FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

In the Matter of	)	
	)	
BANK OF LOUISIANA NEW ORLEANS, LOUISIANA	)	DECISION AND ORDER TO CEASE AND DESIST AND ASSESSMENT OF CIVIL MONEY PENALTY
	)	
(Insured State Nonmember Bank)	)	FDIC-12-489b FDIC-12-479k

I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on May 17, 2016, of a Recommended Decision ("Recommended Decision" or "R.D.") by Administrative Law Judge C. Richard Miserendino ("ALJ"). The ALJ recommended that Bank of Louisiana, New Orleans, Louisiana ("Bank") be subject to an order to cease and desist ("C&D Order") pursuant to sections 8(b) and 8(s) of the Federal Deposit Insurance Act ("FDI Act"),[1] and a civil money penalty ("CMP") of $500,000 pursuant to section 8(i) of the FDI Act.[2]

The Board has reviewed the record, including the parties' submissions, the Recommended Decision, and the Bank's Exceptions to the Recommended Decision ("Exceptions"). The Board agrees with the ALJ's findings that the Bank engaged in unsafe or unsound practices and violations of laws and regulations, including the Bank Secrecy Act ("BSA"), the Electronic Funds Transfer Act ("EFTA"), the Real Estate Settlement Procedures Act ("RESPA"), the Truth in Lending Act ("TILA"), the National Flood Insurance Program

[1] 12 U.S.C. § 1818(b)(1); 12 U.S.C. § 1818(s).
[2] 12 U.S.C. § 1818(i).

("NFIP"), and the Home Mortgage Disclosure Act ("HMDA") and their implementing regulations. Therefore, the Board adopts in full and affirms the Recommended Decision.

II. STATEMENT OF THE CASE

The FDIC initiated this action on November 4, 2013, when it issued a Notice of Charges and of Hearing and a Notice of Assessment of Civil Money Penalty, Findings of Fact and Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice") alleging that the Bank, a federally insured State nonmember bank subject to the FDI Act, had engaged in unsafe or unsound practices and violations of law warranting a cease and desist order and civil money penalty. Specifically, the Notice alleged that the Bank had engaged in unsafe or unsound practices by receiving less-than-satisfactory ratings for earnings, management, and asset quality in its 2013 report of examination ("ROE"), and that the Bank had violated the BSA, the EFTA, the RESPA, the TILA, the NFIP, the HMDA, and their implementing regulations, as discovered during examinations and visitations between 2011 and 2013.

On January 24, 2014, the Bank filed an Amended Answer ("Answer") to the Notice denying the majority of the FDIC's allegations. Although the Bank admitted that its earnings were deficient and that it had failed to comply with the BSA and other laws and regulations in certain instances, it asserted that none of its practices warranted imposition of a C&D Order or CMP.

The FDIC filed a Motion for Summary Disposition and/or Partial Summary Disposition on August 29, 2014. After full briefing, the ALJ issued a Notice of Intended Ruling on January 28, 2015, informing the parties of his intent to recommend that summary disposition be granted in favor of the FDIC on certain issues. A hearing on the remaining issues was held March 10-17, 2015 in New Orleans. On May 17, 2016, the ALJ issued the Recommended Decision and proposed Orders to Cease and Desist and of Assessment of Civil Money Penalty based on

findings that the Bank had engaged in unsafe or unsound practices and had violated the BSA and other applicable laws and regulations.

On June 16, 2016, the Bank filed written exceptions to the Recommended Decision. On August 19, 2016, pursuant to 12 C.F.R. § 308.40(c)(2), the FDIC Assistant Executive Secretary transmitted the record in the case to the Board for final decision.

III. FACTUAL OVERVIEW

Because the ALJ provided a lengthy, detailed, and well-reasoned opinion with extensive citations to the record in support of his conclusions, the Board finds it unnecessary to reiterate in full the contents of the Recommended Decision. The discussion below, however, provides a brief overview of the basis for the Bank's less-than-satisfactory ratings and violations of law as alleged in the Notice, corroborated by supporting testimonial and documentary evidence, and recounted in the Recommended Decision.[3]

The Bank is an insured State nonmember bank subject to federal and state banking laws as well as the various rules and regulations of the FDIC. The Bank was founded in 1958 by G. Harrison Scott (Scott) and his late partner, James Comiskey. R.D. 36. Scott has been the chairman of the Bank's Board of Directors since its founding. *Id.* Since 2005, Scott has also served as the Bank's president. *Id.*

The Bank has been under some form of formal or informal supervisory enforcement action for most of the last twenty years. *Id.* Most recently, the Bank, the FDIC, and the Louisiana Office of Financial Institutions entered into a Memorandum of Understanding in April 2011 ("2011 MOU"), in which the Bank agreed to address a number of risk management issues,

[3] The Recommended Decision includes detailed citations to the voluminous record. In the interest of efficiency and, except where otherwise noted, the Board cites only to the numbered pages in the Recommended Decision rather than to the underlying supporting evidentiary documents or transcripts.

including the Bank's high level of classified assets and past due loans, deficiencies in credit administration and internal loan review, low earnings, and management weaknesses. R.D. 37.

The Bank failed to fulfill many of its commitments in the MOU, and additional issues were identified in subsequent exams and visitations. Specifically in the Bank's 2011 compliance exam, examiners found that the Bank had violated EFTA and Regulation E by failing to investigate customers' claims unless they submitted an affidavit and police report; failing to provide provisional credits within ten business days of receiving notice from the customer; failing to keep an adequate error resolution log; and making incomplete disclosures to customers. R.D. 25. The examiners also found that the Bank had violated RESPA and Regulation X with respect to certain mortgage applications by failing to provide good faith estimates ("GFEs") within the required time period; omitting certain required information from the GFEs; and failing to provide complete and accurate HUD-1 forms. R.D. 27-28. The examiners also found a high error rate in the Bank's tracking of information required under HMDA and Regulation C, a problem first identified in the Bank's 2009 and 2010 data. R.D. 69.

During a July 2012 safety and soundness visitation, examiners discovered further violations of law. An examiner discovered that one of the Bank's tellers was not filing currency transaction reports ("CTRs"), as required under the BSA and its implementing regulations. R.D. 22. This discovery prompted an audit of the Bank's BSA program and an additional BSA exam. The BSA exam discovered more failures to file CTRs, as well as significant deficiencies in the Bank's BSA officer and staff training. R.D. 24, 63, 66.

In August 2012, examiners were again on site for a compliance visitation. Many of the same violations identified in the 2011 compliance exam persisted. The examiners found the same violations of EFTA and Regulation E, and additionally discovered that the Bank was refusing to accept oral notice of claims from customers. R.D. 25. The RESPA and HMDA

violations also had not been eliminated. R.D. 28. In addition, the examiners found violations of TILA and Regulation Z in the Bank's failure to provide timely early mortgage disclosures and establish escrow accounts for higher-priced mortgages. R.D. 28-29. The Bank also failed to determine whether collateral fell within a Flood Hazard Area, notify borrowers of the need for flood insurance, and force-place flood insurance where necessary, in violation of the NFIP and 12 C.F.R. Part 339. R.D. 29.

The Bank failed to remedy its BSA issues by the time of the 2013 exam. With several personnel changes, the Bank had no BSA officer in place for two months and the Bank's new BSA officer was not qualified or well trained for the position. R.D. 64. New BSA violations were discovered, and the Bank continued to offer inadequate training to its staff. R.D. 66.

In addition to these violations, the Bank's earnings and asset quality continued to suffer (R.D. 30, 54-61), and the Bank had refused to implement significant changes in management anticipated by the 2011 MOU and an independent study that followed. R.D. 33. Scott continued to dominate the Bank's management, and the Board did not act as a significant check on his decisions. R.D. 41-45.

IV. ANALYSIS

A. The ALJ's Factual and Legal Findings are Fully Supported by the Record

The Recommended Decision offers extensive support for its conclusions that the Bank engaged in unsafe or unsound practices and violations of law, which the Board summarizes below.

1. Unsafe or Unsound Practices

Under 12 U.S.C. § 1818(b)(8), the Board may deem a bank to be engaging in unsafe or unsound practices if it receives less-than-satisfactory ratings for asset quality, management, earnings, or liquidity in its ROE. Because the Bank received less-than-satisfactory ratings in

three of these areas in its 2013 ROE, the Board agrees with the ALJ that the Bank engaged in unsafe or unsound practices. R.D. 79. The Board further agrees that the record contains ample support for the less-than-satisfactory ratings the Bank received.

a. Less-than-Satisfactory Rating for Earnings

The Bank admitted in its Answer that its earnings were deficient. R.D. 79. It did not dispute that the Bank had a net operating loss in 2012, that its core profitability was trending downward, or that it had a negative return on assets in 2012. R.D. 30. The Board agrees with the ALJ that these admitted deficiencies provide a reasonable basis for the Bank's less-than-satisfactory rating for earnings.

b. Less-than-Satisfactory Rating for Management

The 2013 report of examination cites a number of factors to support its less-than-satisfactory rating for management, including weaknesses in oversight by the board of directors (R.D. 47); the board's and management's failure to ensure compliance with the April 2011 MOU (R.D. 48); gaps in supervision of key bank operations (R.D. 41); and management's failure to curb the high volume of violations of laws and regulations. We agree with the ALJ's determination that the record supports these findings.

With respect to the weaknesses in oversight by the Bank's board of directors, the record contains ample evidence showing that Scott dominated the management of the Bank and failed to seek or heed input from the board on matters within the board's purview including the dismissal of the Bank's Senior Vice President/Chief Financial Officer, who was responsible for several key areas of bank operations; the disposal of Bank-owned real estate (ORE); and decisions regarding technology updates and investments. R.D. 40. The board itself asserted in a letter to the FDIC and the OFI Commissioner that "[t]he Board is essentially with out [sic] power to effect change," and that "Scott has been unwilling to consider other opinions and trumps the Board whenever he

is not in complete agreement." R.D. 40-41. Scott's own testimony confirms this. For example, Scott testified that he allowed the directors to express their opinions, but he chose whether or not to adopt those opinions. R.D. 44.

The record also supports the examiners' conclusion that the board and management failed to ensure compliance with the April 2011 MOU. With respect to several of the MOU's provisions the Bank submitted no evidence to rebut the allegations that it had failed to comply. *See* R.D. 30-33. For the others, the Bank's arguments are unpersuasive. For example, the Bank argued that the MOU did not require it to implement staffing changes recommended by the independent evaluation required by the MOU. As the ALJ concluded, this interpretation is not supported by the plain language of the MOU, which unequivocally states that, upon receipt of the consultant's report, "the Board *shall* implement any recommended staffing changes." R.D. 34. In addition, the record supports the conclusion that the Bank failed to comply with the MOU's provisions regarding plans for reducing classified assets and past due loans. The Bank proposed unacceptable targets, which it failed to meet. R.D. 48-49. The strategic plan submitted by the Bank also fell short by failing to set timelines for several items, failing to recognize loan losses as a problem, and failing to include a plan for disposal of ORE. The Bank offered no evidence to refute these criticisms, and Scott's testimony shows a cavalier disregard for the requirement. R.D. 52.

The Bank similarly failed to submit any evidence that would contradict the examiners' determination that management failed to curb violations of several laws and regulations, as discussed in Part IV.A.2, below.

c. Less-than-Satisfactory Rating for Asset Quality

The 2013 report of examination identifies a number of issues contributing to the Bank's less-than-satisfactory rating for asset quality, including poor loan quality, weak credit

administration and lending policies, and inadequate ORE administration. R.D. 54. The record supports the examiners' assessment of the Bank's asset quality.

As the ALJ determined, the Bank has a very large number of nonperforming and adversely classified loans, and the quality of the Bank's loans has been deteriorating for a number of years. R.D. 54. The Bank had the highest percentage of nonperforming assets in Louisiana, and even Scott admitted that the Bank's problem assets had been increasing. R.D. 54-55. The record also shows significant weaknesses in the Bank's underwriting, with a high percentage of sampled loans missing financial and credit documentation. R.D. 55. The Bank also failed to obtain independent appraisals, allowing loan officers to perform them in violation of applicable regulations. R.D. 55. Scott admitted this practice in his testimony, and his only response to the lack of documentation appeared to be that he did not think it was necessary. R.D. 56.

The record also supports the examiners' determination that the Bank's credit administration and loan review processes were deficient. The Bank's loan review processes failed to capture almost $1 million in loans that should have been adversely classified, and the Bank employee assigned to handle loan review admitted that she lacked banking experience. R.D. 57. The Bank also failed to obtain updated appraisals and financial information for loan renewals. R.D. 57-58.

The Bank submitted no evidence that would undermine these findings. In a July 2013 letter to regulators, Scott stated that the Bank's credit administration was unsatisfactory. R.D. 58. He also admitted in his testimony that the Bank had a problem with credit administration, that the necessary documentation for renewals often was not obtained, and that appraisals were often missing from loan files. R.D. 58. His only explanation for these deficiencies was that the Bank found it difficult to keep up with its practice of annual loan renewals and that he personally

valued properties based on a "feeling" or "guess." R.D. 58-59. These explanations do not refute the objective facts underlying the examiners' asset quality rating.

2. Violations of Law

a. BSA

Under 12 U.S.C. § 1818(s), the Board is required to issue a C&D Order against the Bank if it determines that the Bank has failed to establish and maintain procedures required by regulation to ensure compliance with the BSA or has failed to correct any problem with its procedures that was previously reported to the Bank by the FDIC. The minimum requirements for the Bank's BSA compliance program are listed in 12 C.F.R. § 326.8 and include (1) providing for a system of internal controls to assure ongoing compliance; (2) providing for independent testing for compliance by bank personnel or an outside party; (3) designation of an individual or individuals responsible for coordinating and monitoring day-to-day compliance; and (4) providing training for appropriate personnel. 12 C.F.R. § 326.8(c). We agree with the ALJ's conclusion that the Bank's BSA program failed to meet these minimum requirements.

The record supports the ALJ's conclusion that the Bank lacked adequate internal controls to ensure BSA compliance. The 2012 ROE cited the Bank for its inadequate controls, including teller overrides of Currency Transaction Report ("CTR") requirements; failure to review daily reports; failure to file CTRs and identify suspicious transactions; failure to review high risk customers; and a lack of employee monitoring. R.D. 22. Many of these deficiencies continued and were cited again in the 2013 ROE. R.D. 22. The evidence submitted by the Bank—including the BSA manual and a memorandum relating to BSA compliance—calls none of the ROEs' observations into question, and fails to demonstrate that the Bank had adequate internal controls.

Similarly, the Bank provided no evidence to support its claim that it performed adequate testing of its BSA program. Although a BSA audit was conducted in 2012, examiners noted several deficiencies, including the auditor's lack of banking and BSA auditing experience and the failure to conduct meaningful transaction testing. R.D. 23. In addition, although the Bank's Board approved the retention of a consultant to perform a full-scope independent BSA test in October 2012, the test had not been performed by the time of the 2013 ROE. R.D. 23. The planned test also does not appear adequate: the scope of the test did not include certain key areas, and Scott performed some of the initial tasks himself, but refused to provide examiners with his work on the test. R.D. 24.

We also find that the Bank failed to comply with the requirement to designate an individual responsible for coordinating and monitoring day-to-day compliance with the BSA program. First, the Bank failed to designate a BSA officer for approximately two months after BSA officer Linda Hendrix (Hendrix) resigned her position in October 2012. R.D. 64. In addition, Cherie Bell (Bell), who was eventually appointed to replace Hendrix as BSA officer, had limited BSA experience and had competing duties as a branch manager, which undercut her ability to adequately perform her duties as the Bank's BSA officer, particularly in light of the Bank's ongoing BSA compliance issues. R.D. 65.

The Bank also failed to provide adequate BSA training for either Bell or its other employees. The Bank relied primarily on general DVD and video-based training that was not specific to the Bank or individual employees' duties. R.D. 66. Bell told examiners that she would benefit from more training, and Bell's supervisor demonstrated a lack of familiarity with the BSA regulations and related guidance. R.D. 66. Although the Bank produced evidence that some BSA training was provided, it provided no details that would support a conclusion that the training was adequate to address the specific needs of the Bank and its employees.

In addition to its violations of the minimum program requirements in 12 C.F.R. § 326.8, the Bank admitted that it failed to file CTRs and Suspicious Activity Reports ("SARs") required by the BSA on several occasions, in violation of the statute. R.D. 24. These violations provide an additional ground for imposition of a C&D Order under 12 U.S.C. § 1818(b).

b. EFTA

We agree with the ALJ that the record establishes that the Bank violated EFTA and its implementing regulation, Regulation E. Regulation E requires banks to make certain initial disclosures to customers, including information such as the bank's business days, fees charged for electronic fund transfers, and descriptions of the customer's liability and rights in the event of an error. 12 C.F.R. § 1005.7(b). A copy of the Bank's electronic funds transfer disclosure showed several required terms were blank or omitted, and several account statements showed that customers were charged an undisclosed monthly debit card fee. R.D. 25. The Bank's only response to this evidence was that it eventually corrected its disclosures, but that response does not negate the violations that had already occurred.

Regulation E also specifies certain procedures a bank must follow for resolving errors. 12 C.F.R. § 1005.11. By the regulation's plain terms, banks are required to comply with these requirements for any oral or written notice of error from a consumer, as long as the notice is timely and contains sufficient information to identify the affected account and the reason why the consumer believes an error exists. 12 C.F.R. § 1005.11(b)(1). Although banks may require written confirmation of an oral notice of error (12 C.F.R. § 1005.11(b)(2)), the regulation requires banks to "investigate promptly" and determine whether an error occurred "within 10 business days of receiving a notice of error," regardless of the form of the notice. 12 C.F.R. § 1005.11(c)(1). If a bank does not complete its investigation within ten business days, the bank is required to provisionally credit the consumer's account in the amount of the alleged error

"within 10 business days of receiving the error notice," but need not do so if the consumer has failed to submit a required written confirmation of an oral notice of error. 12 C.F.R. § 1005.11(c)(2).

The 2011 ROE and 2012 compliance visitation identified numerous violations of Regulation E's error resolution requirements. R.D. 25. On a number of occasions, the Bank refused to perform any investigation into an error until it received written confirmation with an affidavit and police report. R.D. 26. Nothing in Regulation E permits the rigorous documentation requirements imposed by the Bank, and the regulation's requirement to "investigate promptly" all notices does not permit the Bank to delay its investigation until after it receives written confirmation of an oral notice of error. *See* 12 C.F.R. Part 1005, Supp. I, 11(b)(1) ("While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement."), 11(c)(1) ("A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation."). Moreover, even if the Bank's documentation requirements were permitted, on at least two occasions the Bank still failed to provide provisional credits within ten days of receiving an affidavit and police report. R.D. 26. There is thus no merit to the Bank's argument that it did not violate Regulation E because it was merely waiting for written confirmation of errors.

c. RESPA

We agree with the ALJ that the record establishes that the Bank violated RESPA and its implementing regulation, Regulation X, by providing borrowers with untimely and improperly completed Good Faith Estimates (GFEs) and by failing to properly complete HUD-1 closing disclosures. Regulation X requires lenders to provide GFEs not later than three business days

after a lender receives an application. 12 C.F.R. § 1024.7(a)(1). Regulation X also requires a loan originator to provide all of the information necessary to complete the HUD-1 to the settlement agent. 12 C.F.R. § 1024.8(b).

The 2011 compliance examination found two instances where the Bank failed to provide GFEs within three business days of receiving an application. R.D. 27. The Bank has offered no evidence to refute this finding, arguing only that its violation of the timing requirement was harmless because the applications at issue were either denied or withdrawn. The denial and withdrawal, however, happened *after* the Bank was required to provide the GFEs, at which time the violations had already occurred. R.D. 28.

The 2011 compliance examination and 2012 visitation also identified a number of instances of incomplete HUD-1s. R.D. 27-28. Indeed, each of the four loans sampled by examiners in the 2011 compliance examination and four out of the seven loans sampled in the 2012 visitation had incomplete HUD-1s. FDIC SD Ex. Comp01 at ¶¶30(c), 70. The Bank again offers nothing to refute these facts, and argues only that the deficiencies in the HUD-1s were inadvertent or technical, and would not be deemed violations of RESPA under 12 C.F.R. § 1024.8(c). Section 1024.8(c), however, excuses technical and inadvertent HUD-1 disclosure violations only if a revised HUD-1 is provided within thirty days after settlement. The Bank produced no evidence that revised HUD-1s were ever provided, so it cannot benefit from this provision. R.D. 28.

d. TILA

The record also supports the ALJ's determination that the Bank violated TILA and its implementing regulation, Regulation Z, by failing to provide GFEs at least seven days before closing, and by failing to establish escrow accounts for high-priced mortgages. 15 U.S.C. § 1638(b)(2)(A); 12 C.F.R. § 1026.35(b). These violations were found during the 2012

visitation, and the Bank has offered no evidence or argument to rebut the examiners' findings. R.D. 29.

e. HMDA

HMDA requires banks to track and report information about home mortgage applications, including the purpose of the loan, property type, loan amount, and demographic information about the applicant on a loan application register (LAR). 12 C.F.R. § 1003.4(a). Banks are required to submit this information to federal agencies on an annual basis. R.D. 69.

Starting with the 2011 compliance examination, the record shows that the Bank repeatedly failed to accurately record required information on its LARs. R.D. 69. Even after the Bank was alerted to the errors and given an opportunity to correct them, examiners still found high error rates for 2009 and 2010. R.D. 69. Although the Bank committed to correcting the issue, examiners again found very high error rates for 2011 and 2012. R.D. 69.

The Bank does not dispute that these errors occurred, but argues that its errors should be excused under the guidance in the FDIC's Compliance Manual because it acted in good faith and had reasonable compliance procedures. R.D. 69-70. The record, however, does not support the Bank's argument. The only evidence the Bank offered of its compliance procedures was one page from its loan manual addressing HMDA compliance. This page does little to support the Bank's argument because the evidence shows that the Bank's employees had not been trained on HMDA and did not understand it. R.D. 70. In such circumstances, we agree with the ALJ that the Bank has not demonstrated the good faith necessary to excuse its HMDA reporting violations.

f. NFIP

NFIP and its associated regulations in 12 C.F.R. Part 339 require banks to ensure that properties securing bank loans have flood insurance when they are located in an area with special

flood hazards. *See* 42 U.S.C. § 4012a(b); 12 C.F.R. § 339.3(a). Related to this obligation, banks are required to determine whether a property is within a special flood hazard area using a standardized form. 42 U.S.C. § 4104b(c); 12 C.F.R. § 339.6. When borrowers fail to obtain flood insurance themselves, the statute and regulation require the bank to notify the borrower and force-place flood insurance if necessary. 42 U.S.C. § 4012a(e); 12 C.F.R. § 339.7(a).

During the 2012 compliance visitation, examiners identified multiple violations of flood insurance requirements, including failures to obtain current flood insurance determinations; failures to send borrowers timely notice before force-placing flood insurance; and failures to force-place insurance on the borrowers' behalf for properties that required flood insurance. R.D. 29. The Bank does not dispute these violations. Instead, the Bank merely asserts that its NFIP policies were adequate. Even if this were true, however, the Bank's policies provide no basis for excusing its clear violations. R.D. 29.

B. The Requirements in the Proposed C&D Order are Reasonable

Congress has empowered the FDIC with broad discretionary authority under Section 8 of the FDI Act to initiate various types of enforcement actions and to fashion remedies appropriate to the nature of such actions. In the case of a cease and desist action, Section 8(b) of the FDI Act empowers the FDIC to craft a remedy requiring that affirmative action be taken to correct any conditions resulting from the violations and practices prompting the order. 12 U.S.C. § 1818(b)(6). Such affirmative action may include an order to employ qualified officers or employees, and any other action that the agency deems appropriate. 12 U.S.C. § 1818(b)(6). The agency has broad discretion in designing the remedy, and a reviewing court will extend substantial deference to the agency as long as the terms of the order are reasonably related to the legislative purpose of the statute under which the action was initiated. *In the Matter Of Marine Bank & Trust Co., Vero Beach, Florida*, FDIC-10-825b, 2013 WL 2456822, at *8 (March 19,

2013); *In the Matter of Mansfield Bank & Trust Co., Mansfield, Louisiana*, FDIC-90-44b, 1990 WL 711265 at *20 (Nov. 16, 1990).

As discussed above, we agree with the ALJ's findings that the Bank engaged in unsafe and unsound practices, as evidenced by its less-than-satisfactory ratings for earnings, management, and asset quality, and violated the Bank Secrecy Act and a number of other statutes. The proposed C&D Order includes provisions requiring that the Bank take specific actions to improve board supervision and management and to address its earnings, asset quality, and compliance deficiencies. The Board finds that these provisions are reasonably crafted to address the practices and violations on which the C&D Order is based.[4]

C. The CMP Assessment is Appropriate

CMPs provide an additional tool for the FDIC to address violations of law. Under Section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), the FDIC has authority to impose CMPs by tiers related to the severity of the penalty and gravity of the offense. First tier CMPs, as recommended by the ALJ here, may be assessed against any institution which violates a law or regulation in an amount up to $7,500 for each day the violation continues. 12 U.S.C. § 1818(i)(2)(A); 12 C.F.R. § 308.132(c)(3)(i). In determining the amount of the penalty to be imposed in a particular case, the agency must consider (1) the size of the Bank's financial resources and good faith; (2) the gravity of the violation; and (3) the history of previous violations. 12 U.S.C. § 1818(i)(2)(G).

Here, the FDIC sought a civil money penalty of $500,000 based on the Bank's BSA-related violations. We agree with the ALJ that the evidence supports a CMP in this amount, and

[4] The Bank takes exception to the management provisions of the proposed C&D Order, arguing that it is a disguised attempt to remove Scott from the Bank without satisfying the requirements of 12 U.S.C. § 1818(e). We disagree. The proposed C&D Order does not require the Bank to remove Scott, and merely requires the Bank to "have and retain qualified management"—a reasonable requirement under the facts presented. Accordingly, we deny Exception 12.

that such a CMP would advance the statute's purpose. As discussed above, the preponderance of the evidence shows that the Bank violated the BSA in a number of respects, satisfying the statutory basis for assessment of a CMP.

We also agree with the ALJ that the $500,000 amount sought by the FDIC is reasonable. The Bank's BSA violations continued for a number of years, and $500,000 is far less than the maximum amount that could be imposed under the statute. In addition, none of the mitigating factors listed in the statute warrant a lower CMP. The Bank has stipulated that it has the ability to pay a $500,000 CMP, and the Bank's failure to address its BSA compliance issues after they were first brought to the Bank's attention undercuts any argument that it acted in good faith. R.D. 90. The relative gravity of the violations also is not a mitigating factor here. The Bank's violations were serious, and showed a complete failure of the Bank's BSA program. R.D. 90. Although the Bank did not have a long history of BSA violations before its 2012 examination, we agree with the ALJ that this does not support a reduction in the CMP given the consistent and continuing BSA compliance deficiencies identified since that time and the Bank's failure to address them. R.D. 90-91.

V. THE BANK'S EXCEPTIONS TO THE RECOMMENDED DECISION

The Bank has raised thirteen exceptions to the Recommended Decision, none of which have merit. Many of the Bank's exceptions simply reargue issues that were raised below and were adequately disposed of by the ALJ. In particular, the ALJ fully addressed the Bank's argument that a C&D Order should not be granted because the FDIC's examiners were motivated by age discrimination against Scott. We agree with the ALJ that this argument has no merit, and we find ample support in the record for the examiners' findings and ratings that form the basis for this action. We also are unpersuaded by the Bank's challenges to the ALJ's authority, the adequacy of the process before the ALJ, and the legal standards applied by the

ALJ. These exceptions are discussed in further detail below. Any exceptions not addressed here or above are denied.

A. Age Discrimination

A prominent theme in the Bank's exceptions is that the FDIC examiners unfairly targeted the Bank for criticism based on age discrimination against Scott. The only evidence the Bank cites in which an FDIC employee referred to Scott's age in anything other than a dry factual statement, however, is a single email in which an FDIC employee stated that "this place will never change until the old man dies." The Board previously considered this email in a related proceeding, and rejected an argument that it established that FDIC staff was motivated by age-based animus toward Scott. *In the Matter of Scott, Crow, Scott*, FDIC-12-276k, FDIC-12-277k, FDIC-12-278k, Decision and Order on Motion to Modify or Set Aside Order, or, Alternatively, Motion for Rehearing at 3 (January 15, 2015) (noting that " [w]hile this reference might be viewed in context as insensitive or unkind, it cannot fairly be read to demonstrate that FDIC staff harbored age-based animus toward Respondents.")[5] Moreover, the Bank's claim that its age discrimination theory is supported by the fact that it was required to enter into the April 2011 MOU, was required to commission a management study, and was subjected to increased scrutiny and visits from examiners, is based on nothing more than speculation. Such speculation cannot surmount the ample evidence in the record showing the legitimate regulatory concerns that prompted each of these actions.

Because the Bank has not identified any evidence of purported age discrimination that, if credited, likely would change the outcome of this proceeding, we deny Exception 1.

B. Adequacy of the Process

[5] Issued by the Executive Secretary pursuant to authority delegated by the Board under 12 C.F.R. § 308.102(b)(2)(ii).

In Exception 2, the Bank argues that it was denied due process in the proceedings before the ALJ because (1) the ALJ determined that certain documents were inadmissible because the Bank failed to provide a witness with personal knowledge to authenticate them; and (2) the ALJ ordered Scott not to confer with the Bank's counsel about his testimony during an overnight recess between days on which he testified.

The failure to admit evidence generally does not amount to a due process violation unless the excluded evidence "is a crucial, critical, highly significant factor" in the context of the entire proceeding. *Johnson v. Puckett*, 176 F.3d 809, 821 (5th Cir. 1999). Here, the ALJ excluded four exhibits offered by the Bank, including (1) FDIC counsel's summary of an interview with the principals of the firm who conducted the Bank's management study (Respondent's Exhibit 1); (2) November 2011 emails among FDIC examiners regarding the start of the Bank's examination (Respondent's Exhibit 13); (3) a document related to the Bank's 2011 BSA examination (Respondent's Exhibit 39); and (4) a portion of the Bank's call report for the quarter ending December 31, 2013 (Respondent's Exhibit 252). R.D. 97; Tr. at 1612-1615; Tr. at 1049-1050; Tr. at 115-118; Tr. 1320-1321. The Bank does not explain how these exhibits were crucial to its case or would have changed the outcome. Moreover, even if the Bank had offered such an explanation, it is unclear how the ALJ's rulings would amount to a due process violation. The administrative process did not conclude with the ALJ's decision, and the Board has independently reviewed the record, including the rejected exhibits. None of these exhibits undermine the ALJ's conclusion that a preponderance of the evidence shows multiple violations of law and supports the examiners' less-than-satisfactory ratings in multiple areas.

We also deny the Bank's exception with respect to the ALJ's sequestration rule. Scott's testimony spanned two days of the hearing, with an overnight recess between his direct and cross-examinations. At the end of his direct examination, the ALJ informed Scott that a

sequestration rule was in place to prevent witnesses from discussing their testimony or other witnesses' testimony. The Bank argues that the sequestration rule was improper because it prevented Scott from conferring with the Bank's counsel about strategic and other matters unrelated to his testimony during an overnight recess. But the sequestration rule was not so broad. The ALJ repeatedly told Scott that he was prohibited only from discussing matters related to his *testimony* with the Bank's counsel. Tr. at 1544-1548. Indeed, when asked whether the sequestration rule would prevent Scott from discussing strategic matters with the Bank's counsel, such as whether to call a particular witness, the ALJ explained that such a question would be permitted as long as counsel did not discuss the witness's proposed testimony with Scott. Tr. at 1546. The Bank's counsel acknowledged his understanding of rule's limited scope, stating, "All right ... I could talk to him [Scott], but not about his testimony or not about anyone else's testimony," and the ALJ responded, "Right." Tr. at 1546.

Because the ALJ made clear that the sequestration rule applied only to discussions of Scott's and other witnesses' testimony while Scott's testimony was in progress, we find that the rule did not violate the Bank's right to be represented by counsel in this proceeding. Such a rule is consistent with Supreme Court precedent in the criminal context, in which the Court has held that a defendant does not have a constitutional right to discuss his testimony "while it is in process." *Perry v. Leeke*, 488 U.S. 272, 284 (1989). Although the Supreme Court also has held that an overnight recess impinged on a criminal defendant's right to assistance of counsel, that case involved a broad sequestration rule prohibiting the defendant from consulting his attorney "about anything" during the recess. *Geders v. United States*, 425 U.S. 80, 91 (1976). As *Perry* made clear, such an order is improper not simply because of its length, but because it prevented the defendant from discussing matters other than his testimony, which typically occurs during an overnight recess. *Perry*, 488 U.S. at 284. Neither *Geders* nor *Potashnick v. Port City*

Construction Co., 609 F.2d 1101 (5th Cir. 1980), on which the Bank relies, address a situation like the one here where the sequestration rule is limited to discussions related to testimony. Because *Perry* indicates that such a limited order would not impinge on any right to counsel, even under the constitutional protections applicable to criminal proceedings, we conclude that the ALJ's sequestration rule was proper.

Accordingly, we deny Exception 2.

C. ALJ's Authority

Exception 11 argues that the administrative proceedings violated the U.S. Constitution because the ALJ was not properly appointed under the Appointments Clause and the ALJ's tenure protections violate separation of powers principles. The Bank, however, ignores the fact that the Board, not the ALJ, makes the final decision in this matter. Indeed, the D.C. Circuit has held that an FDIC ALJ is not an "inferior officer" subject to the Appointments Clause for this very reason. *Landry v. FDIC*, 204 F.3d 1125, 1134 (D.C. Cir. 2000); *see also Raymond J. Lucia Cos. v. SEC*, --- F.3d ----, 2016 WL 4191191, at *4-*7 (D.C. Cir. Aug. 9, 2016) (reaffirming *Landry* and holding that SEC ALJs are not constitutional officers subject to the Appointments Clause) . Although the Bank cites *Landry* in its Exceptions, it makes no attempt to distinguish it, and we find that the D.C. Circuit's analysis is persuasive.

Landry's acknowledgment of the ALJ's status as an "employee" rather than an "inferior officer" also defeats the Bank's separation of powers argument. While the Supreme Court has held that the Constitution imposes limits on Congress's ability to restrict the President's authority to remove constitutional officers, the Court has not acknowledged any similar restrictions on tenure protections for federal employees. *See Free Enterprise Fund v. Public Company Accounting Oversight Board*, 561 U.S. 477, 506 (2012). Because the ALJ is an

employee—and not an inferior officer—his tenure protections present no risk to the separation of powers. Accordingly, Exception 11 is denied.

D. Other Errors

In Exceptions 3 through 6, the Bank raises a variety of other alleged errors, questioning (1) whether the FDIC should have been estopped from pursuing BSA violations as a ground for the Orders; (2) whether the FDIC lacked authority to seek a CMP for the Bank's BSA violations when the FDIC had not previously sought a C&D Order; (3) whether the ALJ should have applied a different standard for determining whether the Bank committed unsafe or unsound practices; and (4) whether the ALJ should have afforded less deference to FDIC examiners. We address each of these exceptions below, and find that none of them provide persuasive grounds for departing from the ALJ's Recommended Decision.

1. Estoppel

In Exception 3, the Bank argues that the ALJ erred in striking its defense that the FDIC should be estopped from asserting BSA violations as a basis for the C&D Order and CMP because it had previously approved of the Bank's BSA program. We find no error in the ALJ's ruling because the Bank's estoppel defense is insufficient as a matter of law. *See* Fed. R. Civ. P. 12(f).

When a party seeks to invoke equitable estoppel against the government, courts require a showing that the agency engaged in affirmative misconduct, in addition to the other elements generally required for estoppel. *Robertson-Dewar v. Holder*, 646 F.3d 226, 229 (5th Cir. 2011); *de la Fuente v. FDIC*, 332 F.3d 1208, 1220 (9th Cir. 2003). To show affirmative misconduct, a party must show an affirmative misrepresentation or affirmative concealment of a material fact by the agency. *Robertson-Dewar*, 646 F.3d at 229.

The Bank has shown no such misconduct here. Although the Bank argues that the BSA violations were identified as a result of intensified scrutiny prompted by age discrimination, the Bank identifies no affirmative actions by the examiners that misled the Bank in any way, as required for estoppel. Moreover, as discussed above, we find no support for the Bank's age discrimination claim even if such discrimination could provide a basis for estoppel.

2. Authority to Seek a CMP

In Exception 4, the Bank contends that the FDIC lacks authority to seek a CMP for BSA violations in this case because it did not previously seek a C&D Order. The Bank argues that 12 U.S.C. § 1818(s) is the FDIC's sole remedy for BSA violations, and that statute instructs the FDIC only to issue a C&D Order with no mention of civil money penalties. We disagree with the Bank's reading of Section 1818(s). While the language of Section 1818(s) requires the FDIC to impose a C&D Order for violations of its regulation governing BSA compliance procedures, nothing in its text precludes the imposition of a CMP in addition to a C&D Order. And the plain language of 12 U.S.C. § 1818(i) authorizes a CMP against any bank that "violates *any* law or regulation" (emphasis added).[6]

The Bank, however, argues that Section 1818(i) should not be read as written because the legislative history states that "[i]t is anticipated generally that use of this authority by a federal banking agency would not be appropriate if there was a civil penalty authority under a more specific civil penalty statute such as 31 U.S.C. 5321." 135 Cong. Rec. S2379-02, S2393, 1989 WL 171463. Even if the consideration of legislative history in the face of clear statutory

[6] The Bank also cites a Financial Institution Letter no longer in effect in which the FDIC stated that repeated violations of its regulation governing BSA compliance programs "may result in a cease and desist order," and that "[f]ailure to comply with such an order may result in the assessment of civil money penalties." FDIC FIL-29-96 (May 14, 1996). The Bank reads these statements as establishing an FDIC policy to pursue a CMP only after it has first imposed a C&D Order. Although FIL-29-96 states that CMPs may be imposed if a bank violates a C&D Order based on BSA compliance deficiencies, nothing in it states that this is the only sequence the FDIC may follow.

language were appropriate, the quoted language does not express a clear intention to bar the FDIC from pursuing CMPs for BSA violations under Section 1818(i). When read in context, it appears that Congress was concerned primarily with situations in which Section 1818(i) might be used to impose a penalty in addition to one imposed by another agency. Indeed, the sentence preceding the one on which the Bank relies states that "the appropriate federal banking agency could not assess an additional penalty under this section after the Department of Treasury assessed a civil penalty under the Bank Secrecy Act (31 U.S.C. 5321) based on the same violations." 135 Cong. Rec. S2379-02, S2393, 1989 WL 171463. Moreover, Congress clearly anticipated that Section 1818(i) would be used to address violations of regulations governing BSA compliance procedures, as shown by the express authorization for CMPs for violations of any temporary or final order issued under Section 1818(s). 12 U.S.C. § 1818(i)(2)(A)(ii).

Because the plain text of the statute authorizes the FDIC to pursue CMPs for any violation of law or regulation, and we find no reason to depart from this clear language in the legislative history, we conclude that the FDIC has authority to impose a CMP for the BSA violations found in this case.

3. Standard for Unsafe or Unsound Practices

In Exception 5, the Bank argues that the ALJ erred in finding that the Bank engaged in unsafe or unsound practices because it misapplied the definition of "unsafe or unsound practices" contained in *Gulf Federal Savings & Loan Association of Jefferson Parish v. Federal Home Loan Bank Board*, 651 F.2d 259 (5th Cir. 1981). *Gulf Federal* states that "unsafe or unsound practices" are limited to "practices with a reasonably direct effect on an association's financial soundness." *Id.* at 264. The Bank argues that, under this definition, the ALJ erred in finding that the Bank engaged in unsafe or unsound practices because the Bank is "on fine financial footing." Exceptions at 35.

The Board has not adopted the *Gulf Federal* definition, and it finds no need to address it here. Unlike the practices at issue in *Gulf Federal*, the statute itself defines the Bank's less-than-satisfactory ratings in earnings, management, and asset quality as unsafe or unsound. 12 U.S.C. § 1818(b)(8). *Gulf Federal* therefore has no application in this case.

The Bank also argues that *Gulf Federal* and the Fifth Circuit's related decision in *First National Bank of Bellaire v. Comptroller of the Currency*, 697 F.2d 674 (5th Cir. 1983) should restrict the violations of law that may form the basis for the C&D Order to those that have "a reasonably direct effect on a bank's financial stability." *Id.* at 681. We disagree. The plain language of Section 1818(b)(1) authorizes the FDIC to impose a C&D Order whenever a bank "is violating or has violated, or the agency has reasonable cause to believe that the depository institution ... is about to violate, a law, rule, or regulation." We find no basis in this text for restricting agency authority to violations of law that affect a bank's financial stability. *Bellaire* also provides no analysis or support for its statement, and no other court has followed its interpretation. *See, e.g., Saratoga Sav. & Loan v. Fed. Home Loan Bank Board*, 879 F.2d 689, 693 (9th Cir. 1989).

Because the plain text of the statute authorizes the FDIC to impose a C&D Order for violations of law, without any requirement of an impact on the Bank's financial stability, we conclude that the ALJ properly determined that the assorted violations of law in this case provide a basis for a C&D Order.

4. Deference to Examiners

In Exception 6, the Bank argues that the ALJ gave too much deference to the opinions of FDIC examiners. The Bank questions the examiners' credibility due to their alleged bias and discrimination against Scott, and argues that the rule of lenity should have precluded deference

with respect to the BSA violations underlying the CMP. Neither of these arguments is persuasive.

As discussed above, we find no evidence that the examiners' findings were motivated by bias or discrimination. In addition, the Bank's rule of lenity argument makes little sense in this context. As the Bank itself acknowledges, the rule of lenity is used to resolve an ambiguity in a statute. Exceptions at 42-43. The Bank, however, identifies no particular ambiguity in either the BSA or 12 C.F.R. § 326.8 that it believes should have been construed in its favor. The Bank merely asserts that 12 C.F.R. § 326.8 is "broad [and] open-ended." Exceptions at 43. The Bank offers no support for this statement, and it is contradicted by the specific requirements listed in the regulation and the ample guidance that further explains these requirements.

VI. CONCLUSION

After a thorough review of the record in this proceeding, the Board finds that the C&D Order and CMP assessment are warranted because the Bank's ratings for earnings, management, and asset quality demonstrated an unsafe and unsound condition, and the Bank violated multiple laws and regulations, including the BSA and its implementing regulations. The Bank's failure to comply with the April 2011 MOU, and its failure to promptly address shortcomings identified by examiners, reinforce the need for requiring affirmative action as prescribed in the C&D Order. Based on the foregoing, the Board affirms the Recommended Decision, adopts in full the findings of fact and conclusions of law therein, and issues the following Orders implementing its Decision.

ORDER TO CEASE AND DESIST

On November 4, 2013, the Federal Deposit Insurance Corporation ("FDIC") issued a NOTICE OF CHARGES AND OF HEARING, NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("Notice") against Respondent BANK OF LOUISIANA, NEW ORLEANS, LOUISIANA ("Bank"). Respondent filed a timely answer to the NOTICE.

On January 28, 2015, the Administrative Law Judge ("ALJ") issued a NOTICE OF INTENDED RULING on FDIC's MOTION FOR SUMMARY DISPOSITION AND/OR PARTIAL SUMMARY DISPOSITION ("Intended Ruling") advising the parties that it was the ALJ's intention to grant partial summary disposition to the FDIC on certain issues.

A hearing on the remaining issues in this case commenced on March 10, 2015. All parties appeared and were given the opportunity to be heard and evidence was taken.

Having considered the evidence submitted in connection with the Motion for Summary Disposition, the Notice of Intended Ruling, the evidence presented at the hearing, the arguments of all parties, the record as a whole, and the Recommended Decision issued by the ALJ, and pursuant to 12 U.S.C. § 1818(b):

IT IS ORDERED that the Bank, institution-affiliated parties of the Bank, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following unsafe or unsound banking practices:

1. Operating the Bank without adequate supervision and direction by the Bank's Board;
2. Operating the Bank with management whose policies and practices are detrimental to the Bank and jeopardize the safety of its deposits;
3. Operating the Bank with inadequate earnings to fund growth;

4. Operating the Bank with inadequate earnings to support dividend payments and augment capital;

5. Operating the Bank with an excessive level of adversely classified assets;

6. Operating the Bank without an effective Compliance Management System ("CMS");

7. Operating the Bank without an effective Bank Secrecy Act (BSA) compliance program; and

8. Operating the Bank in violation of applicable laws, regulations, regulatory guidance, and policy statements.

IT IS FURTHER ORDERED, that the Bank, its institution-affiliated parties and its successors and assigns take affirmative action as follows:

MANAGEMENT – BOARD SUPERVISION

1. Within 30 days after the effective date of this ORDER, the Bank's Board shall increase its participation in the affairs of the Bank by assuming full responsibility for the approval of the Bank's policies and objectives and for the supervision of the Bank's management, including all of the Bank's activities. The Bank's Board participation in the Bank's affairs shall include, at a minimum, monthly meetings in which the following areas shall be reviewed and approved by the Bank's Board: CMS components, reports of income and expenses; new, overdue, renewed, insider, charged-off, delinquent, non-accrued, and recovered loans; operating policies; and individual committee actions. The Bank's Board shall increase its level of participation in the BSA compliance program and take affirmative steps to ensure compliance with all applicable

BSA laws and regulations. The Bank's Board minutes shall fully document the Bank's Board reviews and approvals, including the names of any dissenting directors.

MANAGEMENT - INDEPENDENT DIRECTORS

2. (a) Within 60 days after the effective date of this ORDER, the Bank shall add to its Bank's Board at least one new member who is an Independent Director. For purposes of this ORDER, a person who is an Independent Director shall be any individual:

(1) Who is not an officer of the Bank, any subsidiary of the Bank, or any of its affiliated organizations;

(2) Who does not own more than 5 percent of the outstanding shares of the Bank;

(3) Who is not related by blood or marriage to an officer or director of the Bank or to any shareholder owning more than 5 percent of the Bank's outstanding shares, and who does not otherwise share a common financial interest with such officer, director or shareholder; and

(4) Who is not indebted to the Bank directly or indirectly by blood, marriage or common financial interest, including the indebtedness of any entity in which the individual has a substantial financial interest in an amount exceeding 5 percent of the Bank's total Tier 1 Capital and Allowance for Loan and Lease Losses (ALL); or

(5) Who is deemed to be an Independent Director for purposes of this ORDER by the FDIC Dallas Regional Office Regional Director ("Regional Director") and the Louisiana Office of Financial Institutions ("OFI") Commissioner ("Commissioner"). The

addition of any new Bank directors required by this paragraph may be accomplished, to the extent permissible by state statute or the Bank's bylaws, by means of appointment or election at a regular or special meeting of the Bank's shareholders.

(b) While this ORDER is in effect, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in any of the Bank's Board. Prior to the addition of any individual to the Bank's Board, the Bank shall comply with the requirements of Section 32 of the FDI Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 303.100 - 303.103.

MANAGEMENT – SPECIFIC POSITIONS

3. (a) Within 90 days after the effective date of this ORDER, the Bank shall have and retain qualified management. At a minimum, such management shall include:

(1) A chief executive officer with a demonstrated ability in managing a bank of comparable size and shall have prior experience in upgrading a low quality loan portfolio;

(2) A new senior lending officer with an appropriate level of lending, collection, and loan supervision experience for the type and quality of the Bank's loan portfolio; and

(3) A new chief financial officer/cashier with demonstrated ability in all financial areas relevant to a bank of comparable size including, but not limited to, accounting, regulatory reporting, budgeting and planning, management of the investment function liquidity management, and interest rate risk management.

(4) Such person(s) shall be provided the necessary written authority to implement the provisions of this ORDER.

The qualifications of management shall be assessed on its ability to:

(5) Comply with the requirements of this ORDER;

(6) Operate the Bank in a safe and sound manner;

(7) Comply with applicable laws and regulations; and

(8) Restore all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, and management effectiveness.

(b) While this ORDER is in effect, the Bank shall notify the Regional Director and the Commissioner in writing of any changes in any of the Senior Executive Officers. For purposes of this ORDER, "Senior Executive Officer" is defined as in Section 303.101(b) of the FDIC's Rules and Regulations, 12 C.F.R. § 303.101(b). Prior to the employment of any individual as a Senior Executive Officer, the Bank shall comply with the requirements of Section 32 of the FDI Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 303.100-303.103.

STRATEGIC PLAN

4. (a) Within 120 days after the effective date of this ORDER, the Bank shall prepare and adopt a comprehensive strategic plan ("Strategic Plan"). The Strategic Plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and shall, at a minimum, include:

(1) A mission statement that forms the framework for the establishment of strategic goals and objectives;

(2) A description of the Bank's targeted market(s) and an assessment of the current and projected risks and competitive factors in its identified target market(s);

(3) The strategic goals and objectives to be accomplished;

(4) The specific actions designed to improve Bank earnings and accomplish the identified strategic goals and objectives;

(5) The identification of Bank personnel to be responsible and accountable for achieving each goal and objective of the Plan, including specific time frames;

(6) A financial forecast, to include projections for major balance sheet and income statement accounts, targeted financial ratios, and growth projections over the period covered by the Strategic Plan;

(7) A description of the assumptions used to determine financial projections and growth targets;

(8) An identification and risk assessment of the Bank's present and planned future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in the Strategic Plan, with the requirement that the risk assessment of new product lines must be completed prior to the offering of such product lines;

(9) A description of control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's markets;

(10) An evaluation of the Bank's internal operations, staffing requirements, board and management information systems, and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives established in the Strategic Plan;

(11) A management employment and succession program to promote the retention and continuity of capable management;

(12) Assigned responsibilities and accountability for the strategic planning process, new products, growth goals, and proposed changes in the Bank's operating environment; and

(13) A description of systems designed to monitor the Bank's progress in meeting the Strategic Plan's goals and objectives.

(b) If the Bank's Strategic Plan under this paragraph includes a proposed sale or merger of the Bank, the Strategic Plan shall, at a minimum, address the steps that will be taken and the associated timeline to implement that alternative.

(c) The Bank shall submit the Strategic Plan to the Regional Director and the Commissioner for review and comment. After consideration of all such comments, the Bank shall approve the Strategic Plan, which approval shall be recorded in the minutes of the Bank's Board meeting. Thereafter, the Bank shall implement and follow the Strategic Plan.

(d) Within 30 days after the end of each calendar quarter following the effective date of this ORDER, the Bank's Board shall evaluate the Bank's performance in

relation to the Strategic Plan required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Bank's Board meeting at which such evaluation is undertaken.

(e) The Strategic Plan required by this ORDER shall be revised and submitted to the Regional Director and the Commissioner for review and comment 30 days after the end of each calendar year for which this ORDER is in effect. Within 30 days after receipt of all such comments from the Regional Director and the Commissioner and after consideration of all such comments, the Bank shall approve the revised Strategic Plan, which approval shall be recorded in the minutes of the Bank's Board meeting. Thereafter, the Bank shall implement the revised Strategic Plan.

CLASSIFIED ASSETS - CHARGE-OFF AND PLAN FOR REDUCTION

5. (a) Within 10 days after the effective date of this ORDER, the Bank shall, to the extent that it has not previously done so, eliminate from its books, by charge-off or collection, all assets or portions of assets classified as Loss by the FDIC and the OFI as a result of its examination of the Bank as of January 14, 2013. Elimination or reduction of these assets through proceeds of loans made by the Bank shall not be considered "collection" for the purpose of this paragraph.

(b) Within 60 days after the effective date of this ORDER, the Bank shall submit a written plan to reduce the remaining assets classified as Substandard as of January 14, 2013 ("Classified Asset Plan") to the Regional Director and the Commissioner for review. The Classified Asset Plan shall address each asset so classified with an aggregate balance of $250,000 or greater. The Classified Asset Plan shall include any classified assets identified subsequent to the January 14, 2013 examination by the Bank internally or by the FDIC or the

OFI in a subsequent visitation or examination. For each identified asset, the Classified Asset Plan should provide the following information:

(1) Name under which the asset is carried on the books of the Bank;

(2) Type of asset;

(3) Actions to be taken to reduce the classified asset; and

(4) Time frames for accomplishing the proposed actions.

The Classified Asset Plan shall also include, at a minimum:

(5) A review of the financial position of each such borrower, including the source of repayment, repayment ability, and alternate repayment sources; and

(6) An evaluation of the available collateral for each such credit, including possible actions to improve the Bank's collateral position.

In addition, the Bank's Classified Asset Plan shall contain a schedule detailing the projected reduction of total classified assets on a quarterly basis. Further, the Classified Asset Plan shall contain a provision requiring the submission of monthly progress reports to the Bank's Board and a provision mandating a review by the Bank's Board.

(c) The Bank shall present the Classified Asset Plan to the Regional Director and the Commissioner for review. Within 30 days after the Regional Director's and the Commissioner's response, the Classified Asset Plan, including any requested modifications or amendments, shall be adopted by the Bank's Board, which approval shall be recorded in the minutes of the meeting of the Bank's Board. The Bank shall then immediately initiate measures detailed in the Classified Asset Plan to the extent such measures have not been initiated.

(d) For purposes of the Classified Asset Plan, the reduction of adversely classified assets as of January 14, 2013, shall be detailed using quarterly targets expressed as a percentage of the Bank's Tier 1 Capital plus the Bank's ALLL and may be accomplished by:

(1) Charge-off;

(2) Collection;

(3) Sufficient improvement in the quality of adversely classified assets so as to warrant removing any adverse classification, as determined by the FDIC or the OFI; or

(4) Increase in the Bank's Tier 1 Capital.

(e) While this ORDER is in effect, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified as Loss as determined at any future visitation or examination conducted by the FDIC or the OFI. The Bank shall also update the Classified Asset Plan as needed to reflect any assets subsequently classified as Doubtful or Substandard by the Bank internally or by the FDIC or the OFI.

RESTRICTION ON ADVANCES TO CLASSIFIED BORROWERS

6. (a) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose existing credit has been classified as Loss by the FDIC or the OFI as the result of its examination of the Bank, either in whole or in part, and is uncollected, or to any borrower who is already obligated in any manner to the Bank on any extension of credit, including any portion thereof, that has been charged off the books of the Bank and remains uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing credit already extended to a borrower after full collection, in cash, of interest due from the borrower.

(b) While this ORDER is in effect, the Bank shall not extend, directly or indirectly, any additional credit to or for the benefit of any borrower whose extension of credit is classified as Substandard by the FDIC or the OFI as the result of its examination of the Bank, either in whole or in part, and is uncollected, unless the Bank's Board has signed a detailed written statement giving reasons why failure to extend such credit would be detrimental to the best interests of the Bank. The statement shall be placed in the appropriate loan file and included in the minutes of the applicable Bank's Board meeting.

REDUCTION OF DELINQUENCIES

7. (a) Within 60 days after the effective date of this ORDER, the Bank shall formulate and submit to the Regional Director and the Commissioner for review and comment a written plan for the reduction and collection of delinquent loans (Delinquency Plan). Such Delinquency Plan shall include, but not be limited to, provisions which:

(1) Prohibit the extension of credit for the payment of interest;

(2) Delineate areas of responsibility for implementing and monitoring the Bank's collection policies;

(3) Establish specific collection procedures to be instituted at various stages of a borrower's delinquency;

(4) Establish dollar levels to which the Bank shall reduce delinquencies by March 31, June 30, September 30, and December 31 of each calendar year, and

(5) Provide for the submission of monthly written progress reports to the Bank's Board for review and notation in minutes of the meetings of the Bank's Board.

(b) For purposes of the Delinquency Plan, "reduce" means to:

(1) Charge-off; or

(2) Collect.

(c) After the Regional Director and the Commissioner have responded to the Delinquency Plan, the Bank's Board shall adopt the Delinquency Plan as amended or modified by the Regional Director and the Commissioner. The Delinquency Plan will be implemented immediately to the extent that the provisions of the Delinquency Plan are not already in effect at the Bank.

TECHNICAL EXCEPTIONS

8. (a) Within 30 days after the effective date of this ORDER, the Bank shall correct the technical exceptions listed in the Report of Examination as of January 14, 2013. Where efforts are unsuccessful, the Bank shall document the loan file to memorialize the corrective efforts attempted.

(b) Within 30 days after the effective date of this ORDER, the Bank shall implement a system of monitoring and correcting loan documentation exceptions identified either by the Bank internally or by the FDIC or the OFI in subsequent visitations or examinations to reduce the occurrence of such exceptions in the future.

LOAN REVIEW REQUIREMENTS

9. (a) Within 60 days of the date of this ORDER, the Bank's Board shall implement procedures to strengthen the Bank's internal loan review program ("Loan Review Program"). The improved Loan Review Program shall provide for an independent loan review process, with monthly reports submitted to the Bank's Board. The monthly reports shall include, but should not be limited to, a discussion of following: (1) the quality of the loan portfolio; (2) the identification, by type and amount, of problem or delinquent loans; (3) the identification of all loans not in conformance with the Bank's lending policy; and (4) the identification of all

loans made to officers, directors, principal shareholders or their related interests. The Loan Review Program shall also put in place procedures to determine and correct file documentation deficiencies and ensure that loans recommended for adverse classification or increased monitoring by the regulators or external loan review contractors are included on the Bank's watch list. The guidelines contained in Attachment 1 of the 2006 Interagency Policy Statement on the Allowance for Loan and Lease Losses shall be utilized in formulating this review and revision process. The Bank's Board shall review the reports submitted and monitor the Loan Review Program's accomplishments and/or findings monthly. Such reviews shall be recorded in the minutes of the meeting of the Bank's Board and shall detail the action taken by the Bank's Board, as appropriate, to address and resolve all areas of concern noted in the Loan Review Program reports.

(b) Within 30 days of this ORDER, the Bank's Board shall contract with a consulting firm acceptable to the Regional Director and the Commissioner to perform a comprehensive external loan review, which encompasses at a minimum, loan relationships of $100,000 or more. The consulting firm shall also evaluate the Bank's loan underwriting, administration, and review processes and shall provide, as warranted, recommendations for improvement. The comprehensive loan review shall be completed within 120 days of the date of this ORDER, with a written report generated by the consulting firm. The Bank's Board written response to the consulting firm's report shall detail the action steps to be taken to address the findings and the recommendations included in the consulting firm's report, and shall include a timeline for implementation of the consulting firm's recommendations. A copy of the consulting firm's report and the Bank's Board response to the consulting firm's report shall be submitted to the Regional Director and the Commissioner for review and opportunity to comment. The

Bank's Board shall then implement the recommendations set forth in the report to the extent such recommendations have not been previously implemented.

LOAN POLICY

10. (a) Within 60 days after the effective date of this ORDER, and annually thereafter, the Bank's Board shall review the Bank's loan policies and procedures for effectiveness and, based upon this review, shall make all necessary revisions to the Bank's policies in order to strengthen the Bank's lending procedures and abate additional loan deterioration. The revised written loan policies shall be submitted to the Regional Director and the Commissioner for review and comment upon their completion.

(b) The initial revisions to the Bank's loan policies required by this paragraph, at a minimum, shall include provisions:

(1) Designating the Bank's normal trade area;

(2) Establishing review and monitoring procedures to ensure that all lending personnel are adhering to established lending procedures and that the directorate is receiving timely and fully documented reports on loan activity, including any deviations from established policy;

(3) Requiring that all extensions of credit originated or renewed by the Bank be supported by current credit information and collateral documentation, including lien searches and the perfection of security interests; have a defined and stated purpose; and have a predetermined and realistic repayment source and schedule. Credit information and collateral documentation shall include current financial information, profit and loss statements or copies of tax

returns, and cash flow (including global cash flow) projections, and shall be maintained throughout the term of the loan;

(4) Requiring loan committee review and monitoring of the status of repayment and collection of overdue and maturing loans, as well as all loans classified as Substandard in the Report of Examination;

(5) Requiring the establishment and maintenance of a loan grading system and internal loan watch list;

(6) Requiring a written plan to lessen the risk position in each line of credit identified as a problem credit on the Bank's internal loan watch list;

(7) Prohibiting the capitalization of interest or loan-related expenses unless the Bank's Board formally approves such extensions of credit as being in the best interest of the Bank and provides detailed written support of its position in the Bank's Board minutes;

(8) Requiring that extensions of credit to any of the Bank's executive officers, directors, or principal shareholders, or to any related interest of such person, be thoroughly reviewed for compliance with all provisions of Regulation O, 12 C.F.R. Part 215 and Section 337.3 of the FDIC's Rules and Regulations, 12 C.F.R. § 337.3. For purposes of this paragraph, the term "related interest" is defined as in section 215.2(n) of Regulation O, 12 C.F.R. § 215.2(n);

(9) Requiring a non-accrual policy in accordance with the Federal Financial Institutions Examination Council's Instructions for the Consolidated Reports of Condition and Income;

(10) Requiring accurate reporting of past due loans to the Bank's Board on at least a monthly basis;

(11) Addressing concentrations of credit and diversification of risk, including goals for portfolio mix, establishment of limits within loan and other asset categories, and development of a tracking and monitoring system for the economic and financial condition of specific geographic locations, industries, and groups of borrowers;

(12) Requiring guidelines and review of out-of-territory loans which, at a minimum, shall include complete credit documentation, approval by a majority of the Bank's Board prior to disbursement of funds, and a detailed written explanation of why such a loan is in the best interest of the Bank;

(13) Establishing standards for extending unsecured credit;

(14) Incorporating collateral valuation requirements, including:

a. Maximum loan-to-collateral-value limitations;

b. A requirement that the valuation be completed prior to a commitment to lend funds;

c. A requirement for periodic updating of valuations; and

d. A requirement that the source of valuations be documented in Bank records;

(15) Establishing standards for initiating collection efforts;

(16) Establishing guidelines for timely recognition of loss through charge-off;

(17) Establishing officer lending limits and limitations on the aggregate level of credit to any one borrower which can be granted without the prior approval of the Bank's Board;

(18) Requiring that collateral appraisals be completed prior to the making of secured extensions of credit, and that periodic collateral valuations be performed for all secured loans listed on the Bank's internal watch list, criticized in any internal or outside audit report of the Bank, or criticized in any Report of Examination of the Bank by the FDIC or the OFI;

(19) Prohibiting the payment of any overdraft in excess of $2,500 without the prior written approval of the Bank's Board, and imposing limitations on the use of the Cash Items account;

(20) Establishing limitations on the maximum volume of loans in relation to total assets; and

(21) Establishing review and monitoring procedures to ensure compliance with FDIC's regulation on appraisals pursuant to Part 323 of the FDIC's Rules and Regulations, 12 C.F.R. Part 323.

(c) The Bank shall submit the foregoing policies to the Regional Director and the Commissioner for comment. After the Regional Director and the Commissioner have responded to the policies, the Bank's Board shall adopt the policies as amended or modified by the Regional Director and the Commissioner. The policies will be implemented immediately to the extent that they are not already in effect at the Bank.

ALLL AND AMENDED CALL REPORTS

11. (a) Prior to the end of each calendar quarter, the Bank's Board shall review the adequacy of the Bank's ALLL. Such reviews shall include, at a minimum, the Bank's loan loss experience, an estimate of potential loss exposure in the portfolio, trends of delinquent and non-accrual loans and prevailing and prospective economic conditions. The minutes of the Bank's Board meetings at which such reviews are undertaken shall include complete details of the reviews and the resulting recommended increases in the ALLL.

(b) Within 30 days after the effective date of this ORDER, the Bank shall review the Consolidated Reports of Condition and Income filed with the FDIC on or after December 31, 2012, and amend said reports if necessary to accurately reflect the financial condition of the Bank as of the date of each such report. In particular, such reports shall contain a reasonable ALLL. Reports filed after the effective date of this ORDER shall also accurately reflect the financial condition of the Bank as of the reporting date.

(c) The Bank must use Financial Accounting Standards Board (FASB) Accounting Standards Codification (ASC) Numbers 450 and 310 (formerly Statements Numbers 5 and 114 respectively) for determining the Bank's ALLL reserve adequacy. Provisions for loan losses must be based on the inherent risk in the Bank's loan portfolio. The directorate must document with written reasons any decision not to require provisions for loan losses in the Bank's Board minutes.

PROFIT PLAN

12. (a) Within 90 days after the effective date of this ORDER, and within the first 30 days of each calendar year thereafter, the Bank's Board shall develop a written profit plan (Profit Plan) consisting of goals and strategies for improving the earnings of the Bank for each calendar year. The written Profit Plan shall include, at a minimum:

(1) Identification of the major areas in, and means by, which the Bank's Board will seek to improve the Bank's operating performance;

(2) Realistic and comprehensive budgets;

(3) A budget review process to monitor the income and expenses of the Bank to compare actual figures with budgetary projections on not less than a quarterly basis; and

(4) A description of the operating assumptions that form the basis for and support major projected income and expense components.

(b) Such written Profit Plan and any subsequent modification thereto shall be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days after the receipt of any comment from the Regional Director and the Commissioner, the Bank's Board shall approve the written Profit Plan, which approval shall be recorded in the meeting minutes of the Bank's Board. Thereafter, the Bank, its directors, officers, and employees shall follow the written profit plan and/or any subsequent modification.

CAPITAL MAINTENANCE

13. (a) Within 30 days after the effective date of this ORDER and while this ORDER is in effect, the Bank, after reviewing the adequacy of the Bank's ALLL as required pursuant to paragraph 11 of this ORDER, shall maintain its Tier 1 Leverage Capital ratio equal to

or greater than 9 percent of the Bank's Average Total Assets; shall maintain its Tier 1 Risk-Based Capital ratio equal to or greater than 11 percent of the Bank's Total Risk-Weighted Assets; and shall maintain its Total Risk-Based Capital ratio equal to or greater than 13 percent of the Bank's Total Risk Weighted Assets.

(b) If any such capital ratios are less than required by the ORDER, as determined as of the date of any Report of Condition and Income or at an examination by the FDIC or the OFI, the Bank shall, within 30 days after receipt of a written notice of the capital deficiency from the Regional Director or the Commissioner, present to the Regional Director and the Commissioner a plan ("Capital Plan") to increase the Bank's Tier 1 Capital or to take such other measures to bring all the capital ratios to the percentages required by this ORDER. After the Regional Director and the Commissioner respond to the Capital Plan, the Bank's Board shall adopt the Capital Plan, including any modifications or amendments requested by the Regional Director and the Commissioner.

(c) Thereafter, to the extent such measures have not previously been initiated, the Bank shall immediately initiate measures detailed in the Capital Plan, to increase its Tier 1 Capital by an amount sufficient to bring all the Bank's capital ratios to the percentages required by this ORDER within 60 days after the Regional Director and the Commissioner respond to the Capital Plan. Such increase in Tier 1 Capital and any increase in Tier 1 Capital necessary to meet the capital ratios required by this ORDER may be accomplished by:

(1) The sale of securities in the form of common stock; or

(2) The direct contribution of cash subsequent to January 14, 2013, by the directors and/or shareholders of the Bank or by the Bank's holding company; or

(3) Receipt of an income tax refund or the capitalization subsequent to January 14, 2013, of a bona fide tax refund certified as being accurate by a certified public accounting firm; or

(4) Any other method approved by the Regional Director and the Commissioner.

(d) If all or part of the increase in Tier 1 Capital required by this ORDER is to be accomplished by the sale of new securities, the Bank's Board shall adopt and implement a plan for the sale of such additional securities, including soliciting proxies and the voting of any shares or proxies owned or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with Federal securities laws. Prior to the implementation of the plan, and in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review. Any changes requested to be made in the plan or the materials by the FDIC shall be made prior to their dissemination. If the increase in Tier 1 Capital is to be provided by the sale of non-cumulative perpetual preferred stock, then all terms and conditions of the issue shall be presented to the Regional Director and the Commissioner for prior approval.

(e) In complying with the provisions of this ORDER and until such time as any such public offering is terminated, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities written notice of any planned or existing development or other change

which is materially different from the information reflected in any offering materials used in connection with the sale of the Bank's securities. The written notice required by this paragraph shall be furnished within 10 days after the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every purchaser and/or subscriber who received or was tendered the information contained in the Bank's original offering materials.

(f) In addition, the Bank shall comply with the FDIC's Statement of Policy on Risk-Based Capital found in Appendix A to Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325, App. A.

(g) For purposes of this ORDER, all terms relating to capital shall be calculated according to the methodology set forth in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. Part 325.

DIVIDEND RESTRICTION

14. While this ORDER is in effect, the Bank shall not declare or pay any cash dividend without the prior written consent of the Regional Director and the Commissioner.

INTERNAL AUDIT CONTROL PROGRAM

15. Within 45 days after the effective date of this ORDER, the Bank's Board shall implement an effective program for internal audit and control. The audit program shall provide procedures to test the validity and reliability of operating systems, procedural controls, and resulting records, and shall comply with the Interagency Policy Statement on the Internal Audit Function and its Outsourcing. The Bank's Internal Auditor shall have the appropriate level of independence, resources, requisite skills, and training for the position and shall report quarterly to the Bank's Board. The Internal Auditor's report and any comments made by the directors

regarding the Internal Auditor's report shall be noted in the minutes of the Bank's Board meeting.

BUSINESS PLAN

16. While this ORDER is in effect, the Bank shall not enter into any new line of business without the prior written consent of the Regional Director and Commissioner.

BSA COMPLIANCE PLAN

17. Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt and implement a revised written plan (BSA Compliance Plan) for the continued administration of the Bank's BSA Compliance Program and the Bank's Customer Identification Program (CIP) designed to ensure and maintain compliance with the BSA and its implementing rules and regulations (Regulations). The revised written BSA Compliance Plan shall incorporate the requirements noted in provisions numbered 18 through 21 below. The Bank shall submit the revised BSA Compliance Plan to the Regional Director and the Commissioner for review and comment. Upon receipt of comments from the Regional Director and the Commissioner, if any, the Bank's Board shall review and approve the revised BSA Compliance Plan. The review and approval of the BSA Compliance Plan by the Bank's Board shall be recorded in the minutes of the Bank's Board meeting. Thereafter, the Bank shall implement the revised BSA Compliance Plan.

BSA OFFICER

18. Within 30 days from the effective date of this ORDER, the Bank shall designate a qualified individual or individuals ("BSA Officer") responsible for coordinating and monitoring day-to-day compliance with the BSA pursuant to Section 326.8 of the FDIC's Rules and Regulations, 12 C.F.R. § 326.8. The BSA Officer shall:

(a) Have sufficient executive authority to monitor and ensure compliance with the BSA and its implementing Regulations;

(b) Be responsible for determining the adequacy of BSA/Anti-Money Laundering (AML) staffing and for supervising such staff in complying with the BSA and its implementing rules and regulations;

(c) Report directly to the Bank's Board;

(d) Report to the Bank's Audit Committee on a regular basis, not less than quarterly, with respect to any BSA/AML matters;

(e) Be responsible for assuring the proper filing of Currency Transaction Reports (CTRs), Reports of International Transportation of Currency or Monetary Instruments, and Suspicious Activity Reports (SARs) relating to the BSA;

(f) Provide monthly comprehensive written reports to the Bank's Board regarding the Bank's adherence to the BSA Compliance Plan and this ORDER; and

(g) Be evaluated on their ability to promote compliance with this ORDER and all applicable BSA laws and regulations.

BSA INTERNAL CONTROLS

19. Within 60 days from the effective date of this ORDER, the Bank shall provide for a system of internal controls sufficient to comply in all material respects with the BSA and its implementing Regulations and establish a plan for implementing such internal controls ("BSA Internal Controls Plan"). The BSA Internal Controls Plan shall provide, at a minimum:

(a) Procedures for conducting a risk-based assessment of the Bank's customer base to identify the categories of customers whose transactions and banking activities are routine and usual; and determine the appropriate level of enhanced due diligence necessary for those categories of customers whose transactions and banking activities are not routine and/or usual (high-risk accounts);

(b) Policies and procedures with respect to high-risk accounts and customers identified through the risk assessment conducted pursuant to subparagraph 19(a), including the adoption of adequate methods for conducting enhanced due diligence on high-risk accounts and customers at account opening and on an ongoing basis, and for monitoring high-risk client relationships on a transaction basis, as well as by account and customer;

(c) Policies, procedures, and systems for identifying, evaluating, monitoring, investigating, and reporting suspicious activity in the Bank's products, accounts, customers, services, and geographic areas, including:

(1) Establishment of meaningful thresholds for identifying accounts and customers for further monitoring, review, and analyses;

(2) Periodic testing and monitoring of such thresholds for their appropriateness to the Bank's products, customers, accounts, services, and geographic areas;

(3) Review of existing systems to ensure adequate referral of information about potentially suspicious activity through appropriate levels of management, including a policy for determining action to be taken in the event of multiple filings of SARs on the same customer, or in the event a correspondent or other customer fails to provide due diligence information. Such

procedures shall describe the circumstances under which an account should be closed.

(4) Procedures and/or systems for each subsidiary and business area of the Bank to produce periodic reports designed to identify unusual or suspicious activity, to monitor and evaluate unusual or suspicious activity, and to maintain accurate information needed to produce these reports with the following features:

a. The Bank's procedures and/or systems should be able to identify related accounts, countries of origin, location of the customer's businesses and residences to evaluate patterns of activity; and

b. The periodic reports should cover a broad range of time frames, including individual days, a number of days, and a number of months, as appropriate, and should segregate transactions that pose a greater than normal risk for non-compliance with the BSA;

(5) Documentation of management's decisions to file or not file a SAR; and

(6) Systems to ensure the timely, accurate, and complete filing of required SARs and any other similar or related reports required by law.

(d) Policies and procedures with respect to wire transfer recordkeeping, including requirements for complete information on beneficiaries and senders, as required by 31 C.F.R. § 1020.410;

(e) Policies and procedures for transactions involving non-customers, including, but not limited to, wire transfer services, traveler's check services, and foreign exchange services;

(f) Policies and procedures to establish controls and systems for filing CTRs and CTR exemptions;

(g) Policies and procedures designed to supervise employees that handle currency transactions, complete reports, grant exemptions, monitor for suspicious activity, or engage in any other activity covered by the BSA and its implementing Regulations;

(h) Policies that incorporate BSA compliance into the job descriptions and performance evaluations of appropriate Bank personnel; and

(i) Policies and procedures with respect to the Information Sharing provisions of Section 314(a) of the USA PATRIOT ACT, as required by 31 C.F.R. § 1020.520.

BSA TESTING

20. Within 60 days from the effective date of this ORDER, the Bank shall provide for the periodic and independent testing of the Bank's BSA Compliance Program by developing an independent testing plan (Independent Testing Plan). At a minimum, the Independent Testing Plan shall:

(a) Provide for independent testing for compliance by the Bank with the BSA and its Regulations to be conducted by either:

(1) A qualified outside party with the requisite ability to perform such testing and analysis; or

(2) Qualified Bank personnel who have no BSA responsibilities at the Bank.

(b) Such testing shall be done on an annual basis with the first independent test to be completed within 60 days of the formation of the Independent Testing Plan.

(c) The Independent Testing Plan shall, at a minimum:

(1) Test the Bank's internal procedures for monitoring compliance with the BSA and its implementing rules and regulations, including interviews of employees who handle cash transactions;

(2) Sample large currency transactions followed by a review of the CTR filings;

(3) Test the validity and reasonableness of the customer exemptions granted by the Bank;

(4) Test the Bank's recordkeeping system for compliance with the BSA and its Regulations, including, but not limited to:

a. Testing to ensure all reportable transactions have been identified;

b. Testing to ensure Bank personnel is reviewing all applicable reports, including monitoring reports for structuring activities; and

c. Testing to ensure compliance with the Office of Foreign Assets Control (OFAC) provisions.

(5) Test the Bank's CIP procedures;

(6) Test the adequacy of the Bank's BSA training program;

(7) Assess the overall process for identifying and reporting suspicious activity to include testing to ensure the effectiveness of the Bank's suspicious activity monitoring systems used for BSA compliance;

(8) Assess the integrity and accuracy of management information systems used in the BSA Compliance Program; and

(9) Document the scope of the testing procedures performed and the findings of the testing.

The results of each independent test, as well as any apparent exceptions noted during the testing, shall be presented to the Bank's Board. The Bank's Board shall record the steps taken to correct any exceptions noted and address any recommendations made during each independent test in the minutes of the Bank's Board meeting.

BSA TRAINING

21. Within 60 days from the effective date of this ORDER, the Bank shall develop an effective BSA training program (BSA Training Program) for management and staff on all relevant aspects of laws, regulations, and Bank policies and procedures relating to the Bank's BSA Compliance Plan. The BSA Training Program shall ensure that all appropriate personnel are aware of, and can comply with, the requirements of the BSA and its implementing rules and regulations, including the currency and monetary instruments reporting requirements and the reporting requirements associated with SARs, as well as all applicable USA PATRIOT ACT and OFAC requirements. The BSA Training Program shall include the following:

(a) Bank-specific BSA policies and procedures, and new rules and requirements as they arise;

(b) A requirement that the Bank's Board fully document the BSA training of each Bank employee, officer, and director, including the additional training provided to the designated BSA Compliance Officer; and

(c) A requirement that BSA training shall be conducted no less frequently than annually.

BSA STAFFING STUDY

22. (a) With the assistance of a qualified and independent third party, the Board shall conduct a BSA staffing study ("BSA Staffing Study") to ensure that the Bank employs qualified personnel capable of implementing and overseeing all aspects of the Bank's BSA Compliance Program. The BSA Staffing Study shall take into account the type and complexity of the Bank's products and shall include the following:

(1) Identification of both the type and number of officer and staff positions needed to properly manage and supervise the Bank's BSA Compliance Program;

(2) Evaluation of BSA Compliance Program management and staff to determine whether the individuals assigned to the Bank's BSA Compliance Program area possess the ability, experience, training, and other qualifications required to perform their present and anticipated duties, including the development, implementation of, and adherence to the Bank's BSA policies and procedures, and an ability to restore and maintain the Bank's BSA Compliance Program to a safe and sound condition;

(3) A plan to recruit and hire any additional or replacement personnel with the requisite ability, experience, training, and other qualifications to supplement or replace any Bank employees as necessary to perform any present or anticipated duties with respect to the Bank's BSA Compliance Program as noted in subparagraph 22(a)(2) above;

(4) A BSA management succession and continuity plan; and

(5) Job descriptions for each Bank employee designated to work in the Bank's BSA Compliance Program area.

(b) The BSA Staffing Study shall be completed within 90 days of the effective date of this ORDER, with a copy of the BSA Staffing Study to be submitted to the Regional Director and the Commissioner for review and comment. Within 30 days from the receipt of any comments from the Regional Director and the Commissioner, and after the adoption of any recommended changes to the BSA Staffing Study by the Regional Director and the Commissioner, the Bank's Board shall approve the BSA Staffing Study and record its approval in the Board minutes. Thereafter, the Board shall ensure that the Bank, its directors, officers, and employees implement the BSA Staffing Study recommendations within 30 days of Board approval.

LOOK BACK REVIEW

23. (a) Within 45 days from the effective date of this ORDER, the Bank shall develop a written plan detailing how it will conduct, through an independent and qualified auditor, a review of deposit account and transaction activity from December 1, 2011, through the effective date of this ORDER, to identify and report any transactions or series of transactions that may require the filing of SARs or CTRs (Look Back Review).

(b) The plan for the Look Back Review and the subsequent contract or engagement letter entered into with the auditor performing the Look Back Review shall at a minimum:

(1) Discuss the qualifications of the auditor selected and set forth the auditor's knowledge and experience with the filing of both SARs and CTRs;

(2) Set forth the scope of the Look Back Review by specifying the types of accounts and transactions to be reviewed and making sure that the review includes the Bank's high-risk account customers;

(3) Discuss the methodology for conducting the Look Back Review, including any sampling procedures to be followed;

(4) Discuss the Bank's resources and expertise to be dedicated to the Look Back Review;

(5) Set forth the anticipated start date as well as the anticipated date of completion of the Look Back Review;

(6) Include a provision in the engagement letter for unrestricted examiner access to auditor work papers; and

(7) Include a provision in the engagement letter that the auditor will present the auditor's findings from the Look Back Review directly to the Bank's Board.

(c) The plan for the Look Back Review shall be submitted to the Regional Director and the Commissioner for review and comment prior to the implementation of the Look Back Review plan. Upon receipt of comments from the Regional Director and the Commissioner, the Board shall approve the Look Back Review plan, which approval shall be recorded in the minutes of Bank's Board.

(d) Within 10 days of the Board's approval of the Look Back Review plan, the Bank shall implement the Look Back Review plan.

(e) By the tenth day of each month while the Look Back Review is being conducted, the Bank shall provide to the Regional Director and the Commissioner a written

report detailing the actions taken under the Look Back Review and the results obtained since the prior report.

(f) Within 30 days of the completion of the auditor's portion of the Look Back Review plan, the Bank shall provide a list to the Regional Director and the Commissioner specifying all outstanding matters or transactions identified by the auditor as part of the Look Back Review which have yet to be reported and detailing when and how these matters will be reported in accordance with applicable law and regulation.

OFAC COMPLIANCE

24. Within 60 days from the effective date of this ORDER, the Board shall evaluate the Bank's OFAC programs and screening procedures to determine if such activities are designed to ensure compliance with OFAC regulations and develop an OFAC compliance program (OFAC Compliance Program). The OFAC Compliance Program should include the following:

(a) An OFAC risk-assessment for the Bank's various products, customers, and departments;

(b) The identification of a qualified individual to monitor and oversee OFAC compliance;

(c) Written Bank-specific policies and procedures for screening transactions and new Bank customers for possible OFAC matches;

(d) Guidelines and internal controls to ensure periodic screening of all existing customer accounts;

(e) Bank-specific procedures for obtaining and maintaining up-to-date OFAC lists of blocked countries, entities, and individuals;

(f) Methods to be utilized to timely convey OFAC updates throughout the Bank;

(g) Procedures for identifying, handling, and reporting prohibited OFAC transactions;

(h) Guidance for filing SARs on OFAC matches, if appropriate;

(i) Training for all appropriate Bank personnel on OFAC compliance and the newly developed Bank OFAC policies and procedures; and

(j) Procedures and timelines for internal reviews or audits of the OFAC processes in each affected department of the Bank.

CORRECTION OF VIOLATIONS AND CONTRAVENTIONS

25. Within 60 days after the effective date of this ORDER, the Bank's Board shall eliminate and/or correct all violations of law or regulation identified in the Joint Report of Examination dated January 14, 2013, and implement procedures designed to ensure the Bank's future compliance with all applicable laws, regulations and statements of policy.

COMPLIANCE MANAGEMENT SYSTEM

26. (a) Within ninety (90) days after the effective date of this ORDER, the Bank shall develop and implement a CMS that is commensurate with the level of complexity of the Bank's operations. The CMS shall:

(1) Include oversight by the Bank's board of directors and senior management that includes the following actions:

a. Ensures adherence with all the provisions of this ORDER and recommendations for corrective actions contained in the FDIC's Compliance Visitation Report dated August 13, 2012 (Report);

b. Ensures the Bank operates with an adequate CMS as described in the Federal Deposit Insurance Corporation's Compliance Examination Manual, Tab II ("Compliance Examinations"), pages II-2.1-4 ("Compliance Management System"); and

c. Ensures that the Bank's Compliance Officer receives ongoing training, sufficient time, authority, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS.

(2) Include the development and implementation of a compliance program that is reviewed and approved annually by the Bank's Board, with the Board's approval reflected in the Board minutes. The Compliance Program shall include written policies and procedures that shall:

a. Provide Bank personnel with all the information that is needed to perform a business transaction; and

b. Reflect changes, based on periodic updates, in the Bank's business and regulatory environment.

(3) Include the implementation and maintenance of a training program related to applicable consumer protection laws for all Bank personnel, including senior management and the Bank's Board, commensurate with their individual job functions and duties. The Compliance Officer shall be responsible for the administration of

this program, and shall provide training to officers and employees on a continuing basis.

(4) Include compliance monitoring procedures that have been incorporated into the normal activities of every department. At a minimum, monitoring procedures should include ongoing reviews of:

a. Applicable departments and branches; including Electronic Fund Transfers, to monitor transactions such as ACH transactions and debit card point of sale transactions;

b. Disclosures and calculations for various loan and deposit products; including Initial Disclosures for deposit accounts and loan products;

c. Document filing and retention procedures;

d. Marketing literature and advertising; and

e. Internal compliance communication system that provides to Bank personnel appropriate updates resulting from revisions to applicable Consumer Laws.

(5) Require an annual independent, comprehensive, and written audit. The Bank's Board shall document its efforts, including the review of corrective measures made pursuant to the audit's findings, in the Board minutes. The audit shall:

a. Provide for sufficient transactional testing, as appropriate, for all areas of significant compliance risk, including those areas identified in the Report; and

b. Identify the causes that resulted in the violations of law or exceptions noted in the Audit Report, if any, with sufficient detailed information to provide management with direction in formulating corrective action.

CORRECTION OF CONSUMER VIOLATIONS

27. Within 90 days after the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of consumer laws and regulations identified in the Report, and ensure that the Bank's CMS will facilitate compliance with all consumer laws and regulations in the future. The Bank's actions under this section shall include, at a minimum:

(a) Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement systems and controls to ensure compliance with the Electronic Fund Transfers Act (EFTA), 15 U.S.C. §§ 1693 *et seq.*, and Regulation E of the Federal Reserve Board, 12 C.F.R. Part 205, including error resolution procedures. In addition, the following shall be completed within 90 days:

(1) Deliver a copy of the Bank's error resolution policy to all bank customers; revise existing procedures, including ACH Procedures, to comply with the regulatory requirements; provide training to applicable Bank personnel; and implement review procedures to identify and correct any future issues; and

(2) Develop and maintain a Regulation E consumer error dispute log which records the date of notification, either oral or written, whichever is earlier, and records the dates of provisional and final credit given to customers regarding error disputes.

COMPLIANCE COMMITTEE

28. Within 30 days after the effective date of this ORDER, the Bank's Board, or a subcommittee of the Bank's Board, shall be charged with the responsibility of ensuring that the Bank complies with the provisions of this ORDER. If a subcommittee is established, the subcommittee shall report monthly to the entire Bank Board. A copy of any report and any discussion related to the report or the ORDER shall be included in the Bank's Board minutes. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

PROGRESS REPORTS

29. Within 30 days after the end of the first calendar quarter following the effective date of this ORDER, and within 30 days after the end of each successive calendar quarter, the Bank shall furnish written progress reports to the Regional Director and the Commissioner detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports may be discontinued when the corrections required by the ORDER have been accomplished and the Regional Director and the Commissioner have released the Bank in writing from making additional reports.

SHAREHOLDER NOTIFICATION

30. After the effective date of this ORDER, the Bank shall send a copy of this ORDER, or otherwise furnish a description of this ORDER, to its shareholders (1) in conjunction with the Bank's next shareholder communication, and also (2) in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC Accounting and Securities Disclosure Section, Washington, D.C. 20429, for review at least 20 days prior to dissemination

to shareholders. Any changes requested by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

The provisions of this ORDER shall not bar, stop, or otherwise prevent the FDIC, OFI, the State, or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the FDIC and the OFI.

By direction of the Board of Directors

Dated at Washington, D.C., this 15th day of November, 2016.

/s/
Valerie J. Best
Assistant Executive Secretary

(SEAL)

083817

ORDER OF ASSESSMENT OF A CIVIL MONEY PENALTY

On November 4, 2013, the Federal Deposit Insurance Corporation ("FDIC") issued a NOTICE OF CHARGES AND OF HEARING, NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY, FINDINGS OF FACT AND CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING ("Notice") against Respondent BANK OF LOUISIANA, NEW ORLEANS, LOUISIANA ("Bank"). Respondent filed a timely answer to the Notice.

On January 28, 2015, the administrative law judge ("ALJ") issued a NOTICE OF INTENDED RULING on FDIC's MOTION FOR SUMMARY DISPOSITION AND/OR PARTIAL SUMMARY DISPOSITION ("Intended Ruling") advising the parties that it was the ALJ's intention to grant partial summary disposition to the FDIC on certain issues.

A hearing on the remaining issues in this case commenced on March 10, 2015. All parties appeared and were given the opportunity to be heard and evidence was taken.

Having considered the evidence submitted in connection with the Motion for Summary Disposition, the Notice of Intended Ruling, the evidence presented at the hearing, the arguments of all parties, the record as a whole, and the Recommended Decision issued by the ALJ, and pursuant to 12 U.S.C. § 1818(i)(2)(A):

IT IS HEREBY ORDERED THAT, Respondent Bank be assessed a civil money penalty of Five Hundred Thousand Dollars ($500,000).

Remittance of the civil money penalty shall be payable to the Treasury of the United States and delivered to the Executive Secretary of the Federal Deposit Insurance Corporation, Washington, D.C.

This ORDER will become effective thirty (30) days from the date of its issuance.

The provisions of this ORDER will remain effective and in force except in the event that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the Federal Deposit Insurance Corporation.

IT IS SO ORDERED.

Dated at Washington, D.C., this 15th day of November, 2016.

/s/
Valerie J. Best
Assistant Executive Secretary

(SEAL)
083834

ORDER PLACING PORTIONS OF THE RECORD UNDER SEAL

On May 17, 2016, Administrative Law Judge C. Richard Miserendino issued a Recommended Decision in this matter. At the time that the Recommended Decision was issued certain exhibits had been placed under seal either permanently or temporarily. The Recommended Decision included the Administrative Law Judge's analysis and recommendations about the need to maintain or remove the seals currently in place and, in certain instances, to place additional materials under seal.

Having considered the Recommended Decision, and pursuant to 12 U.S.C. § 1818(u):

IT IS HEREBY ORDERED THAT the Executive Secretary, who is custodian of the record in this matter as set forth in 12 C.F.R. § 308.105, shall maintain the following hearing exhibits, which have been previously placed under seal, as sealed documents: FDIC Exhibits 199, and 332; Respondent's Exhibits 28, 106, and 209; and Joint Exhibits 9 and 18.

IT IS FURTHER ORDERED THAT the Executive Secretary shall maintain as sealed documents the following exhibits filed in connection with the FDIC's Motion for Summary Disposition, which were previously placed under temporary seal by an Order dated November 6, 2015: FDIC Exhibits RMS 1, 2, 5, 8, 10, 11, 15, and 17; FDIC Exhibits BSA 1, 6, 10, 14, 17, 18, and 21; FDIC Exhibits COMP 1-28, 30-32, and 34-48; and Respondent's Exhibits 9, 11, 16, and 41. It is further ordered that the remainder of the exhibits submitted in connection with the FDIC's Motion for Summary Disposition, which were also temporarily placed under seal by the Order dated November 6, 2015, shall be unsealed and made a part of the public record in this matter.

IT IS FURTHER ORDERED THAT the Executive Secretary shall place the following hearing exhibits, which have not previously been placed under seal, under seal and maintain

them as sealed documents: FDIC Exhibits 133, 205, 213, 216-222, 242-245, and 299; Respondent's Exhibits 13 (rejected), 61, and 63; and Joint Exhibits 8 and 16.

IT IS FURTHER ORDERED THAT the Executive Secretary shall place the following pleadings under seal: the FDIC's Motion for Summary Disposition, filed August 29, 2014; Respondent's Opposition to the FDIC's Motion for Summary Disposition, filed October 7, 2014; the FDIC's Reply Brief, filed October 17, 2014; Respondent's Surreply, filed November 3, 2014; Respondent's Surreply with Certificate of Service, filed November 4, 2014; the FDIC's Post-Hearing Filings, filed June 1, 2015; Respondent's Post-Hearing Filings, filed June 1, 2015; the FDIC's Reply Brief, filed June 24, 2015; and Respondent's Reply Brief, filed June 24, 2015.

IT IS SO ORDERED.

Dated at Washington, D.C., this 15th day of November, 2016.

/s/
Valerie J. Best
Assistant Executive Secretary

(SEAL)
083835