



§ 1813(c)(2).

(2) Respondent was Senior Vice President 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)(1), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties of the Bank. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain prohibition and civil money penalty actions against him pursuant to 12 U.S.C. §§ 1818(e) and (i).

## **Article II**

### **COMPTROLLER’S FINDINGS**

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

- (1) At all relevant times, Respondent was Senior Vice President at the Bank.
- (2) Between August 2008 and November 2008, Respondent made false statements and representations and provided false documentation in connection with a residential mortgage loan issued by the Bank to Respondent.
- (3) During this same time period, Respondent made false statements and representations to another insured depository institution in connection with an unsecured line of credit issued by that insured depository institution to Respondent, the proceeds of which were used to further Respondent’s mortgage fraud scheme against the Bank.
- (4) By reason of the foregoing conduct, Respondent violated laws, engaged in unsafe

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or unsound practices, and breached his fiduciary duties to the Bank; received a corresponding personal benefit and caused a financial loss to another insured depository institution; and demonstrated personal dishonesty and willful and/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 depository institution under 12 U.S.C. §§ 1818(b)(3), (b)(4), or (b)(5), including, but not limited to, bank holding

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companies and savings and loan holding companies and any subsidiary of such institutions;

- (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 Agency 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(e) and (h).

#### **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 dollars (\$5,000.00), which shall be paid in full upon execution of this Order.

(2) Respondent shall make payment by certified or cashier's check made payable to the Treasurer of the United States and shall deliver payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-

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2013-89) shall be entered on the check. Respondent shall deliver a copy of the check to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency (“Enforcement Director”), 400 7th Street, SW, Washington D.C. 20219.

(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(i) and (h).

## **Article V**

### **BANKRUPTCY**

(1) In any bankruptcy proceeding in which it is or may be contended that Respondent’s obligation to pay a civil money penalty pursuant to this Order is subject to discharge, Respondent shall make a motion to the bankruptcy court for an order of non-dischargeability of the civil money penalty and provide the Enforcement Director at 400 7th Street, SW, Washington D.C. 20219 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 a 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 that result in claims not dischargeable in bankruptcy.

## **Article VI**

### **CLOSING**

(1) By executing this Order, Respondent waives:

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- (a) the right to a Notice of Intention to Prohibit Further Participation and a Notice of Assessment of a Civil Money Penalty under 12 U.S.C. §§ 1818(e) and (i);
- (b) 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 109;
- (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. § 145.121 and Part 359. In addition, 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. § 145.121 and Part 359.

(3) 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

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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.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). 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. However, the specific acts, omissions, or violations described in Article II may be used by the Comptroller in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (4) above, 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.

(6) 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.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a

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contract binding the Comptroller or the United States. Respondent expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of those entities, to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(8) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

(10) The provisions of this Order are effective upon issuance by the Comptroller through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller, through his authorized representative.

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IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

s/Eric c. Diamond  
Eric C. Diamond

11/18/13  
Date

IT IS SO ORDERED.

s/Kristina B. Whittaker  
Kristina B. Whittaker  
Deputy Comptroller  
Special Supervision Division

11/20/13  
Date

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