

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

<b>In the Matter of:</b>	)	
Dan J. Fehrenbach	)	
	)	AA-EC-15-97
Former President and Director	)	
	)	
Bank of Indiana, N.A.	)	
Dana, Indiana	)	

**CONSENT ORDER**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate cease and desist and civil money penalty proceedings against Dan J. Fehrenbach (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while serving as President and Director of Bank of Indiana, N.A. (“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(b) and (i);

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

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(2) Respondent was a director and officer of the Bank and was 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 was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and was 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 cease and desist and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(b) and (i).

## **ARTICLE II**

### **COMPTROLLER’S FINDINGS**

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

(1) During the period from 2006 to 2011, Respondent made or renewed numerous extensions of credit in contravention of the Bank’s loan policy by failing to: follow prescribed loan approval processes; provide accurate information to the Board Loan Committee; adequately monitor loans, including failing to ensure independent inspections on construction loans; ensure compliance with loan covenants approved by the Board Loan Committee; and obtain current and accurate collateral valuations, in violation of 12 C.F.R. Part 34. Respondent also acted in contravention to specific instructions of the Board of Directors by negotiating and executing the release of a guaranty on a loan in foreclosure.

(2) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank; which violations, practices, or breaches

were part of a pattern of misconduct and caused or were likely to cause more than a minimal loss to the Bank. Respondent's misconduct resulted in loss or risk of loss to the Bank.

### **ARTICLE III**

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

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by, or is offered employment at, a depository institution (as defined in 12 U.S.C. § 1813(c)(1)) or becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) With regard to any lending-related activity, including any extension of credit or renewal:
  - (i) Comply fully with all laws, regulations, and policies applicable to any depository institution with which he is affiliated;
  - (ii) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code; and
  - (iii) Fulfill the fiduciary duties of loyalty and care owed to any depository institution with which he is or may become affiliated and shall, at all times, avoid placing his own interests above those of the institution;
  - (iv) Not engage in or participate in any lending-related activity without the oversight and approval of a loan committee or the Board of Directors.
- (b) Provide the Board of Directors of the depository institution of which Respondent is currently an institution-affiliated party with a copy of this

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Order. Respondent shall provide written certification of compliance with this paragraph to the Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, within ten (10) days of execution of this Order; and

- (c) With respect to any future employment, prior to becoming an institution-affiliated party, provide the President or Chief Executive Officer of the depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219, along with a written certification of his compliance with this paragraph within ten (10) days after acceptance of such position.

(2) If, at any time, Respondent is uncertain whether a situation implicates paragraph (1) of this Article, or if Respondent is uncertain about his duties arising from such paragraphs, he shall obtain, at his own expense, and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution; and who has never been subject to any formal sanctions by any Federal banking agency, either by agency order or consent, as disclosed on the banking agencies' websites.

(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.

**ARTICLE IV**

**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 twenty thousand dollars (\$20,000), which shall be paid in full upon Respondent's execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-15-97) shall be entered on the submitted payment.

(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.

**ARTICLE V**

**CLOSING**

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (i) 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

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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; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(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.

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Date: \_\_\_\_\_

(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/ Dan J. Fehrenbach

January 27, 2016

\_\_\_\_\_  
Dan J. Fehrenbach

\_\_\_\_\_  
Date

**IT IS SO ORDERED.**

S/Michael R. Brickman

2/2/2016

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

\_\_\_\_\_  
Date