

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

<b>In the Matter of:</b> Tom Whitehead Former Chief Financial Officer and Director One Bank and Trust, N.A. Little Rock, Arkansas	) ) ) ) )	AA-EC-2017-61
-----------------------------------------------------------------------------------------------------------------------------------------------	-----------------------	---------------

**CONSENT ORDER**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition and cease and desist proceedings against Tom Whitehead (“Respondent”) pursuant to 12 U.S.C. §§ 1818(e) and (b) on the basis of Respondent’s activities while serving as Chief Financial Officer and Director of the Board of One Bank and Trust, N.A., Little Rock, Arkansas (“Bank”);

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to consent to the issuance of this Consent Order (“Order”) issued pursuant to 12 U.S.C. §§ 1818(e) and (b);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency (“Comptroller”), and Respondent that:

**ARTICLE I**

**JURISDICTION**

- (1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a director, officer, and employee of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) 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 prohibition and cease and desist action against Respondent pursuant to 12 U.S.C. §§ 1818(e) and (b).

## ARTICLE II

### COMPTROLLER’S FINDINGS

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

(1) From at least July 2003 until December 2012, Respondent served as the Chief Financial Officer of the Bank. From at least August 2011 to November 2012, Respondent also served as a member of the Bank’s board of directors (“Board”).

(2) Respondent caused the Bank to pay expenses related to the purchase of a condominium for the personal benefit of the Bank’s chairman and chief executive officer (“CEO”). Respondent also participated in the CEO’s misappropriation of \$765,130 in sale proceeds of the Bank-owned condominium and the subsequent concealment of the transactions on the Bank’s records.

(3) Respondent caused the Bank to make residential mortgage loans to the CEO’s children based on false income and employment information. Respondent falsified mortgage documents in order to qualify the CEO’s children for mortgage loans.

(4) Between 2008 and 2011, Respondent misapplied over \$2.4 million in Bank funds for the benefit of the CEO and his children, and concealed the personal nature of the expenses on the Bank's books and records.

(5) Respondent failed to disclose to the Board the nature and the amount of the CEO's personal expenses that were being paid by the Bank.

(6) In June 2011, Respondent aided and abetted the CEO in misappropriating approximately \$9.5 million withdrawn from the cash surrender value of the Bank-owned life insurance ("BOLI") policies. Respondent failed to ensure that the Bank properly accounted for the transaction on its books. As a result, the Bank was required to write-down the cash surrender value of its BOLI by approximately \$10.6 million as of September 30, 2012.

(7) Between 2008 and 2012, Respondent caused the Bank to create inaccurate books and records. Respondent signed the Bank's Consolidated Reports of Condition and Income ("Call Reports"), which improperly capitalized the use of Bank funds to pay the CEO's personal expenses as Bank expenses.

(8) From October 2001 to December 2012, Respondent caused or participated in causing the Bank to make lease payments to his personal business for use of a condominium, totaling \$327,575 ("payments"). At the time of the payments, the Bank's financial condition was deteriorating. Respondent failed to ensure that those payments were disclosed to and approved by the Bank's Board.

(9) During the OCC's 2012 full scope examination of the Bank, Respondent obstructed the examination by making false statements and providing falsified documentation to OCC examiners.

(10) By reason of the foregoing conduct, Respondent engaged in violations of 12 U.S.C. § 161, engaged in unsafe or unsound practices, and breached his fiduciary duty to the Bank. Respondent's misconduct resulted in financial gain to Respondent and loss or risk of loss to the Bank, demonstrated personal dishonesty, willful or continuing disregard for the safety and soundness of the Bank, and involved a reckless disregard for the law, and unjust enrichment.

### **ARTICLE III**

#### **ORDER OF PROHIBITION**

Respondent consents to, and it is ORDERED that:

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the "appropriate Federal banking agency," as defined in 12 U.S.C. § 1813(q); or
- (d) vote for a director, or serve or act as an "institution-affiliated party," as defined in 12 U.S.C. § 1813(u).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. § 1818(b)(3), (b)(4) or (b)(5);

- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Agency and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the OCC and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. § 1818(e)(7)(D).

(4) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

#### **ARTICLE IV**

#### **ORDER TO CEASE AND DESIST REQUIRING PAYMENT OF RESTITUTION**

Respondent consents to, and it is ORDERED that:

- (1) Respondent shall pay restitution in the amount of one hundred thousand dollars (\$100,000), which shall be paid in full according to the following payment schedule:
  - (a) Fifty thousand dollars (\$50,000) shall be paid upon Respondent's execution of this Order; and
  - (b) Fifty thousand dollars (\$50,000) shall be paid on or before June 30, 2018.
- (2) The restitution required in paragraph (1) of this Article shall be paid to the Bank.
  - (a) Respondent shall make each payment by cashier's check or certified check made payable to One Bank & Trust, N.A., and shall deliver the payment to

the Board of Directors, One Bank & Trust, N.A., 300 West Capitol Avenue, Little Rock, AR 72203.

(b) Within seven (7) days of each payment under this Article, Respondent shall deliver a copy of the submitted payment to the Director, Enforcement and Compliance Division, 400 7th Street SW, Mail Stop 9E-11, Washington, DC 20219. The docket number of this case (AA-EC-2017-61) shall be entered on the submitted payment.

(3) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division of the address of his current place of residence, by completing the form attached hereto as Appendix A.

(4) Until the restitution is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Director of the Enforcement & Compliance Division of his new address within seven (7) days of such change in address, by sending overnight mail written notice to the Director of the Enforcement & Compliance Division, 400 7th Street SW, Mail Stop 9E-11, Washington, DC 20219.

(5) If Respondent fails to comply with any provision of this Order, then the entire balance of the restitution amount described in this Article shall become immediately due and payable.

(6) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and become final pursuant to 12 U.S.C. § 1818.

## **ARTICLE V**

### **BANKRUPTCY**

(1) If Respondent files for bankruptcy protection prior to making the payments in full as required by Article IV of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division within ten (10) days of the filing, by sending by overnight mail a copy of the filing to Director of the Enforcement & Compliance Division, 400 7th Street SW, Mail Stop 9E-11, Washington, DC 20219.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay restitution pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the OCC or any officer, employee, or agent of the OCC or any agent, officer, or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the restitution obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

## **ARTICLE VI**

### **CLOSING**

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Charges to Prohibit Further Participation and Notice of Charges for Issuance of an Order to Cease and Desist under 12 U.S.C. §§ 1818(e) and (b);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(e) and (b) and 12 C.F.R. Part 19;
  - (c) all rights to seek judicial review of this Order;
  - (d) all rights in any way to contest the validity of this Order; and
  - (e) any and all claims for fees, costs, or expenses against the United States, the OCC, or any officer, employee, or agent of the OCC, related in any

way to this enforcement matter or this 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.

(2) Respondent shall not cause, participate in, or authorize the Bank (or any subsidiary or affiliate of the Bank) to incur, directly or indirectly, any expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

(3) Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the OCC or any officer, employee, or agent of the OCC to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from

taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent 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 those entities, to a contract affecting the OCC's exercise of its supervisory responsibilities.

(8) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(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) 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 shall have been amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller's duly authorized representative.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

S/ Tom Whitehead

11/17/17

\_\_\_\_\_  
Tom Whitehead

\_\_\_\_\_  
Date

**IT IS SO ORDERED.**

S/ Michael R. Brickman

11/21/17

\_\_\_\_\_  
Michael R. Brickman  
Deputy Comptroller for Special Supervision

\_\_\_\_\_  
Date