

**#2004-64**

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

In the Matter of: )  
Merchants Bank of California, National Association )  
Carson, California )

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has examined Merchants Bank of California, National Association, Carson, California (“Bank”), and his findings are contained in the Report of Examination for the examination that commenced on January 5, 2004 (“ROE”).

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,” dated May 27, 2004, that is accepted by the Comptroller. By this Stipulation and Consent, that is incorporated by reference, the Bank has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

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

**ARTICLE I**

**COMPLIANCE COMMITTEE**

(1) Within thirty (30) days, the Board shall appoint a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee of the Bank or any of its affiliates (as the term “affiliate” is defined in 12 U.S.C. § 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance

Committee shall be submitted in writing to the Assistant Deputy Comptroller. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order

(2) The Compliance Committee shall meet at least monthly.

(3) Within thirty (30) days of the appointment of the Committee and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) actions taken to comply with each Article of this Order; and

(b) the results of those actions.

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Assistant Deputy Comptroller.

(5) All reports or plans which the Bank or Board has agreed to submit to the Assistant Deputy Comptroller pursuant to this Order shall be forwarded to the:

Assistant Deputy Comptroller  
Southern California South Field Office  
1925 Palomar Oaks Way, Suite 202  
Carlsbad, CA 92008-6526

## Article II

### THIRD PARTY WIRE ACTIVITY

(1) Prior to the Bank's resumption of third party wire activity originating with Casa de Cambios or Centros Cambiarios, or any similar entities in any country outside of the United States of America, the Board shall prepare a written analysis of this activity. The analysis shall, at a minimum, include the following:

(a) a detailed assessment of the risks and benefits of the activity to the Bank;

- (b) a detailed explanation of how the activity is consistent with the Bank's strategic plan;
- (c) a detailed evaluation of the adequacy of the Bank's organizational structure, staffing, MIS, internal controls and written policies and procedures to identify, measure, monitor, and control the risks associated with the activity; and
- (d) a profitability analysis, including growth projections.

(2) Prior to the Bank's resumption of third party wire activity originating with Casa de Cambios or Centros Cambiarios, or any similar entities in any country outside of the United States of America, the Bank shall submit a copy of the analysis required by paragraph (1) of this Article to the Assistant Deputy Comptroller for review and a prior written determination of no supervisory objection.

(3) Within thirty (30) days the Board shall prepare a written analysis of any current third party wire activity, other than the type of activity described in paragraph (1) of this Article, originating in any country outside of the United States of America. The analysis shall, at a minimum, include the elements required by sub-paragraphs (a) through (d) of paragraph (1) of this Article.

(4) Immediately upon completion of the Board's written analysis required by paragraph (3) of this Article, the Bank shall submit a copy of the written analysis to the Assistant Deputy Comptroller for review and a written determination of no supervisory objection. The Bank shall immediately correct any deficiencies noted in writing by the Assistant Deputy Comptroller in his review of this written analysis. If required in writing by the Assistant Deputy

Comptroller after his review of this written analysis, the Bank shall cease any third party wire activity described in paragraph (3) of this Article until any deficiencies are corrected.

(5) Prior to commencing any new third party wire activity originating in any country outside of the United States of America, the Bank shall submit a written analysis of such activity to the Assistant Deputy Comptroller for review and a written determination of no supervisory objection. The analysis shall, at a minimum, include the elements required by sub-paragraphs (a) through (d) of paragraph (1) of this Article.

### ARTICLE III

#### BANK SECRECY ACT - INTERNAL CONTROLS

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to ensure compliance with the Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 - 5330), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C (collectively referred to as the Bank Secrecy Act). At a minimum, this written program shall establish:

- (a) due diligence policies, procedures, and controls reasonably designed to detect and report money laundering through correspondent accounts and private banking accounts that the Bank establishes or maintains for non-U.S. persons, as required by the Bank Secrecy Act;
- (b) comprehensive guidelines and procedures to identify and report both the shipment and receipt of currency or monetary instruments via common couriers, which guidelines should specifically detail procedures that will

cover and address courier pouches containing monetary instruments, as well as related procedures for reporting and filing Suspicious Activity Reports for such pouches;

- (c) a system of internal controls and independent testing and auditing to ensure ongoing compliance with the Bank Secrecy Act;
- (d) operating procedures for both the opening of new accounts and the monitoring of high risk accounts;
- (e) adequate controls and procedures to ensure that all suspicious and large currency transactions are identified and reported. Procedures should be comprehensive as to all points of cash entry and exit;
- (f) procedures to ensure that records are maintained on monetary instrument transactions and funds transfers, as required by the Bank Secrecy Act;
- (g) comprehensive procedures to identify and report to appropriate management personnel:
  - (i) bank accounts opened in the name of a casa de cambio (money exchange house), any “financial institution” as defined in 31 C.F.R. § 103.11(n) (bank, broker/dealer, currency dealer or exchanger, issuer or seller or redeemer of traveler’s checks or money orders, transmitter of funds, telegraph company, casino, etc.), or any foreign financial institution;
  - (ii) receipt and disbursement of wire transfers or book entry transfers without an apparent business reason or when they are inconsistent with the customer’s business;

- (iii) receipt and disbursement of currency or monetary instruments when they are inconsistent with the customer's business;
  - (iv) frequent or large volume cash deposits or wire transfers or book entry transfers to or from offshore or domestic entities or individuals; and
  - (v) wire transfers or book entry transfers that are deposited into several accounts;
- (h) a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness of and compliance with the requirements of the Bank Secrecy Act and the Office of Foreign Assets Control (OFAC), including the currency reporting and monetary instrument and funds transfer record keeping requirements, and the reporting requirements associated with Suspicious Activity Reports (SARs) pursuant to 12 C.F.R. Part 21, Subpart B;
- (i) comprehensive guidelines, procedures, and systems for compliance with the rules and regulations of the Office of Foreign Assets Control (OFAC); and
- (j) which officer position will be responsible for filing Currency Transaction Reports (CTRs), Reports of International Transportation of Currency or Monetary Instruments (CMIRs), Reports of Foreign Bank and Financial Accounts (FBARs), and SARs.

(2) Upon completion, a copy of this program shall be submitted to the Assistant Deputy Comptroller for review. In the event the Assistant Deputy Comptroller recommends changes to the program, the Board shall immediately incorporate those changes into the program.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

#### ARTICLE IV

##### BANK SECRECY ACT – REVIEW OF ACCOUNT ACTIVITY

(1) Within ninety (90) days, the Bank shall conduct an independent review of all account activity at the Bank since January 1, 2003. This review shall include third party wire activity, pouch activity, and money orders, in order to ascertain any unusual or suspicious transactions that may have occurred at the Bank during this period. Upon completion of this review, the findings of the independent review shall be reported to the Board, with a copy to the Assistant Deputy Comptroller.

(2) Within thirty (30) days of receiving the written report detailing the findings of the independent review, the Bank shall file Suspicious Activity Reports, in accordance with 12 C.F.R. § 21.11, for any previously unreported suspicious activity identified during this review.

## ARTICLE V

### BANK SECRECY ACT - AUDIT FUNCTION

(1) Within thirty (30) days, the Board shall review and evaluate the level of service and ability of the Bank Secrecy Act audit function currently being provided by its independent auditor. Such an assessment should include the Board's expectations of how this firm can assist in ensuring the Bank's compliance with the Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 - 5330), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C (including, but not limited to, Currency Transaction Reports ("CTRs") and Suspicious Activity Reports ("SARs")) (collectively referred to herein as the "Bank Secrecy Act"), and the rules and regulations of the Office of Foreign Assets Control.

(2) Within sixty (60) days, the Board shall expand the Bank's existing audit procedures to include:

- (a) a risk based approach to Bank Secrecy Act compliance that includes transactional testing and verification of data for higher risk accounts or geographic areas of specific concern;
- (b) a program to test the adequacy of internal controls designed to ensure compliance with the provisions of the Bank Secrecy Act; and
- (c) prompt management response and follow-up to all audit exceptions or other recommendations of the Bank's auditor.

(3) Within sixty (60) days, the Board shall retain the services of a qualified independent auditor to develop findings, observations and recommendations on the Bank's internal controls addressing compliance with the Bank Secrecy Act, 12 C.F.R. Part 21, Subpart B (including the SAR requirements) and the rules and regulations of the Office of Foreign Assets



Control, including related regulatory reporting on those subjects. These findings, observations, and recommendations, along with the Bank's response to any such concerns, shall be reviewed by the independent auditor on an annual basis for the term of this Order.

(4) A copy of the Bank's proposed "Engagement Letter" with this independent auditor, and any amendments thereto, shall be submitted to the Assistant Deputy Comptroller for review and written determination of no supervisory objection prior to execution.

## ARTICLE VI

### SAFEGUARDING CUSTOMER INFORMATION

(1) Within sixty (60) days, the Board or an appropriate committee thereof, shall review the Bank's existing written information security program and revise it as necessary to include administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information, appropriate to the size and complexity of the Bank and the nature and scope of its activities. This revised program shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information contained in 12 C.F.R. Part 30, Appendix B, including, but not limited to oversight of any Bank service provider arrangements. The Board shall approve the Bank's revised written information security program.

(2) Prior to the revision of the Bank's existing written information security program, the Bank shall assess the risk to its customer information or customer information systems. This assessment shall include:

- (a) identification of reasonably foreseeable internal and external threats that could result in unauthorized disclosure, misuse, alteration, or destruction of customer information or customer information systems;
- (b) an assessment of the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
- (c) an assessment of the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.

(3) The above-referenced written information security program shall be designed by the Bank to control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of the Bank's activities. The Bank must consider the security measures referenced at 12 C.F.R. Part 30 Appendix B (III)(C), and make a determination as to whether such measures are appropriate for the Bank, and if so, adopt such measures as part of the Bank's above-referenced written information security program.

(4) The Bank shall thereafter train its staff to effectively implement the above-referenced written information security program.

(5) In addition, the Bank shall thereafter regularly test the key controls, systems and procedures of its revised information security program. The frequency and nature of such tests shall be determined by the Bank's risk assessment. Such tests shall be conducted or reviewed by independent third parties or staff independent of those that develop or maintain the security program.

(6) The Bank shall thereafter monitor, evaluate, and adjust, as appropriate, the information security program revised pursuant to paragraph (1) of this Article in light of any relevant changes in technology, the sensitivity of its customer information, internal or external

threats to information, the Bank's own changing business arrangements, and changes to customer information systems.

(7) The Bank shall report to the Board at least annually on the overall status of the Bank's revised information security program and its compliance with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information contained in 12 C.F.R. Part 30, Appendix B, as well as the Bank's concurrent obligations under this Order. At a minimum, such report(s) shall contain discussion of matters referenced in 12 C.F.R. Part 30 Appendix B (III)(F). This report shall concurrently be forwarded to the Assistant Deputy Comptroller.

(8) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the written information security program revised pursuant to this Article.

## ARTICLE VII

### VIOLATIONS OF LAW

(1) The Board shall immediately take all necessary steps to ensure that Bank management corrects each violation of law, rule or regulation cited in the ROE and in any subsequent Report of Examination. The quarterly progress reports required by Article I of this Order shall include the date and manner in which each correction has been effected during that reporting period.

(2) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(3) Within sixty (60) days of receipt of any subsequent Report of Examination which cites violations of law, rule, or regulation, the Board shall adopt, implement, and thereafter ensure Bank adherence to specific procedures to prevent future violations as cited in the ROE and shall adopt, implement, and ensure Bank adherence to general procedures addressing compliance management which incorporate internal control systems and education of employees regarding laws, rules and regulations applicable to their areas of responsibility.

(4) Upon adoption, a copy of these procedures shall be promptly forwarded to the Assistant Deputy Comptroller.

(5) The Board shall ensure that the Bank has policies, processes, personnel, and control systems to ensure implementation of and adherence to the procedures developed pursuant to this Article.

## ARTICLE VIII

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Board determines that an exception to any provision of this Order is in the best interests of the Bank, or requires an extension of any timeframe within this Order, the Board shall submit a written request to the Assistant Deputy Comptroller asking for relief.

(2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Assistant Deputy Comptroller to exempt the Bank from any provision, or that require an extension of any timeframe within this Order. All such requests shall be accompanied by relevant supporting documentation.

(3) The Assistant Deputy Comptroller's decision as to the request is final and not subject to further review.

## ARTICLE IX

### CLOSING

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or prior determination of no supervisory objection of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him 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) Any time limitations imposed by this Order shall begin to run from the effective date of this Order.

(4) 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.

(5) 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.

(6) 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 27<sup>th</sup> day of May, 2004.

*/s/ Steven J. Vander Wal*

*5/27/04*

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Steven J. Vander Wal  
Assistant Deputy Comptroller  
Southern California South Field Office

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Date

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

In the Matter of: )  
Merchants Bank of California, National Association )  
Carson, California )

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

The Comptroller of the Currency of the United States of America (“Comptroller”) has initiated cease and desist proceedings against Merchants Bank of California, National Association, Carson, California (“Bank”) pursuant to 12 U.S.C. § 1818(b).

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order, dated May 27, 2004 (“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(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## 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). 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 its 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.

(3) The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency 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 its supervisory responsibilities.

## Article III

### Waivers

(1) The Bank, by signing this Stipulation and Consent, hereby waives:

(a) 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 Order;
- (c) all rights to seek any type of administrative or judicial review of the Order; and
- (d) 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 deems it appropriate to do so to fulfill the responsibilities placed upon him 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/ Steven J. Vander Wal*

*5/27/04*

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Steven J. Vander Wal  
Assistant Deputy Comptroller  
Southern California South Field Office

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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.

Signed _____ James Cheney	_____ May 27, 2004 Date
Signed _____ Dobard	_____ 5-27-04 Date
Signed _____ Rod Garza	_____ May 27, 2004 Date
Signed _____ Daniel K. Roberts	_____ 05-27-2004 Date
Signed _____ Mathew Roberts	_____ 5-27-04 Date
Signed _____ Philip Scott	_____ May 27, 2004 Date
Signed _____ G. Scott Peterson	_____ May 27, 2004 Date