

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

<b>In the Matter of:</b> Robert Gunville, Jr. Chairman of the Board The First National Bank of Niagara Niagara, Wisconsin	) ) ) ) )	AA-EC-12-70
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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate cease and desist, prohibition, and civil money penalty proceedings against Robert Gunville, Jr. (“Respondent”) pursuant to 12 U.S.C. § 1818(b), (e), and (i) on the basis of Respondent’s activities while serving as chairman of the board of The First National Bank of Niagara, Niagara, Wisconsin (“Bank”), during the period of at least March 2009 through August 2011, for unsafe or unsound practices, violations of law, and breaches of his fiduciary duty;

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 enter into this Consent Order (“Order”) issued pursuant to 12 U.S.C. §§ 1818(b), (e), and (i);

NOW, THEREFORE, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent that:

Initials: RRG  
Date: 3/25/13

**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.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is the chairman of the board of directors 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 hereof (*see* 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties of the Bank. Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist, prohibition and civil money penalty actions against him pursuant to 12 U.S.C. §§ 1818(b), (e), and (i).

**ARTICLE II**  
**COMPTROLLER’S FINDINGS**

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

(1) At all relevant times, Respondent was the chairman of the Bank’s board of directors.

(2) From approximately March 2009 through March 2010, Respondent or his related interests, which are Bank affiliates due to Respondent’s common ownership,

consistently overdrew their accounts at the Bank resulting in the Bank extending credit on preferential terms, in excess of the individual lending limits and without prior board approval, and without posting the appropriate collateral. These overdrafts resulted in violations of 12 C.F.R. §§ 215.4 and 223.13. Respondent again overdrew the account of a related interest in August 2011, resulting in additional violations.

(3) In August 2011, Respondent caused the Bank to renew three of his personal loans without paying accrued interest in the approximate amount of \$22,400. These extensions of credit were preferential to Respondent and violated 12 C.F.R. § 215.4.

(4) On several occasions during the period of at least December 2010 through August 2011, checks which were unsupported by collected funds were written and deposited back and forth between the accounts of Respondent or his related interests at the Bank and accounts at two other banks.

(5) During the period of May 2010 through August 2011, Respondent caused the Bank to make seven loans, totaling approximately \$200,000, to third party borrowers who then subsequently loaned the loan proceeds to Respondent or his related interests, which are Bank affiliates due to Respondent's common ownership. During this time period, the Bank was unable to further extend credit to Respondent or his related interests directly without obtaining prior board approval. The seven loans are attributable to Respondent pursuant to 12 C.F.R. § 215.3(f) and to Respondent's related interests, which are Bank affiliates, pursuant to 12 C.F.R. § 223.16. Therefore, these loans violated 12 C.F.R. §§ 215.4, 223.13, and/or 223.14 because they were not approved in advance by the board, were made in an unsafe or unsound manner, and/or were not properly secured.

(6) On five occasions during the period of January through July 2011, Respondent or his related interests failed to properly document loans from the retirement trust plan of one of his related interests. The proceeds from such loans were fully replaced by Respondent to the retirement trust plan in January 2012, along with the interest required under the published guidelines of the Department of Labor's Voluntary Fiduciary Correction Program.

(7) By reason of the foregoing conduct, Respondent engaged in violations of law, reckless unsafe or unsound practices, a pattern of misconduct, and breached his fiduciary duty to the Bank, resulting in or likely to result in prejudice to depositors, personal gain to himself, and loss to the Bank and a related interest, thereby exhibiting personal dishonesty and a willful and continuing disregard for the safety and soundness of the Bank.

### **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 depository institution under 12 U.S.C. §§ 1818(b)(3), (b)(4) or (b)(5), including, but not limited to, bank holding companies and any subsidiary of such institution, or treated as a savings and loan holding company or subsidiary under 12 U.S.C. § 1818(b)(9);
- (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 Board 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 Comptroller 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**

##### **CEASE AND DESIST ORDER**

Respondent consents to, and it is ORDERED that:

(1) Respondent shall guarantee the Bank against any losses incurred with respect to the loans attributable to Respondent or his related interests, discussed in paragraph (5) of Article II. Immediately upon execution of this Order, Respondent shall provide written notice to the Bank's Board of Directors of his obligation to guarantee the Bank against any loss on the loans attributable to him, and instruct the Bank to demand payment from him if a loss occurs. Respondent shall provide a copy of the written notice required by this paragraph to the Director of Enforcement and Compliance, 250 E Street S.W., Washington, DC 20219.

(2) Respondent shall make any payment required by paragraph (1) of this Article within ten (10) days of receiving demand from the Bank, by certified check or money order, and shall deliver the payment to the Board of Directors, The First National Bank of Niagara, 900 Roosevelt Rd., Niagara, WI 54151. Respondent shall send a copy of each check or money order to Director, Enforcement and Compliance Division, 250 E Street, S.W., Washington, DC 20219.

(3) Within sixty (60) days from the date of this Order, Respondent shall close or otherwise remove all transactional deposit accounts belonging to him personally, or

any of his related interests, from the Bank, and shall not thereafter maintain any depository accounts with the Bank; however, Respondent may continue to retain, rollover, or open certificates of deposit for himself or his related interests at the Bank.

(4) Within sixty (60) days from the date of this Order, Respondent shall payoff or otherwise move all extensions of credit he and his related interests maintain at the Bank, except for those extensions of credit that are fully secured by certificates of deposit held at the Bank.

(5) If Respondent is unable to comply with the requirements of paragraphs (3) or (4) of this Article within the stated timeframes, Respondent may request relief by submitting a written request to Director for Special Supervision, 250 E Street, S.W., Washington, DC 20219. The request shall state the amount of additional time requested and shall include a statement setting forth in detail, with relevant supporting documentation, the facts and circumstances that support Respondent's request for additional time to achieve compliance. The Director's decision concerning any request submitted pursuant to this paragraph is final and not subject to further review.

(6) Effective immediately, Respondent and his related interests shall not seek new extensions of credit from the Bank unless the extensions of credit are fully secured at all times by certificates of deposit maintained at the Bank.

(7) For purposes of this Article, the terms "extension of credit" and "related interest" shall have the definitions set forth at 12 C.F.R. §§ 215.3 and 215.2(n), respectively.

(8) 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 V**

### **ORDER FOR CIVIL MONEY PENALTY**

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of fifty-thousand dollars (\$50,000.00), which shall be paid in full upon execution of this Order.

(2) Respondent shall make payment by cashier's check or money order made payable to the Treasurer of the United States, and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-12-70) shall be entered on the submitted payment, and a copy of the check or money order shall be returned to the OCC along with this original executed Order.

(3) Respondent shall notify the OCC of the address of his current place of residence by completing the form attached hereto as Appendix A and returning it, along with the original executed Order, to Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St. S.W., Washington, DC 20219.

(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 VI**  
**BANKRUPTCY**

(1) If Respondent files for bankruptcy protection, Respondent shall notify the Director within ten (10) days of the filing, and shall deliver a copy of the filing to the Director of the Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E Street S.W., Washington, DC 20219.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligations to pay a civil money penalty and guarantee the Bank against losses on loans attributable to him pursuant to this Order are subject to discharge, Respondent will in no manner contest the assertion of the Comptroller or any agent, officer or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty and guarantee obligations in the Order arise out of acts which result in claims not dischargeable in bankruptcy.

**ARTICLE VII**  
**CLOSING**

- (1) By executing this Order, Respondent waives:
- (a) the right to the issuance of a Notice of Charges and Notice of Assessment of Civil Money Penalty under 12 U.S.C. § 1818;
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 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 Comptroller, or any of his agents or employees, 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 thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359; and Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; and

(3) Respondent 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 Comptroller, his agents or employees to cause or induce Respondent to agree to consent to the issuance of this Order or to execute this Order.

(4) This Order constitutes a settlement of cease and desist, prohibition, and civil money penalty proceedings contemplated by the Comptroller and arising out of the specific acts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). However, the specific acts, omissions, or violations described in Article II

may be used by the Comptroller in future enforcement actions to establish a pattern of misconduct or the continuation of a pattern of misconduct.

(5) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his 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 Comptroller or his authorized representative.

(6) The provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (4), shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting Respondent if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(7) Respondent understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and nothing herein 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.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

Robert Gunville, Jr.  
Robert Gunville, Jr.

3-25-13  
Date

Kristina B. Whittaker  
Kristina B. Whittaker  
Deputy Comptroller for Special Supervision

April 8, 2013  
Date