

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

<b>In the Matter of:</b> Mark E. Pappas Former Branch Manager KeyBank Cleveland, Ohio	) ) ) ) ) )	AA-EC-08-85
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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate prohibition proceedings against Mark E. Pappas (“Respondent”), former branch manager at KeyBank, N.A., Cleveland, OH (“Bank”), pursuant to 12 U.S.C. § 1818(e) (as amended);

WHEREAS, in the interest of cooperation and to avoid the costs associated with administrative and judicial proceedings with respect to the above matter, and without admitting or denying any wrongdoing, Respondent desires to enter into this Consent Order (“Order”);

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) KeyBank, N.A., Cleveland, OH (“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*, during the period relevant to this proceeding. Accordingly, the Bank was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a branch manager at the Bank during January 2004 through October 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 an enforcement proceeding against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain these prohibition and civil money penalty proceedings 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) Respondent was a branch manager at the Bank during the period January 2004 through October 2005.

(2) During the period December 2004 through September 2005, Respondent made multiple improper withdrawals from Bank Customer A’s account using ATM cards associated with the account that he issued to himself.

(3) Respondent caused the Bank to sustain a loss of \$51,691.25 due to the improper withdrawals he made from Bank Customer A’s account. Respondent subsequently made full restitution to the Bank.

(4) By reason of the foregoing conduct, Respondent violated the law, engaged in unsafe or unsound banking practices, and violated his fiduciary duty to the Bank. Respondent’s conduct caused loss to the Bank and demonstrated personal dishonesty and a continuing and/or

willful disregard for the safety or soundness of the insured depository institution.

### Article III

#### PROHIBITION

(1) Pursuant to the authority provided by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, Respondent consents and is hereby ORDERED that, effective immediately, with respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent 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 bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association 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; any appropriate Federal depository institution regulatory agency; and 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), (j), and (h) (as amended).

#### Article IV

#### WAIVERS

By executing this Order, Respondent waives:

- (1) The right to issuance of a Notice under 12 U.S.C. § 1818;
- (2) 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;
- (3) all rights to seek judicial review of this Order;
- (4) all rights in any way to contest the validity of this Order; and
- (5) 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.

#### Article VII

OTHER PROVISIONS

(1) 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 the civil money penalty except in accordance with 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 in accordance with 12 C.F.R. § 7.2014 and Part 359.

(2) 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 or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of these prohibition 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.

(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 the 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 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 the Respondent's testimonial obligations.

(6) The invalidity or unenforceability of any provision of this Order shall not affect the validity or enforceability of any other provisions of this Order, which shall remain in full force and effect.

(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, and Respondent shall not 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/

01/13/2009

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Ronald G. Schneck  
Director for Special Supervision  
Office of the Comptroller of the Currency

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Date

/S/

01/02/2009

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Mark E. Pappas

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Date