

#2007-150

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

In the Matter of:)
Juan M. Gonzalez)
Former Executive Vice President and)
Chief Lending Officer) OCC-AA-EC-07-03
)
Terrabank, National Association)
Miami, Florida)

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) initiated prohibition and civil money penalty proceedings against Juan M. Gonzalez (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i) through the issuance of a Notice of Intention to Prohibit Further Participation and Notice of Assessment of a Civil Money Penalty dated February 5, 2007 (“Notice”); 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, Respondent, without admitting or denying any wrongdoing, desires to enter into this Stipulation and Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (i); and

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) Terrabank, N.A., Miami, FL (“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 Senior Vice President of the Bank and later an Executive Vice President and Chief Lending Officer 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)). On January 17, 2007, Respondent and the Comptroller executed an agreement, which, among other things, tolled the statute of limitations for any claim or cause of action that might be brought by the Comptroller against Respondent, except for such actions which lapsed before January 17, 2007.

(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 cease and desist, prohibition, and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b), (e), and (i).

ARTICLE II

PERSONAL CEASE AND DESIST ORDER

(4) 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, whenever

Respondent is employed by, or is offered employment at, an insured depository institution or otherwise becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution which employs him, including, but not limited to, laws and regulations related to legal lending limits.
- (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.
- (d) Adhere to the written policies and procedures of any insured depository institution or agency to which he is or may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise.
- (e) If the Respondent participates in the approval of, or influences the approval of, any extension of credit (including, but not limited to, guarantees) made by any insured depository institution or agency to which he is or may become affiliated, he shall make certain that:
 - (i) the extension of credit is properly underwritten in accordance with such insured depository institution's policies and procedures and in accordance with safe and sound banking practices;
 - (ii) the extension of credit is supported by adequate documentation and analysis in accordance with such insured depository institution's

- policies and procedures and in accordance with safe and sound banking practices;
- (iii) the extension of credit is approved by an officer with lending authority that exceeds Respondent's lending authority; and
 - (iv) the extension of credit is in all other aspects in accordance with such insured depository institution's policies and procedures and in accordance with safe and sound banking practices.
- (f) Be diligent to ensure that – within the scope of Respondent's duties and influence at any insured depository institution – extensions of credit are properly and timely recorded in the insured depository institution's loan portfolio.
- (g) Prior to signing any document on behalf of any insured depository institution of which Respondent is an institution-affiliated party, properly review such document to ensure that Respondent understands the document's content, meaning, and impact on the insured depository institution.
- (h) Cooperate with examiners of the appropriate Federal banking agency that regulates any insured depository institution of which Respondent is an institution-affiliated party.
- (i) In the event that anyone attempts to suggest, direct, or advise, through any means of influence whatsoever, that Respondent engage or refrain from engaging in any conduct, the commission or omission of which could, to a reasonable person in similar circumstances, appear to constitute a violation

of law or regulation (by Respondent or the insured depository institution), an unsafe or unsound practice (by Respondent or the insured depository institution), or a breach of fiduciary duty, Respondent shall promptly report in writing such attempt to influence his conduct to the board of directors of the insured depository institution.

- (j) If Respondent becomes aware of information that someone has provided to the board of directors and a reasonable person in similar circumstances might suspect that such information may be incomplete or inaccurate, Respondent shall promptly report in writing to the board of directors that such information may be incomplete or inaccurate.
- (k) Familiarize himself with, and adhere to, the written policies and procedures of any insured depository institution or agency with which he is or may become affiliated. In the event that the Respondent is affiliated with an insured depository institution or agency with written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution or agency.
- (l) Provide the board of directors of the insured depository institution of which Respondent is currently an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph (4)(l) to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, D.C. 20219, within ten (10) days of execution of this Order.

(m) Prior to accepting any offer of a position that causes Respondent to become an institution-affiliated party of an insured depository institution, provide the board of directors of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance, Office of the Comptroller of the Currency, 250 E St., SW, Washington, D.C. 20219, along with a written certification of his compliance with this paragraph (4)(m) within ten (10) days after acceptance of such position.

(5) If, at any time, Respondent is uncertain whether a situation implicates paragraph (4) of this Article, or if Respondent is uncertain about his duties arising from these or any other requirements of 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 is in no way affiliated with the insured depository institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' web sites.

(6) 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

ORDER FOR CIVIL MONEY PENALTY

(7) 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 Order.

(8) Respondent shall make payment in full by cashier's or certified 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 all checks. Respondent shall send a copy of the check to the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219.

(9) 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 IV

BANKRUPTCY

(10) If Respondent files for bankruptcy protection prior to making payment in full of the civil money penalty required by this Order, Respondent shall notify the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219, within ten (10) days of the filing and shall provide a copy of the filing to the Director.

(11) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay the 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 V

WAIVERS

- (12) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges for Issuance of an Order to Cease and Desist 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), (e) 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.
- (13) 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.

(14) Any failure by Respondent to comply with this Order shall be subject to enforcement for the longer of (a) the period allowed by the applicable statute of limitations, or (b) five (5) years following the failure to comply.

(15) 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 Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(16) It is hereby agreed that the provisions of this Order constitute a settlement of the prohibition and civil money penalty proceedings initiated by the Comptroller through the filing of the Notice. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations referenced in the Notice unless such acts, omissions, or violations reoccur.

(17) 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 (16), 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.

(18) Respondent further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Notice or creating the impression that the Notice is without factual basis. If Respondent violates this provision, the Comptroller may set aside this settlement and restore this action to its

active docket. Nothing in this paragraph shall affect Respondent's testimonial obligations.

(19) Respondent shall cooperate with the Comptroller in any future enforcement action, investigation, or examination in which the Comptroller deems that Respondent's knowledge or understanding of any matter related to the Bank may be relevant. This obligation includes, but is not limited to, meeting and discussing Bank matters with the Comptroller's examiners and attorneys as the Comptroller deems necessary and testifying in administrative hearings initiated by the Comptroller as the Comptroller deems necessary.

(20) 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 has hereunto set his hand.

/s/ Juan M. Gonzalez

12/4/07

Juan M. Gonzalez

Date

IT IS SO ORDERED.

/s/ Ronald G. Schneck

12/19/07

Ronald G. Schneck
Director
Special Supervision Division

Date