

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

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| In the Matter of: |) | |
| |) | |
| Kevin Marvin |) | AA-EC-2006-85 |
| Former Senior Vice President |) | |
| American National Bank |) | |
| Denver, Colorado |) | |
| <hr/> |) | |

CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) initiated cease and desist and civil money penalty proceedings against Kevin Marvin (“Respondent”), former Senior Vice President of American National Bank, Denver, Colorado (“Bank”) pursuant to 12 U.S.C. § 1818(b) and (i) (as amended) through the issuance of a Notice of Charges (“Notice”) dated April 30, 2007 in connection with Respondent's removal of confidential customer information, as well as other Bank documents, from the Bank via electronic mail over an unsecured internet connection to his personal electronic mail account in November 2005; and

WHEREAS, Respondent filed an Answer and Request for Hearing on May 21, 2007; 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 Respondent, without admitting or denying any wrongdoing, desires to enter into this

Initials: _____
Date: _____

Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818 (i); and

WHEREAS, it is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits;

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) American National Bank, Denver, Colorado (“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 until November 2005 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 and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

COMPTROLLER'S FINDINGS

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, the following:

(1) In violation of Bank policy, Respondent e-mailed himself confidential customer and proprietary Bank information (“information”) with the intent to use such information at his new employer;

(2) Respondent’s removal of the information from the Bank was without Bank authorization or knowledge and was contrary to Bank policies and procedures;

(3) Respondent’s removal of the information constituted a breach of Respondent’s fiduciary duty to the Bank that caused or was likely to cause more than a minimal loss to the Bank and resulted in pecuniary gain or other benefit to the Respondent.

Article III

ORDER FOR CIVIL MONEY PENALTY

Respondent hereby consents to, and it is Ordered that:

(1) Respondent shall pay a civil money penalty in the amount of nine thousand dollars (\$9,000.00) upon execution of this Order.

(2) 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.

(3) Respondent shall provide the Director of the Enforcement & Compliance Division ("Enforcement Director") his social security number and the address of his current place of residence, by completing the form attached hereto as Appendix A upon execution of 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(h) and (i) (as amended).

Article IV

WAIVERS

- (1) By executing this Order, Respondent waives:
- (a) all rights to a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) and 12 C.F.R. Part 19;
 - (b) all rights to seek judicial review of this Order;
 - (c) all rights in any way to contest the validity of this Order;
 - (d) 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

(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 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), or Heartland Bank, with respect to such amounts except as permitted by

Initials: _____
Date: _____

12 C.F.R. § 7.2014 and Part 359.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of the Notice arising out of the specific acts, omissions, or violations 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.

(4) 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 3, 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.

(5) 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.

(6) 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 OCC may set aside this settlement and restore this action to its active docket. Nothing in this paragraph shall affect Respondent's testimonial obligations.

(7) 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
Special Supervision Division

2/21/08
Date

/s/ Kevin Marvin
Kevin Marvin

2/11/08
Date

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Date: _____