

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

**In the Matter of:**

Earl McNaughton  
Former President, Chief Executive Officer and Chairman  
of the Board

First National Bank of Fremont  
Fremont, Indiana

AA-EC-06-49

**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 Earl McNaughton (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i); and

**WHEREAS**, Respondent filed a request for hearing regarding the civil money penalty assessment on August 30, 2007, and an Answer to the Notice on September 14, 2007, which he hereby withdraws; and

**WHEREAS**, the Comptroller alleges that while associated with First National Bank of Fremont, Fremont, Indiana (“Bank”), as the President, Chief Executive Officer and Chairman of the Board, 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; and

**WHEREAS**, in the interest of cooperation and to avoid the costs associated with future

Initials: \_\_\_\_\_  
Date: \_\_\_\_\_

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(e) 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 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 was formerly the President, Chief Executive Officer and Chairman of the Board 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 and civil money penalty proceedings against him pursuant to 12 U.S.C. § 1818(e) and (i).

## 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 engaged in a nominee loan scheme and other practices designed, among other things, to funnel Bank funds to Respondent.

(2) During at least January 2000 through October 2004, six Bank officers and directors (hereinafter, "Directors") and at least five Bank customers aided and abetted Respondent by obtaining loans from the Bank and other financial institutions in their names for the benefit of Respondent ("nominee loans").

(3) During this same time, Respondent, aided by the Directors, caused the Bank to fund interest and/or principal payments for the nominee loans with bonuses paid on behalf of the Directors and with transfers from the Bank's general ledger account.

(4) To avoid detection, Respondent and the Directors engaged in a series of complex transactions designed to conceal the trail of funds to Respondent ("layering") and also refinanced the nominee loans through the Bank and other financial institutions.

(5) Additionally, during December 2000 through December 2002, Respondent caused the Bank to make loans to two Bank customers to fund the sale and resale of certain real estate. Through a series of layering transactions related to the real estate loans, Respondent diverted Bank funds to his personal use causing loss to the Bank and gain to Respondent.

(6) In addition to the nominee loan scheme and real estate transactions, during at least May 2003 through September 2004, Respondent deposited Bank funds into his personal account

by temporary debits to the general ledger. Respondent reversed the debits at the end of each quarter to avoid reporting the debit balance on the Bank's quarterly call report.

(7) By reason of the temporary debits to the general ledger, Respondent misappropriated approximately \$1.6 million of Bank funds for his temporary use, and aided by the Directors, manipulated the Bank's books and records to avoid detection.

(8) By reason of Respondent's manipulation of the Bank's general ledger account, Respondent caused 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.

(9) 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.

(10) By reason of Respondent's 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. In addition, Respondent received financial gain totaling at least \$1.658 million and received financial gain or other benefit from the temporary use of an additional \$1.6 million of Bank funds.

(11) 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**

#### **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 two hundred fifty thousand dollars (\$ 250,000.00).

(2) Respondent may make payment of the civil money penalty from the proceeds of the sale of certain real property in New Mexico ("New Mexico Ranch"), on condition that:

(a) Respondent shall provide to the Comptroller a mortgage lien and title policy on the New Mexico Ranch, acceptable to the Comptroller, on or before execution of this Order; and

(b) the New Mexico Ranch is sold within twelve (12) months of execution of this Order.

(3) On sale of the New Mexico Ranch, Respondent shall pay in full his two hundred fifty thousand dollar (\$250,000.00) civil money penalty obligation at the time of the sale closing. In addition, and pending the proposed sale, Respondent shall ensure that the OCC is kept apprised of all negotiations and is given notice of any and all offers to purchase the New Mexico Ranch.

(4) In the event the proceeds from the sale of the New Mexico Ranch are insufficient to satisfy Respondent's two hundred fifty thousand dollar (\$250,000.00) civil money penalty obligation, Respondent shall make annual payments of fifty thousand dollars (\$50,000.00) commencing twelve (12) months from the date of execution of this Order or the date of closing of the sale, whichever occurs first, until the entire two hundred fifty thousand dollar (\$250,000.00) civil money penalty obligation is paid off.

(5) In the event the New Mexico Ranch is not sold within twelve (12) months of execution of this Order, Respondent shall make annual payments of fifty thousand dollars (\$50,000.00) commencing twelve (12) months from the date of execution of this Order until the entire two hundred fifty thousand dollar (\$250,000.00) civil money penalty obligation is satisfied, or until sale of the New Mexico Ranch, in which case the total remaining balance is due in full at closing of the sale.

(6) In the event that Respondent pays the entire two hundred fifty thousand dollar (\$250,000.00) civil money penalty obligation prior to the sale of the New Mexico Ranch, the civil money penalty specified in paragraph (1) of this Article shall be deemed to have been fully satisfied and the Comptroller shall execute any appropriate Release of Mortgage provided by Respondent.

(7) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in paragraph (1) of this Article shall become immediately due and payable.

(8) Respondent shall make payment(s) by certified check made payable to the Treasurer of the United States and shall deliver the payment(s) to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-06-49) shall be entered on the check(s). Respondent shall provide a photocopy of the check(s) along with the signed original copy of this Order to the attention of the Director of the Enforcement and Compliance Division (“Enforcement Director”) of the Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

(9) Upon execution of this Order, Respondent shall notify the Enforcement Director of the address of his current place of residence, by completing the form attached hereto as Appendix A.

(10) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address.

(11) 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**

(1) 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.

(2) 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**

- (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 (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; 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 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.

(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 the prohibition 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.

(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 nor to make or permit to be made any public statement denying, directly or indirectly, any allegation in the Notice, filed on August 10, 2007, or creating the impression that the Notice or this Order 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 for Special Supervision

4/22/08  
Date

/S/ Earl McNaughton  
Earl McNaughton

3/7/08  
Date