

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

In the Matter of: ) AA-EC-10-127  
Pacific National Bank )  
Miami, Florida )

**CONSENT ORDER FOR A CIVIL MONEY PENALTY**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has supervisory authority over Pacific National Bank, Miami, Florida (“Bank”);

**WHEREAS**, the Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order for a Civil Money Penalty,” (“Stipulation and Consent”) dated March 23, 2011, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order for a Civil Money Penalty (“Order”) by the Comptroller.

Article I

COMPTROLLER’S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, without any adjudication on the merits, the following:

- (1) The OCC previously determined that the Bank failed to establish and maintain procedures reasonably designed to assure and monitor their compliance with the Bank Secrecy Act (“BSA”), 31 U.S.C. §§ 5311 *et seq.*, and cited the Bank for violations of 12 C.F.R. §§ 21.11 (Suspicious Activity Report violations) and 21.21 (BSA compliance program violation), which

resulted in the issuance of a Consent Order to the Bank on December 16, 2005 (“2005 BSA Order”).

(2) During a full scope examination that commenced on March 25, 2009 (“2009 Examination”) which included an assessment of the Bank’s compliance with the 2005 BSA Order, the OCC determined that the Bank continued to fail to establish and maintain procedures reasonably designed to assure and monitor their compliance with the BSA and that it was in violation of the BSA, including 31 U.S.C. § 5318(i); 12 U.S.C. § 1818(s); and OCC and BSA regulations, 12 C.F.R. §§ 21.11 & 21.21, and 31 C.F.R. § 1010.610 (31 C.F.R. § 103.176 prior to March 1, 2011) (correspondent banking violation), and that the Bank had failed to comply with the 2005 BSA Order. In particular, the Bank failed to:

- (a) develop and implement an effective risk assessment program;
- (b) ensure that sufficient and qualified Bank resources were available to effectively manage the BSA/anti-money laundering risk, comply with applicable laws and regulations, correct violations, and remediate other deficiencies addressed in the 2005 BSA Order in a timely manner;
- (c) implement adequate policies, practices, procedures and internal controls for conducting customer due diligence and enhanced due diligence;
- (d) implement effective policies, procedures, and internal controls to ensure effective monitoring, customer due diligence, and enhanced due diligence pertaining to the Bank’s foreign correspondent bank accounts;
- (e) implement appropriate procedures for identifying, monitoring and reporting suspicious activity;
- (f) identify and report suspicious activity involving foreign correspondent

bank accounts;

- (g) file suspicious activity reports and report ongoing suspicious activity in a timely manner; and
- (h) ensure that adequate and timely independent audits were conducted and that full audit reports issued.

(3) During a full scope examination that commenced on March 23, 2010, the OCC determined that the Bank continued to fail to establish and maintain procedures reasonably designed to assure and monitor its compliance with the BSA, and continued to be in violation of the BSA, 31 U.S.C. §§ 5311 *et seq.*, including 31 U.S.C. § 5318(i); 12 U.S.C. § 1818(s); and OCC and BSA regulations, 12 C.F.R. §§ 21.11 & 21.21, and 31 C.F.R. § 1010.610 (31 C.F.R. § 103.176 prior to March 1, 2011). The Bank also was not in compliance with the 2005 BSA Order by continuing to have the same failures specified in Paragraph (2)(a) through (h) of this Article, and additionally by failing to identify and monitor suspicious activity in the Bank's bill payment systems.

(4) The above violations, non-compliance, and unsafe or unsound practices were the result of a number of factors, including, among others (i) failure to ensure compliance with the law and the requirements of the 2005 BSA Order; (ii) failure to recognize the risk inherent in foreign correspondent bank accounts and to adequately monitor transactions in light of that risk; (iii) inadequate staffing of the BSA department; (iv) failure to have adequate policies and procedures governing the foreign correspondent bank accounts; and (v) inadequate collection and analysis of customer due diligence and enhanced due diligence information.

## Article II

### ORDER FOR A CIVIL MONEY PENALTY

Pursuant to the authority vested in the Comptroller by Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby Orders that:

(1) The Bank make payment of a civil money penalty in the amount of seven million dollars (\$7,000,000), which shall be paid upon execution of this Order.

(a) If a check is the selected method of payment, the check shall be made payable to the Treasurer of the United States and shall be delivered to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000, with a copy of the check sent to Director, Enforcement & Compliance Division, 250 E Street, SW, Washington, DC 20219.

(b) If a wire transfer is the selected method of payment, it must be sent to the Comptroller's account #XXXXXXX, ABA Routing #XXXXXX. A copy of the wiring instructions shall be provided to the Director, Enforcement & Compliance Division at the address listed in subparagraph (a) above.

(2) The Bank shall enter into a related consent agreement with the U.S. Department of Treasury's Financial Crimes Enforcement Network for the payment of a civil money penalty in the amount of seven million dollars (\$7,000,000). Such penalty assessment shall be concurrent with the seven million dollar (\$7,000,000) civil money penalty assessed by the OCC, and both shall be satisfied by one payment of seven million dollars (\$7,000,000) to the Department of Treasury and delivery of the payment instrument to the Director of the OCC's Enforcement & Compliance Division, at the address set forth in paragraph (1) of this Article.

(3) 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(h) and (i) (as amended).

### Article III

#### CLOSING

(1) This Order is not intended to, and shall not, supplant or amend any provisions of the December 15, 2010 Consent Order entered into between the Bank and the Comptroller.

(2) It is expressly and clearly understood that if, at any time, the Comptroller 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 Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

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

(4) 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.

IT IS SO ORDERED, this 23rd day of March, 2011.

/s/

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Henry Fleming  
Director  
Special Supervision Division

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

<b>In the Matter of:</b>	)	
Pacific National Bank	)	AA-EC-10-127
Miami, Florida	)	

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER FOR A CIVIL MONEY PENALTY**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to assess a civil money penalty against Pacific National Bank, Miami, Florida (“Bank”) pursuant to 12 U.S.C. § 1818(i) for its violations of law and violation of the 2005 BSA Order; and

**WHEREAS**, the Bank, consented to the issuance of a consent order to cease and desist, dated December 15, 2010, OCC Enforcement Action No. 2010-106, in order to address deficiencies in the Bank’s Bank Secrecy Act program; and

**WHEREAS**, the Bank, in the interest of compliance and cooperation, consents to the Consent Order for a Civil Money Penalty against it, dated March 23, 2011 (“Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

Article I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(i).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(i).

## Article II

### AGREEMENT

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

(5) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to agree to consent to the issuance of the Order and/or to execute the Order.

(6) The Bank also expressly acknowledges that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall the Bank 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.

### Article III

#### WAIVERS

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
- (a) the issuance of an Assessment of a Civil Money Penalty pursuant to 12 U.S.C. § 1818(i)(2);
  - (b) any and all procedural rights available in connection with the issuance of the Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§1818(h) and 1818(i)(2) (as amended), and 12 C.F.R. Part 19;
  - (d) all rights to seek any type of administrative or judicial review of the Order; and
  - (e) any and all rights to challenge or contest the validity of the Order.



Article IV

OTHER ACTION

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he or she deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

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

/s/  
Henry Fleming  
Director  
Special Supervision Division

3/23/11  
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

<u>/s/</u> Jose L. Baloyra	<u>3/22/11</u> Date
<u>/s/</u> Andrès Baquerizo	<u>3/22/11</u> Date
<u>/s/</u> Clemencia de Tobon	<u>3/22/11</u> Date
<u>/s/</u> Eduardo A. Gross	<u>3/22/11</u> Date
<u>/s/</u> Carlos Fernandez-Guzman	<u>3/22/11</u> Date
<u>/s/</u> Peter Phillips	<u>3/22/11</u> Date
<u>/s/</u> Joaquin R. Urquiola	<u>3/22/11</u> Date
<u>/s/</u> _____	<u>3/22/11</u> _____
_____	_____