

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

<b>In the Matter of:</b> Rory A. Brown Former Chief Executive Officer and Chairman of the Board Lydian Private Bank Palm Beach, Florida	) ) ) ) ) )	AA-EC-2015-29
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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate cease and desist and civil money penalty proceedings against Rory A. Brown (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while serving as Chief Executive Officer (“CEO”) and Chairman of the Board of Directors of Lydian Private Bank, Palm Beach, Florida (“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 consent to the issuance of this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(b) and (i);

NOW, THEREFORE, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

**ARTICLE I**

**JURISDICTION**

(1) The Bank was a Federal savings association within the meaning of 12 U.S.C. § 1813(b) and 12 U.S.C. § 1462(3).

(2) The Bank was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

Initials: \_\_\_\_\_  
Date: \_\_\_\_\_

(3) Respondent, at all relevant times, was CEO and Chairman of the Board 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 of this Order (*see* 12 U.S.C. § 1818(i)(3)).

(4) 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 of the Bank. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain a cease and desist and civil money penalty action 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 May 2010, Respondent participated in the Bank’s issuance of \$4.5 million in loans of \$1.5 million each to three individuals, who lacked sufficient cash flow and liquidity to service the loans.

(2) In December 2010, the Bank consented, with the Respondent’s knowledge, to the effective release of the stock collateral and corporate guarantee for the loans so the guarantor could borrow additional funds from another lender. Respondent knew the release did not receive loan committee approval or ratification as required by Bank’s loan policy.

(3) In June 2011, the three individuals defaulted on the loans, and the Bank suffered loss. At the time of the Bank’s failure, the loss was about \$4.34 million. Subsequently, all but approximately \$746,000 was recovered.

(4) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices.

### **ARTICLE III**

#### **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 (\$5000), which shall be paid in full upon Respondent's execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check 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-2015-29) shall be entered on the submitted payment.

(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.

### **ARTICLE IV**

#### **ORDER TO CEASE AND DESIST**

Respondent consents to, and it is ORDERED 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 becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

(a) With regard to any lending-related activity:

(i) Comply fully with all laws, regulations, and policies applicable to any depository institution with which he is affiliated;

Initials: \_\_\_\_\_  
Date: \_\_\_\_\_

- (ii) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code; and
  - (iii) 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 interests above those of the institution;
- (b) If Respondent is currently an institution-affiliated party at a depository institution, provide the Board of Directors with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph to the Director, Enforcement & 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
- (c) With respect to any future employment, prior to 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 & 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 such paragraphs, 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' websites.

(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.

## **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 Notice of Civil Money Penalty Assessment 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 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 of the Bank) to incur, directly or indirectly, any 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 of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 45.121 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(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 the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order 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 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 in this Order shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and nothing in this Order 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/Rory A. Brown

10/1/15

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Rory A. Brown

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Date

**IT IS SO ORDERED.**

s/Michael R. Brickman

10/6/15

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Michael R. Brickman  
Deputy Comptroller for Special Supervision

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Date