

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

<b>In the Matter of:</b>	)	
James O'Malley	)	
Former CEO and Chairman	)	AA-EC-11-48
	)	
Beverly Bank & Trust Company, N.A.	)	
Chicago, Illinois	)	

**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 James O’Malley (“Respondent”), former Chief Executive Officer (“CEO”) of Beverly Bank & Trust Company, N.A., Chicago, Illinois (“Bank”) and Chairman of the Board of Directors, pursuant to 12 U.S.C. § 1818 (e) and (i) relating to Respondent’s activities while employed at the Bank;

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(e) 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:

Article I

JURISDICTION

(1) The 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 served as the CEO and Chairman for 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.

## Article II

### COMPTROLLER’S FINDINGS

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

(1) During at least the period from October 2005 through May 2007, Respondent approved loans, renewed loans and extended overdrafts to Customer A, a construction company that develops residential real estate in the Chicago area.

(2) Respondent repeatedly violated the Bank’s loan policy by approving loans and large overdrafts to Customer A in excess of his lending authority, the proceeds of which were used to make payments on Customer A’s loans. This practice made Customer A’s loans appear as if they were being paid in a timely fashion, when in fact, they were not and resulted in material misstatements on the Bank’s Call Reports.

(4) Respondent instructed a Bank employee to transfer funds from an unrelated account without authorization from the accountholder. The funds were used to make interest payments on Customer A’s loans.

(5) For at least 18 months, Respondent failed to disclose to the Bank's Board of Directors that he approved loans and overdrafts to Customer A in excess of his lending authority in violation of the Bank's policy. These overdrafts to Customer A increased the Bank's exposure to Customer A loans and resulted in a loss to the Bank.

(6) By reason of the foregoing, Respondent engaged in recklessly unsafe or unsound practices and exhibited personal dishonesty or willful disregard for the safety or soundness of the Bank that resulted in losses to the Bank.

### Article III

#### ORDER OF PROHIBITION

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby agrees that he 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.

#### Article IV

##### ORDER FOR CIVIL MONEY PENALTY

(1) Respondent hereby consents to the payment of a civil money penalty in the amount of six thousand five hundred dollars (\$6,500), which shall be paid in accordance with the following procedure and schedule.

(2) Respondent shall make a payment of five hundred dollars (\$500) upon execution of this Order. Respondent shall thereafter make quarterly payments of seven hundred fifty dollars (\$750) on or before the 15<sup>th</sup> day of each January, April, July and October, commencing

on October 15, 2011, and continuing until such time as the remaining balance of the civil money penalty is paid in full. The civil money penalty shall be paid in full by July 15, 2013.

(3) Respondent shall make payments pursuant to this Article by check (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 shall be entered on all checks. Respondent shall send a copy of the check to the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219. Respondent may comply with this provision by faxing a copy of the check to the Enforcement Director at (202) 874-5301.

(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.

(5) In the event Respondent fails to make payment as provided in this Article, the entire unpaid balance of the total amount of restitution shall become immediately due and payable.

(6) Within seven (7) days from the issuance of this Order, Respondent shall notify the Enforcement Director of his current residential address, by completing the form attached hereto as Appendix A.

(7) Until the civil money penalty is paid in full, upon each and every subsequent change in address, if any, Respondent shall notify the Director of Enforcement at the address set forth above in paragraph (3) of his new address within seven (7) days of such change in address.

## Article V

### BANKRUPTCY

(1) If Respondent files for bankruptcy protection prior to making payment in full of the civil money penalty required by this Order, Respondent shall notify the Director, Enforcement and Compliance Division, 250 E St., SW, Washington, DC 20219, within ten (10) days of the filing and shall provide a copy of the filing to the 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 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 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) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 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 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 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) This Order constitutes a settlement of the prohibition and civil money penalty proceeding contemplated by the Comptroller and arising out of the specific acts, omissions, or violations described in Article II of this Order. However, the specific acts, omissions or violations described in Article II of this Order may be used by the Comptroller in future enforcement actions to establish a pattern or practice of misconduct or the continuation of a pattern or practice of misconduct.

(6) 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 for Special Supervision  
Office of the Comptroller of the Currency

6/21/11  
Date

/s/James O'Malley  
James O'Malley

6/14/11  
Date