

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

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**In the Matter of:**

NBAD Americas, N.V.  
Washington, D.C.

A Federal branch of

NBAD Americas, N.V.  
Willemstad, Curaçao

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AA-EC-2017-10

**CONSENT ORDER**

**WHEREAS**, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over NBAD Americas, N.V. Federal Branch, Washington, D.C. (“Branch”);

**WHEREAS**, the Branch, by and through its General Manager, has executed a Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”), dated February 13, 2017, that is accepted by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”); and

**WHEREAS**, by this Stipulation, which is incorporated herein by reference, the Branch has consented to the issuance of this Consent Order (“Order”) by the OCC, through the Comptroller’s duly authorized representative.

**NOW, THEREFORE**, pursuant to the authority vested in the OCC by Section 8(b) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the OCC hereby orders that:

## ARTICLE I

### **COMPTROLLER'S FINDINGS**

The Comptroller finds, and the Branch neither admits nor denies, the following:

- (1) The Branch violated 12 C.F.R. § 21.21 by failing to establish and maintain a compliance program reasonably designed to assure and monitor compliance with the requirements of the Bank Secrecy Act as amended, 31 U.S.C. § 5311 *et seq.*, and the implementing regulations promulgated under 31 C.F.R. Chapter X (collectively, the “BSA”).
- (2) The Branch violated 12 C.F.R. § 21.11 by failing to timely file suspicious activity reports (“SARs”); and
- (3) The Branch violated 31 C.F.R. § 1010.610 by failing to conduct adequate due diligence on foreign correspondent accounts.

## ARTICLE II

### **COMPREHENSIVE BSA/AML ACTION PLAN**

- (1) Within sixty (60) days of this Order, the GM shall submit to the Director for International Banking Supervision (“Director”) a plan containing a complete description of the actions that are necessary and appropriate to achieve full compliance with Articles III through IX of this Order (“Action Plan”). In the event the Director asks the Branch to revise the Action Plan, the Branch shall promptly make the requested revisions and resubmit the Action Plan to the Director. The Branch shall implement the Action Plan upon the Director’s issuance of a written determination of no supervisory objection. Following implementation, the Branch shall not take any action that will cause a significant deviation from or material change to the Action Plan unless and until the Branch has received a prior written determination of no supervisory objection from the Director.

(2) The GM shall ensure that the Branch achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan.

(3) The Action Plan must specify timelines for completion of each of the requirements of Articles III through IX of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in Articles III through IX.

(4) Any independent consultant or auditor engaged by the Branch to assist in the assessment of the Action Plan or other compliance with this Order must have demonstrated and specialized experience with the BSA/anti-money laundering (“AML”) matters that are the subject of the engagement, and must not be subject to any conflict of interest affecting the consultant’s or auditor’s independence.

(5) Commencing with the first calendar quarter of 2017, within thirty (30) days after the end of each calendar quarter following the date of this Order, the GM shall submit to the Director a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The GM shall ensure that the progress report includes information sufficient to validate compliance with this Order. The Director may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

### **ARTICLE III**

#### **BSA OFFICER AND STAFF**

(1) The GM shall ensure that the Branch has a permanent, qualified, and experienced BSA Officer who shall be vested with sufficient authority, time, and resources to fulfill the

duties and responsibilities of the position and ensure compliance with the requirements of the BSA and the Office of Foreign Assets Control (“OFAC”).

(2) If the BSA Officer position is vacated, the GM shall identify and provide written notice to the Director of a new BSA Officer within ninety (90) days of the date of such vacancy. Such BSA Officer shall be deemed a senior executive officer and accordingly subject to the prior notice provisions of 12 C.F.R. § 5.51.

(3) Within ninety (90) days of this Order, the GM shall ensure that the Branch conducts a formal written assessment of the Branch’s oversight and infrastructure to ensure compliance with the requirements of the BSA and OFAC. This assessment shall include, at a minimum:

- (a) the adequacy of staffing of the BSA/AML and OFAC compliance functions, including:
  - (i) the level and scope of responsibilities of the BSA Officer;
  - (ii) the knowledge, skills, and capabilities of the BSA Officer to conduct assigned responsibilities and ensure the Branch’s compliance with the requirements of the BSA and OFAC;
  - (iii) the number of staff needed to support the BSA Officer and the Branch’s BSA/AML and OFAC compliance functions, and the level and scope of responsibilities of any support staff;
- (b) the BSA Officer’s reporting structure, authority, time, and resources; and
- (c) the Branch’s performance evaluation program that addresses periodic performance evaluations of staff involved with BSA/AML and OFAC compliance.

(4) Within sixty (60) days after completing the formal written assessment under paragraph (2) of this Article, the GM shall ensure that the Branch implements any changes that are needed regarding the Branch's BSA Officer and supporting staff, including the responsibilities, authority, structure, independence, competencies, or capabilities. In particular, the GM shall ensure that the BSA Officer and supporting staff have sufficient training, authority, and skill to perform their assigned responsibilities.

(5) The GM shall periodically (no less than annually) review the adequacy of the Branch's BSA Officer and supporting staff, and shall document its determination(s) in writing. The periodic reviews shall consider the factors described in paragraph (3).

#### **ARTICLE IV**

##### **BSA/AML RISK ASSESSMENT**

(1) Within ninety (90) days of this Order, the GM shall ensure that the Branch reviews, updates, and implements an enhanced written institution-wide, ongoing BSA/AML Risk Assessment process that timely and accurately identifies the BSA risks posed to the Branch after consideration of all pertinent information ("BSA/AML Risk Assessment"). The BSA/AML Risk Assessment process shall reflect a comprehensive analysis of the Branch's vulnerabilities to money laundering and financial crimes activity and provide strategies to control risk and limit any identified vulnerabilities. The BSA/AML Risk Assessment methodology shall follow the risk assessment expectations set forth in the *2014 FFIEC Bank Secrecy Act/Anti-Money Laundering Examination Manual* (rev. Feb. 27, 2015) ("FFIEC BSA/AML Examination Manual") and shall include:

- (a) the identification of all activities and other elements that pose BSA/AML risk to the Branch, including, but not limited to, the Branch's: (i) products

and services; (ii) customers and entities; (iii) transactions; (iv) geographic locations; and (v) methods that the Branch uses to interact with its customers (collectively, the “specific risk categories”);

(b) a detailed analysis of all pertinent data obtained regarding the specific risk categories, including but not necessarily limited to:

- (i) volumes and types of transactions and services by geographic location; and
- (ii) numbers of customers that typically pose higher BSA/AML risk, both by type of risk and by geographic location, so as to permit the Branch to revise or develop, as necessary, and implement appropriate policies, processes, and procedures to monitor and mitigate the Branch’s BSA/AML risks within those risk categories.

The analysis to be conducted shall include an evaluation of all relevant information obtained through the Branch’s Customer Identification Program (“CIP”), customer due diligence (“CDD”), and enhanced due diligence (“EDD”);

(c) an assessment of BSA/AML risk both individually within the Branch’s business lines and on a consolidated basis across all Branch activities and product lines, so as to permit the Branch to identify accurately BSA/AML risk and risk categories within and across specific lines of business and product categories;

(d) an update of the Risk Assessment at least every twelve (12) months so as to identify and respond to changes in the Branch’s risk profile (such as

when new products or services are introduced, existing products or services change, there is a material change to high-risk customer accounts or profiles, or the Branch expands through mergers or acquisitions);

- (e) maintenance of appropriate documentation, including CDD and EDD information, so as to be able to support the Risk Assessment's conclusions; and
- (f) independent testing to validate the accuracy and reasonableness of the most recent BSA/AML Risk Assessment. The written results of the independent testing shall be completed within one-hundred and fifty (150) days of this Order.

(2) Within ninety (90) days of this Order, and at least annually thereafter, the GM shall ensure Branch management reviews, updates, and implements an enhanced written institution-wide, ongoing OFAC Risk Assessment process that is separate from the BSA/AML Risk Assessment process. The OFAC Risk Assessment process and methodology shall include the criteria in Paragraph (1) of this Article, as applicable.

(3) Within one-hundred and twenty (120) days of this Order, the GM shall review and approve the BSA/AML Risk Assessment and OFAC Risk Assessment processes and actual assessments. The GM shall review and approve each Risk Assessment at least annually thereafter, and upon receipt of any updates or changes to each Risk Assessment.

## **ARTICLE V**

### **LOOK-BACK REPORT**

(1) Within thirty (30) days of this Order, the Branch shall submit to the Director for a written determination of no supervisory objection, an acceptable written plan, in accordance with

OCC Bulletin 2013-33, for a qualified, independent, third-party consultant to conduct a review of account and transaction activity (“Look Back”) covering areas and dates specified in writing by the Director.

(2) The Look Back plan shall include, at a minimum, the name of the consultant selected by the Branch to conduct the Look Back, a description of the consultant’s specialized expertise in BSA/AML matters, the scope of the Look Back, a timeline for completion, and all other information required by OCC Bulletin 2013-33.

(3) The purpose of the Look Back is to determine whether suspicious activity was timely identified by the Branch, and, if appropriate to do so, was then timely reported by the Branch in accordance with 12 C.F.R. § 21.11.

(4) Within thirty (30) days of the completion of the Look Back, the written findings (“Look Back Report”) shall be reported to the GM, with a copy to the Director. The Look Back Report shall include, at a minimum, the Look Back scope, methodology, a list of customers with SARs that should be filed or amended, a list of accounts that represent excessive risk for BSA/AML compliance, and a conclusion about the effectiveness of the Branch’s suspicious activity monitoring.

(5) Within thirty (30) days of receiving the Look Back Report, the Branch shall file SARs, in accordance with 12 C.F.R. § 21.11, for any previously unreported suspicious activity identified during the Look Back.

(6) Based upon the results of the Look Back, the OCC, at its sole discretion, may expand the scope of the independent review or require a longer Look Back period. If an additional Look Back is deemed appropriate by the OCC, the Branch shall complete the Look Back in accordance with this Article.



## ARTICLE VI

### **SUSPICIOUS ACTIVITY MONITORING AND REPORTING**

(1) Within one-hundred and twenty (120) days of this Order, the GM shall ensure that the Branch develops, implements, and thereafter adheres to a written program to ensure, pursuant to 12 C.F.R. § 21.11, the timely and appropriate review and disposition of BSA/AML suspicious activity alerts and the timely filing of SARs.

(2) Within ninety (90) days of this Order, the Branch shall evaluate its suspicious activity identification processes to ensure they are effective and provide comprehensive coverage to the Branch. This evaluation shall include an assessment of the capabilities of any surveillance and transaction monitoring systems used, the scope of coverage provided by the systems, and the management of those systems. Upon completion of the Branch's evaluation, the Branch shall take appropriate corrective action to remedy any identified weaknesses or deficiencies. The evaluation shall address, but not be limited to, the following issue:

- (a) An assessment of the functionality of automated transaction monitoring systems used to determine if the systems are sufficiently robust to provide for the timely identification of potentially suspicious activity. A comprehensive listing of weaknesses or deficiencies in the system, the risks presented by these deficiencies, and proposed corrective actions.

(3) The Branch's implementation of each surveillance and transaction monitoring system shall ensure the following:

- (a) The integrity of data feeding the transaction monitoring systems;
- (b) The system has been sufficiently tailored to the Branch's risk profile and operations;

- (c) The system's functionality is being fully utilized to appropriately address risk;
  - (d) The business logic units, parameters, rules, or other factors selected for automated monitoring are appropriate and effective in identifying client activity that is unreasonable or abnormal given the nature of the client's occupation or business and expected activity. In addition, there shall be:
    - (i) Sufficient management information and metrics to manage and adjust the system, as necessary; and
    - (ii) Statistically valid processes to validate and optimize monitoring system settings and thresholds, and to measure the effectiveness of the automated system and individual scenarios, where appropriate.
- (4) The Branch's implementation of the alert investigation process shall ensure the following:
- (a) The adequacy of staffing to investigate and clear alerts;
  - (b) The quality and completeness of information available to analysts working transaction monitoring alerts and conducting investigations;
  - (c) The standards for disposition of different types of alerts are reasonable, communicated in writing to relevant staff, and are adhered to by the alert investigators;
  - (d) Adequate documentation is maintained to support the disposition of alerts;
  - (e) The availability and adequacy of information to investigate potentially suspicious activity, including, if applicable, information from multiple lines of business a customer transacts with or information from Branch's

Head Office, holding company, or affiliates; and

- (f) Disposition of each alert within a reasonable time period after the generation of the alert and filing of SARs and follow-up SARs within the time frames specified in the applicable rules, regulations, and regulatory guidance;
- (g) Standards that ensure accounts with high volumes of alerts are identified, elevated, and properly categorized as high risk, and subject to enhanced due diligence and monitoring;
- (h) Sufficient quality control processes designed to ensure the surveillance and transaction monitoring system, alert management process, and SAR decisioning and filing are working effectively and according to internal standards; and
- (i) The adequacy of training for staff involved in the investigation and clearing of alerts, filing of SARs, quality control and assurance processes, and management of the surveillance and transaction monitoring system.

## **ARTICLE VII**

### **BSA/AML TRAINING**

(1) Within sixty (60) days of this Order, the GM shall ensure that the Branch develops, implements, and thereafter adheres to a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of OFAC and the BSA. This comprehensive training program shall:

- (a) provide for comprehensive ongoing training for the BSA Officer to ensure he or she obtains and maintains the necessary knowledge, skills, and abilities to administer and oversee an effective BSA/AML program;
- (b) provide for more extensive BSA/AML and OFAC training for all operational and supervisory personnel assigned to the Branch's BSA/AML compliance department;
- (c) provide for more targeted training for other personnel focusing on the individual employee's specific duties and responsibilities;
- (d) include strategies for mandatory attendance, the frequency of training, procedures and timing for updating training programs and materials, and the method for delivering training.

## **ARTICLE VIII**

### **BSA/AML INTERNAL AUDIT**

(1) Within ninety (90) days of this Order, the GM shall adopt, implement, and thereafter ensure Branch adherence to an effective, independent BSA/AML and OFAC audit program so that its scope, testing, documentation, and follow-up testing are sufficient to:

- (a) detect irregularities in the Branch's operations;
- (b) perform a sufficient audit quality assurance review to ensure adequate internal controls, including that alert dispositions are accurate and properly supported;
- (c) determine the Branch's level of compliance with BSA/AML and OFAC laws, rules, regulations, and regulatory guidance;
- (d) determine the root cause for BSA/AML and OFAC deficiencies;

- (e) evaluate the Branch's adherence to established policies and procedures;
- (f) perform an appropriate level of testing to support the audit findings; and
- (g) ensure adequate BSA/AML and OFAC audit coverage and audit frequency in all areas.

(2) The GM shall ensure that the person(s) or external firm responsible for implementing the BSA/AML and OFAC audit program described in paragraph (1) of this Article reports directly to the GM, or a designated committee, which shall have the sole power to direct the audit activities. All reports prepared by the internal audit staff with respect to any external BSA/AML and OFAC audit shall be filed directly with the GM, or a designated committee, and not through any intervening party.

(3) The GM, or designated committee, shall ensure appropriate oversight of the BSA compliance audit function, with particular emphasis on an adequately staffed BSA/AML audit department or outside firm with respect to the necessary expertise and knowledge regarding BSA/AML and OFAC, experience, and number of individuals employed.

(4) All audit reports prepared by internal audit staff or an independent third party shall be in writing and supported by adequate work papers, which must be provided to the Branch.

(5) The GM, or a designated committee, shall ensure the Branch takes prompt actions to remedy deficiencies cited in audit reports, and that the auditors maintain a written record describing those actions and tracking the timeliness and effectiveness of such actions.

(6) The audit staff shall have access to any records necessary for the proper conduct of its activities. The OCC shall have access to all reports and work papers of the audit staff and any other parties working on its behalf.

## ARTICLE IX

### **CUSTOMER DUE DILIGENCE**

(1) Within sixty (60) days of this Order, the GM shall ensure that the Branch develops, implements, and thereafter adheres to appropriate policies and procedures for gathering CDD and EDD information when opening new accounts or when reviewing or modifying existing accounts for customers, regardless of whether they are affiliates of the Branch. These policies and procedures must include, at a minimum:

- (a) a methodology for assigning risk levels to the Branch's customer base that assesses appropriate factors such as type of customer; geographic activity; the expected account activity by type of service used, including the volume and frequency by dollar amount and number, and the specification of the CDD and EDD information the Branch must obtain, commensurate with these risk levels;
- (b) the quantification of risk shall encompass a customer's entire relationship with the Branch, to include the purpose of the account, actual or anticipated activity in the account (e.g., type, volume, and value (number and dollar) of transaction activity engaged in), nature of the customer's business or occupation, customer location (e.g., customer's geographic location, where they transact business, and where they have significant operations), types of products and services used by the customer, material changes in the customer's relationship with the Branch, as well as other factors outlined within the *FFIEC BSA/AML Examination Manual*;

- (c) procedures that comply with 31 C.F.R. § 1020.220 for the opening of new accounts and that ensure that the required customer identification information is recorded in the automated system of record;
- (d) procedures that comply with 31 C.F.R. § 1010.610 for foreign correspondent accounts and that ensure that the required due diligence information is recorded in the automated system of record;
- (e) procedures for updating information on existing Branch customers acquired from other financial institutions; and
- (f) procedures for updating the automated system of record to include current information.

(2) The BSA Officer or his/her designee shall establish a program to periodically review account documentation for high-risk customers and their related accounts to determine whether the account activity is consistent with the customer's business and the stated purpose of the account.

(3) The Branch shall develop and maintain an adequate management information system program that compiles CDD and EDD information. The program shall be commensurate with the Branch's BSA/AML risk as identified by the Branch's risk assessment required by Article IV, and shall provide appropriate business, BSA/AML compliance, and investigations staff throughout the Branch with the appropriate access to sufficient CDD and EDD information enabling sound analysis and monitoring of customers.

## **ARTICLE X**

### **CLOSING**

(1) Although the GM by this Order is required to submit certain proposed actions, programs, plans, and reports for the review or prior written determination of no supervisory objection of the Director, the GM has the ultimate responsibility for proper and sound management of the Branch as well as compliance with all of the provisions contained in the Order.

(2) In each instance in this Order in which the GM is required to take action, ensure adherence to, and undertake to perform certain obligations of the Branch, including the obligation to implement plans, policies, or other actions, it is intended to mean that the GM shall:

- (a) ensure the Branch has sufficient processes, management, personnel, and control systems to effectively implement and adhere to all provisions of this Order and that Branch management and personnel have sufficient training and authority to execute their duties and responsibilities under this Order;
- (b) authorize, direct, and adopt such actions on behalf of the Branch as may be necessary for the Branch to perform its obligations and undertakings under the terms of this Order;
- (c) require appropriate, adequate, and timely reporting by Branch management of such actions directed by the GM to be taken under the terms of this Order;
- (d) follow-up on any non-compliance with such actions in a timely and appropriate manner; and



(e) require corrective action be taken in a timely manner of any non-compliance with such actions.

(3) Each citation, guidance, or issuance referenced in this Order includes any subsequent citations, guidance, or issuance that replaces, supersedes, amends, or revises the cited citation, regulation, or guidance.

(4) The provisions of this Order are effective upon issuance by the OCC, through the Comptroller's duly authorized representative, whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order are amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller's duly authorized representative.

(5) Except as otherwise expressly provided herein, any time limitations imposed by this Order shall begin to run from the effective date of this Order.

(6) If the Branch requires an extension of any timeframe within this Order, the GM shall submit a written request to the Director asking for relief. Any written request submitted pursuant to this Article shall include a statement setting forth in detail the special facts and circumstances that prevent the Branch from complying with a provision within a timeframe specified in this Order and that require an extension of that timeframe. All such written requests shall be accompanied by relevant supporting documentation, and any other facts upon which the Branch relies. The OCC's decision concerning a request for an extension of any timeframe within this Order, which will be communicated to the GM in writing by the Director, is final and not subject to further review.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(8) It is expressly and clearly understood that if, at any time, the OCC deems it appropriate in fulfilling the responsibilities placed upon it by the several laws of the United States of America to undertake any action affecting the Branch, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the OCC from so doing.

(9) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

(10) All correspondence related to this Order, and any information or documentation required hereunder to be submitted to the Director, shall be sent by overnight mail or hand delivery to:

Marci A. Heppner  
Director for International Banking Supervision  
340 Madison Avenue, 9th Floor  
New York, New York 10173

IT IS SO ORDERED, this 13<sup>th</sup> day of February, 2017.

/s/\_\_\_\_\_  
Vance S. Price  
Deputy Comptroller  
Large Bank Supervision

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

<b>In the Matter of:</b>	)	
NBAD Americas, N.V. Federal Branch	)	
Washington, DC	)	
	)	AA-EC-2017-10
A Federal branch of	)	
	)	
National Bank of Abu Dhabi PJSC	)	
Abu Dhabi, United Arab Emirates	)	

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

**WHEREAS**, the Office of the Comptroller of the Currency (“OCC”), based upon information derived from the exercise of its regulatory and supervisory responsibilities, intends to initiate a cease and desist order to NBAD Americas, N.V., Federal Branch, Washington, D.C. (“Branch”), pursuant to 12 U.S.C. § 1818(b), for the Branch’s violations of 12 C.F.R. §§ 21.21 and 21.11 and 31 C.F.R. § 1010.610; and

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Branch, through its General Manager, has agreed to execute this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”), that is accepted by the OCC, through the duly authorized representative of the Comptroller of the Currency (“Comptroller”);

**NOW THEREFORE**, in consideration of the above premises, it is stipulated by the Branch that:

**ARTICLE I**  
**JURISDICTION**

(1) The Branch is an uninsured Federal branch licensed and examined by the OCC pursuant to the International Banking Act of 1978, as amended, 12 U.S.C. § 3101 *et seq.*

(2) The Branch is an “insured depository institution” for purposes of 12 U.S.C. § 1818. *See* 12 U.S.C. § 1813(c)(3).

(3) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this cease and desist action against the Branch pursuant to 12 U.S.C. § 1818(b).

**ARTICLE II**  
**CONSENT**

(1) The Branch, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order (“Order”) by the OCC.

(2) The terms and provisions of the Order apply to the Branch and any subsidiaries, even though any such subsidiaries are not named as parties to the Order.

(3) The Branch consents and agrees that the Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that the Order shall become effective upon issuance by the OCC, through the Comptroller’s duly authorized representative, and shall be fully enforceable by the OCC pursuant to 12 U.S.C. § 1818(i).

(4) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Branch under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of

contract law. The Branch expressly acknowledges that neither the Branch nor the OCC has any intention to enter into a contract.

(5) The Branch declares that no separate promise or inducement of any kind has been made by the OCC, or by its officers, employees, or agents, to cause or induce the Branch to consent to the issuance of the Order and/or execute this Stipulation.

(6) The Branch expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities.

(7) The Order constitutes a settlement of the cease and desist proceeding against the Branch contemplated by the OCC, based on the practices and violations of law described in the Comptroller's Findings set forth in Article I of the Order. The OCC releases and discharges the Branch from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the practices and violations described in Article I of the Order, to the extent known to the OCC as of the effective date of the Consent Order. Nothing in this Stipulation or the Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions other than a cease and desist order against the Branch based on the findings set forth in Article I of the Order;
- (b) instituting enforcement actions against the Branch based on any other findings;

- (c) instituting enforcement actions against the Branch's institution-affiliated parties based on the findings set forth in Article I of the Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of the Order in future enforcement actions against the Branch or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in this Stipulation or the Order shall affect any right of the OCC to determine and ensure compliance with the terms and provisions of this Stipulation or the Order.

### **ARTICLE III**

#### **WAIVERS**

- (1) The Branch, by executing this Stipulation and consenting to the Order, waives:
  - (a) Any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) Any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (h), and 12 C.F.R. Part 19;
  - (d) Any and all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) Any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents related in any way to this enforcement matter or the Order, whether arising under common law or under the terms

of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;

- (f) Any and all rights to assert this proceeding, this Stipulation, consent to the issuance of the Order, and/or the issuance of the Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) Any and all rights to challenge or contest the validity of the Order.

## **ARTICLE V**

### **CLOSING**

(1) The provisions of this Stipulation and the Order shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any other action affecting the Branch or its institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) if, at any time, the Comptroller or his duly authorized representative deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(2) Nothing in this Stipulation or the Order shall preclude any proceedings brought by the OCC to enforce the terms of the Order, and nothing in this Stipulation or the Order constitutes, nor shall the Branch contend that it constitutes, a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of the Order are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his duly authorized representative, has hereunto set his hand on behalf of the Comptroller.

/s/ \_\_\_\_\_  
Vance S. Price  
Deputy Comptroller  
Large Bank Supervision

February 13, 2017  
\_\_\_\_\_  
Date

IN TESTIMONY WHEREOF, the undersigned, the General Manager of the Branch, has hereunto set his hand on behalf of the Branch.

/s/ \_\_\_\_\_  
Husam Arabiat  
General Manager  
NBAD Americas, N.V.

February 7, 2017  
\_\_\_\_\_  
Date