

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

<b>In the Matter of:</b>	)	
David Schimmele	)	
Former Chief Financial Officer and Director	)	AA-EC-06-53
First National Bank of Fremont	)	
Fremont, Indiana	)	

**CONSENT ORDER**

**WHEREAS**, on August 10, 2007, the Comptroller of the Currency of the United States of America (“Comptroller”) initiated these administrative proceedings by issuance of a Notice of Intention to Prohibit Further Participation and Notice of Civil Money Penalty Assessment (“Notice”), against David Schimmele (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i); and

**WHEREAS**, in a previous order dated October 18, 2007, Respondent was assessed a \$150,000 civil money penalty pursuant to 12 U.S.C. § 1818(i)(2)(E)(ii) and 12 C.F.R. § 19.19 (c)(2), this Order pertains only to the prohibition proceedings initiated pursuant to 12 U.S.C. § 1818(e); and

**WHEREAS**, the Comptroller alleges that while associated with First National Bank of Fremont, Fremont, Indiana (“Bank”), as the Chief Financial Officer and Director, Respondent violated various laws and regulations, engaged in reckless unsafe and unsound practices in conducting the affairs of the Bank and/or breached his fiduciary duty to the Bank during the period of at least January 2000 through October 2004;

**WHEREAS**, on August 29, 2007, Respondent filed an Answer neither admitting nor denying the Comptroller’s allegations and invoking his Fifth Amendment right against self-incrimination in response to all of the Comptroller’s allegations; 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, civil and/or criminal, desires to enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(e).

**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 Fremont, Fremont, Indiana (“Bank”) was 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 a Former Chief Financial Officer and Director 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 prohibition against him pursuant to 12 U.S.C. § 1818(e).

## **Article II**

### **COMPTROLLER’S FINDINGS**

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

(1) During at least January 2000 through October 2004, Respondent aided and abetted the Bank's President in a nominee loan scheme and other practices designed, among other things, to funnel funds to the Bank's President.

(2) During at least January 2000 through October 2004, Respondent obtained at least ten loans from the Bank and other financial institutions in his name for the benefit of the Bank's President ("nominee loans").

(3) During this same time, Respondent received Bank funds from the Bank's President which were charged to the Bank's general ledger account, *inter alia*, in the form of bonuses which he used to make payments for the nominee loans.

(4) Respondent aided the Bank's President to conduct transactions designed to conceal the trail of funds ("layering") and also refinanced the nominee loans through the Bank and other financial institutions.

(5) Additionally, during at least May 2003 through September 2004, Respondent, as the Chief Financial Officer, assisted the Bank President to misappropriate Bank funds for the Bank President's temporary use and to manipulate the Bank's general ledger account thereby causing the Bank's books and records to be materially inaccurate and its financial condition to be materially misstated in the Bank's quarterly call reports.

(6) By reason of the foregoing conduct, Respondent violated and/or aided or abetted the Bank's violation of 12 U.S.C. §§ 84, 161, 375a, and 375b, 12 C.F.R. Part 32 and 215, and 31 C.F.R. § 103.33(a), and engaged in unsafe or unsound practices in conducting the affairs of the Bank and/or breached his fiduciary duty to the Bank.

(7) Respondent asserts that the foregoing specific acts, violations, practices and/or breaches were at the specific direction and instruction of the Bank's President.

(8) By reason of the foregoing violations, practices and/or breaches, the Bank suffered direct financial loss totaling at least \$2.2 million and indirect loss in the form of inaccurate books and records.

(9) Such violations, practices and/or breaches involved personal dishonesty by Respondent, demonstrated a willful and/or continuing disregard for the Bank's safety and soundness and were part of a pattern of misconduct that caused more than a minimal loss to the Bank and pecuniary gain or other benefit to Respondent.

### **Article III**

#### **ORDER OF PROHIBITION**

(1) With respect to the institutions and agencies set forth in paragraph 2 of this Article, Respondent hereby agrees and it is Ordered that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the "appropriate Federal banking agency," as defined in 12 U.S.C. § 1813(q) (as amended);  
or
- (d) vote for a director, or serve or act as an "institution-affiliated party," as defined in 12 U.S.C. § 1813(u) (as amended).

(2) The prohibitions in paragraph 1 of this Article apply 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 depository institution under 12 U.S.C. §§ 1818(b)(3), (b)(4) or (b)(5), including, but not limited to, any subsidiary of such institution, or treated as a savings and loan holding company or subsidiary under 12 U.S.C. § 1818(b)(9) (as amended);
- (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) The prohibitions of paragraphs 1 and 2 of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the Comptroller and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(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(e), (i), (j), and (h) (as amended).

## **Article IV**

### **WAIVERS**

- (1) By executing this Order, Respondent waives:
  - (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) 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; and

(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.

(2) 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 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.

(3) 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.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of prohibition and civil money penalty proceedings arising out of the alleged specific acts, omissions, or violations described in the Comptroller's Findings (Article II). However, the alleged 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.

(5) 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 4, 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.

(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.

(8) By signing this Consent Order, Respondent asserts that he has not waived his Fifth Amendment rights against self incrimination, nor does he admit any criminal wrongdoing as a former Chief Financial Officer of the Bank.

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

/s/ Ronald G. Schneck  
Ronald G. Schneck  
Director for Special Supervision

2/11/08  
Date

/s/ David Schimmele  
David Schimmele

February 4, 2008  
Date