

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

<b>In the Matter of:</b> Stephen Moynahan former Chief Credit Officer The International Bank of Miami, N.A. Coral Gables, Florida	) ) ) ) ) )	AA-EC-07-07
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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate these cease and desist and civil money penalty proceedings against Stephen Moynahan (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of the Comptroller’s findings, detailed below, with regard to Respondent’s activities while serving as the Chief Credit Officer at the International Bank of Miami, N.A., Coral Gables, Florida (“Bank”) during the period from October 2001 through October 2004.

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (i);

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) The International Bank of Miami, N.A., Coral Gables, Florida (“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 the former Chief Credit 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 these cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

## **ARTICLE II**

### **COMPTROLLER’S FINDINGS**

The Comptroller finds, and Respondent neither admits nor denies, the following:

(4) Respondent was the Bank’s Chief Credit Officer from 1999 through 2006. During this time, the Respondent and his Credit Administration department were responsible for reviewing all credit extended by the Bank and ensuring that the Bank did not take undue credit risk.

(5) During the period from about October 2001 through October 2004, Respondent engaged in unsafe and unsound banking practices by signing, together with other officers of the Bank, approval documents for loans originated by the Capital Markets Group (“CMG”) for which Respondent did not have a full and complete understanding of each of the transactions.

(6) During the period from about October 2001 through October 2004, Respondent engaged in unsafe and unsound banking practices by signing, together with other officers of the Bank, approval documents for certain CMG loans, that were then processed and funded, without

Respondent's determination that the transactions complied with the Bank's own lending policies.

- (a) Respondent signed the approval forms for certain CMG loans in the absence of documentation required by Bank lending policies, including updated financial statements of the borrower and credit memoranda explaining the transaction.
- (b) Respondent signed the approval forms for certain CMG loans documented with vague purpose statements including a description of use of loan proceeds as "working capital" in contravention of Bank lending policies.

(7) During the period from about October 2001 through October 2004, Respondent engaged in violations of law and unsafe or unsound banking practices by signing, together with other officers of the Bank, the approval forms for certain CMG loans without Respondent's determination that documentation for loans in excess of \$10,000 contained specific information describing the nature or purpose of the transaction in violation of 31 C.F.R. §103.33(a).

### **ARTICLE III**

#### **PERSONAL CEASE AND DESIST ORDER**

(8) Pursuant to the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), Respondent hereby consents to and it is ordered that:

- (a) Respondent shall immediately disclose a copy of this Order to the Chief Executive Officer of the Bank and provide written notice of this disclosure to the Director of the Enforcement and Compliance Division ("Enforcement Director") within ten (10) days of Respondent's disclosure;
- (b) prior to accepting any position that would cause him to become an "institution-affiliated party" (as defined in 12 U.S.C. § 1813(u)) of any other institution or

agency specified in 12 U.S.C. § 1818(e)(7)(A), Respondent shall provide the chief executive officer of any such employer with a copy of this Order; and

- (c) within ten (10) days from and after his acceptance of any position described in paragraph (8)(b) of this article, Respondent shall provide written notice of such acceptance to the Enforcement Director, together with a written certification of his compliance with paragraph (8)(b) of this article. 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.

(9) It is further ordered that, in connection with any existing or future employment subject to this Article III, paragraph (8)(b) above, Respondent shall:

- (a) undertake to obtain thorough knowledge and understanding of all aspects of proposed transactions before signing approval forms for such transactions;
- (b) undertake to fully inform himself of all policies applicable to matters within the scope of his responsibilities;
- (c) ensure that all transaction approval forms presented to him for his signature contain the documentation necessary and sufficient to comply with relevant internal policies and applicable laws;
- (d) comply fully with all laws, regulations, and policies applicable to any insured depository institution which employs him, including 31 C.F.R. §103.33 and all other Bank Secrecy Act regulations;
- (e) avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (f) fully observe his fiduciary duties of loyalty and care owed to any insured

depository institution with which he is or may become affiliated and, at all times, avoid placing his own interests above those of the institution; and

(g) adhere to the written policies and procedures of any insured depository institution or agency to which he may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.

(10) To comply with paragraph (9) of this Article, Respondent shall (among other things):

(a) be diligent to ensure that -- within the scope of Respondent's duties and responsibilities at any insured depository institution or agency -- customers or other third parties are not using the institution (or the services of the institution) or agency to facilitate or perpetuate fraudulent activity; and

(b) be diligent to ensure that -- within the scope of Respondent's duties and responsibilities at any insured depository institution or agency -- adequate and appropriate controls are in place and that any employees reporting to Respondent are adequately trained and supervised.

(11) If, at any time, issues arise concerning Respondent's ability to comply with the requirements of this Article, Respondent shall consult with counsel and obtain written advice regarding appropriate compliance with the terms of this Article.

(12) 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 IV**

**ORDER FOR CIVIL MONEY PENALTY**

Respondent hereby consents to, and it is ordered that

(13) Respondent shall pay a civil money penalty in the amount of five thousand dollars (\$5,000), which shall be paid upon execution of this Order.

(14) 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 979012, St. Louis, Missouri 63197-9000. The docket number of this case shall be entered on the check. Respondent shall provide a photocopy of the check together with the signed original copy of this Order to the attention of the Director of Enforcement and Compliance Division of the Office of the Comptroller of the Currency (the "OCC"), 250 E Street, SW, Washington, DC 20219.

(15) 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(h) and (i) (as amended).

**ARTICLE V**

**BANKRUPTCY**

(16) If Respondent files for bankruptcy protection, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(17) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay a civil money penalty pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent,

officer, or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

## **ARTICLE VI**

### WAIVERS

- (18) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges and a Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) 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.
- (19) 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 Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order except as permitted by 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 as permitted by 12 C.F.R. § 7.2014 and Part 359.

(20) 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 or his agents or employees to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(21) It is hereby agreed that the provisions of this Order constitute a settlement of these cease and desist and civil money penalty proceedings arising out of the specific acts, omissions, or violations described in the Comptroller's Findings (Article II). However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern or practice of misconduct or the continuation of a pattern or practice of misconduct.

(22) 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 in paragraph (21), shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting 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.

(23) Respondent further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the specific acts, omissions, or violations referenced in this Order, or otherwise creating the impression that this Order is without factual basis. If Respondent violates this provision, the OCC may set aside this settlement and commence administrative proceedings on the actions alleged herein. Nothing in this paragraph shall affect Respondent's testimonial obligations.



(24) 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

Ronald G. Schneck  
Director for Special Supervision

3/26/07

Date

/s/ Stephen Moynahan

Stephen Moynahan

3/15/07

Date