was \$12,109.75 more than the Board had authorized.

80. On January 7, 2016, the sale of the Carmi Warehouse closed. From the proceeds of the Bank's \$1,262,109.75 loan: a) National Bank received \$358,309.12 to payoff Common Borrower 2's first mortgage loan; b) the Bank received \$637,681.88 to payoff Common Borrower 2's second mortgage loan; c) \$150,000 was escrowed to establish an 18-month lease payment reserve account from which monthly payments of \$7,753 were to be paid to Carmi Warehouse Purchaser, so it could make monthly loan payments to the Bank; and d) Common Borrower 2 received \$100,000 for G.E. and A.E. to use for operations.

81. Aside from the 18-month lease payment reserve, the ability of Carmi Warehouse Purchaser to repay its debt to the Bank was entirely dependent upon the ability of Common Borrower 2 to make monthly lease payments, and Common Borrower 2 was dependent upon income generated from Common Borrower 1's operations.

82. Subsequent to the closing, the Bank's loan to Carmi Warehouse Purchaser was classified substandard by FDIC and Illinois Department of Financial and Professional Regulation ("IDFPR") examiners, who also recommended that the loan be placed on nonaccrual status until full payment of principal and interest could be reasonably assured. Thereafter, the Bank placed its loan to Carmi Warehouse Purchaser on nonaccrual and made a loan impairment allocation that it adjusted after an FDIC and IDFPR visitation in September 2016. In early January 2017, the Board charged off \$500,000 against the Bank's loan to Carmi Warehouse Purchaser.

Subsequent thereto, Carmi Warehouse Purchaser defaulted on its \$1.25 million loan and acquiesced to the use of a deed-in-lieu to avoid foreclosure, conveying the Carmi Warehouse to the Bank. After the deed-in-lieu, the Bank wrote down the value of the Carmi Warehouse by an additional \$13,760.

#### **VIII. Bonan II Directs the Bank to Release Rig 23, Common Borrower 1 Collateral**

83. On or about September 14, 2015, Common Borrower 1, as seller, entered into a Letter of Intent with the Rig Purchaser, as buyer, to sell a Service King 775 drilling rig, known as Rig 24, for \$1,559,000.

84. On or about October 9, 2015, the Rig Purchaser sent Common Borrower 1 a signed Sale and Purchase Agreement (“Rig Purchase Agreement”) to purchase Rig 24 for \$1,559,000. A.E. advised Bonan II that they still needed a UCC-1 release from Grand Rivers and National Bank on Rig 24 to attach to the Rig Purchase Agreement. Bonan II forwarded A.E.’s request to S.C. and G.G. and instructed them to get these releases.

85. Under paragraph 3.1 (c), “Title to Properties; Absence of Liens and Encumbrances,” of the Rig Purchase Agreement, Common Borrower 1 agreed to provide the Rig Purchaser with a list of all liens with proof of satisfaction of indebtedness and/or release of security interest prior to closing. Common Borrower 1 also represented and warranted to the Rig Purchaser that the list of liens listed in Exhibit C was complete.

86. Common Borrower 1 listed two separate liens in Exhibit C. The first was listed as a “Security Interest given to [National Bank], a record of which is filed with the Indiana Secretary of State Filing No. 201100005563790.” This described National Bank’s blanket UCC-1 securing all of Common Borrower 1’s equipment. The second lien listed was a “Security Interest given to [the Bank], record of which is filed with the Illinois Secretary of State at File



No. 017906194.” This described the Bank’s UCC-1 securing a PMSI in Common Borrower 1’s Rig 23.

87. G.G. explained to Bonan II that the Bank did not have a blanket UCC-1 as National Bank did; the Bank only had a lien on a specific rig. G.G. added that all he needed to do was prepare the termination that could be sent out but not filed with Secretary of State until payment was received. G.G. also told Bonan II that the Bank just needed the attachments to the Rig Purchase Agreement to confirm the termination was for the same equipment using the same wording in the UCC-1 and the Rig Purchase Agreement.

88. Bonan II never provided the requested information to the Bank or National Bank which described the drilling rig (Rig 24).

89. S.C. also advised C.Z., National Bank’s Executive Vice President, that National Bank never received the information to determine what equipment National Bank should release in order to know who owned the equipment.

90. On or about October 13, 2015, S.C., on behalf of National Bank, informed A.E. that he was working on the UCC release and requested the list of the assets Common Borrower 1 was selling to the Rig Purchaser. Common Borrower 1 provided S.C. with a copy of Appendix A to the Rig Purchase Agreement, which included the list.

91. On or about October 16, 2015, after K.W. sent Bonan II the Bank’s unrecorded UCC-1 terminations for Illinois and Indiana, A.E. sent an email with attachments of all the required documents per the escrow instructions and the Rig Purchase Agreement, to the Rig Purchaser, the escrow agent Old National Wealth Management, Bonan II, and S.C. Included in the attached documents were copies of the Bank’s unrecorded UCC-1 terminations of its PMSI in Rig 23 for both Illinois and Indiana.

92. Bonan II assured D.B., president of the Rig Purchaser, that he would record the original UCC termination statements when the Rig Purchaser's initial money from the escrow agent was received by National Bank.

93. On or about October 16, 2015, the Rig Purchaser's transport trucks picked up Rig 24 and its drilling machinery and equipment from Common Borrower 1's Carmi Warehouse.

94. On October 16, 2015, the escrow agent, Old National Wealth Management, wired funds in the amount of \$1,262,790 to National Bank.

95. On or about October 23, 2015, S.C. sent A.E. an email with an attached list of Common Borrower 1 equipment, including Rig 23, and asked her to review the list and mark where each piece of equipment was located.

96. On or about October 26, 2015, A.E. replied that Rig 23 was located in Canadian, Texas.

97. On or about October 27, 2015, Bonan II sent S.C., C.Z., W.B., and H.B., an email informing them that A.E. was working on getting financing using \$2 million of Common Borrower 1 equipment from a list she previously sent to S.C. Bonan II also added that Rig 23 remained to be sold and he thought it was worth not less than \$2.2 million.

98. On October 28, 2015, National Bank's Executive Loan Committee held a teleconference meeting to review and discuss Common Borrower 1's request that maturity dates on its two loans with National Bank be extended until April 30, 2016. Bonan II, W.B., H.B., and K.B. participated in the teleconference. The Executive Loan Committee was advised that Common Borrower 1 recently sold Rig 24 and the net proceeds of approximately \$1.4 million would be applied with \$1.1 million to existing National Bank debt, \$140,000 to the same debt upon release from the escrow agent, and \$160,000 to Common Borrower 1 to cover the costs of

moving Rig 23 from Texas to the Carmi Warehouse and preparing it for sale. National Bank's Executive Loan Committee unanimously voted to approve Common Borrower 1's requests with K.B. abstaining from voting.

99. On or about November 2, 2015, after the National Bank Executive Loan Committee approved Common Borrower 1's requests to extend its loan maturity dates, National Bank sent G.E. and A.E. the Extension Agreement.

100. On or about November 2, 2015, K.B., on behalf of G.E., asked W.B. for an informational phone call or meeting to explain why Common Borrower 1 needed \$160,000 and how to get Rig 23 back to the Carmi Warehouse from Texas. K.B. indicated that G.E. thought it would cost about \$50,000 to \$75,000 to move Rig 23 to the Carmi Warehouse.

101. On November 3, 2015, the Extension Agreement was signed. In return for National Bank's extension of the maturity dates on the two Common Borrower 1 loans, with a combined indebtedness of \$10,427,024, Common Borrower 1 promised to pledge new collateral set out on Exhibit A free and clear of all liens and encumbrances. Rig 23 was one of the pieces of Common Borrower 1 equipment listed and described on Exhibit A. In addition, Common Borrower 1 agreed to make every reasonable effort to liquidate a minimum of \$1.75 million from the new collateral with the proceeds therefrom applied to its two loans at National Bank's discretion. The Extension Agreement also provided that \$1,262,790, representing the proceeds received to date from the sale of Rig 24, held by National Bank in escrow, would be applied as specified, including the payment of \$160,000 to Common Borrower 1.

102. On November 3, 2015, A.E. emailed S.C. requesting that \$160,000, from the \$1,262,790 in sale proceeds of Rig 24, be deposited into Common Borrower 1's checking account.

103. On or about November 11, 2015, A.R., on behalf of Common Borrower 1, emailed D.B. at the Rig Purchaser and Bonan II informing them that all components of Rig 24 had left the Carmi Warehouse and requested that the Rig Purchaser authorize the escrow agent (i.e., Old National Wealth Management) to remit the final funds, approximately \$140,000, to National Bank.

104. D.B. responded to A.R., copied Bonan II, and explained that National Bank first needed to follow through with the promised paperwork reflecting its deletion of Rig 24 as collateral from the UCC-1 filed with the Indiana Secretary of State before he would authorize the escrow agent to release any funds to National Bank.

105. On November 12, 2015, National Bank filed its deletion of Rig 24 as collateral with the Indiana Secretary of State.

106. On the same date, K.W. informed Bonan II that the Bank's loan to Common Borrower 1 had a current balance of \$549,945.37, secured by a UCC on a drilling rig and equipment, and the Bank's loan to Common Borrower 2 had a current balance of \$637,149.32, secured by the Carmi Warehouse.

107. K.W. further explained that, based upon documentation in the file, the Bank's loans to Common Borrower 1 and Common Borrower 2 were not cross collateralized. K.W. commented that the one rig and specific equipment that goes with it were secured with a PMSI UCC, and the Carmi Warehouse secured the loan to Common Borrower 2. Bonan II replied to K.W. and acknowledged that the Bank had a PMSI in Rig 23.

108. On November 13, 2015, at 6:55 am, D.B. emailed A.R., copied Bonan II, and thanked her for her help with National Bank's recording of its deletion of Rig 24 as collateral and added that if the Rig Purchaser can obtain the Bank's UCC release, it should be finished.

109. Bonan II, without comment, forwarded D.B.'s request to G.G. and K.W.

110. On November 13, 2015, at 8:45 am, the Bank filed a termination of its Rig 23 PMSI UCC-1 with the Illinois Secretary of State. At 9:24 am, on the same date, the Bank filed a termination of its Rig 23 PMSI UCC-1 with the Indiana Secretary of State.

111. Rig 24 was never collateral securing Common Borrower 1's loan with the Bank.

112. A.R. informed Bonan II that G.E. wanted to know how Common Borrower 1 should handle a UCC-1 from the Bank (even though there was no collateral for Rig 24 at the Bank) because D.B. wanted a recorded UCC-1.

113. Bonan II forwarded A.R.'s request to G.G. and K.W. instructing them to "Get this bulkshit [sic] done this morning."

114. K.W. then emailed A.R., copied Bonan II, with an attached copy of the Bank's recorded UCC termination from the Indiana Secretary of State, which A.R. forwarded to D.B.

115. On or after November 13, 2015, the Bank's loan to Common Borrower 1 with an outstanding balance due of approximately \$549,945 was unsecured. In early January 2017, the Bank charged off the Common Borrower 1's loan in the amount of \$489,268. The Bank's PMSI in Rig 23 was approximately \$489,268, which was lost after Bonan II's actions and inactions.

## **IX. Respondent Caused Financial Loss to the Bank**

116. Bonan II's orchestration of the Bank's \$1.25 million loan to his two employees, acting through Carmi Warehouse Purchaser, caused a loss to the Bank. Bonan II's directions to release Rig 23, the only collateral securing Common Borrower 1's impaired \$640,000 loan with

the Bank, caused the Bank to suffer financial loss and placed the Bank at risk of suffering additional loss.

117. The loss to the Bank as result of Bonan II's misconduct includes at least \$513,760 in loan proceeds to Carmi Warehouse Purchaser and \$489,268, when the Bank released, without consideration, its PMSI in Rig 23 as collateral.

118. As of the joint January 2016 examination by the FDIC and IDFPR, the Carmi Warehouse Purchaser loan was deemed substandard, and examiners recommended that the loan be placed on nonaccrual until full payment of principal and interest could be reasonably assured; of the \$640,000 loan to Common Borrower 1, approximately \$536,000 was deemed substandard.

## **X. Conclusions of Law**

119. As a result of the above acts, omissions, and practices, Respondent recklessly engaged or participated in unsafe or unsound banking practices in connection with the Bank under 12 U.S.C. §§ 1818(e) and (i)(2).

120. As a result of the above acts, omissions, and practices, Respondent breached his fiduciary duty to the Bank under 12 U.S.C. § 1818(e) and (i)(2).

121. The above acts, omissions, and practices resulted in financial loss, likely financial loss, or other damage to the Bank under 12 U.S.C. § 1818(e) and (i)(2).

122. The acts, omissions, and practices of the Respondent alleged above demonstrate the Respondent's personal dishonesty under 12 U.S.C. § 1818(e).

123. The acts, omissions, and practices of the Respondent alleged above demonstrate Respondent's willful and continuing disregard for the safety and soundness of the Bank under 12 U.S.C. § 1818(e).

124. Respondent's above-described acts, omissions, and practices were part of a

pattern of misconduct under 12 U.S.C. § 1818(i)(2).

### **ORDER TO PAY**

Based on the above Findings of Fact and Conclusions of Law, the FDIC determined that Respondent's reckless practices and breaches merit a civil money penalty. After taking into account the appropriateness of the penalty with respect to the following mitigating factors under 12 U.S.C. § 1818(i)(2)(G), the size of the Respondent's financial resources and good faith, the gravity of the violation, the history of previous violations, and such other matters as justice may require, it is:

ORDERED that by reason of Respondent's practices and breaches listed above, a \$105,000 penalty is assessed against Frank William Bonan II under 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED that the Order to Pay is stayed until 20 days after the date of service of this Notice of Assessment to allow Respondent time to request a hearing.

If Respondent wants to object to the Order to Pay, Respondent must formally request a hearing in writing within 20 calendar days after service of this Notice of Assessment, as explained at 12 U.S.C. § 1818(i)(2)(H). Respondent may request a hearing in a formal Answer, as specified in 12 C.F.R. § 308.19. **If Respondent fails to request a hearing to object to the Order to Pay within 20 calendar days from the date of service of this Notice of Assessment, the penalty assessed against Respondent will be final and unappealable under 12 U.S.C. § 1818(i)(E)(ii) and 12 C.F.R. § 308.19(c)(2) and must be paid within 60 calendar days after the date of service of this Notice of Assessment.**

## **NOTICE OF HEARING**

Respondent must file an Answer to object to the Notice of Charges within 20 days from the date of service under 12 C.F.R. § 308.19. Respondent may file one document containing both the Answer to the Notice of Charges and a request for hearing on the Order to Pay. The hearing will be held before an Administrative Law Judge (ALJ) assigned by Office of Financial Institution Adjudication (OFIA) under 5 U.S.C. § 3105. The hearing on the Notice of Charges will begin on a date set by the ALJ in Benton, Illinois or in another location set by the ALJ. The hearing will be public and conducted in accordance with 12 U.S.C. §§ 1811-1831aa, the Administrative Procedure Act, 5 U.S.C. §§ 551-559, and 12 C.F.R. Part 308, subparts A and B.

An original and one copy of all papers filed in this proceeding must be served upon OFIA, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, VA 22226-3500, in the manner specified at 12 C.F.R. § 308.10. Also, copies of all papers filed in this proceeding must be served upon the following: FDIC Administrative Officer, 550 17th Street, N.W., Washington, D.C. 20429-9990; Seth P. Rosebrock, Assistant General Counsel, and Sam Ozeck, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, D.C. 20429-9990; and Monica M. Tynan, Regional Counsel, Chicago Regional Office, Federal Deposit Insurance Corporation, 300 S. Riverside Plaza, Suite 1700, Chicago, Illinois 60606. Respondent is encouraged to file any subsequent documents electronically with OFIA at [ofia@fdic.gov](mailto:ofia@fdic.gov).



### **PRAYER FOR RELIEF**

The FDIC prays that an Order of Removal and Prohibition from Further Participation under 12 U.S.C. § 1818(e) and an Order to Pay in the amount of \$105,000 and assessed under 12 U.S.C. § 1818(i)(2), be issued against Frank William Bonan II.

Pursuant to delegated authority.

Dated at Washington, D.C., this 5th day of May, 2021.

/s/ \_\_\_\_\_  
Doreen R. Eberley  
Director  
Division of Risk Management Supervision