

**#2010-253**

*Also Terminates #2005-165 & #2009-137*

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

In the Matter of: )  
Pacific National Bank )  
Miami, Florida )

AA-EC-10-106

**CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America ("Comptroller" or "OCC"), 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 ("Stipulation and Consent"), dated December 15, 2010 that is acceptable to the Comptroller; and

**WHEREAS**, by this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order ("Order") by the Comptroller;

**NOW, THEREFORE**, pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, the Comptroller hereby orders the following:

**ARTICLE I**

**COMPLIANCE COMMITTEE**

(1) The Board shall maintain a Compliance Committee of at least three (3) directors, of which no more than one (1) shall be an employee or controlling shareholder 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. In the event of a change of the membership, the name of any new member shall be submitted in writing to the Director for Special Supervision ("Director"). 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 date of this Order and quarterly thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

(a) a description of the actions needed to achieve full compliance with each Article of this Order, Bank personnel responsible for implementing the corrective actions and the time frames for completion;

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

(c) the results and status 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 Director within ten (10) days of receiving such report.

(5) All reports or plans which the Bank or Board has agreed to submit to the Director pursuant to this Order shall be forwarded, by overnight mail or via email, to the following:

Director for Special Supervision  
Comptroller of the Currency  
250 E Street, S.W.  
Mail Stop 7-4  
Washington, DC 20219

*with a copy to:*  
Comptroller of the Currency  
South Florida Field Office  
9800 Northwest 41<sup>st</sup> Street, Suite 120  
Miami, FL 33178

(6) The Board shall ensure that the Bank has sufficient processes, personnel, and control systems to effectively implement and adhere to all provisions of this Order, and that Bank personnel have sufficient training and authority to execute their duties and responsibilities under this Order.

## ARTICLE II

### STRATEGIC PLAN

(1) Within thirty (30) days, the Board shall forward to the Director for his review, pursuant to paragraph (5) of this Article, a written Strategic Plan for the Bank that is acceptable to the Director, covering at least a three-year period. The Strategic Plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development, and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and shall, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) a description of the Bank's targeted market(s) and an assessment of the current and projected risks and competitive factors in its identified target market(s);
- (c) the strategic goals and objectives to be accomplished;
- (d) specific actions to improve Bank earnings and accomplish the identified strategic goals and objectives;
- (e) designated Bank personnel to be responsible and accountable for achieving each goal and objective of the Strategic Plan, including specific time frames;
- (f) a financial forecast, to include projections for major balance sheet and income statement accounts, targeted financial ratios, and growth projections over the period covered by the Strategic Plan;

- (g) a description of the assumptions used to determine financial projections and growth targets;
- (h) an identification and risk assessment of the Bank's present and planned future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in the Strategic Plan, with the requirement that the risk assessment of new product lines must be completed prior to the offering of such product lines;
- (i) standards for opening or renewing deposit accounts opened on behalf of account owners residing in foreign countries;
- (j) a description of control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's markets;
- (k) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems, and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives established in the Strategic Plan;
- (l) a management employment and succession program to promote the retention and continuity of capable management;
- (m) assigned responsibilities and accountability for the strategic planning process, new products, growth goals, and proposed changes in the Bank's operating environment; and
- (n) a description of systems to monitor the Bank's progress in meeting the Strategic Plan's goals and objectives.

(2) If the Board's Strategic Plan under paragraph (1) of this Article is a sale or merger of the Bank, including a transaction pursuant to 12 U.S.C. § 215a-3, the Strategic Plan shall, at a

minimum, describe the actions that will be taken, including the associated timeline, to execute a definitive agreement for the sale or merger to occur within ninety (90) days after the receipt of the Director's written determination of no supervisory objection pursuant to paragraph (5) of this Article.

(3) At least monthly, the Board shall review financial reports and earnings analyses prepared by Bank management that evaluate the Bank's performance against the goals and objectives established in the Strategic Plan for that month and year-to-date, as well as the Bank's written explanation of significant differences between actual and projected balance sheet, income statement, and expense accounts for those periods, including descriptions of extraordinary and/or nonrecurring items.

(4) At least quarterly, the Board shall prepare a written evaluation of the Bank's performance against the Strategic Plan, based on the Bank's monthly reports, analyses, and written explanations of any differences between actual performance and the Bank's strategic goals and objectives, and shall include a description of the actions the Board will require the Bank to take to address any shortcomings, which shall be documented in the Board meeting minutes. Within ten (10) days of completing its evaluation, the Board shall submit a copy to the Director.

(5) Prior to adoption by the Board, a copy of the Strategic Plan, and any subsequent amendments or revisions, shall be forwarded to the Director for review and prior written determination of no supervisory objection. Within five (5) days of receiving a written determination of no supervisory objection from the Director, the Board shall adopt and the Bank shall immediately implement and adhere to the Strategic Plan, and any subsequent amendments or revisions.

(6) The Bank may not initiate any action that deviates significantly from the Board-approved Strategic Plan without a written determination of no supervisory objection from the

Director. The Board must give the Director advance, written notice of its intent to deviate significantly from the Strategic Plan, along with an assessment of the impact of such change on the Bank's condition, including a profitability analysis and an evaluation of the adequacy of the Bank's organizational structure, staffing, management information systems, internal controls, and written policies and procedures to identify, measure, monitor, and control the risks associated with the change in the Strategic Plan.

(7) For the purposes of this Article, changes that may constitute a significant deviation from the Strategic Plan include, but are not limited to, a change in the Bank's products and services, marketing strategies, marketing partners, underwriting practices and standards, credit administration, accounting processes and practices, or funding strategy, any of which, alone or in aggregate, may have a material impact on the Bank's operations or financial performance; or any other changes in personnel, operations, or external factors that may have a material impact on the Bank's operations or financial performance. For purposes of this paragraph, "personnel" shall include the president, chief executive officer, chief operating officer, chief financial officer, chief credit officer, BSA officer, chief compliance officer, risk manager, in-house general counsel, member of the Bank's board of directors, or any other position subsequently identified in writing by the Director.

### ARTICLE III

#### CAPITAL PLAN

(1) Within thirty (30) days, the Board shall develop and forward to the Director for his review, pursuant to paragraph (4) of this Article, a written Capital Plan for the Bank covering at least a three-year period. The Capital Plan shall include:

- (a) specific plans for the maintenance of adequate capital at levels commensurate with the Bank's risk profile, business model and operations;

- (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (c) projections of the sources and timing of additional capital to meet the Bank's future needs;
- (d) the establishment and funding of an escrow account at an insured depository institution in the United States, pursuant to an escrow agreement acceptable to the Director, for the purpose of providing additional capital to the Bank, pursuant to the Capital Plan required by paragraph (1) of this Article; and
- (e) a contingency plan that identifies alternative methods should the primary source(s) under (c) and (d) above not be available.

(2) Should it become necessary for the Bank to secure capital infusions so as to remain in compliance with its initial or ongoing capital requirements as set forth in the Capital Plan required by paragraph (1) of this Article, the Bank will promptly notify and first make demand on the Bank's controlling owner for such capital.

- (3) The Bank may pay a dividend or make a capital distribution only:
- (a) when the Bank is in compliance with its approved Capital Plan and would remain in compliance with its approved Capital Plan immediately following the payment of any dividend or capital distribution;
  - (b) when the Bank is in compliance with 12 U.S.C. §§ 56 and 60; and
  - (c) following the prior written determination of no supervisory objection by the Director.

(4) Prior to adoption by the Board, a copy of the Capital Plan shall be submitted to the Director for prior written determination of no supervisory objection. Within five (5) days of receiving a determination of no supervisory objection from the Director, the Board shall adopt and the Bank shall implement and adhere to the Capital Plan. The Board shall review and update the Bank's Capital Plan on an annual basis, or more frequently if necessary or if requested by the Director. Copies of the reviews shall be submitted to the Director. Revisions to the Capital Plan shall be submitted to the Director for a prior written determination of no supervisory objection. Upon receiving a determination of no supervisory objection to the revised Capital Plan from the Director, the Board shall adopt and the Bank shall implement and adhere to the revised Capital Plan or provide to the Director reasons, in writing, as to why the revised Capital Plan should not be implemented.

(5) If the Bank fails to submit an acceptable Capital Plan as required by paragraph (1) of this Article, or fails to implement or adhere to a Capital Plan to which the Director has taken no supervisory objection pursuant to paragraph (4) of this Article, then, in the sole discretion of the Director, the Bank shall, upon direction of the Director, within thirty (30) days develop and shall submit to the Director for his review and prior written determination of no supervisory objection a Disposition Plan that shall detail the Board's proposal to sell or merge the Bank, or liquidate the Bank under 12 U.S.C. § 181.

(6) In the event that the Disposition Plan submitted by the Bank's Board outlines a sale or merger of the Bank, including a transaction pursuant to 12 U.S.C. § 215a-3, the Disposition Plan shall, at a minimum, address the steps that will be taken and the associated timeline to ensure that within ninety (90) days after the receipt of the Director's written determination of no supervisory objection to the Disposition Plan a definitive agreement for the sale or merger is executed.

(7) After the Director has advised the Bank in writing that he does not take supervisory objection to the Disposition Plan, the Board shall immediately adopt and implement, and shall thereafter ensure adherence to, the terms of the Disposition Plan. Failure to submit a timely, acceptable Disposition Plan, or failure to implement and adhere to the Disposition Plan after the Board obtains a written determination of no supervisory objection from the Director, may be deemed a violation of this Order, in the exercise of the Director's sole discretion.

#### ARTICLE IV

##### BANK SECRECY ACT PROGRAM

(1) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to provide for compliance with the Bank Secrecy Act, as amended (31 U.S.C. §§ 5311 et seq.), the regulations promulgated thereunder at 31 C.F.R. Part 103, as amended, and 12 C.F.R. Part 21, Subparts B and C, and the rules and regulations of the Office of Foreign Assets Control ("OFAC") (collectively referred to as the "Bank Secrecy Act" or "BSA") and for the appropriate identification and monitoring of transactions that pose greater than normal risk for compliance with the BSA. This program shall include comprehensive policies, procedures and controls to:

- (a) identify and monitor transactions that pose greater than normal risk for compliance with the BSA;
- (b) record and maintain information about transactions that pose greater than normal risk for compliance with the BSA;
- (c) investigate and resolve the Bank's response to transactions that have been identified as posing greater than normal risk for compliance with the BSA;

- (d) perform sufficient due diligence prior to opening new accounts that provides for collecting customers' identifying information, verifying customers' identification, maintaining identification records, documenting and evaluating the BSA risk profile and determining whether customers appear on any list of suspected terrorists or terrorist organizations;
- (e) perform annual risk assessments which provide sufficient coverage of the Bank's operations, products, services and geographies of operation;
- (f) ensure that all suspicious and large currency transactions are identified and reported;
- (g) address acceptance of deposit instruments made by remote deposit capture;
- (h) maintain records on monetary instrument transactions and funds transfers, as required by the BSA;
- (i) identify and report to appropriate management personnel the receipt and disbursement of currency or monetary instruments that are suspicious or inconsistent with the customers' business and accounts opened in the name of or for the benefit of a financial institution or foreign bank, as defined in 31 C.F.R. § 103.11;
- (j) establish a method for introducing new products and services, including any related operational processes, that ensures that the policies and procedures governing new products and services are consistent with the Bank's program for compliance with the BSA;
- (k) implement escalation procedures concerning customers with multiple suspicious activity report ("SAR") filings or protracted periods of suspicious activity that include a formal written account closing policy;

- (l) include a formal evaluation of the knowledge, capabilities and performance of the Bank's BSA staff for identifying transactions that pose greater than normal risk for compliance with the BSA, taking into account the findings contained in the March 23, 2010 Report of Examination and any subsequent examination and audit findings, and factoring in the BSA staff performance, experience and qualifications compared to their position descriptions, duties and responsibilities;
- (m) ensure that the Bank's OFAC program is effective and the OFAC filters are current, updated and cover all products and services; and
- (n) include a comprehensive training program for all appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of the BSA, including the reporting requirements associated with SARs pursuant to 12 C.F.R. Part 21, Subpart B, regardless of the size of the relationship or type of customer involved.

(2) The Bank shall submit a copy of the written program developed pursuant to paragraph (1) of this Article to the Director for a written determination of no supervisory objection. Upon receipt of the Director's written determination of no supervisory objection, the Bank shall implement the program.

## ARTICLE V

### BANK SECRECY ACT ACCOUNT MANAGEMENT

(1) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to expanded customer due diligence, enhanced due diligence and risk management procedures for all existing accounts and new accounts that pose greater than normal risk for compliance with the BSA by requiring:

- (a) identification of all account owners and beneficial owners in compliance with 31 C.F.R. § 103.121 and consistent with the Guidance on Obtaining and Retaining Beneficial Ownership Information issued by the Federal Banking Agencies, FinCEN and the Securities Exchange Commission dated March 5, 2010;
- (b) identification of the officers, directors, major shareholders or partners of the Bank's customers, as applicable;
- (c) identification of accounts that are related to officers, directors, shareholders and partners of the Bank and the Bank's holding company;
- (d) analysis and documentation of the BSA risk profile of the account and its signers and beneficial owners;
- (e) documentation of the following information for all deposit account customers:
  - (i) all relevant financial information concerning the customer;
  - (ii) the type of business conducted by the customer;
  - (iii) the customer's source of income or wealth;
  - (iv) any other due diligence required by this Order, the BSA Officer, or Bank policy;
- (f) guidance and standards for updating and re-underwriting all existing high risk accounts by performing and documenting customer due diligence and enhanced due diligence;
- (g) guidance and standards for not opening an account, permitting the use of an account while verifying a customer's identity or other risks, closing an account, and filing SARs if the Bank does not receive the information

required by paragraph (1) by the date the information is due or if the Bank is not able to form a reasonable belief that it knows the true identity of a customer.

(2) The Bank shall ensure that all deposits from account owners residing in foreign countries are processed directly through the Bank and not accepted through any affiliate correspondent account. Account owner deposits shall be received by the Bank either through a wire transfer directly to the customer's account at the Bank or via international mail, and not by remote image capture.

(3) The Bank shall not open any account for a customer and shall close any existing account of a customer if the information available to the Bank indicates that the customer's relationship with the Bank would be detrimental to the reputation or safety or soundness of the Bank.

## ARTICLE VI

### BANK SECRECY ACT MONITORING

(1) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program of policies and procedures to provide for the Bank's identification and monitoring of suspicious cash, monetary instruments, wire transfers, international mail and other activities for all types of transactions, accounts (including transactions through foreign correspondent accounts), customers, products, services, and geographic areas. At a minimum, this written program shall establish:

- (a) reviews of cash purchases of monetary instruments;
- (b) reviews of funds transfers (including intermediary wires and cover payments) including the following:

- (i) wire transfer activity (including common originators and beneficiaries);
- (ii) funds transfers or book entry transfers that are deposited into several accounts or related accounts. The term "related accounts" shall be broadly construed and shall include the following:
  1. All accounts for which there are common signatories, officers, directors, addresses, taxpayer identification numbers, or phone numbers that can be reasonably identified;
  2. All accounts of a customer's immediate relatives by blood, marriage, or adoption (e.g., spouses, children, parents, siblings, uncles, and aunts) that can be reasonably identified;
  3. All accounts of any corporation, joint enterprise, partnership or any undertaking whatsoever that can be reasonably identified as controlled by or operated substantially in the interest of any Bank customer. "Control" includes direct or indirect ownership of ten percent (10%) or more of the stock, capital, or equity of any such undertaking;
  4. All accounts where the Bank's customer can be reasonably identified as exercising control or authority over the account holder; and
  5. any account(s) so designated by the Director.
- (iii) frequent or large volume cash deposits, wire transfers and book entry transfers to or from offshore or domestic entities or individuals;

- (iv) receipt and disbursement of wire transfers or book entry transfers without an apparent bona fide business reason; and
- (v) receipt and disbursement of wire transfers or book entry transfers that are suspicious or inconsistent with the customer's business;
- (c) periodic analysis of aggregate cash, monetary instrument, wire transactions and international mail activity;
- (d) periodic analysis of Currency Transaction Report filings;
- (e) automatic reviews of accounts or customers for which the Bank has received criminal subpoenas that may involve the BSA;
- (f) reviews of high risk transactions, accounts, customers, products, services, and geographic areas on an annual basis;
- (g) timely submission of SARs based on these reviews and analyses; and
- (h) adequate policies and procedures and documentation concerning the clearing of alerts and the determination of whether to file a SAR or not file a SAR.

(2) The written program pursuant to paragraph (1) of this Article shall include the development and implementation of written policies and procedures to provide for the application of appropriate thresholds for monitoring all types of transactions (including, but not limited to, international mail), accounts, customers, products, services, and geographic areas that pose greater than normal risk for compliance with the BSA. At a minimum, these procedures shall establish:

- (a) appropriate and supportable thresholds for filtering account activity and customers for further monitoring, review, analysis and account rating changes;

- (b) an analysis of the filtering thresholds established by the Bank; and
- (c) internal periodic testing and monitoring of thresholds for their appropriateness to the Bank's customer base, products, services, and geographic area.

## ARTICLE VII

### BANK SECRECY ACT REPORTS

(1) Within sixty (60) days of the date of this Order, the Board shall develop, implement, and thereafter maintain an integrated, accurate program for all Bank areas to generate account information and produce periodic reports designed to identify, monitor and evaluate unusual or suspicious activity, including patterns of activity, and to maintain accurate information needed to produce these reports. The Bank's system shall be able to link related accounts, countries of origin, location of the customers' businesses and residences to evaluate patterns of activity. The reports shall provide information on the following:

- (a) a current list of all accounts associated or affiliated with a high risk relationship including, but not limited to, high risk accounts with transactions involving high risk countries and accounts of politically exposed persons ("PEPs"),
- (b) all high risk accounts, including the following information:
  - (i) the name of the customer;
  - (ii) the purpose and balance of the account;
  - (iii) the officers, directors and major shareholder of any corporate customer and the partners of any partnership customer;

- (iv) any other accounts or related accounts maintained by the customer and, as applicable, its officers, directors, major shareholders or partners;
- (v) a detailed analysis of the due diligence performed on the customer and, as applicable, its officers, directors, major shareholders or partners;
- (vi) any unusual activity for each account; and
- (vii) any action the Bank has taken on the account;
- (c) transactions occurring on a daily, weekly, monthly, quarterly and annual basis, which segregate transactions that pose a greater than normal risk for compliance with the Bank Secrecy Act;
- (d) any type of subpoena received by the Bank and on any law enforcement inquiry directed to the Bank and any action taken by the Bank on the affected account; and
- (e) any other reports deemed necessary or appropriate by the BSA Officer or the Bank.

(2) The BSA Officer or his/her designee shall periodically review, not less than each calendar year, all account documentation for all high risk accounts and the related accounts of those customers at the Bank to determine whether the account activity is consistent with the customer's business and the stated purpose of the account.

(3) The system developed pursuant to paragraph (1) shall incorporate sufficient controls and processes for identifying and reporting known or suspected violations of Federal law, violations of the BSA, or suspicious transactions related to money laundering activity, including suspicious activity relating to the opening of new accounts, the monitoring of current

accounts, and the transfer of funds through the Bank to ensure compliance with the requirements to file SARs set forth in 12 C.F.R. § 21.11, as amended.

## ARTICLE VIII

### ACCOUNT/TRANSACTION ACTIVITY REVIEW ("LOOK-BACK")

(1) The Bank shall retain one or more independent consultants with expertise in the review of foreign correspondent activity to perform a look-back of certain accounts and transactions from May 31, 2009 through November 30, 2010, including all foreign correspondent accounts and Bank affiliate accounts through which customer account activity occurred and all account holders that are known to conduct business with OFAC sanctioned countries, in order to determine whether suspicious activity was timely identified by the Bank, and if appropriate to do so, was timely reported by the Bank in accordance with 12 C.F.R. §21.11. The look-back shall also determine whether OFAC-related transactions were properly screened and, if appropriate to do so, were timely reported to OFAC.

(2) The Bank shall submit the name and background information of the independent consultant(s) identified pursuant to paragraph (1) of this Article to the Director for a prior written determination of no supervisory objection.

(3) Prior to the engagement of the independent consultant(s) pursuant to paragraph (1) of this Article, the Bank shall provide to the OCC for a prior written determination of no supervisory objection a detailed engagement letter which sets forth the scope, parameters, number of accounts and transactions expected to be reviewed through the look-back, and the expected timeframe for completion. The look-backs shall be risk-based, including the risks identified in the Bank's current risk assessment, and shall identify the sampling, software screening, or analytical techniques the consultant(s) will use to identify transactions that are subject to review for suspicious activity.

(4) Upon completion of the look-back, the Bank shall file SARs, in accordance with 12 C.F.R. §21.11, for any previously unreported suspicious activity identified during this review. The written findings of the look-back shall be reported to the Board, with a copy to the Director, to include the number of SARs filed and the dollar amount of the SARs filed as a result of the look-back. Any transactions involving reports to OFAC shall also be identified in this report.

(5) Based upon the results of the look-back, the OCC, at its sole discretion, may expand the scope of the independent review. If an additional look-back is deemed appropriate by the OCC, the Bank shall complete the look-back in accordance with this Article.

## ARTICLE IX

### INDEPENDENT AUDIT

(1) Within sixty (60) days of the date of this Order, the Board, or a designated committee of the Board, shall adopt, implement, and thereafter ensure Bank adherence to an independent, risk-based audit program of all Bank operations, including the Bank Secrecy Act/Anti-Money Laundering-related functions, sufficient in scope, testing and documentation to:

- (a) detect irregularities in the Bank's operations;
- (b) determine the adequacy of internal controls;
- (c) determine the Bank's level of compliance with all applicable laws, rules and regulations;
- (d) evaluate adherence to Bank policies and procedures;
- (e) perform a sufficient level of testing, including deposit account threshold monitoring, to support the audit findings, including a sufficient level of transaction testing;
- (f) ensure adequate audit coverage and audit frequency in all areas; and

(g) establish an annual audit plan using a risk based approach sufficient to achieve these objectives.

(2) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Board, or a designated committee thereof, which shall have the sole power to direct the audit program activities.

(3) The Board, or a designated committee of the Board, shall exercise appropriate oversight of the audit function, with particular emphasis on an adequately staffed department or outside firm with respect to both the experience level and number of the individuals dedicated to the Bank's audit function.

(4) All audit reports shall be in writing, provide conclusions, and be supported by adequate work papers, which must be provided to the Bank. The Board, or a designated committee of the Board, shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that the Bank maintains a written record describing those actions. The Board shall ensure that management provides detailed explanations in those circumstances, if any, where the deficiencies cannot be remedied, and that the audit staff maintain a written record describing those actions. The Board shall provide for a timely independent written follow-up for any uncorrected deficiencies. The audit staff shall evaluate in writing the effectiveness of the corrective actions and recommend additional corrective actions, as necessary.

(5) The audit staff shall have unfettered access to any records necessary for the proper conduct of its activities. The Board shall ensure that National Bank examiners have unrestricted access to all reports and work papers of the audit staff and any other parties working in the audit staff's behalf.

(6) The Board, or a designated committee of the Board, shall evaluate the audit reports of any party providing services to the Bank, and shall assess the impact on the Bank of any audit deficiencies cited in such reports.

## ARTICLE X

### 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 Report of Examination dated March 23, 2010 ("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 thirty (30) 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 Director.

## ARTICLE XI

### CREDIT RISK AND PROBLEM ASSET MANAGEMENT

(1) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure Bank adherence to a written program to reduce the high level of credit risk in the Bank. The program shall include, but not be limited to, procedures to strengthen:

- (a) credit underwriting;
- (b) management of credit operations and to maintain an adequate, qualified staff in all loan functional areas; and
- (c) loan collections.

The Board shall submit a copy of the written program to the Director.

(2) At least quarterly, the Board shall prepare a written assessment of the Bank's credit risk, which shall evaluate the Bank's progress under the aforementioned program. The Board shall submit a copy of this assessment to the Director for review.

(3) Within thirty (30) days, the Board shall adopt and the Bank (subject to Board review and ongoing monitoring) shall implement and thereafter ensure adherence to a written program designed to protect the Bank's interest in those assets criticized as "doubtful," "substandard," or "special mention" in the most recent Report of Examination ("ROE"), in any subsequent ROE, by any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination. The program shall include:

- (i) sufficient staff having the qualifications, skills, and experience to effectively manage and resolve problem assets, who will be held accountable by the Bank's Board to successfully execute their assigned duties;
- (ii) adequate management information systems to measure the status of workout plans on each problem asset; and
- (iii) the development of Criticized Asset Reports ("CARs") identifying all credit relationships and other assets totaling in aggregate five

hundred thousand dollars (\$500,000) or more, criticized as "doubtful," "substandard," or "special mention." The CARs must be updated and submitted to a committee of the Board monthly, and to the full Board and to the Director quarterly. Each CAR shall cover an entire credit relationship and other assets, and include, at a minimum, analysis and documentation of the following:

- (a) the origination date and any renewal or extension dates, amount, purpose of the loan or other asset, and the originating and current handling officer(s);
- (b) the expected primary and secondary sources of repayment, and an analysis of the adequacy of the repayment source;
- (c) the appraised value of supporting collateral, along with the date and source of the appraisal, and the position of the Bank's lien on such collateral, where applicable, as well as other necessary documentation to support the current collateral valuation;
- (d) an analysis of current and complete credit information, including a global cash flow analysis where loans are to be repaid from operations;
- (e) results of any impairment analysis;
- (f) accurate risk ratings consistent with the classification standards contained in the *Comptroller's Handbook* on "Rating Credit Risk;"
- (g) appropriate accrual status pursuant to the FFIEC Instructions for the Preparation of Consolidated Reports of Condition and Income;
- (h) significant developments, including a discussion of changes since the prior CAR, if any; and

- (i) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment, including an appropriate exit strategy.

(4) The Bank shall not extend credit, directly or indirectly, including renewals, modifications or extensions, to a borrower whose loans or other extensions of credit are criticized in any ROE, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination, unless and until the Board determines in writing that each of the following conditions is met:

- (a) the Board, or a designated committee thereof, finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, modifying or extending any additional credit, a majority of the full Board (or designated committee) approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank. A copy of the findings and approval of the Board or designated committee shall be maintained in the credit file of the affected borrower and made available for review by National Bank Examiners;
- (b) the Bank performs a written credit and collateral analysis as required by paragraphs (3)(c) and (d) of this Article and, if necessary, the proposed action referred to in paragraph (1)(i) of this Article is revised, as appropriate; and
- (c) the Board's formal plan to collect or strengthen the criticized asset will not be compromised by the extension of additional credit.

## ARTICLE XII

### ALLOWANCE FOR LOAN AND LEASE LOSSES

(1) The Board shall maintain and adhere to a written policy and procedures for the maintenance of an adequate Allowance for Loan and Lease Losses ("ALLL"). The policy and procedures shall be consistent with the comments on maintaining a proper ALLL found in the Interagency Policy Statement on the ALLL contained in OCC Bulletin 2006-47 (December 13, 2006) and with "Allowance for Loan and Lease Losses," Booklet A-ALLL of the *Comptroller's Handbook*, and shall incorporate the following:

- (a) internal risk ratings of loans;
- (b) results of the Bank's independent loan review;
- (c) criteria for determining which loans will be reviewed under Accounting Standards Codification ("ASC") Topic 310 (pre-codification reference: Statement of Financial Accounting Standards ("FAS") Statement No. 114), how impairment will be determined, and procedures to ensure that the analysis of loans complies with ASC 310 requirements;
- (d) criteria for determining loan pools under ASC 450 (pre-codification reference: FAS Statement No. 5) and an analysis of those loan pools;
- (e) recognition of non-accrual loans in conformance with generally accepted accounting principles and regulatory guidance;
- (f) loan loss experience;
- (g) trends of delinquent and non-accrual loans;
- (h) concentrations of credit in the Bank; and
- (i) present and projected economic and market conditions.

(2) The policy and procedures shall provide for a review of the ALLL by the Board at least once each calendar quarter. Any deficiency in the ALLL shall be remedied in the quarter it is discovered, prior to filing the Consolidated Reports of Condition and Income, by additional provisions from earnings. Written documentation shall be maintained of the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL, and made available for review by National Bank Examiners.

(3) A copy of the Board's ALLL policy and procedures, and any subsequent revisions, shall be submitted to the Director.

### ARTICLE XIII

#### LIQUIDITY RISK MANAGEMENT PROGRAM

(1) Within sixty (60) days, the Board shall implement and maintain a comprehensive liquidity risk management program, consistent with OCC Bulletin 2010-13, "Liquidity" (March 22, 2010), which assesses on an ongoing basis the Bank's current and projected funding needs, and ensures that sufficient funds or access to funds exist to meet those needs. Such a program must include effective methods to achieve and maintain sufficient liquidity and to measure and monitor liquidity risk, to include at a minimum:

- (a) Strategies to maintain sufficient liquidity at reasonable costs including, but not limited to, the following:
  - (i) lower concentrations of funding sources, reducing reliance on high cost providers;
  - (ii) reducing rollover risk;
  - (iii) increasing liquidity through such actions as obtaining additional capital, placing limits on asset growth, aggressive collection of

problem loans and recovery of charged-off assets, and asset sales;  
and

- (iv) monitoring the impact of changes in the Bank's reputation, and changes in economic and credit conditions in the Bank's market(s).
- (b) Establishment of liquidity ratios and limits that are based on the Bank's business model and inherent risk exposures;
- (c) Guidelines which measure the level of available liquidity in comparison to the price sensitivity of deposits and the potential runoff of deposits, especially within the next twelve months;
- (d) The preparation of liquidity reports which shall be reviewed by the Board on at least a monthly basis, to include, at a minimum, the following:
  - (i) comparison of established liquidity limits and actual liquidity levels;
  - (ii) a certificate of deposit maturity schedule, including separate line items for Bank affiliate deposits and uninsured deposits, depicting maturities on a weekly basis for the next month and monthly thereafter for the following five months, which schedule shall be updated at least weekly;
  - (iii) a schedule of all funding obligations, including unfunded loan commitments, outstanding lines of credit and outstanding letters of credit, showing the obligations that can be drawn immediately, and on a weekly basis for the next month and monthly thereafter for the following five months, which schedule shall be prepared and updated at least weekly;

- (iv) a listing of funding sources, prepared and updated on a weekly basis for the next month and monthly thereafter for the following five months, including federal funds sold; unpledged assets and assets available for sale; and borrowing lines by lender, including original amount, remaining availability, type and book value of collateral pledged, terms, and maturity date, if applicable;
- (v) a monthly sources and uses of funds report for a minimum period of six months, updated monthly, which reflects known and projected changes in asset and liability accounts, and the assumptions used in developing the projections. Such reports shall include, at a minimum:
  - 1. the funding obligations and sources required by (d)(ii) and (d)(iii) of this paragraph;
  - 2. projected additional funding sources, including loan payments, loan sales/participations, or deposit increases; and
  - 3. projected additional funding requirements from a reduction in deposit accounts, inability to acquire federal funds purchased, or availability limitations or reductions associated with borrowing relationships.
- (e) A contingency funding plan that, on a quarterly basis, forecasts funding needs, and funding sources under different stress scenarios which represent management's best estimate of balance sheet changes that may result from a liquidity or credit event. The contingency funding plan shall include:

- (i) the preparation of reports which identify and quantify all sources of funding and funding obligations under best case and worst case scenarios, including asset funding, liability funding and off-balance sheet funding; and
- (ii) procedures which ensure that the Bank's contingency funding practices are consistent with the Board's guidance and risk tolerances.

(2) Upon completion, the Board shall implement the comprehensive liquidity risk management program and submit a copy of the program to the Director. The Bank shall submit liquidity reports required by this Article to the Director on a monthly basis.

#### ARTICLE XIV

##### CONSUMER COMPLIANCE PROGRAM

(1) Within sixty (60) days, the Board shall adopt, implement, and thereafter ensure adherence to a written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations.

This program shall include, but not be limited to:

- (a) a written description of the duties and responsibilities of the consumer compliance officer;
- (b) adequate internal controls to ensure compliance with consumer protection laws, rules, and regulations;
- (c) the preparation of a policies and procedures manual covering all consumer protection laws, rules and regulations for use by appropriate Bank personnel in the performance of their duties and responsibilities;

- (d) periodic updates of the written policies and procedures manual to ensure it remains current;
  - (e) an annual consumer compliance risk assessment;
  - (f) procedures for introducing new products or services that ensure these new activities are consistent with the Bank's consumer compliance program. This procedure shall include an assessment of the consumer compliance risk posed by the new activities, and whether the consumer compliance program has sufficient staffing and funding to effectively monitor the new activities.
  - (g) an independent audit program to test for compliance with consumer protection laws, rules and regulations;
  - (h) timely reporting of the results of the consumer compliance audit to the Board or a committee thereof;
  - (i) procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel in a timely manner; and
  - (j) sufficient training of all appropriate Bank personnel in the requirements of all federal and state consumer protection laws, rules and regulations.
- (2) Upon adoption, a copy of the program shall be forwarded to the Director.

## ARTICLE XV

### INFORMATION TECHNOLOGY

(1) The Board shall immediately take all steps necessary to improve the management of the Bank's Information Technology ("IT") and Information Security activities and to correct each deficiency cited in the March 23, 2010 Report of Examination, or any supervisory or audit communication.

(2) Within sixty (60) days, the Board shall develop, implement, and thereafter ensure adherence to a comprehensive, written information security program to ensure the safety and soundness of its operations and to support the Bank's efforts to comply with 12 C.F.R. Part 30, Appendix B, Safeguarding Customer Information. The information security program shall include administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. The information security program shall be consistent with the security process described in the "Information Security" booklet of the FFIEC Information Technology Examination Handbook. At a minimum, the information security program shall include:

- (a) a corporate-wide assessment of the risks to its customer information or customer information systems and a written report evidencing such assessment. The assessment shall include:
  - (b) the 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;
  - (c) an assessment of the likelihood and potential damage of these threats, taking into consideration the sensitivity of customer information; and
  - (d) an assessment of the sufficiency of policies, procedures, customer information systems, and other arrangements in place to control risks.
- (e) a process to monitor and control the identified risks, commensurate with the sensitivity of the information as well as the complexity and scope of bank activities; and
- (f) a test plan that provides for regular testing of key controls, systems and procedures of its information security program. The frequency and nature of

such tests shall be determined by the risk assessment. Such tests shall be conducted or reviewed by independent third parties or staff independent of those who develop or maintain the information security program.

(3) Within sixty (60) days, the Board shall develop, implement, and thereafter adhere to a written, well-documented, risk-based, internal information technology audit program. At a minimum, the IT audit program shall be performed by an independent and qualified party, and shall include fundamental elements of a sound audit program as described in the "Audit" booklet of the FFIEC Information Technology Examination Handbook.

(4) Within sixty (60) days, the Bank shall develop, implement, and thereafter adhere to a training program for all appropriate operational and supervisory personnel to ensure their awareness of their responsibility for compliance with the requirements of 12 C.F.R. Part 30, Appendix B, Safeguarding Customer Information. This training shall be provided to employees immediately upon being hired and, at a minimum, annually thereafter.

(5) The Board shall submit a copy of the comprehensive, written information security program and the training program required by this Article to the Director.

## ARTICLE XVI

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank requires an extension of any timeframe within this Order, the Board shall submit a written request to the Director asking for relief. 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 a provision and that require an extension of a timeframe within this Order.

(2) All such requests shall be accompanied by relevant supporting documentation, and any other facts upon which the Bank relies. The Director's decision concerning a request is final and not subject to further review.

## ARTICLE XVII

### OTHER PROVISIONS

(1) Although the Bank is by this Order required to submit certain proposed actions and programs for the review or prior written determination of no supervisory objection of the Director, the Board has the ultimate responsibility for proper and sound management of the Bank and the completeness and accuracy of the Bank's books and records.

(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) Unless otherwise stated, any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Director for good cause upon written application by the Board.

(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) In each instance in this Order in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any non-compliance with such actions.

(6) 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.

(7) The OCC and the Bank entered into a Consent Order dated December 16, 2005 and a Consent Order dated September 29, 2009 (collectively "Consent Orders"). This Order replaces the Consent Orders in their entirety and, therefore, the Consent Orders are hereby terminated.

(8) 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 15 day of December, 2010.

/s/

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Henry Fleming  
Director for Special Supervision

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

In the Matter of: )  
Pacific National Bank )  
Miami, Florida )

AA-EC-10-106

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

**WHEREAS**, the Comptroller of the Currency of the United States of America ("Comptroller" or "OCC") intends to initiate cease and desist proceedings against Pacific National Bank, Miami, Florida ("Bank") pursuant to 12 U.S.C. § 1818 through the issuance of a Notice of Charges, for unsafe or unsound banking practices relating to asset quality, liquidity, earnings and management, for violations of 12 U.S.C. § 1818(s); the Bank Secrecy Act, 31 U.S.C. §§ 5311 *et seq.*, including 31 U.S.C. § 5318(i); and Bank Secrecy Act regulations 12 C.F.R. §§ 21.11 and 21.21, and 31 C.F.R. § 103.176, and for the failure to comply with the Consent Order dated December 16, 2005 and the Consent Order dated September 29, 2009;

**WHEREAS**, the Bank, in the interest of compliance and cooperation, and without admitting or denying any wrongdoing, consents to the issuance of a Consent Order, dated December 15, 2010 ("Order") by executing this Stipulation and Consent to the Issuance of a Consent Order;

**NOW THEREFORE**, 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).

(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 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 consent to the issuance of the Consent Order and/or execute the Consent Order.

(5) The Bank also 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.

(6) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

### 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 a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 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

#### CLOSING PROVISIONS

(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, it 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

December 15, 2010  
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.

/s/  
Jose L. Baloyra 12/15/2010  
Date

/s/  
Andres Baquerizo 01/04/2011  
Date

/s/  
Clemencia de Tobon 12/15/2010  
Date

/s/  
Eduardo A. Gross 12/15/2010  
Date

/s/  
Carlos Fernandez-Guzman 12/15/2010  
Date

/s/  
Peter Phillips 12/15/2010  
Date

/s/  
Joaquin R. Urquiola 12/15/2010  
Date