

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

In the Matter of:)	
Patrick M. O'Brien,)	
Former Financial Specialist)	AA-EC-2006-07
)	
Wachovia Bank, N.A.)	
Charlotte, NC)	
)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist proceedings against Patrick M. O’Brien (“Respondent”) pursuant to 12 U.S.C. § 1818(b); 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) Wachovia Bank, N.A., Charlotte, North Carolina (“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 a Financial Specialist 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 enforcement proceedings against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist proceedings against him pursuant to 12 U.S.C. § 1818(b).

ARTICLE II

COMPTROLLER’S FINDINGS

(1) Pursuant to the authority invested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby finds, and Respondent neither admits nor denies, that:

(2) Respondent removed customer and/or consumer nonpublic personal information (“information”) from the premises of the Bank, and in violation of Bank policy, failed to safeguard the information after its removal.

(3) Respondent’s removal of the information from the Bank was without specific Bank authorization.

(4) Respondent's removal and failure to safeguard the information constituted a breach of Respondent's fiduciary duty to the Bank.

(5) Respondent's removal and failure to safeguard the information constituted an unsafe or unsound banking practice.

ARTICLE III

PERSONAL CEASE AND DESIST ORDER

FOR AFFIRMATIVE ACTION

(1) **Notice to Future Employers and the Comptroller.** Pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), Respondent hereby consents that:

- (a) Prior to accepting any new position with:
 - (i) any employer that will cause him to come in contact with "nonpublic personal information," as defined in 12 C.F.R. § 40.3(n), that is transferred as part of the employer's business to any institutions or agencies listed in this Article III, paragraph (2), **or**
 - (ii) any of the institutions or agencies listed in this Article III, paragraph (2),
 - (iii) Respondent shall provide the chief executive officer of any such employer referenced in this Article III, paragraph (1)(a) with a copy of this Order.

(b) Within ten (10) days from and after his acceptance of any position described in paragraph (1)(a) of this Article III, Respondent shall provide written notice of such acceptance to the OCC's Director of Enforcement and Compliance, along with a written certification of his compliance with paragraph (1)(a). All such written notices and certifications required by this Order shall be sent to: Director, Enforcement and Compliance Division, 250 E Street, SW, Washington, DC 20219.

(2) **Institutions and Agencies Covered.** Paragraph (1)(a) of this Article III applies to the following institutions and agencies:

- (a) Any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) Any institution treated as an insured bank under 12 U.S.C. § 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9);
- (c) Any insured credit union under the Federal Credit Union Act;
- (d) Any institution chartered under the Farm Credit Act of 1971;
- (e) Any appropriate Federal depository institution regulatory agency; and
- (f) The Federal Housing Finance Board and any Federal Home Loan Bank.

(3) **Compliance with Laws, Regulations, Fiduciary Duties and Employer Policies.** It is further ordered that, in connection with any employment subject to this Article III, paragraph (1)(a) above, whenever Respondent comes into contact with “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n), he shall comply with the following provisions:

- (a) Respondent shall at all times comply with all applicable laws and regulations relating to such “nonpublic personal information.”
- (b) Respondent shall adhere to all written policies and procedures of his employer relating to “nonpublic personal information.”
- (c) Respondent shall not breach his fiduciary duties of loyalty or care owed to any employer with which he may become affiliated and shall, at all times, avoid placing his own interests above those of the employer.

(4) **Restrictions on Use of Nonpublic Personal Information.** It is further ordered that, in connection with any employment subject to this Article III, paragraph (1)(a) above, Respondent shall:

- (a) Never use, or otherwise handle, “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n), in any manner not explicitly or implicitly permitted by the provider of such information.
- (b) Be diligent to ensure that – within the scope of Respondent’s duties and influence – adequate and appropriate controls are in place to ensure that “nonpublic personal information,” as defined in 12 C.F.R. § 40.3(n), is not used, or otherwise handled, in any manner not explicitly or implicitly permitted by the provider of such information.

(5) **Enforceability of Order.** 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) and (h).

ARTICLE IV

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) The right to the issuance of a 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;
 - (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; 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 Order.

ARTICLE V

CLOSING

(1) 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; 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.

(2) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist proceeding contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, violations or breaches set forth in Article II above, unless such acts, omissions, violations or breaches reoccur, or the Comptroller learns that Respondent has made any false statement or misrepresentation to the Comptroller or any of his agents or employees in connection with the investigation of this matter.

(3) Except as set forth in paragraph (2) above, it is further agreed that the provisions of this Order 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.

(4) 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.

(5) Respondent expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency (“OCC”) has statutory or other authority to bind the United States, the United States Department of the Treasury, the OCC, any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities.

(6) If, at any time, Respondent is uncertain whether a situation implicates any of the obligations or requirements of this Order, or if Respondent is uncertain about the obligations or requirements imposed by this Order, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who has not been subject to any order or agreement imposing sanctions on such counsel by any Federal banking agency, as that term is used in 12 U.S.C. § 1813(q).

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

/s/ Ronald Schneck

2/27/06

Ronald G. Schneck
Director
Special Supervision Division

Date

/s/ Patrick M. O’Brien

2/17/06

Patrick M. O’Brien

Date