

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

)	
In the Matter of)	
)	NOTICE OF CHARGES
FIRST COVENANT BANK)	AND OF HEARING
COMMERCE, GEORGIA)	
)	FDIC-19-0088b
)	
(INSURED STATE NONMEMBER BANK))	
)	

The Federal Deposit Insurance Corporation (FDIC), having reasonable cause to believe that First Covenant Bank, Commerce, Georgia (Bank) has violated the Bank Secrecy Act, 31 U.S.C. § 5311 *et. seq.*, 12 U.S.C. § 1829b, 12 U.S.C. §§ 1951-1959 and 12 U.S.C. § 1818(s), and its implementing regulations, 31 C.F.R. Chapter X (effective March 1, 2011), section 326.8 and Part 353 of the Rules and Regulations of the FDIC, 12 C.F.R. § 326.8 and 12 C.F.R. Part 353 (collectively, the BSA), and that the Bank has thereby engaged in unsafe or unsound banking practices and, unless restrained, will continue to engage in such practices in conducting the business of the Bank, institutes this proceeding seeking an appropriate order against the Bank under the provisions of sections 8(s) and 8(b)(1) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. §§ 1818(s) and 1818(b)(1).

The FDIC hereby issues this Notice of Charges and of Hearing (Notice) pursuant to the provisions of the FDI Act and the FDIC's Rules of Practice and Procedure, 12 C.F.R. Part 308, and alleges as follows:

JURISDICTION

1. The Bank is a corporation existing and doing business under the laws of the State Georgia and has its principal place of business at Commerce, Georgia. At all times pertinent to this proceeding, the Bank is and has been a “State nonmember bank” within the meaning of section 3(e)(2) of the FDI Act, 12 U.S.C. § 1813(e)(2), an “insured depository institution” within the meaning of section 3(c)(2) of the FDI Act, 12 U.S.C. § 1813(c)(2), and subject to the FDI Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III (Rules), the BSA, and the laws of the State of Georgia. The FDIC is the “appropriate Federal banking agency” as that term is defined in section 3(q)(2) of the FDI Act, 12 U.S.C. § 1813(q)(2), with respect to the Bank, and the FDIC has jurisdiction over the Bank and the subject matter of this proceeding.

12 C.F.R. § 326.8 – BSA COMPLIANCE PROGRAM

2. Section 326.8(a) of the Rules and Regulations of the FDIC, 12 C.F.R. § 326.8(a), requires insured depository institutions, such as the Bank, to establish and maintain procedures reasonably designed to assure and monitor their compliance with recordkeeping and reporting requirements set forth in subchapter II of chapter 53 of title 31, United States Code, 31 U.S.C. § 5311 et. seq., and the implementing regulations issued by the Department of Treasury at 31 Code of Federal Regulations Chapter X, 31 C.F.R. Chapter X.

3. To comply with section 326.8(a), the Bank is required to develop and administer a written, board-approved BSA Compliance Program, commensurate with the Bank’s risk profile. The BSA Compliance Program must include, at a minimum, four “pillars”: (1) a system of internal controls to assure on-going compliance; (2) independent testing for compliance conducted by bank

personnel or by an outside party; (3) a designated individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) training for appropriate personnel. 12 C.F.R. § 326.8(b) and 12 C.F.R. § 326.8(c)(1)-(4).

PERTINENT REGULATORY HISTORY

4. At all times pertinent to this proceeding, the Bank was subject to the conditions and restrictions imposed by a Consent Order issued December 7, 2012 by the FDIC's Board of Directors, pursuant to 12 U.S.C. § 1818(b), and the Georgia Department of Banking and Finance (Department) pursuant to O.C.G.A. § 7-1-91 (collectively, the Supervisory Authorities), *In the Matter of First Covenant Bank*, docket number FDIC-12-288b (Consent Order). While the Consent Order did not explicitly address compliance with the BSA, it provided, *inter alia*, that the Bank must adopt and implement appropriate procedures to ensure future compliance with all applicable federal and state laws, and regulations.

5. The FDIC and the Department commenced a safety and soundness examination of the Bank on March 18, 2013 (2013 Examination), during which the Supervisory Authorities examined the Bank's compliance with the BSA. The 2013 Examination identified concerns with the administration of the Bank's BSA Compliance Program, concluding, *inter alia*, the Bank lacked adequate policies and procedures related to automated clearing house (ACH) and prepaid cards transactions. The results of the 2013 Examination were set forth in a Report of Examination dated March 18, 2013 (2013 ROE), which was provided to the Bank on July 19, 2013. As a result of the findings set forth in the 2013 ROE, on January 27, 2014, the FDIC, the Department and the Bank entered into a Memorandum of Understanding (2014 MOU), which sets forth

affirmative action that the Bank agreed to take to address, among other things, the deficiencies in the Bank's BSA Compliance Program identified in the 2013 ROE.

6. The FDIC and the Department commenced a safety and soundness examination of the Bank on November 7, 2016 (2016 Examination), during which the Supervisory Authorities examined the Bank's compliance with the BSA. The 2016 Examination identified serious concerns with the administration of the Bank's BSA Compliance Program, concluding, *inter alia*, that the Bank failed to capture BSA risks inherent in the distribution of services and activities. The results of the 2016 Examination were set forth in a Report of Examination dated November 7, 2016 (2016 ROE), which was provided to the Bank on December 18, 2017.

7. The FDIC and the Department commenced a safety and soundness examination of the Bank on August 13, 2018 (2018 Examination), during which the Supervisory Authorities examined the Bank's compliance with the BSA. The 2018 Examination found that the Bank had failed to implement an effective BSA Compliance Program to adequately identify, monitor, and control the BSA risks applicable to the administration of the Bank's activities with customers. Specifically, examiners found the Bank's BSA Compliance Program was not commensurate with its BSA risk profile, and that the Bank had failed to adequately provide for two of the four "pillars" and, as a result, has failed to provide for the continued administration of a BSA Compliance Program reasonably designed to assure and monitor compliance with the BSA, in violation of section 326.8(b) of the Rules and Regulations of the FDIC, 12 C.F.R. § 326.8(b), and as further described in paragraphs 8 through 13, *infra*, and set forth in the Report of Examination dated August 13, 2018 (2018 ROE), which was provided to the Bank on May 15, 2019.

Internal Controls

8. The Bank has failed to develop and provide for the continued administration of an adequate system of internal controls, consisting of effective policies, procedures and processes to assure ongoing BSA compliance. Without limiting the generality of the foregoing, it is further alleged that, as of the 2018 Examination:

- (a) The Bank has failed to adequately develop and implement an independent and comprehensive BSA Risk Assessment process that assessed the particular BSA risks associated with all products, services, customers, entities, transactions, and geographic locations unique to the Bank, and that included a detailed analysis of the data pertaining to the Bank's activities within each of the Bank's specific BSA risk categories.
- (b) The Bank has failed to appropriately and timely address changes in its BSA risk profile, to include a significant increase in automated clearinghouse and wire transfer activity.
- (c) The Bank has failed to adequately evaluate the BSA risks of international or cross- border transactions.
- (d) The Bank has failed to adequately identify and address the BSA risks presented by out-of-territory customers.
- (e) The Bank has failed to adequately monitor and manage the delivery of higher-risk products and services, and failed to detail the mitigating controls used to offset the associated, inherent BSA risks.

(f) The Bank has failed to appropriately analyze the staffing and resource allocation needs for adequate performance of its BSA compliance program in light of its obligations related to the BSA services it provides pursuant to a contract with [REDACTED]

(g) The Bank has failed to have an adequate BSA customer risk-rating system that is consistently applied and based on a well-documented methodology.

(h) The Bank has failed to adequately develop and implement “increased customer due diligence” procedures for its higher-risk customers.

(i) The Bank has failed to adequately implement account monitoring systems necessary to monitor customer transactions for suspicious activity.

9. By and through the acts and omissions described in paragraph 8, *supra*, the Bank violated the provisions of applicable regulations. (See 12 C.F.R. §§ 326.8(b) and (c)(1) and 31 C.F.R. § 1020.210.)

10. By and through the acts and omissions described in paragraph 8, *supra*, the Bank engaged in unsafe or unsound practices in conducting the business of the Bank. (See 12 U.S.C. § 1818(b)(1).)

Responsible Compliance Officer

11. The Bank has failed to endow with an appropriate level of delegated authority and resources, an individual responsible for coordinating and monitoring day-to-day BSA compliance as evidenced by failure of the BSA Officer to administer a comprehensive and robust BSA compliance program based on the Bank’s risk profile, including the failure to establish effective oversight in the

administration of internal controls as set forth in Paragraph 8.

12. By and through the acts and omissions described in paragraph 11, *supra*, the Bank violated the provisions of applicable regulations. (*See* 12 C.F.R. §§ 326.8(b) and (c)(3).)

13. By and through the acts and omissions described in paragraph 11, *supra*, the Bank engaged in unsafe or unsound practices in conducting the business of the Bank. (*See* 12 U.S.C. § 1818(b)(1).)

PRAYER FOR RELIEF

By virtue of each of the paragraphs set forth above in this NOTICE, the FDIC has determined that the Bank violated the BSA and prays that an appropriate ORDER (Exhibit A) be issued against the Bank under the provisions of section 8(s) and 8(b)(1) of the FDI Act, 12 U.S.C §§ 1818(s) and 1818(b)(1).

PROCEEDING

Notice is hereby given that a hearing will be held at Gainesville, Georgia commencing 60 days from the date of service of this Notice on the Bank, for the purpose of taking evidence on the charges herein before specified in order to determine: Whether an appropriate Order should be issued under the Act requiring the Bank: (1) to cease and desist from violations of law or regulation and unsafe or unsound banking practices herein specified; and/or (2) to take affirmative action to correct the conditions resulting from such violations and practices.

The hearing will be held before an Administrative Law Judge to be assigned by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The hearing will be public, and in all respects will be conducted in compliance with the provisions of the Act and the FDIC's Rules of

Practice and Procedure. The Bank is hereby directed to file an Answer to this Notice within 20 days from the date of service of this Notice on the Bank, as provided by section 308.19 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.19. The original and one copy of all papers to be filed or served in this proceeding shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8116, Arlington, Virginia, 22226-3500, pursuant to section 308.10 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.10. Respondent is encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov.

Copies of all papers filed or served in this proceeding shall be served upon the Executive Secretary Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; Andrea Winkler, Acting Assistant General Counsel, Enforcement Section, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; and Lynn R. Moffatt, Regional Counsel, Federal Deposit Insurance Corporation, 10 10th Street NE, Suite 800, Atlanta, GA 30309.

Pursuant to delegated authority.

Dated this 11th day of September, 2019.

_____/s/_____
Michael J. Dean
Regional Director (Atlanta)
Division of Risk Management Supervision