

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

In the Matter of:	)	
Richard E. Magnuson	)	
Former President	)	AA-EC-10-13
	)	
American Bank, N.A.	)	
Le Mars, Iowa	)	

**CONSENT ORDER**

WHEREAS, on February 18, 2010, the Comptroller of the Currency of the United States of America (“Comptroller”) filed a Notice of Charges (“Notice”) initiating this proceeding for a prohibition order and assessment of a civil money penalty against Richard E. Magnuson (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i), on the basis of Respondent’s activities during September 2008 while serving as President of American Bank, N.A., Le Mars, Iowa (“Bank”);

WHEREAS, on March 4, 2010, Respondent filed an answer to the Notice denying the allegations contained therein;

WHEREAS, in the interest of cooperation and to avoid the costs associated with further litigation and 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, it is stipulated by and between the Comptroller, through his

Initials: RM  
Date: 7/28/10

duly authorized representative, and Respondent that:

## Article I

### JURISDICTION

(1) American Bank, N.A., Le Mars, Iowa (“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) Respondent was the President 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) In September 2008, Respondent caused the Bank to purchase from a local auto dealer a new 2009 Pontiac GT G8 for his use as Bank president. As part of the same transaction, Respondent caused the Bank to make an unauthorized purchase of a 2002 PT Cruiser for his personal use, titled in his name, and at a loss to the Bank. Respondent concealed the purchase of the PT Cruiser from the Bank.

(2) Respondent returned the PT Cruiser to the Bank upon his resignation on February 20, 2009.

(3) By reason of the foregoing conduct, Respondent violated the law, engaged in an unsafe or unsound practice, breached his fiduciary duty to the Bank, and exhibited personal dishonesty that resulted in gain to himself and loss to the Bank.

### Article III

#### ORDER OF PROHIBITION

Respondent consents to, and it is ORDERED that:

(1) 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 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).

#### Article IV

#### ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of five thousand four hundred dollars (\$5,400), to be paid within ten (10) days of Respondent's execution of this Order.

(2) Respondent shall make payment by certified check or money order 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 (AA-EC-10-13) shall be entered on all checks.

(3) The Respondent shall deliver a copy of the check to the Director of Enforcement and Compliance ("Director"), Office of the Comptroller of the Currency, 250 E St., S.W., Washington, D.C. 20219, with reference to the docket number of this case.

(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(i) (as amended).

## Article V

### OTHER PROVISIONS

(1) By consenting to the issuance of 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 acknowledges that:

- (a) He 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 he 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.
- (b) He has read 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 him to agree to consent to the issuance of this Order or to execute this Order.

(3) This Order constitutes a settlement of the prohibition and civil money penalty proceedings arising out of the specific acts, omissions, or violations alleged in the Comptroller's Notice initiating this action. However, the specific acts, omissions or violations described in the Notice 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) 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) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and 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 has hereunto set his hand.

/s/Richard E. Magnuson

Richard E. Magnuson

7/28/10

Date

**IT IS SO ORDERED.**

/s/John W. Quill

John W. Quill

Deputy Comptroller for Special Supervision

8/24/10

Date