

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

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<b>In the Matter of:</b>	)	
William Ashley Gurganus, former AVP & Banking	)	
Center Manager	)	AA-EC-09-33
Bank of America, N.A.	)	
Charlotte, North Carolina	)	

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**CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America ("Comptroller" or "OCC") intends to initiate this cease and desist proceeding against William Ashley Gurganus ("Respondent") pursuant to 12 U.S.C. § 1818(b) on the basis of Respondent's activities during 2006 while serving as an Assistant Vice President at a branch of Bank of America, N.A. ("Bank") in Kitty Hawk, North Carolina;

**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 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) The Bank was and 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 employed at the Bank from September 22, 2003 until involuntary termination of his employment on November 3, 2006. At the time of his termination, Respondent was an Assistant Vice President and Banking Center Manager at 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 these cease and desist proceeding against him pursuant to 12 U.S.C. § 1818(b).

## Article II

### COMPTROLLER’S FINDINGS

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

(1) Respondent engaged in several instances of improper conduct during April 2006 through July 2006.

(2) Respondent executed an agreement ("Agreement") with a Bank customer for certificates of deposits ("CDs") on behalf of the Bank that falsely represented, among other things, that the Bank had agreed to make a \$14 million loan related to the purchase and development of a property in Perquimans County, North Carolina. Although the Agreement created potential legal liability for the Bank, Respondent admitted that he did not read the Agreement before signing it.

(3) In June 2006, Respondent created, or caused to be created, unfunded CDs for \$2 million and \$1.5 million. Even though the CDs were unfunded, CD receipts were faxed to a customer outside the Bank, and Respondent failed to notify the customer that the CDs were erroneously created, thus exposing the Bank to potential legal liability.

(4) In July 2006, Respondent failed to adequately safeguard access to his office and computer in order to prevent unauthorized access to his computer. During this time, additional unfunded CDs for \$2 million and \$1.5 million were created using Respondent's computer passwords.

(5) Based on the foregoing conduct, Respondent engaged in unsafe or unsound banking practices and breached his fiduciary duty to the Bank.

### Article III

#### PERSONAL CEASE AND DESIST ORDER

Respondent consents to, and it is ORDERED that:

(1) In the event Respondent currently is employed at any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A) (hereinafter “insured depository institution”), Respondent shall, within ten (10) days of the execution of this Order, provide a copy of the Order to: (i) the board of directors; or (ii) the chief executive officer or other senior management official of such institution, provided that such official has been approved in writing by the OCC for this purpose.

(2) Prior to accepting any position that would cause Respondent to become an “institution-affiliated party” within the meaning of 12 U.S.C. § 1813(u), Respondent shall provide a copy of this Order to: (i) the board of directors; or (ii) the chief executive officer or other senior management official of such institution, provided that such official has been approved in writing by the OCC for this purpose.

(3) Within ten (10) days of satisfying the requirements of paragraphs 1 and/or 2, Respondent shall provide a written certification of his compliance to the Director, Enforcement and Compliance Division, 250 E Street, SW, Washington, DC 20219.

(4) In connection with any existing or future employment subject to this Article, Respondent shall:

- (a) Not engage in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (b) Fully observe his fiduciary duties of care and loyalty owed to any institution with which he is or may become affiliated and, at all times, shall not place his own interests above those of the institution;

- (c) Comply fully with all laws and regulations applicable to any insured depository institution which employs him;
- (d) Fully adhere to the written policies and procedures of the institution to which he may become affiliated or seek and receive written permission from appropriate authorized individuals to do otherwise.
- (e) Not enter into any contractual obligation, written or oral, on behalf of any institution with which he is or may be affiliated, without the express, written, prior consent of his immediate supervisory authorizing Respondent to so act on behalf of the institution.

## Article VI

### WAIVERS

(1) By executing this Order, Respondent waives:

- (a) the right to the issuance of a Notice of Charges 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) 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
- (f) 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

Article VII

OTHER PROVISIONS

(1) Respondent shall not cause, participate in, or authorize an insured depository institution (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense incurred 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 any insured depository institution (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 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 and/or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of these enforcement proceedings arising out of the specific acts, omissions, or violations described in 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 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 Respondent's testimonial obligations.

(6) 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.

(7) This Order shall be enforceable to the same extent and in the same manner as a final order issued pursuant to 12 U.S.C. §§ 1818(b).

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

/s/ Ronald G. Schneck

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

06/15/2009

Date

/s/ William Ashley Gurganus

William Ashley Gurganus

06/05/2009

Date