

**#2010-020**

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

<u>In the Matter of:</u>	)	
Robert D. McElroy, Jr.	)	
Former Account Executive	)	AA-EC-09-99
Bank of America, N.A.	)	
Charlotte, NC (Annandale, VA Office)	)	

**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a cease and desist and civil money penalty proceeding against Robert D. McElroy, Jr. (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while an account executive at the Annandale, VA branch office of Bank of America, N.A., Charlotte, NC (“Bank”) for engaging in unsafe or unsound practices and breaches of fiduciary duty relating to the transfer of information about Bank customers to a competitor financial institution while employed by the Bank; 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, desires to enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) 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:

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

Article I

JURISDICTION

(1) Bank of America, N.A., Charlotte, NC (“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) Robert D. McElroy, Jr. (“Respondent”) was an account executive of the Bank for the period from April 2000 through June 29, 2004, 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 a cease and desist and civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818(b) and (i).

Article II

PERSONAL CEASE AND DESIST ORDER

(1) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders that, whenever Respondent is employed by, or is offered employment at, an insured depository institution or otherwise becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution which employs him.
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code.
- (c) Not breach the fiduciary duties of loyalty or care owed to any insured depository institution with which he is or may become affiliated.
- (d) Adhere to any lawful written policies and procedures of any insured depository institution or agency with which he may become affiliated, or seek written advice from appropriate authorized individuals if other action is contemplated.
- (e) Utilize and process information about customers of insured depository institutions only as permitted by the provider or owner of such information, and in accordance with safe and sound practices, fiduciary duties, applicable laws and regulations, and the policies and procedures of the institution.
- (f) Carefully review all electronic communications sent outside any insured depository institution so as to ensure the proper treatment of information about customers of the institution in accordance with safe and sound practices, fiduciary duties, applicable laws and regulations, and the policies and procedures of the institution.
- (g) Provide the chief compliance officer of his current employer with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph (1)(g) to the Director, Enforcement and Compliance Division, Office of

the Comptroller of the Currency, 250 E St., SW, Washington, D.C. 20219, within ten (10) days of execution of this Order.

(h) Prior to accepting any offer of a position that causes Respondent to become an institution-affiliated party of an insured depository institution, provide the chief compliance officer (or if none, the officer performing such functions) of the future employer with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance, Office of the Comptroller of the Currency, 250 E St., SW, Washington, D.C. 20219, along with a written affidavit of his compliance with this paragraph (1)(h) within ten (10) days after acceptance of such position.

(i) Familiarize himself with, and adhere to, the written policies and procedures of any insured depository institution or agency with which he is or may become affiliated. In the event that the Respondent is affiliated with an insured depository institution or agency with written policies and procedures that are more stringent than the provisions of this Order, the Respondent shall adhere to the written policies and procedures of such insured depository institution or agency.

(2) If, at any time, Respondent is uncertain whether a situation implicates Article II, paragraph (1) of this Article, or if Respondent is uncertain about his duties arising from these or any other requirements of this Order, he shall obtain, and abide by, the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and

who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' web sites.

(3) 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(b).

### Article III

#### ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of five thousand dollars (\$5,000), which shall be paid 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 all checks.

(3) 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) the right to the issuance of a Notice of Charges and a Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) 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
  - (e) 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) Any failure by Respondent to comply with this Order shall be subject to enforcement for the longer of (a) the period allowed by the applicable statute of limitations, or (b) five (5) years following the failure to comply.

(4) 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.

(5) It is hereby agreed that the provisions of this Order constitute a settlement of these cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations referenced in the first whereas clause, hereof, unless such acts, omissions, or violations reoccur.

(6) 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 (5), 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.

(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/Henry Fleming  
Henry Fleming  
Director  
Special Supervision

1/20/2010  
Date

/s/Robert D. McElroy, Jr.  
Robert D. McElroy, Jr.

1/12/2010  
Date

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