

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

In the Matter of:)
Douglas Wachtel)
Former Officer)
Next Bank, N.A.)
Phoenix, Arizona)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a cease and desist proceeding against Douglas Wachtel (“Respondent”) pursuant to 12 U.S.C. § 1818(b) (as amended); and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order (“Order”);

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Article I

JURISDICTION

(1) Next Bank, N.A. (“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. Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was an officer of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain this cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b).

Article II

PERSONAL CEASE AND DESIST ORDER

(1) Without admitting or denying any of the facts underlying this Order, Respondent agrees that he shall not seek, accept, or continue as an employee, officer, or agent of an insured depository institution in which the performance of his duties or responsibilities includes making decisions on, or giving advice or guidance relating to, financial reporting by an insured depository institution unless and until he obtains the

Comptroller's prior written determination of no supervisory objection. For purposes of this Order, the term "appropriate federal banking agency" shall have the meaning as set forth in 12 U.S.C. § 1813(q). For purposes of this Order, the term "financial reporting" shall mean:

- (a) The preparation of any application, notification, report, or document on behalf of an insured depository institution which is filed with or submitted to the appropriate Federal banking agency;
 - (b) Establishing or changing existing accounting policies and/or reversing accounting entries; further, Respondent must raise to his supervisor any accounting policies or accounting entries that he believes are not in accordance with generally accepted accounting principles or regulatory accounting principles;
 - (c) The preparation of any Report of Condition and Income,
 - (d) Making decisions involving what constitutes a credit loss and/or fraud loss;
and
 - (e) Interacting with the insured depository institution's external accounting firm regarding accounting or auditing issues, except in the presence of one or more of his supervisors.
- (2) Respondent further agrees that, whenever he becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), he shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution that employs him.
 - (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
 - (c) Not breach the fiduciary duties of loyalty or care owed to any insured depository institution with which he is or may become affiliated.
- (3) If at any time Respondent is uncertain whether a situation implicates paragraphs (1) through (2)(c) of this article, or if he is uncertain about his ability to meet the duties and obligations arising from such paragraphs or such situation, he shall obtain and abide by the written advice of competent independent counsel regarding his compliance with the obligations under this Order.
- (4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(b).

Article III

WAIVERS

- (1) By executing this Order, Respondent waives:
 - (a) the right to the issuance of Notice of Charges under 12 U.S.C. § 1818(b);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and 12 C.F.R. Part 19;

- (c) all rights to seek judicial review of this Order;
- (d) all rights in any way to contest the validity of this Order; and
- (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

(2) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any legal (or other professional) expense relative to the negotiation and issuance of this Order except in accordance with 12 C.F.R. § 7.2014 and Part 359, except as covered by insurance; and Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except in accordance with 12 C.F.R. § 7.2014 and Part 359, except as covered by insurance.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist proceeding authorized by 12 U.S.C. § 1818(b) that is

contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for any monetary relief arising from the specific acts, omissions, or violations that form the basis of the cease and desist proceeding unless such acts, omissions, or violations reoccur.

(5) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(6) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ Ronald G. Schneck

12/9/05

Ronald G. Schneck
Director
Special Supervision Division

Date

12/6/2005

/s/

Douglas Wachtel

Date