#2008-148

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

IN THE MATTER OF:	)	
	)	
VERNON W. HILL, II,	)	
FORMER CHIEF EXECUTIVE OFFICER AND	)	**AA-EC-08-64**
CHAIRMAN OF THE BOARD,	)	
COMMERCE BANK, N.A.,	)	
PHILADELPHIA, PENNSYLVANIA	)	

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States ("Comptroller") intends to initiate a proceeding against Vernon W. Hill, II ("Respondent"), former chief executive officer and chairman of the board of Commerce Bank, N.A., Philadelphia, PA ("Bank"), by filing a Notice of Charges pursuant to 12 U.S.C. § 1818(b) and 12 C.F.R. § 19.18;

WHEREAS, the Comptroller finds, and Respondent neither admits nor denies, that Respondent engaged in unsafe and unsound practices and breaches of fiduciary duties by failing to comply with sound corporate governance principles in connection with real estate purchases, leases and joint real estate development transactions involving the Bank which resulted in financial gain to Respondent; and without an adjudication on the merits and solely for purposes of this settlement, and pursuant to Rule 408 of the Federal Rules of Evidence and equivalent state provisions; and in the interest of cooperation and to avoid the costs associated with future investigative, administrative and judicial proceedings with respect to this matter, the Comptroller and Respondent desire to enter into this Stipulation and Consent Order ("Order") and conclude this matter.

NOW THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent, that:

ARTICLE I
JURISDICTION

(1) The Bank was 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.*, (prior to acquisition of the Bank by TD Banknorth, N.A., Portland, Maine, under the charter of the latter and under the title TD Bank, N.A. on May 31, 2008). The Bank was an "insured depository institution," as that term is defined in 12 U.S.C. § 1813(c)(2), at all times relevant to this Order.

(2) Respondent, in the capacities of chief executive officer and chairman of the board of directors, is an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in these capacities within six (6) years preceding the date of this Order.

(3) Pursuant to 12 U.S.C. § 1813(q), the Office of the Comptroller of the Currency ("OCC") is the "appropriate Federal banking agency" to maintain enforcement proceedings against Respondent pursuant to 12 U.S.C. §§ 1818(b) and (i)(2).

ARTICLE II
REAL ESTATE RELATED ACTIVITY AND INSIDER TRANSACTIONS

(1) Whenever Respondent or any Respondent Controlled Entity is in an Affiliated Party Relationship with a member of an Insured Financial Institution Group, then:

(a) Neither Respondent nor any Respondent Controlled Entity shall engage in any future Real Estate Related Activity with any member of such Insured Financial Institution Group unless such transaction is:

(i) Reported by Respondent to the board of directors of the member involved in the transaction;

(ii) Approved in advance and in writing by the board of directors of the member involved in the transaction; and

(iii) Within five business days of such transaction, reported by Respondent to the audit committee of the member involved in the transaction.

(b) Respondent shall use his best efforts to ensure that a Respondent Related Party does not engage in any future Real Estate Related Activity with any member of such Insured Financial Institution Group without satisfying the requirements described in sub-paragraphs (a)(i) through (a)(iii) of this paragraph as applied to such Respondent Related Party; and

(c) Respondent, upon discovery of any type of Real Estate Related Activity by any Respondent Related Party with any member of such Insured Financial Institution Group which did not satisfy the requirements described in sub-paragraphs (a)(i) through (a)(iii) of this paragraph as applied to such Respondent Related Party, shall within five business days report such transaction to:

(i) The board of directors of the member involved in the transaction; and

(ii) The audit committee and the appropriate federal regulator of the member involved in the transaction.

(2) In addition to the provisions set forth in paragraph (1) of this Article, whenever Respondent or any Respondent Controlled Entity is a director, officer or Major Shareholder of a member of an Insured Financial Institution Group, then:

(a) Neither Respondent nor any Respondent Controlled Entity shall engage in any future Real Estate Related Activity with any member of such Insured Financial Institution Group unless the board of directors of that member first obtains a written opinion from a Designated Auditing Firm finding that the transaction is fair to the member;

(b) Respondent shall use his best efforts to ensure that a Respondent Related Party does not engage in any future Real Estate Related Activity with any member of such Insured Financial Institution Group without satisfying the requirements described in sub-paragraph (a) of this paragraph as applied to such Respondent Related Party; and

(c) Respondent, upon discovery of any type of Real Estate Related Activity by any Respondent Related Party with any member of such Insured Financial Institution Group which did not satisfy the requirements described in sub-paragraph (a) of this paragraph as applied to such Respondent Related Party, shall within five business days report such transaction to:

(i) The board of directors of the member involved in the transaction; and

(ii) The audit committee and the appropriate federal regulator of the member involved in the transaction.

(3) Any Material Change to a transaction involving Real Estate Related Activity shall be deemed to be a new transaction for the purposes of this Order.

(4) The reporting required by Respondent in paragraphs (1) and (2) of this Article shall be in writing and shall include full disclosure of all material facts that would be required to be made by a senior executive officer of an insured depository institution entering into an insider-related transaction with such institution.

ARTICLE III
COMPLIANCE

(1) Respondent shall not engage in any conflict of interest, unsafe or unsound practice, breach of fiduciary duty, or violation of law or regulation with respect to any member of an Insured Financial Institution Group.

(2) Within five business days of entering into any Affiliated Party Relationship with a member of an Insured Financial Institution Group, Respondent shall provide a copy of this order to the chairman of the board of such member.

ARTICLE IV
MONETARY PAYMENTS

Respondent shall pay to TD Bank the sum of $4,000,000 in the form of an offset to an agreed-upon sum to be paid by TD Bank to Respondent pursuant to an agreement between TD Bank and Respondent resolving all litigation between them.

ARTICLE V
DEFINITIONS

(1) The term "Respondent Controlled Entity" means any agent or nominee of Respondent; any entity in which Respondent is a general partner, controlling shareholder,

president, chief executive officer, chairman of the board, majority shareholder, or managing member, or over which Respondent otherwise possesses control; any agent or nominee of a Respondent Controlled Entity; or any entity in which a Respondent Controlled Entity is a general partner, controlling shareholder, president, chief executive officer, chairman of the board, majority shareholder, managing member, or over which a Respondent Controlled Entity otherwise possesses control. The term "control" means the ability to control, in any manner, the election of the majority of the board of directors, or the power to exercise a controlling influence over the management or policies of the entity.

(2) The term "Major Shareholder" means an owner of twenty-five percent (25%) or more of the voting stock of a member of an Insured Financial Institution Group, whether alone or "acting in concert" with others as defined at 12 C.F.R. § 5.50(d)(2).

(3) The term "Real Estate Related Activity" means any transaction by or with a member of an Insured Financial Institution Group or by or with a contractor or agent of a member of an Insured Financial Institution Group, involving real estate or real estate improvements, whether relating to new or existing facilities, and includes, but is not limited to, the purchase by or lease to a member of real estate or real estate improvements, the sale by or lease from a member of real estate or real estate improvements, real estate brokerage or agent activity, the sharing or division of costs related to the development of real estate or the construction or renovation of real estate improvements, work relating to obtaining local approvals and permits, construction management, site development, real estate consulting services, all aspects of construction (*e.g.*, carpentry, roofing, electricity, lighting, water, sewage, utilities, painting, roads, driveways, sidewalks, parking lots), architecture, interior design, interior decoration, landscaping, surveys, appraisal services, escrow services, title services, real

estate legal services, procurement and maintenance of furniture or fixtures, space planning and management and renovations.

(4) The term "Insured Financial Institution Group" means any "insured depository institution," as that term is defined by 12 U.S.C. § 1813(c), and all of its subsidiaries and affiliates, and any holding company of such institution and all of such holding company's subsidiaries and affiliates.

(5) The term "Respondent Related Party" means the individuals previously identified by Respondent to the Comptroller in a letter dated November 13, 2008, any agent or nominee of such person; any entity in which such person is a general partner, controlling shareholder, president, chief executive officer, chairman of the board, majority shareholder, or managing member, or over which such person otherwise possesses control.

(6) The term "Affiliated Party Relationship" means any relationship in which:

(a) Respondent or a Respondent Controlled Entity is a director, officer, employee, agent or shareholder of 10.0% or more (whether alone or "acting in concert" as defined at 12 C.F.R. § 5.50(d)(2)) of a member of an Insured Financial Institution Group; or

(b) Respondent or a Respondent Controlled Entity has filed or is required to file a change-in-control notice with the appropriate Federal banking agency under 12 U.S.C. § 1817(j).

(7) The term "Designated Auditing Firm" means:

(a) One of the ten largest accounting firms based in the United States measured by international revenue in the previous year; or

(b) A consulting, advisory, or other accounting firm with appropriate expertise, if the appropriate federal regulator does not object within 30 business days after being provided with written notice of the proposal to engage such firm, subject to the following:

(i) The appropriate federal regulator may object to the qualifications of such firm or to the engagement agreement or contract with such firm;

(ii) Neither the failure to act nor a non-objection shall constitute an approval or endorsement of the proposed engagement by the appropriate federal regulator; and

(iii) Whether to object to the engagement of such firm shall be in the sole discretion of the appropriate federal regulator.

(c) The following shall not constitute a Designated Auditing Firm for purposes of Article V, Paragraph (7)(b):

(i) Any firm that is a Respondent Controlled Entity or a Respondent Related Party;

(ii) Any firm that is engaged or has previously been engaged to provide other types of services or products for Respondent, a Respondent Controlled Entity or a Respondent Related Entity, if such engagement was within the five years preceding the request for no supervisory objection and totaled $100,000 or more during that period; or

(iii) Any accounting firm that is then performing external audits for any member of an Insured Financial Institution Group where Respondent or a Respondent Controlled Entity is an officer, director or Major Shareholder.

(8) The term "Material Change" means a change to a transaction that a careful and prudent person would regard as substantially altering the person's expected cost, benefit or risk in the transaction. Notwithstanding or limiting the foregoing, any increase in payment to or any decrease in expense of Respondent, a Respondent Controlled Entity or a Respondent Related Party of either (a) five percent or more or (b) $25,000 or more in any transaction involving Real Estate Related Activity shall be deemed to be a "Material Change" for the purposes of this Order.

(9) The term "fair" means a price that is within a reasonable range of the market value price and terms and conditions that are consistent with industry standards.

ARTICLE VI
WAIVERS

(1) By executing this Order, Respondent waives:

(a) the right to the issuance of notices under the provisions of 12 U.S.C. § 1818;

(b) all rights to hearings and final agency decisions 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 damages, 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 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 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 Comptroller, his agents or employees to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of the actions contemplated by the Comptroller, described above. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations described above including specifically any such acts or omissions by or liability of Respondent or any Respondent Controlled Entity at any time prior to the execution of this Order, unless such acts, omissions, or violations reoccur.

(4) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (3) of this Article, 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.

(5) Respondent understands 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 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.

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

___/s/_____ 11/14/08
Vernon W. Hill, II Date

IT IS SO ORDERED.

___/s/_____ 11/17/08
John W. Quill Date
Deputy Comptroller for Special Supervision
Office of the Comptroller of the Currency