

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

IN THE MATTER OF)
John Aguirre, Former Chief Financial Officer)
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 administrative enforcement actions against John Aguirre (“Respondent”) pursuant to 12 U.S.C. § 1818, for activities detailed in a letter to the Respondent dated December 18, 1997, including: a Prohibition proceeding pursuant to 12 U.S.C. § 1818(e) (as amended) through the issuance of a Notice of Intention to Prohibit Further Participation (“Prohibition Notice”); and, a Civil Money Penalty proceeding pursuant to 12 U.S.C. § 1818(i) (as amended) through the issuance of a Notice of Assessment of a Civil Money Penalty (“Notice of Assessment”); and,

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matters, 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. Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is the former Chief Financial Officer 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 as an officer of the Bank 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 enforcement proceedings 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(b)(6), (e) and (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 twelve thousand dollars (\$12,000) which shall be paid within thirty (30) days from the date Respondent executes this Stipulation. 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) Without admitting or denying any wrongdoing, Respondent hereby consents to a

Prohibition from banking pursuant to 12 U.S.C. § 1818(e) and the terms and conditions set forth herein.

(2) With respect to the institutions and agencies set forth in paragraph (3) of this Article, Respondent hereby agrees 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);
- (d) vote for a director; or,
- (e) serve or act as an "institution-affiliated party," as defined in 12 U.S.C. § 1813(u) (as amended).

(3) The prohibitions in paragraph (2) 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 bank under 12 U.S.C. § 1818(b)(3), (b)(4), or as a savings association 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.

(4) The prohibitions of paragraphs (2) and (3) of this Article shall cease to apply with respect to a particular institution only 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).

ARTICLE IV

(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(b), (e), (i), (j), and (h) (as amended).

ARTICLE V

- (1) By executing this Stipulation and Consent Order, Respondent waives:
- (a) all rights to the issuance of a Prohibition Notice pursuant to 12 U.S.C. § 1818(e);
 - (b) all rights to the issuance of a Notice of Assessment pursuant to 12 U.S.C. § 1818(i);
 - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b), (e) and (i), and 12 C.F.R. Part 19;
 - (d) all rights to seek judicial review of this Stipulation and Consent Order;
 - (e) all rights in any way to contest the validity of this Stipulation and Consent

Order;

- (f) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to these enforcement matters 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
- (g) 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 C.F.R. § 7.2014 and 12 C.F.R. § 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 VI

(1) It is hereby agreed that the provisions of this Stipulation and Consent Order constitute a settlement of the Prohibition and 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 December 18, 1997, 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 and/or the Federal Election Commission, to bring other

actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

<u>-SIGNED-</u>	<u>03-18-99</u>
Leann G. Britton	Date
Senior Deputy Comptroller	
for Bank Supervision Operations	

<u>-SIGNED-</u>	<u>02-26-99</u>
John Aguirre	Date