

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

<b>In the Matter of:</b> Raymond J. Kyzar Former Loan Officer First National Bank of Brundidge Brundidge, Alabama	) ) ) ) )	AA-EC-11-61
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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate prohibition and civil money penalty proceedings against Rayment J. Kyzar (“Respondent”) pursuant to 12 U.S.C. §§ 1818(e) and (i) on the basis of Respondent's activities during 2005 and 2006 period while serving as a Loan Officer at the The First National Bank of Brundidge, Brundidge, Alabama ("Bank");

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:

Initials RJK Date 6-27-11

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 beginning on November 3, 2000 until July 14, 2006, when he resigned. At the time of his resignation, Respondent was a Loan Officer 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 removal and 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 November 2005 through July 2006, Respondent engaged in a scheme in which he orchestrated the issuance of 21 cashier's checks and "loan proceeds" checks ("unauthorized checks") totaling approximately \$168,000 for the apparent benefit of a bank customer, even though the checks were made payable to various other individuals.

(2) Ten of the unauthorized checks were unfunded at the time of issuance, and the other eleven were funded using unauthorized withdrawals from customer accounts.

(3) The Bank uncovered the scheme on or about July 6, 2006, when one of the Bank's customers complained of unauthorized activity in his account.

(4) All unauthorized checks were eventually funded (and monies replaced in customers' accounts) through deposits or payments by Respondent and others.

(5) By reason of the foregoing conduct, Respondent violated the law and engaged in a pattern of misconduct, which led to temporary Bank loss, breached his fiduciary duty to the Bank, and engaged in personal dishonesty and a willful or continuing disregard for the safety and soundness of 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); or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u).

(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);
- (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).

(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.

#### Article IV

#### ORDER ASSESSING CIVIL MONEY PENALTY

Respondent consents to, and it is OREDERED that:

(1) Respondent shall pay a civil money penalty in the amount of seventy-five hundred dollars (\$7,500), which shall be paid by July 15, 2011.

(2) Respondent shall make the 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-11-61) shall be entered on the check.

(3) At the time payment is made pursuant to paragraphs (2) and (3), a copy of the certified check or money order shall be sent to the Director of the Enforcement and Compliance Division, 250 E Street, S.W. Washington, DC 20219 (“Enforcement Director”).

(4) Upon execution of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division (“Enforcement Director”) of his social security

number and the address of his current place of residence by completing and returning the form attached hereto as Appendix A upon execution of this Order.

(5) 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.

## Article V

### BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to payment in full of the civil money penalty ordered in Article IV, 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 the civil money penalty pursuant to this Order is subject to discharge, Respondent shall make a motion to the court for an order of non-dischargeability of the civil money penalty and provide the Enforcement Director with a copy of the motion, concurrent with filing, and a copy of any subsequently issued order within ten (10) days of issuance. If Respondent fails to make such motion, 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 V

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 (i) 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 VI

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 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 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) Nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order and 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/Henry Fleming*  
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Henry Fleming  
Director for Special Supervision  
Office of the Comptroller of the Currency

*7-5-11*  
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Date

*/s/Raymond J. Kyzar*  
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Raymond J. Kyzar

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Date 6-27-11