

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

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IN THE MATTER OF )  
Roy Binger, Former President )  
Peoples National Bank of Commerce, )  
Miami, Florida )

**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a civil money penalty proceeding against Roy Binger (“Respondent”) pursuant to 12 U.S.C. § 1818(i)(2), through the issuance of a Notice of Assessment of a Civil Money Penalty (Notice of Assessment) for activities detailed in a letter to the Respondent dated August 27, 1998; and,

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent 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:

ARTICLE I

(1) Peoples National Bank of Commerce, Miami, Florida (“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.

(2) The Bank is an “insured depository institution” as that term is defined in 12

U.S.C. § 1813(c)(2).

(3) Respondent is the former President of the Bank and an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served as an officer of the Bank within six (6) years from the date hereof (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 enforcement proceedings against institution-affiliated parties. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain a civil money penalty proceeding against him pursuant to 12 U.S.C. § 1818(i).

## ARTICLE II

(1) Without admitting or denying any wrongdoing, Respondent hereby consents to the payment of a civil money penalty in the amount of two thousand dollars (\$2,000). Payment shall be made in full by check made payable to the Treasurer of the United States and delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The words “Peoples National Bank of Commerce CMP” should be noted on the check.

## ARTICLE III

(1) Respondent agrees that this Stipulation and Consent 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) (as amended).

## ARTICLE IV

- (1) By executing this Stipulation and Consent Order, Respondent waives:
- (a) all rights to the issuance of a Notice of Assessment pursuant to 12

U.S.C. § 1818(i);

- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) and 12 CFR Part 19;
- (c) all rights to seek judicial review of this Stipulation and Consent Order;
- (d) all rights to contest the validity of this Stipulation and Consent Order in any way;
- (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 and/or this Stipulation and Consent 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; and,
- (f) all rights to assert a "double jeopardy" claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Stipulation and Consent Order.

(2) Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any legal (or other professional) expense relative to the negotiation and issuance of this Stipulation and Consent Order, and/or any attempt to modify or rescind this Order, and consistent with 12 CFR § 7.2014 and 12 CFR § 359.5, 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 the civil money penalty agreed to in Article II of this Stipulation and Consent Order.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Stipulation and Consent 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 the Respondent to agree to consent to the issuance of this Stipulation and Consent Order and/or to execute this Stipulation and Consent Order.

#### ARTICLE V

(1) It is hereby agreed that the provisions of this Stipulation and Consent Order constitute a settlement of the civil money penalty actions currently contemplated by the Comptroller. The Comptroller agrees not to institute further proceedings for the specific acts contained in the letter to the Respondent dated August 27, 1998, unless such acts reoccur.

(2) It is further agreed that the provisions of this Stipulation and Consent Order shall not be construed as an adjudication on the merits and, except as set forth above, 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.

(3) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Stipulation and Consent 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.

<u>-SIGNED-</u> Leann G. Britton Senior Deputy Comptroller for Bank Supervision Operations	Date	<u>12-21-99</u>
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<u>-SIGNED-</u> Roy Binger	Date	<u>11-16-99</u>
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