

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

<b>In the Matter of:</b>	)	
	)	
Patrick McEvoy	)	AA-EC-2014-84
Former Portfolio Manager	)	
	)	
Fidelity Bank of Florida, N.A.	)	
Merritt Island, Florida	)	

**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist and civil money penalty proceedings against Patrick McEvoy (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s actions while employed as Portfolio Manager at Fidelity Bank of Florida, N.A., Merritt Island, Florida (“Bank”), during the period of March 2012 through January 2014;

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to this 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:

**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 is a former Portfolio Manager 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 cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

## **Article II**

### **COMPTROLLER’S FINDINGS**

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

(1) In January 2014, Respondent transferred proprietary Bank customer files to his personal email accounts. These files contained confidential information, including nonpublic personal information regarding the Bank’s customers.

(2) By reason of the foregoing conduct, Respondent caused, brought about, participated in, counseled, or aided or abetted the Bank’s violation of 12 C.F.R. Part 40 (which requires banks to maintain and comply with privacy policies on customer information in the bank’s possession), and breached his fiduciary duty to the Bank. Respondent’s actions resulted in loss to the Bank.

### Article III

#### **PERSONAL CEASE AND DESIST ORDER**

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:

(1) Whenever Respondent is employed by, or is offered employment at, a depository institution (as defined in 12 U.S.C. § 1813(c)(1)) 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 depository institution with which he is or may become affiliated;
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (c) Fulfill the fiduciary duties of loyalty and care owed to any depository institution with which he is or may become affiliated and shall, at all times, avoid placing his own interest above those of the institution;
- (d) Utilize and process nonpublic personal information of customers or proprietary information of such 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;
- (e) Carefully review all electronic communications Respondent sends outside any such depository institution so as to ensure the proper treatment of nonpublic personal information of customers or proprietary information of the institution in accordance with safe and sound practices, fiduciary

duties, applicable laws and regulations, and the policies and procedures of the institution;

- (f) Provide the Board of Directors of the depository institution of which Respondent is currently employed or serves as an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, within ten (10) days of execution of this Order; and
- (g) With respect to any future employment, prior to accepting employment at a depository institution or becoming an institution-affiliated party, provide the President or Chief Executive Officer of the depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) If, at any time, Respondent is uncertain whether a situation implicates 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, at his own expense, 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) 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 two thousand five hundred dollars (\$2,500.00), which shall be paid in full upon execution of this Order.

(2) Respondent shall make payment by cashier's 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-2014-84) shall be entered on the submitted payment.

(3) A copy of the check or money order shall be returned along with this original signed Order to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219.

(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) and (h).

#### **Article V**

#### **CLOSING**

(1) By executing this Order, Respondent waives:

- (a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and a Notice of Assessment of a Civil Money Penalty 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. 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. § 7.2014 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 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 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.

(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 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.



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

s/Patrick McEvoy  
Patrick McEvoy

1/26/2015  
Date

**IT IS SO ORDERED.**

s/Michael R. Brickman  
Michael R. Brickman  
Deputy Comptroller for Special Supervision

3/9/2015  
Date