#N11-002

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

In the Matter of:	)	
	)	
Donald Shephard	)	
Former Director, Executive Vice President,	)	AA-EC-11-52
and Chief Financial Officer	)	
The First National Bank of Valentine	)	
Valentine, NE	)	

NOTICE OF INTENTION TO PROHIBIT FURTHER PARTICIPATION
NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY

On a date as determined by the Administrative Law Judge, a hearing will commence in Valentine, Nebraska, pursuant to 12 U.S.C. § 1818(e) and (i) concerning the charges set forth herein to determine whether an Order should be issued against Donald Shephard ("Respondent"), former Director, Executive Vice President, and Chief Financial Officer of The First National Bank of Valentine, Valentine, NE ("Bank"), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency, or entity referred to in 12 U.S.C. § 1818(e) and requiring Respondent to pay a civil money penalty.

After taking into account the financial resources and good faith of Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require pursuant to 12 U.S.C. § 1818(i)(2)(G), and after soliciting and giving full consideration to Respondent's view with respect to these considerations, the Comptroller of the Currency ("Comptroller") hereby assesses a civil money penalty in the

amount of seventy-five thousand dollars ($75,000) against Respondent. This penalty is payable to the Treasurer of the United States.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest.

In support of this Notice of Intention to Prohibit Further Participation and Notice of Assessment of a Civil Money Penalty ("Notice"), the Comptroller charges the following:

Article I

Jurisdiction

At all times relevant to the charges set forth below:

(1) The Bank was 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 was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(e) and (i).

(3) The Comptroller is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. §§ 1813(q)(1) and for purposes of 12 U.S.C. § 1818(e) and (i) to initiate and maintain an enforcement proceeding against an institution-affiliated party.

(4) Respondent served as a Director, Executive Vice President ("EVP"), and Chief Financial Officer ("CFO") 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 one or more of these capacities within six (6) years from the date hereof (*see* 12 U.S.C. § 1818(i)(3)).

Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain an enforcement proceeding against Respondent pursuant to 12 U.S.C. § 1818.

Article II

Background

(5) In each of his capacities as a Director, EVP, and CFO, Respondent had an obligation to comply with all applicable laws and regulations and to carry out his duties and responsibilities in a safe and sound manner. In addition, Respondent owed fiduciary duties of care and loyalty to the Bank, which included, but were not limited to, an obligation to avoid conflicts of interest and to place the interests of the Bank ahead of his own personal interests at all times.

Article III

Respondent's Involvement in Two Nominee Loans

(6) This Article repeats and realleges all previous Articles in this Notice.

(7) As discussed in this Article, Respondent violated laws or regulations, engaged in unsafe or unsound practices, and breached his fiduciary duty to the Bank through his involvement in two nominee loans.

(8) On or about December 14, 2006 Borrower A obtained a $200,000 line of credit from the Bank and borrowed approximately $200,000 ("200,000 Loan").

(9) Respondent was not identified as a borrower in the application, note, or line of credit agreement for the $200,000 Loan. The note and line of credit agreement for the $200,000 Loan were dated December 14, 2006 and were signed by Borrower A and the loan officer on the loan ("Loan Officer A").

(10) Based on his conversations with Respondent, Borrower A understood the $200,000 Loan was to be a joint loan to him and Respondent.

(11) On or about December 21, 2006, Respondent directed the Bank to wire the $200,000 Loan proceeds to the account of Company A at another bank.

(12) At Respondent's direction, Company A applied approximately $81,000 of the $200,000 Loan proceeds to a purchase of Company A stock by Respondent, and applied the remainder of the $200,000 Loan proceeds to a purchase of Company A stock by Borrower A.

(13) Respondent concealed from Loan Officer A and the Board of Directors ("Board") of the Bank that Respondent would be receiving and, later, that he had received, a portion of the $200,000 Loan proceeds.

(14) Respondent acknowledged his receipt of $81,133 of the $200,000 Loan proceeds in a signed, notarized memorandum to Borrower A, dated on or about December 27, 2006.

(15) On or about April 18, 2007 Borrower A obtained, and borrowed the full amount of, a $340,000 line of credit from the Bank ("$340,000 Loan").

(16) Respondent was not identified as a borrower in the application, note, or line of credit agreement for the $340,000 Loan. The note and line of credit agreement for the $340,000 Loan were dated April 18, 2007 and were signed by Borrower A and Loan Officer A.

(17) Based on his conversations with Respondent, Borrower A understood the $340,000 Loan was to be a joint loan to him and Respondent.

(18) On or about April 19, 2007, Respondent directed the Bank to wire the $340,000 Loan proceeds to the account of Company A at another bank.

(19) At Respondent's direction, Company A applied approximately $90,000 of the $340,000 Loan proceeds to a purchase of Company A stock by Respondent, and applied the remainder of the $340,000 Loan proceeds to a purchase of Company A stock by Borrower A.

(20) Respondent concealed from Loan Officer A and the Board that Respondent would be receiving and, later, that he had received, a portion of the $340,000 Loan proceeds.

(21) Respondent sent an email to Borrower A on or about June 12, 2007 in which he acknowledged that he owed Borrower A $171,133 as a result of the stock purchases Respondent had made with portions of the proceeds of the $200,000 Loan and the $340,000 Loan.

(22) In or about December 2007, Respondent paid Borrower A approximately $11,400 and noted "interest on loan" on the check.

(23) In or about early 2008, Respondent paid Borrower A approximately $173,000. Borrower A forwarded these funds to the Bank to repay a portion of the $200,000 Loan.

(24) By receiving proceeds of the $200,000 Loan and the $340,000 Loan, Respondent became a borrower on the loans. Respondent was an undisclosed party who received proceeds from loans made by the Bank to another borrower.

(25) The Bank's loan documents for the $200,000 Loan and the $340,000 Loan were inaccurate because Respondent allowed them to identify only Borrower A as the borrower when Respondent was a planned, and actual, borrower on the loans.

(26) During the time in which he received proceeds of the $200,000 Loan and the $340,000 Loan, Respondent was an "executive officer" and an "insider" for purposes of 12 C.F.R. Part 215.

(27) During the time in which Respondent received proceeds of the $200,000 Loan and the $340,000 Loan, the Bank was a "member bank" for purposes of 12 C.F.R. Part 215.

(28) Twelve C.F.R. § 215.3(f) provides that "an extension of credit is considered made to an insider to the extent that the proceeds are transferred to the insider or are used for the tangible economic benefit of the insider." Proceeds of the $200,000 Loan and the $340,000 Loan were transferred to Respondent and they were used for his tangible economic benefit. Accordingly, Respondent's receipt of proceeds of the $200,000 Loan and the $340,000 Loan constituted extensions of credit to him for purposes of 12 C.F.R. Part 215.

(29) Twelve C.F.R. § 215.5(d) states:

> (a) Any extension of credit by a member bank to any of its executive officers shall be:
>
> (i) Promptly reported to the member bank's board of directors;
>
> (ii) In compliance with the requirements of § 215.4(a) of this part;
>
> (iii) Preceded by the submission of a detailed current financial statement of the executive officer; and

(iv) Made subject to the condition in writing that the extension of credit will, at the option of the member bank, become due and payable at any time that the officer is indebted to any other bank or banks in an aggregate amount greater than the amount specified for a category of credit in paragraph (c) of this section.

(30) Respondent did not promptly report his receipt of proceeds of the $200,000 Loan or the $340,000 Loan to the Board and neither receipt of proceeds was preceded by the submission of a detailed financial statement, as required by 12 C.F.R. § 215.5(d). Accordingly, Respondent's receipt of proceeds of the $200,000 Loan and the $340,000 Loan were not authorized under 12 C.F.R. § 215.5(d).

(31) Twelve C.F.R. § 215.6 prohibits an executive officer or director of a member bank from "knowingly receiv[ing] . . . from a member bank, directly or indirectly, any extension of credit not authorized under this part."

(32) Respondent knew of the requirements of 12 C.F.R. Part 215 when he received proceeds of the $200,000 Loan and the $340,000 Loan.

(33) Respondent received proceeds of the $200,000 Loan and the $340,000 Loan in violation of 12 C.F.R. § 215.6.

(34) By reason of the foregoing conduct described in this Article, Respondent violated laws or regulations, engaged in unsafe or unsound practices, and breached his fiduciary duty to the Bank. As a result, Respondent received financial gain in the amount of approximately $171,000. Further, Respondent's violations, unsafe or unsound practices, and breaches of fiduciary duty involved personal dishonesty, demonstrated a

willful and continuing disregard for the safety or soundness of the Bank, and were part of a pattern of misconduct.

(35) By reason of the foregoing conduct described in this Article, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank. Respondent's concealment of his planned and actual receipt of the proceeds of a loan in another borrower's name was done in disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank.

Article IV

Respondent's Release of Collateral Securing Two Bank Loans

(36) This Article repeats and realleges all previous Articles in this Notice.

(37) As discussed in this Article, Respondent engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank by releasing collateral securing two Bank loans.

(38) Pursuant to a commercial security agreement, dated December 14, 2006 and signed by Borrower A and Loan Officer A, all of Borrower A's present and future debts to the Bank were secured by Borrower A's brokerage account ("Brokerage Account"). Accordingly, Borrower A's Brokerage Account secured the $200,000 Loan and the $340,000 Loan. The commercial security agreement provided that Borrower A would not make sales or transfers of the collateral without the Bank's prior written consent.

(39) Borrower A's Brokerage Account held shares of Company A stock.

(40) Pursuant to a control agreement, dated December 14, 2006 and signed by Borrower A, Loan Officer A, and a "securities intermediary," Borrower A was not

permitted to make withdrawals from the Brokerage Account without the Bank's prior written consent.

(41) Between approximately August 2007 and December 2007, Borrower A sold approximately 80,000 shares of Company A's stock from his Brokerage Account. Borrower A withdrew the proceeds of the sales from his Brokerage Account. Respondent was aware of and approved these sales and withdrawals.

(42) Respondent did not notify Loan Officer A that Respondent was aware of and had approved Borrower A's sales and withdrawals from his Brokerage Account.

(43) Loan Officer A did not approve Borrower A's sales and withdrawals from his Brokerage Account.

(44) As a result of Borrower A's stock sales and withdrawals from his Brokerage Account, approximately 80,000 shares of stock ceased to serve as collateral for the $200,000 Loan and the $340,000 Loan. This release of collateral put the Bank at risk of not being able to collect fully on the loans if Borrower A defaulted on either loan.

(45) Borrower A did not repay the $340,000 Loan, and the Bank charged it off.

(46) The Bank's books and records concerning the $200,000 Loan and the $340,000 Loan were inaccurate because Respondent did not update the Bank's file on Borrower A to reflect that Respondent had authorized Borrower A's stock sales and withdrawals from his Brokerage Account.

(47) By reason of the foregoing conduct described in this Article, Respondent engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank. As a result, Respondent benefitted because his actions advanced the interests of Borrower A, who was his friend, and the Bank suffered or would probably suffer financial loss or

other damage due to its reduced collateral position. Further, Respondent's unsafe or unsound practices and breaches of fiduciary duty involved personal dishonesty, demonstrated a willful and continuing disregard for the safety or soundness of the Bank, and were part of a pattern of misconduct.

(48) By reason of the foregoing conduct described in this Article, Respondent recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank. Respondent's approval of Borrower A's sales and withdrawals from his Brokerage Account and failure to notify Loan Officer A of the sales and withdrawals were done in disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank.

Article V

The Bank's Unlawful Acquisition of Brokered Deposits

(49) This Article repeats and realleges all previous Articles in this Notice.

(50) As discussed in this Article, Respondent violated laws or regulations and breached his fiduciary duty to the Bank through his involvement in the Bank's acquisition of brokered deposits at a time when the Bank was prohibited from acquiring such deposits.

(51) Between approximately August 2004 and August 2007, the Bank was party to a formal agreement with the Comptroller dated August 19, 2004 ("Agreement"). The Agreement contained a capital level requirement.

(52) A bank under a formal agreement that contains a capital level requirement is prohibited from acquiring brokered deposits without a waiver of the prohibition from the Federal Deposit Insurance Corporation ("FDIC").

(53) The Bank did not obtain a waiver of the prohibition from the FDIC while it was under the Agreement. Thus, the Bank was prohibited from acquiring brokered deposits while it was under the Agreement.

(54) A "brokered deposit" is "any deposit that is obtained, directly or indirectly, from or through the mediation or assistance of a deposit broker," as defined in 12 C.F.R. § 337.6.

(55) Respondent knew or should have known what type of deposit constitutes a brokered deposit.

(56) Respondent knew or should have known whether, at any given time, the Bank was prohibited from acquiring brokered deposits.

(57) The Bank acquired approximately $22 million in prohibited brokered deposits ("Prohibited Brokered Deposits") between approximately February 2007 and August 2007 in violation of 12 C.F.R. § 337.6.

(58) The deposit broker involved in the Bank's acquisition of the Prohibited Brokered Deposits was U.S. Sterling Capital Corp.

(59) Respondent caused, brought about, or participated in the violations of 12 C.F.R. § 337.6.

(60) During the time in which the Bank acquired the Prohibited Brokered Deposits, Respondent had key roles in the planning, organizing, and controlling of the Bank's resources, which included responsibility for the Bank's acquisition of brokered deposits. Specifically:

(a) Respondent served on the Board, which had ultimate responsibility for the planning, organizing, and controlling of the Bank's

financial resources (including, but not limited to, the acquisition of brokered deposits);

(b) The Board delegated oversight of its financial resources to the President of the Bank with the advice of the Asset and Liability Committee ("ALCO"). Respondent was a member of the ALCO; and

(c) Respondent, as the Bank's CFO, arranged for the Bank's acquisition of brokered deposits.

(61) By reason of the foregoing conduct described in this Article, Respondent violated laws or regulations and breached his fiduciary duty to the Bank. Respondent's violations and breaches of fiduciary duty were part of a pattern of misconduct.

Article VI

Grounds for an Order of Prohibition

(62) This Article repeats and realleges all previous Articles in this Notice.

(63) By reason of Respondent's misconduct described in each of Articles III and IV, the Comptroller seeks an order of prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent violated laws or regulations, engaged in unsafe or unsound practices in connection with the Bank, and/or breached his fiduciary duty to the Bank;

(b) By reason of Respondent's violations, practices, and breaches, the Bank suffered or would probably suffer financial loss or other

damage, the interests of the Bank's depositors were prejudiced, and/or Respondent received financial gain or other benefit; and

(c) Respondent's violations, practices, and breaches involved personal dishonesty and/or demonstrated a willful and/or continuing disregard for the safety or soundness of the Bank.

Article VII

Grounds for an Assessment of a Civil Money Penalty

(64) This Article repeats and realleges all previous Articles in this Notice.

(65) By reason of Respondent's misconduct described in each of Articles III and V, the Comptroller seeks an assessment of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated laws or regulations.

(66) By reason of Respondent's misconduct described in each of Articles III through V, the Comptroller seeks an assessment of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent violated laws or regulations, recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank, and/or breached his fiduciary duty to the Bank; and

(b) Respondent's violations, unsafe or unsound practices, and breaches were part of a pattern of misconduct, caused or were likely to cause more than a minimal loss to the Bank, and/or resulted in pecuniary gain or other benefit to Respondent.

Article VIII

Opportunity for a Hearing

(67) Respondent is directed to file a written Answer to this Notice within twenty (20) days from the date of service of this Notice, in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any Answer shall be filed with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226. Respondent is encouraged to file any Answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any Answer shall also be filed upon the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, D.C. 20219 and with the attorney whose name appears on the accompanying certificate of service. **Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the Comptroller's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

(68) Respondent is also directed to file, with the Answer, a written request for a hearing before the Comptroller concerning the assessment of civil money penalties contained in this Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. § 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written Answer, with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226. Respondent is encouraged to file

any request electronically with the Office of Financial Institutions Adjudication at ofia@fdic.gov. A copy of any request, along with the written Answer, shall also be served upon the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street SW, Washington, D.C. 20219 and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment in this Notice to constitute a final and unappealable order for a civil money penalty against Respondent, pursuant to 12 U.S.C. § 1818(i).**

Prayer for Relief

The Comptroller prays for relief in the form of the issuance of a final Order of Prohibition and an Assessment of a Civil Money Penalty in the amount of seventy-five thousand dollars ($75,000).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this ___*11th*_ day of May, 2011.

/s/John W. Quill

John W. Quill
Deputy Comptroller
Special Supervision Division