#N16-003

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

In the Matter of:	)	
	)	
William C. McKinnon	)	AA-EC-2016-07
Former Senior Vice President and Commercial Real Estate	)	
Loan Officer	)	
	)	AA-EC-2016-03
Kenneth D. Pomeroy	)	
Former Corporate Banking Executive for the Florida	)	
Market	)	
	)	
Superior Bank	)	
Birmingham, Alabama	)	

NOTICE OF CHARGES FOR PROHIBITION

Take notice that on a date as determined by the Administrative Law Judge, a hearing will commence in Birmingham, Alabama, pursuant to 12 U.S.C. § 1818(e) concerning the charges set forth herein to determine whether Orders should be issued against William C. McKinnon, a former Senior Vice President and Commercial Real Estate Loan Officer, and Kenneth D. Pomeroy, a former Corporate Banking Executive for the Florida Market (collectively "Respondents"), of Superior Bank, Birmingham, Alabama ("Bank"), by the Comptroller of the Currency of the United States of America ("Comptroller"), prohibiting each of the Respondents 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).

The hearing afforded Respondents 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 Charges for Prohibition ("Notice"), the Comptroller charges the following:

Article I

JURISDICTION

At all times relevant to the charges set forth below:

(1) The Bank was a Federal savings association within the meaning of 12 U.S.C. § 1813(b)(2) and 12 U.S.C. § 1462(3).

(2) The Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2).

(3) The Office of the Comptroller of the Currency ("OCC") 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) to initiate and maintain enforcement proceedings against an institution-affiliated party.[1]

(4) Respondent William C. McKinnon is a former Senior Vice President and Commercial Real Estate Loan Officer of the Bank and is an "institution-affiliated party" of the

[1] In July 2011, pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), Pub. L. No. 111-203, section 312, 124 Stat. 1376, 1521-23 (2010) (*codified at* 12 U.S.C. § 5412(b)(2)(B)(i)), all functions of the Office of Thrift Supervision ("OTS") relating to Federal savings associations (including the Bank) were transferred to the OCC. As a result, on July 21, 2011, the OCC assumed responsibility for the regulation of the Bank.

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)).

(5) Respondent Kenneth D. Pomeroy is a former Corporate Banking Executive for the Florida Market 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)).

(6) Respondents are subject to the authority of the Comptroller to initiate and maintain prohibition proceedings against them pursuant to 12 U.S.C. § 1818(e).

Article II

BACKGROUND

A. Overview of Respondents' Duties and Responsibilities

(7) Respondent McKinnon served as a Senior Vice President and Commercial Real Estate Loan Officer from at least October 2005 through April 2011.

(8) Respondent Pomeroy served as President of the Bank's Central Florida region from January 2008 until January 2009. From January 2009 until April 2011, Respondent Pomeroy served as the Corporate Banking Executive for the Florida market. From January 2007 until April 2011, Respondent Pomeroy was a member of the Florida Loan Committee ("FLC").

(9) The FLC comprised Respondent Pomeroy, Chief Credit Officer John Figlewski ("Figlewski"), Florida Operations President George Hall ("Hall"), Market Executive for the Bank's Northwest Florida Region Dewayne Maddox ("Maddox"), and President Charles Scott ("Scott").

(10) Figlewski, Hall, Maddox and Scott consented to OCC Orders of Prohibition on March 3, 2016. Additionally, former Chairman of the Board Charles Bailey and former Director Charles Roberts III consented to OCC Orders of Prohibition on February 3, 2016; and, former Director and Chairman of the Board Loan and Investment Committee Robert Parrish consented to an OCC Order of Prohibition on March 17, 2016.

(11) As officers of the Bank, Respondents knew they were obligated to comply with all applicable laws and regulations, ensure an effective system of internal controls, and to otherwise carry out their duties and responsibilities in a safe and sound manner.

B. Overview of Supervisory History

(12) The Bank was a $3 billion dollar institution with 73 branches in Alabama and Florida, as of December 31, 2010.

(13) The OTS placed the Bank into receivership on April 15, 2011, which was the largest bank failure in the United States in 2011.

(14) On November 16, 2011, the Office of Inspector General of the Department of the Treasury issued a Material Loss Review ("MLR") of the Bank.

(15) The MLR found that Bank management did not timely reclassify loans as adversely classified as the Bank's loan portfolio deteriorated in 2008.

(16) The MLR found that in response to Bank-engaged third party asset quality reviews, adversely classified loans reported by the Bank increased from $362 million as of December 31, 2009, to $629 million as of September 30, 2010, an increase of almost 74 percent.

(17) Respondents' actions caused the Bank to avoid classification or further reclassification of troubled loans and/or prevented any required provisions to the Bank's Allowance for Loan and Lease Losses ("ALLL") and/or charge-offs of non-performing loans; thereby, overstating the Bank's earnings, assets, and capital in the Bank's regulatory Thrift Financial Reports ("TFRs").

(18) Respondents' misconduct concealed the Bank's condition from shareholders, depositors, the public, and the OTS, delaying regulatory enforcement actions.

(19) On or about December 5, 2008, the Bank's holding company received $69 million from the U.S. Department of Treasury Capital Purchase Program under the Troubled Asset Relief Program ("TARP"), which was launched to stabilize the financial system by providing capital to viable financial institutions.

(20) On or about December 11, 2008, the Bank received $65,550,000 of the $69 million from its holding company.

(21) As of December 31, 2014, the FDIC estimated a loss of approximately $320 million to the Deposit Insurance Fund, in addition to $65.5 million loss in TARP funds.

Article III

RESPONDENTS CONCEALED THE TRUE NATURE OF NON-PERFORMING AND TROUBLED BANK LOANS

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

(23) As described herein, Respondents Pomeroy and McKinnon repeatedly engaged in unsafe or unsound banking practices and violations of law and regulation by causing the Bank to renew or make new multi-million dollar loans to un-creditworthy borrowers. The loans

masked existing troubled loans without obtaining new or updated appraisals on the collateral. The loans concealed the condition of the Bank from regulators, shareholders, depositors, and the public. Respondents' actions improperly avoided provisions to the Bank's ALLL and/or charge-offs of the non-performing loans, which overstated the Bank's earnings, assets, and capital reported in the Bank's regulatory TFRs.

A. Loan A

(24) Respondent Pomeroy caused the Bank to extend credit to borrowers to assume the largest non-performing loan in the Bank ("Loan A")[2] to conceal the true condition of the Bank from regulators, depositors, and the public. The borrowers to whom Respondent Pomeroy caused the Bank to extend credit never had the ability to repay the interest-only payments required for the loan they assumed without relying on Bank-funded interest reserves.

(25) On or about June 29, 2009, Loan A was in default at maturity with an outstanding balance of $29.1 million. It was the largest non-performing loan in the Bank.

(26) As of November 30, 2009, Loan A accounted for nearly half of the non-performing assets ("NPAs") in the Commercial Real Estate ("CRE") Department.

(27) On or about July 20, 2009, Respondent Pomeroy recommended and approved extending Loan A for sixty (60) days, using an outdated appraisal from February 2007.

(28) On or about August 2009, Respondent Pomeroy directed staff to order a new appraisal on Loan A.

(29) The September 10, 2009 appraisal showed an 'As Is' market value for Loan A of $11.9 million, representing 41% of the then loan balance.

[2] The names of entities and individuals described by alias herein will be separately disclosed to Respondents.

(30) Based on this appraisal, the Bank would have to either sell the note at a deep discount after accepting a deed in lieu of foreclosure or charge-off the amount above the fair market value of the collateral. Either option would have had a direct impact on the Bank's earnings, assets and capital reported in its regulatory TFRs.

(31) On or about September 2009, a Tennessee-based company (referred to herein as "PGM") approached the Bank to obtain a $10 million loan to develop a retail shopping center ("Loan B").

(32) At all relevant times herein, Respondent Pomeroy acted as the principal Bank liaison with PGM.

(33) On or about October of 2009, Respondent Pomeroy communicated to PGM that it would be required to assume the delinquent $29.1 million Loan A to receive Loan B.

(34) To entice PGM to acquire Loan A, Respondent Pomeroy offered to limit PGM's liability by allowing PGM to "put-back" the loan to the Bank in 3 to 5 years, at PGM's discretion.

(35) Respondent Pomeroy's "put-back" offer essentially placed the entire risk of loss of the loan on the Bank.

(36) At all relevant times herein, Respondent Pomeroy concealed the September 10, 2009 appraisal from Bank records and did not disclose the appraisal to PGM.

(37) The December 21, 2009 FLC minutes falsely stated that an appraisal was "TBD" meaning "to be determined."

(38) Respondent Pomeroy was a member of the FLC in December 2009.

(39) When Respondent Pomeroy learned that regulators would have concerns about a "put-back" option and would take this into account when classifying any troubled loan, Respondent Pomeroy informed PGM that the put-back offer would cause the loan to be reclassified as a Troubled Debt Restructuring. Therefore, the Bank decided not to offer the feature.

(40) As an incentive for PGM to assume Loan A, Respondent Pomeroy structured the loan to provide for Bank-funded management fees to PGM and a Bank-funded interest reserve to cover the interest-only loan payments.

(41) At the time PGM assumed Loan A, the Bank renamed it ("Loan A.2").

(42) Respondent Pomeroy caused Loan A.2 to be divided into two components, "Note A" and "Note B," each with a principal balance of $16 million.

(43) Note A was non-recourse and not guaranteed, while Note B was recourse and guaranteed by the principals of PGM.

(44) Respondent Pomeroy structured principal payments to be applied to the guaranteed, recourse Note B first, which benefited the borrower and shifted the greater risk of loss to the Bank.

(45) At the time PGM assumed the Loan A.2, PGM did not have the ability to repay the interest-only loan, and income from the troubled commercial real estate project was improbable. Therefore, PGM could only repay the interest-only loan through the Bank-funded interest reserve.

(46) On June 29, 2011, Loan A.2 was subject to charge-offs of $5,840,410.00 and $13,315,954.53, respectively, which were subject to an FDIC loss-share agreement. As of June 29, 2011, the total loss on Loan A.2 was over $19 million.

(47) In July 2011, when the Bank denied PGM additional advances to make interest payments, PGM defaulted on both notes of Loan A.2. PGM made no further payments on the loan.

(48) Respondent Pomeroy sought PGM to take the $29.1 million Loan A.2 with knowledge that the appraised value of the property was only $11.9 million. Respondent Pomeroy knew that PGM did not have the financial capacity and ability to repay Loan A.2 without a Bank-funded interest reserve. As a result, Respondent Pomeroy concealed the fact that it was non-performing and a risk of significant loss in the Bank's loan portfolio from the OTS, shareholders, depositors and the public by causing PGM to take Loan A.2. Respondent Pomeroy disguised the non-performing loan as a viable new loan; thereby, Respondent Pomeroy avoided any required provisions to the Bank's ALLL, charge-offs and/or sale of the loan at a deep discount. Accordingly, Respondent Pomeroy caused the Bank to overstate the Bank's earnings, assets, and capital in its regulatory TFRs.

(49) Respondent Pomeroy engaged in unsafe or unsound banking practices by extending Loan A.2 to borrowers that did not have the ability to repay the loan.

(50) Respondent Pomeroy engaged in unsafe or unsound banking practices by extending a Bank-funded interest reserve to enable PGM to make the interest-only loan payments on Loan A.2, because the borrowers did not have the ability to repay the loan and the property did not have sufficient cash flow to service the debt.

(51) Twelve C.F.R. §564.3 requires appraisals for all real estate-related financial transactions, unless they meet specific exclusions, and specifically requires appraisals when there has been an obvious and material change in market conditions.

(52) Respondent Pomeroy engaged in unsafe or unsound banking practices and a violation of 12 C.F.R. § 564.3 by failing to secure or disclose a new appraisal of the collateral for Loan A.2 despite clear evidence of changing market conditions including difficulty in securing tenants.

(53) Respondent Pomeroy engaged in unsafe or unsound banking practices by structuring Loan A.2 as two notes, with no guarantor for non-recourse Note A and applying the principal payments to the guaranteed, recourse Note B first.

(54) Twelve U.S.C. § 1972(1) prohibits, in part, a bank from extending credit to a customer on the condition or requirement that the customer shall obtain some additional credit, property, or service from such bank.

(55) Respondent Pomeroy engaged in unsafe or unsound banking practices and violations of law when he made the extension of Loan B contingent on PGM also taking Loan A.2 in contravention of anti-tying prohibitions of 12 U.S.C. § 1972(1).

(56) Twelve C.F.R. § 563.180(b)(2) precludes a bank officer or employee from knowingly making an omission to a person or organization auditing a savings association or otherwise preparing or reviewing its financial statements concerning the accounts, assets, management condition, ownership, safety, or soundness, or other affairs of the association.

(57) Respondent Pomeroy engaged in unsafe or unsound banking practices and violations of law by failing to disclose the 2009 appraisal, which only supported 41% of the value of the loan, in contravention of 12 C.F.R. § 563.180(b)(2).

(58) Respondent Pomeroy's violations and/or unsafe or unsound practices demonstrated personal dishonesty and a willful or continuing disregard for the safety or soundness of the Bank and caused loss or risk of loss to the Bank.

B. Loan C

(59) Respondents McKinnon and Pomeroy engaged in unsafe or unsound banking practices by repeatedly renewing a $14.1 million loan notwithstanding the diminished value of the condominium development and the borrower's inability to repay the loan. As a result, Respondents McKinnon and Pomeroy caused the Bank to avoid classification of the troubled loan and/or prevent any required provisions to the Bank's ALLL and/or charge-offs; thereby, overstating the Bank's earnings, assets and capital in its regulatory TFRs.

(60) In 2006, the Bank acquired a $14,126,334 loan ("Loan C") to build condominiums in Mexico Beach, Florida.

(61) The appraisal of the underlying property, dated January 9, 2004, valued the property at $3.12 million.

(62) The original maturity of Loan C was 18 months, with a possible six-month extension.

(63) On or about July 12, 2007, Respondent McKinnon recommended and other Bank Officers approved a renewal for Loan C to extend maturity 270 days, until June 5, 2008.

(64) The July 12, 2007 Loan Modification Form stated that the "borrower continues to struggle with the sale on individual units. It does not appear that buyers have returned to the Mexico Beach Market."

(65) The Bank's 2007 Loan Policy Manual states that although there are certain exemptions, most real estate transactions greater than $250 thousand require appraisals, including the refinancing of real property.

(66) The Bank's 2007 Loan Policy Manual states that an existing appraisal may be used to support a subsequent transaction, as long as the credit file documents the facts and analysis that support the conclusion that the appraisal or evaluation remains valid.

(67) On or about June 16, 2008, Respondent McKinnon recommended and other Bank Officers approved a renewal for Loan C.

(68) On or about May 15, 2009, Bank records indicate the borrower informed the Bank that condominium sales had been non-existent in the past year.

(69) On or about June 15, 2009, Respondent McKinnon and other Bank Officers submitted a Credit Approval Request for a renewal for Loan C.

(70) On or about June 15, 2009, at a meeting of the FLC, Respondent Pomeroy and the other FLC members approved and renewed the loan, despite knowing that the most recent appraisal on file, dated January 9, 2004, reported an "As Is" market value of $3.12 million.

(71) On or about June 15, 2009, Loan C had an outstanding balance of $9,742,271.

(72) On or about June 23, 2010, the Bank received a draft appraisal of the remaining unsold thirty-four (34) units for $3,600,000.

(73) On June 25, 2010, the appraiser sent an email to Respondent McKinnon regarding the property that was the collateral for Loan C, indicating that condominium sales had stalled, there was not a sustainable rental market, and one of the buildings was never constructed.

(74) On or about June 29, 2011, The Bank charged off Loan C in the amount of $9,742,271.15, which was subject to an FDIC loss share agreement.

(75) Respondents McKinnon and Pomeroy participated in violations of law, because the Bank continually failed to obtain a new appraisal after Loan C Borrower informed the Bank that it was seeking loan renewals because of adverse changes in the local market that hindered expected sales transactions, in violation of 12 C.F.R. § 564.3.

(76) Respondents McKinnon and Pomeroy acted in contravention of the Bank's internal policies and procedures and engaged in unsafe or unsound banking practices by allowing repeated loan renewals based on stale appraisals, despite knowledge and evidence of adverse market changes.

(77) Respondents McKinnon and Pomeroy engaged or participated in violations and/or unsafe or unsound practices, which demonstrated a willful or continuing disregard for the safety or soundness of the Bank and caused loss or risk of loss to the Bank.

C. Foley Loans

(78) Respondents McKinnon and Pomeroy engaged in unsafe or unsound banking practices by repeatedly financing a failed condominium development and ultimately financing the sale of the troubled loan to a borrower who had a demonstrated inability to repay the new loan. As a result, Respondents McKinnon and Pomeroy caused the Bank to avoid further reclassification of the troubled loan and prevent any required provisions to the Bank's ALLL

and/or charge-offs; thereby, overstating the Bank's earnings, assets and capital in its regulatory TFRs.

(79) Specifically, in 2006, the Bank acquired two loans totaling approximately $6 million related to a condominium project in Foley, Alabama ("Foley Loans").

(80) The appraisal of the underlying land, dated September 21, 2005, valued the property "As Is" at $6.3 million.

(81) The Foley Loans' guarantors included four individuals, including the general contractor on the project ("Borrower R").

(82) Respondent McKinnon was the principal loan officer on the Foley Loans and all successor loans secured by the condominium project.

(83) By October 2007, the Foley Loans had increased to approximately $17.5 million and were in default.

(84) On or about October 5, 2007, the Foley Loans were assumed by and/or sold to a different LLC (the "LLC Borrower").

(85) The LLC Borrower comprised Borrower R (25% ownership) and Borrower E (75% ownership), both of whom became guarantors on the Foley Loans.

(86) None of the original Foley Loans guarantors were released from being guarantors, but they were neither a source of repayment for the loan nor did they honor the guarantees.

(87) On or about October 5, 2007, all pre-sales made for the condominium were cancelled due to developer failures, including the invalidity of the condominium association under Alabama law.

(88) On or about November 2007, one condominium was sold to Borrower E (75% owner in LLC Borrower) and one condominium was sold to Borrower R (the general contractor on the Foley Loans condominiums); no other condominiums had been sold.

(89) On or about October 10, 2008, Respondent McKinnon possessed an appraisal dated September 21, 2005, with an appraised value of $6.3 million.

(90) On or about October 10, 2008, Respondent McKinnon prepared a recommendation to renew the Foley Loans, which noted "N/A" in place of an appraisal date and appraised value.

(91) On or about October 10, 2008, Respondent McKinnon prepared a Credit Memorandum that relied on the sale of the condominium units, despite his knowledge that Alabama law prevented the classification of the units as condominiums, and as such they could not be sold and would have to be used as rentals.

(92) On or about November 2008, the Foley Loans went into default.

(93) On or about December 2008, the Foley Loans were renewed.

(94) On or about September 22, 2009, the Foley Loans went into default.

(95) On or about October 6, 2009, Respondent McKinnon prepared a Credit Approval Report for a renewal of the Foley Loans, in the amount of $15,984,704.

(96) Respondents and two other FLC members signed the Credit Approval Report, which noted that Respondent McKinnon had informed Borrower E that he needed to develop a repayment plan that included a reduction of principal over the following 12 months.

(97) The appraised value of the underlying land at November 2005 was $2.5 million. Yet, the Commercial Appraisal Review form of this appraisal used the value as $19,000,000, without any notation that it was a speculative value.

(98) On or about October 13, 2009, despite having been informed that the most current appraisal was from November 2005, the lack of adequate collateral, the loan was an interest-only loan, and was to mature in approximately two months, Respondent Pomeroy and two other FLC members approved the renewal of the Foley Loans for $15,984,704.

(99) On or about October 30, 2009, the Bank, the Foley Loans borrowers, and the five guarantors, entered into a forbearance agreement for approximately two months.

(100) On or about January 22, 2010, Respondent McKinnon prepared a Credit Approval Request for a 90-day administrative renewal.

(101) Respondent McKinnon and two FLC members signed the Credit Approval Request, which noted that the last appraisal received was dated November 1, 2005.

(102) On or about January 25, 2010, the Credit Approval Request was presented at the FLC.

(103) On or about June 23, 2010, a draft appraisal valuing the remaining unsold sixty (60) units of the condominium project at $5,775,000 was provided to the Bank.

(104) On or about June 24, 2010, the Bank and Foley Loans borrower entered into an administrative renewal and forbearance agreement for approximately two months.

(105) On or about June 25, 2010, the appraiser sent an email to Respondent McKinnon and another FLC member noting no sales had closed and the sales and rental market were dead.

(106) On or about August 10, 2010, the final appraisal stated that no condominiums were being marketed for sale.

(107) On or about December 2, 2010, Respondent McKinnon and two FLC members recommended that Borrower E, a guarantor and principal on the Foley Loans, be granted a loan totaling approximately $16 million, composed of Note A ($10,700,000) and B ($5,346,000), which would be used to buy the Foley Loans ("Borrower E's Loan").

(108) Respondents McKinnon and Pomeroy recommended and/or approved the Borrower E's Loans, despite their knowledge of Borrower E's demonstrated inability to repay the loan, as Borrower E was unable to develop a repayment plan that included a reduction of principal over 12 months.

(109) On or about December 2, 2010, the FLC, including Respondent Pomeroy, approved Borrower E's Loans, which Borrower E obtained on or about December 23, 2010.

(110) On or about December 31, 2010, approximately $5,346,575, the entire balance of Note B, an unsecured, non-recourse loan, was charged-off by the Bank.

(111) On June 29, 2012, Note A was charged off in the amount of $10,630,535.94, which was subject to an FDIC loss share agreement.

(112) Respondent McKinnon engaged in unsafe or unsound banking practices by underwriting multiple loan renewals between 2007 and 2010 without ensuring that the Bank secured new appraisals, in violation of 12 C.F.R. §564.3.

(113) Respondents McKinnon and Pomeroy engaged in unsafe or unsound banking practices by failing to ensure the Bank wrote down the loan to reflect the losses on the

underlying collateral after the Bank received an updated appraisal in mid-2010 reflecting an appraised value of approximately $6,990,000.

(114) Respondents McKinnon and Pomeroy engaged in unsafe or unsound banking practices by renewing the Foley Loans despite having knowledge that the borrower did not have sufficient means to repay the $16 million loan.

(115) Respondents McKinnon and Pomeroy engaged in unsafe or unsound banking practices by underwriting or approving Borrower E's Loans, despite their knowledge of Borrower E's demonstrated inability to repay the loan, as Borrower E was unable to develop a repayment plan that included a reduction of principal over 12 months.

(116) Respondents McKinnon and Pomeroy's violations and/or unsafe or unsound practices demonstrated a willful or continuing disregard for the safety or soundness of the Bank and caused loss or risk of loss to the Bank.

D. Florida Loan

(117) Respondents McKinnon and Pomeroy engaged in unsafe or unsound banking practices by repeatedly renewing a distressed condominium development and ultimately financing the payoff of the troubled loan by extending a loan to another troubled borrower to conceal the non-performing loans from OTS examiners. As a result, Respondents McKinnon and Pomeroy caused the Bank to avoid further reclassification of the troubled loan and prevent any required provisions to the Bank's ALLL and/or charge-offs; thereby, overstating the Bank's earnings, assets and capital in its regulatory TFRs.

(118) On or about January 24, 2006, the Bank extended a loan for up to $17,500,000 for the development of a condominium project in St. Petersburg, Florida ("Florida Loan").

(119) From origination, the Florida Loan required the payment of interest only during the two-year term, with a balloon payment due at maturity, in February 2008.

(120) Respondent McKinnon was the primary loan officer for the Florida Loan.

(121) The original appraisal supporting the Florida Loan, dated as of October 6, 2005, listed an "As Is" market value of $2.8 million along with a $21.4 million value predicated upon a bulk sale of all proposed condominium units, upon the projected completion of the project in February 2007.

(122) A bulk sale of the condominium units did not occur prior to the original loan maturity date of February 2008.

(123) At all relevant times herein, the Florida Loan Borrower did not have sufficient cash flow to repay the principal due.

(124) On or about February 12, 2008, the Florida Loan became delinquent.

(125) By 2008 and 2009 market conditions had deteriorated, and significantly and obviously changed since the October 6, 2005 appraisal.

(126) At all relevant times herein, due to market conditions, sales of the condominium units were unlikely.

(127) Despite the delinquent status of the Florida Loan, and lack of the cash flow on which the loan was premised, Respondents McKinnon and Pomeroy, along with an FLC member, recommended to the FLC that the Bank renew the loan four separate times between 2008 and 2009.

(128) The four renewals between 2008 and 2009, recommended by Respondents McKinnon and Pomeroy, all utilized the October 6, 2005 appraisal valued at $2.8 million or

$21.4 million based on a speculative bulk purchase of condominiums, which never occurred, to support the loan value of $17,500,000.

(129) At the time of each of the loan renewals, Respondent Pomeroy and the other members of the FLC knew that the borrower was unable to repay the principal balance from either the sale of condominium units or from the personal assets of the Florida Loan Borrower.

(130) On or around February 12, 2008, Bank records indicate that the thirteen (13) units under contract were subject to litigation to rescind the contracts.

(131) The Florida Loan was repeatedly modified to change the maturity dates: from February 5, 2008 to August 5, 2008, from August 5, 2008 to February 5, 2009, and from February 5, 2009 to August 5, 2009.

(132) On or about September 15, 2008, Respondent McKinnon signed a Credit Approval Request to extend the maturity of the Florida Loan to February 5, 2009, and noted that the last appraisal was dated as of October 6, 2005.

(133) A March 16, 2009 Loan Modification Form, signed by Respondents and one other FLC member stated that: (a) the maturity was being extended from February 5, 2009 to August 5, 2009 by waiving the requirement that the borrower sell six additional units by February 5, 2009, (b) the borrower had continued to lower unit prices, (c) “This is after almost a year of no sales…,” and (d) even with reductions in the asking prices, a total of thirty-eight (38) of the fifty-six (56) contemplated units remained unsold.

(134) This Loan Modification Form was presented to the FLC on March 16, 2009, and at the meeting Respondent Pomeroy, among other members of the FLC, approved the modification to extend the maturity of the Florida Loan.

(135) On or about July 29, 2009, Respondent McKinnon requested by email that the Florida Loan Borrower remit $41,087 to cover the June 2009 principal and interest payments along with the July 2009 interest payment on a separate personal loan from the Bank to bring that loan, with an outstanding balance of $2,478,155, current.

(136) Respondent McKinnon's July 29, 2009 email also told the Florida Loan Borrower that the June principal and interest payment would keep the loan from being reported to the Bank's Board of Directors and "Federal bank examiners are currently on site reviewing our loans. We are trying to keep them from further downgrading the [Florida Loan] project but that may be impossible if your personal loan continues to go 30 days past due."

(137) By September 30, 2009, Respondents were well aware of the significant problems with the Florida Loan development project, the delinquent status of the loan, and the delinquent status of the Borrower's personal loan with the Bank.

(138) The Bank's 2010 Loan Policy Manual states that although there are certain exemptions, most real estate transactions greater than $250 thousand require appraisals, including the refinancing of real property.

(139) The Bank's 2010 Loan Policy Manual states that an existing appraisal may be used to support a subsequent transaction, as long as the credit file documents the facts and analysis that support the conclusion that the appraisal or evaluation remains valid.

(140) The Bank's 2010 Loan Policy Manual states, in part, that an appraisal must be ordered in a transaction involving an existing extension of credit, if there has been an obvious and material change in market conditions or physical aspects of the property.

(141) Despite knowledge and evidence of adverse market changes, in contravention of the Bank's internal policies and procedures, as well as 12 C.F.R. §564.3, Respondents participated in the decision to continually renew the Florida Loan based on both the outdated October 6, 2005 appraisal, and their awareness of the lack of necessary condominium sales to support the debt service coverage of the Loan.

(142) In September 2010, Respondents were told that the Bank President "…[w]ants the [Florida] Loan to be gone by the end of the month."

(143) On or about September 30, 2010, Respondents increased the Florida Loan Borrower's already delinquent personal loan by an additional $7.3 million, bringing the outstanding principal balance to $9.7 million.

(144) On or about September 30, 2010, $7.2 million of the Florida Loan Borrower's new personal loan proceeds were used to "pay-off" the Florida Loan.

(145) On or about June 29, 2012, the Florida Loan Borrower's personal loan was charged off in the amount of $1,216,702, which was subject to an FDIC loss share agreement.

(146) The repeated renewals of the Florida Loan constituted an unsafe or unsound banking practice and violation of law because Respondents relied on stale appraisals, despite both difficulty in securing buyers for the condominiums and clear evidence of deterioration of market conditions, in violation of 12 C.F.R. § 564.3.

(147) Respondents engaged in unsafe or unsound banking practices by increasing the Borrower's personal loan to pay off the Florida Loan because it concealed the true nature of the deteriorating credit and increased the Bank's risk of loss. The Borrower did not have the financial ability to repay either his personal loan or the Florida Loan. As a result, Respondents

McKinnon and Pomeroy caused the Bank to avoid classification of the troubled loan and prevented any required provisions to the Bank's ALLL and/or charge-offs; thereby, overstating the Bank's earning, assets and capital in its regulatory TFRs.

(148) Respondents engaged in unsafe or unsound banking practices through their scheme to conceal the non-performing Florida Loan by underwriting an increase to the separate troubled loan held by the Borrower to pay off the loan.

(149) Respondents' violations and/or unsafe or unsound practices, which demonstrated personal dishonesty and a willful or continuing disregard for the safety or soundness of the Bank and caused loss or risk of loss to the Bank.

* * *

(150) In light of the foregoing, Respondents engaged in unsafe or unsound practices in conducting the affairs of the Bank. Moreover, Respondents engaged in these unsafe or unsound practices, because they acted in disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank.

(151) In light of the foregoing, Respondents violated laws and regulations, including 12 C.F.R. § 564.3, and Respondent Pomeroy violated 12 U.S.C. § 1972(1) and 12 C.F.R. § 563.180.

(152) Respondents engaged in violations and/or unsafe or unsound practices, which demonstrated personal dishonesty and a willful or continuing disregard for the safety or soundness of the Bank, which caused loss or risk of loss to the Bank.

ARTICLE IV

LEGAL BASES FOR REQUESTED RELIEF

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

(154) By reason of Respondents' misconduct as described in Articles III through IV, the Comptroller seeks a Prohibition Order against Respondents pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondents violated laws and regulations, including 12 C.F.R. § 564.3; Respondent Pomeroy violated 12 U.S.C. §1972(1) and 12 C.F.R. § 563.180; and, Respondents engaged in unsafe or unsound practices in conducting the affairs of the Bank.

(b) Respondents caused loss or risk of financial loss to the Bank by reason of their misconduct.

(c) Respondents' violations and/or unsafe or unsound practices demonstrated personal dishonesty and/or a willful or continuing disregard for the safety or soundness of the Bank.

Answer and Opportunity for Hearing

Respondents are 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. § 109.19(a) and (b). The original and one copy of any answer shall be filed with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500. Respondents are 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 with the

Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, DC 20219, Hearing.Clerk@occ.treas.gov, 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.**

PRAYER FOR RELIEF

The Comptroller prays for relief in the form of the issuance of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) against each respondent.

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, DC this 24th day of June, 2016.

/s/Michael R. Brickman
Michael R. Brickman
Deputy Comptroller for Special Supervision
Officer of the Comptroller of the Currency