

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

In the Matter of:)
)
John J. Hays)
Executive Vice President)
First National Bank of Hope)
Hope, Arkansas)

**STIPULATION AND CONSENT TO THE
ASSESSMENT OF A CIVIL MONEY PENALTY**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate this civil money penalty proceeding against John J. Hays (“Respondent”) pursuant to 12 U.S.C. § 1818(i) (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 to the Assessment of a Civil Money Penalty (“Stipulation”);

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) First National Bank of Hope, Hope, Arkansas (“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 is the Executive Vice President 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 civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818(i).

Article II -- **FINDINGS OF FACT**

(1) Respondent has been Executive Vice President and a Director of the Bank since May 17, 2005. The period at issue in this Stipulation is from May 25, 2005 through March 27, 2006 (about ten months).

(2) Executive officers¹ and directors of national banks are not permitted to have overdrafts in their deposit accounts unless the payment of funds is made in accordance with a written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment, or a written, preauthorized transfer of funds from another account of the executive officer at the bank. However, this prohibition does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of \$1,000 or less, provided that the account is not overdrawn for more than five business days, and the bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances. *See* 12 C.F.R. § 215.4(e).

(3) Respondent had set up a "transfer of funds from another account of the account holder at the bank" in the amount of ten thousand dollars (\$10,000), to cover any overdrafts in his accounts. But this amount was quickly exhausted. As a result, Respondent's overdrafts were no longer covered by the arrangement once the \$10,000 was depleted.

(4) During the ten month period in question, Respondent had 25 overdrafts of more than \$1,000 each in his deposit accounts at the Bank. Each of these overdrafts caused a violation of 12 U.S.C. § 375b(6) and Regulation O at 12 C.F.R. § 215.4(e).

(5) In addition, Respondent had 68 overdrafts over the ten month period that cannot be considered to be inadvertent because they were so numerous. Therefore, each of these overdrafts also caused a violation of 12 U.S.C. § 375b(6) and Regulation O at 12 C.F.R. § 215.4(e).

(6) Respondent paid the overdraft fees and covered all of his overdrafts. The Bank did not experience a loss on the transactions.

Article III -- **CIVIL MONEY PENALTY**

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of ten thousand dollars (\$10,000), which shall be paid upon execution of this Stipulation. Respondent shall make payment in full by check made payable to the Treasurer of the United States, and shall deliver the payment to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150.

(2) This Stipulation 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(h) and (i) (as amended).

Article IV -- **WAIVERS**

(1) By executing this Stipulation, Respondent waives:

- (a) the right to the issuance of a Notice of Assessment of a Civil Money Penalty under 12 U.S.C. § 1818(i);

¹ The definition of executive officer in Regulation O at 12 C.F.R. § 215.3(e) specifically includes every vice-president of the Bank.

- (b) 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;
- (c) all rights to seek judicial review of this Stipulation;
- (d) all rights in any way to contest the validity of this Stipulation;
- (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 Stipulation, 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; and
- (f) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Stipulation.

(2) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Stipulation, or any legal (or other professional) expense relative to the negotiation and issuance of this Stipulation except in accordance with 12 C.F.R. § 7.2014 and Part 359; 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.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Stipulation, 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 Stipulation and/or to execute this Stipulation.

(4) It is hereby agreed that the provisions of this Stipulation constitute a settlement of this civil money penalty proceeding contemplated by the Comptroller. The Comptroller agrees not to institute additional civil money penalty proceedings for the specific acts, omissions, or violations, unless such acts, omissions, or violations reoccur.

(5) It is further agreed that the provisions of this Stipulation 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 Stipulation, 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.

Signed

Jeri Gilland
District Deputy Comptroller

8-22-06

Date

Signed

John J. Hays

8-17-06

Date