

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY

In the Matter of: )  
Pacific National Bank )  
Miami, Florida )

CONSENT ORDER

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has supervisory authority over Pacific National Bank, Miami, Florida (“Bank”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated December 16, 2005, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller. The Comptroller acknowledges that, prior to the date of this Order, the Board has initiated a program to address the matters contained in this Order.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that:

ARTICLE I

COMPLIANCE COMMITTEE

(1) The Comptroller acknowledges the Board has appointed a Compliance Committee to be responsible for monitoring and coordinating the Bank’s adherence to the provisions of this Order. The Board shall continue to maintain a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee or principal

shareholder (as the term “principal shareholder” is defined in 12 C.F.R. § 215.2(m)) of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. In the event of a change of the membership of the Compliance Committee, the name of any new member shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank’s adherence to the provisions of this Order.

(2) The Compliance Committee shall meet at least monthly.

(3) Within forty-five (45) days of the date of this Order and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) a description of the actions needed to achieve full compliance with each Article of this Order;
- (b) actions taken to comply with each Article of this Order; and
- (c) the results and status of those actions.

(4) The Board shall forward a copy of the Compliance Committee’s report, with any additional comments by the Board, to the Assistant Deputy Comptroller, South Florida Field Office, 9800 Northwest 41<sup>st</sup> Street, Suite 120, Miami, Florida, 33178, within twenty (20) days of receiving such report.

## ARTICLE II

### BANK SECRECY ACT INTERNAL CONTROLS

(1) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to provide for compliance with Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 et seq.), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R.

Part 21, Subparts B and C, and the rules and regulations of the Office of Foreign Assets Control (“OFAC”) (collectively referred to as the “Bank Secrecy Act” or “BSA”) and for the appropriate identification and monitoring of transactions that pose greater than normal risk for compliance with the BSA. This program should include the following:

- (a) formal evaluation of the knowledge of the Bank’s operational and supervisory personnel of the Bank’s policies and procedures for identifying transactions that pose greater than normal risk for compliance with the Bank Secrecy Act;
- (b) enhanced policies and procedures for identifying and monitoring transactions that pose greater than normal risk for compliance with the Bank Secrecy Act;
- (c) enhanced policies and procedures for recording, maintaining, and recalling information about transactions that pose greater than normal risk for compliance with the Bank Secrecy Act;
- (d) well-defined policies and procedures for investigating and resolving the Bank’s response to transactions that have been identified as posing greater than normal risk for compliance with the Bank Secrecy Act;
- (e) reasonable procedures for the opening of new accounts that provides for collecting customers’ identifying information, verifying customers’ identification, maintaining identification records, and determining whether customers appear on any list of suspected terrorists or terrorist organizations;

- (f) adequate controls and procedures to ensure that all suspicious and large currency transactions are identified and reported;
- (g) procedures to maintain records on monetary instrument transactions and funds transfers, as required by the BSA;
- (h) procedures to identify and report to appropriate management personnel:
  - (i) frequent or large volume cash deposits or wire transfers or book entry transfers to or from offshore or domestic entities or individuals;
  - (ii) wire transfers or book entry transfers that are deposited into several accounts;
  - (iii) receipt and disbursement of wire transfers or book entry transfers without an apparent *bona fide* business reason;
  - (iv) receipt and disbursement of wire transfers or book entry transfers that are suspicious or inconsistent with the customers' business;
  - (v) receipt and disbursement of currency or monetary instruments that are suspicious or inconsistent with the customers' business; and
  - (vi) accounts opened in the name of or for the benefit of a financial institution or foreign bank, as defined in 31 C.F.R. § 103.11; and
- (i) a method for introducing new products and services that ensures that the policies and procedures governing new products and services are consistent with the Bank's program for compliance with the Bank Secrecy Act.

(2) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to provide for the Bank's monitoring of suspicious cash, monetary instruments, wire transfers, and other activities for all types of transactions, accounts, customers, products, services, and geographic areas. At a minimum, this written program shall establish:

- (a) reviews of cash purchases of monetary instruments;
- (b) periodic analysis of aggregate cash, monetary instrument, and wire activity;
- (c) periodic analysis of Currency Transaction Report filings;
- (d) automatic reviews of accounts or customers for which the Bank has received criminal subpoenas that may involve the Bank Secrecy Act;
- (e) reviews of high risk transactions, accounts, customers, products, services, and geographic areas; and
- (f) submission of SARs based on these reviews and analyses.

(3) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to provide for the application of appropriate thresholds for monitoring all types of transactions, accounts, customers, products, services, and geographic areas that pose greater than normal risk for compliance with the Bank Secrecy Act. At a minimum, this written program shall establish:

- (a) meaningful thresholds for filtering accounts and customers for further monitoring, review, and analyses;
- (b) an analysis of the filtering thresholds established by the Bank; and

- (c) periodic testing and monitoring of thresholds for their appropriateness to the Bank's customer base, products, services, and geographic area.

(4) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to expanded account-opening procedures for all accounts that pose greater than normal risk for compliance with the Bank Secrecy Act by requiring:

- (a) identification of all account owners and beneficial owners in compliance with 31 C.F.R. § 103.121;
- (b) identification of the officers, directors, major shareholders or partners, as applicable;
- (c) documentation of the following information for all deposit account customers:
  - (i) any relevant financial information concerning the customer;
  - (ii) the type of business conducted by the customer;
  - (iii) the customer's source of income or wealth; and
  - (iv) any other due diligence required by this Order, the BSA Officer or the Bank.

(5) The Bank shall obtain the information required in the preceding paragraph (4) of this Article before renewing or modifying an existing customer's account within the scope of the preceding paragraph (4).

(6) The BSA Officer or his/her designee shall periodically review, not less than each calendar year, all account documentation for all high-risk accounts and the related accounts of

those customers at the Bank to determine whether the account activity is consistent with the customer's business and the stated purpose of the account.

(7) The Board shall ensure that the Bank has processes, personnel, and control systems to implement and adhere to the program developed pursuant to this Article.

(8) The term "related accounts," as referenced in this Article, shall be broadly construed and shall include the following accounts:

- (a) all accounts for which there are common signatories, officers, directors, addresses, taxpayer identification numbers, or phone numbers that can be reasonably identified;
- (b) all accounts of a customer's immediate relatives by blood, marriage or adoption (e.g., spouses, children, parents, siblings, uncles, and aunts) that can be reasonably identified;
- (c) all accounts of any corporation, joint enterprise, partnership or any undertaking whatsoever that can be reasonably identified as controlled by or operated substantially in the interest of any Bank customer; "control" includes direct or indirect ownership of ten percent (10%) or more of the stock, capital, or equity of any such undertaking; and "substantial interest" shall mean derivation in any manner of income of ten thousand dollars (\$10,000) or more per annum from the operation of any such undertaking;
- (d) all accounts where the Bank's customer can be reasonably identified as exercising control or authority over the account holder; and
- (e) any account(s) so designated by the Assistant Deputy Comptroller.

### ARTICLE III

#### BANK SECRECY ACT AUDIT

(1) Within sixty (60) days of the date of this Order, the Board, or a designated committee of the Board, shall adopt, implement, and thereafter ensure Bank adherence to an independent BSA audit program, including its scope, testing, and documentation, sufficient to:

- (a) detect irregularities in the Bank's operations;
- (b) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (c) evaluate the Bank's adherence to established policies and procedures;
- (d) perform an appropriate level of testing to support the audit findings;
- (e) ensure adequate audit coverage in all areas; and
- (f) establish an annual audit plan using a risk-based approach sufficient to achieve these objectives.

(2) Within sixty (60) days of the date of this Order, the Board shall expand the Bank's existing BSA audit procedures to include:

- (a) development of a schedule, from which deviations of more than 45 days will occur only with the Board approval, for the Bank's internal audits;
- (b) development of a program to test periodically the adequacy of internal controls designed to ensure compliance with the provisions of OFAC and the Bank Secrecy Act in all areas of the Bank;
- (c) prompt management response and follow-up to all exceptions or other recommendations of any Bank auditor for BSA matters or of the Office of the Comptroller of the Currency; and



- (d) a risk-based approach to OFAC and Bank Secrecy Act compliance that includes transactional testing and verification of data for higher-risk accounts or geographic areas of specific concern.

(3) Within one hundred twenty (120) days of the date of this Order, the Board should ensure that the auditor for BSA matters has performed the following activities:

- (a) develop findings, observations and recommendations on the Bank's internal controls addressing compliance with OFAC and the Bank Secrecy Act, including related regulatory reporting on those subjects.
- (b) review prior account activity at the Bank, including deposit accounts, loan transactions, wire activity, certified check activity, Currency Transaction Report activity (including structuring) and traveler's check activity, for accounts that pose greater than normal risk for compliance with the Bank Secrecy Act in order to ascertain any unusual or suspicious transactions that may have occurred at the Bank during this period.

(4) Upon completion of the review required by Paragraph (3)(b) of this Article, the auditor shall report his or her findings to the Board and to the Assistant Deputy Comptroller. The Bank shall immediately file SARs, in accordance with 12 C.F.R. § 21.11, for any previously unreported suspicious activity identified during this review.

(5) The Board, or a designated committee of the Board, shall ensure appropriate oversight of the BSA audit function, with particular emphasis on an adequately staffed department or outside firm with respect to both the experience level and number of the individuals employed.

(6) The Board, or a designated committee of the Board, shall ensure that the audit program is independent. The persons responsible for implementing the BSA audit program described above shall report directly to the Board, or a designated committee of the Board, which shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Board and not through any intervening party.

(7) All audit reports shall be in writing and supported by adequate workpapers, which must be provided to the Bank. The Board, or a designated committee of the Board, shall evaluate the BSA audit reports and ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(8) The audit staff shall have access to any records necessary for the proper conduct of its activities. National bank examiners shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

(9) The Board, or a designated committee of the Board, shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of, and adherence to, the program developed pursuant to this Article.

(10) Upon adoption, a copy of the internal audit program shall be promptly submitted to the Assistant Deputy Comptroller.

#### ARTICLE IV

##### BANK SECRECY ACT TRAINING

(1) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a comprehensive training program for all

appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of the OFAC and the Bank Secrecy Act, including the reporting requirements associated with SARs pursuant to 12 C.F.R. Part 21, Subpart B, regardless of the size of the relationship or type of customer involved.

(2) This comprehensive training program should include strategies for mandatory attendance, the frequency of training, procedures and timing for updating training programs and materials, and the method for delivering training.

## ARTICLE V

### CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Assistant Deputy Comptroller for good cause upon written application by the Board.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain

effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(7) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 16<sup>th</sup> day of December, 2005.

*/S/ Jeri Gilland*

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Jeri Gilland  
Deputy Comptroller  
Southern District

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

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**In the Matter of:** )  
Pacific National Bank )  
Miami, Florida )

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**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist proceedings against Pacific National Bank, Miami, Florida (“Bank”) pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated December 16, 2005 (“Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

**ARTICLE I**

**Jurisdiction**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) This Order shall cause the Bank to be subject to 12 C.F.R. § 5.51(c)(6) unless otherwise informed in writing by the Comptroller. In addition, this Agreement shall cause the

Bank not to be designated as an “eligible bank” for purposes of 12 C.F.R. § 5.3(g), unless otherwise informed in writing by the Comptroller.

## ARTICLE II

### Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

## ARTICLE III

### Waivers

(1) The Bank, by signing this Stipulation and Consent, hereby waives:

- (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
- (b) any and all procedural rights available in connection with the issuance of the Order;
- (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. Part 19;
- (d) all rights to seek any type of administrative or judicial review of the Order; and
- (e) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set her hand on behalf of the Comptroller.

/S/ Jeri Gilland  
Jeri Gilland  
Deputy Comptroller  
Southern District

12-16-05  
Date



IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/S/  
\_\_\_\_\_  
Jose J. Basulto

December 16, 2005  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Roberto Gonzalez

December 16, 2005  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Mauricio Laniado

December 16, 2005  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Lynn B. Lewis

December 16, 2005  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Richard D. Lotharius

12/16/05  
\_\_\_\_\_  
Date

/S/  
\_\_\_\_\_  
Antonio Prado

12-16-05  
\_\_\_\_\_  
Date

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