

**#2011-0058**

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

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<b>In the Matter of:</b>	)	
Andrès Baquerizo	)	
Director and Chairman of the Board	)	AA-EC-11-07
Pacific National Bank	)	
Miami, Florida	)	

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**CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) intends to initiate proceedings to assess a civil money penalty against Andrès Baquerizo (“Respondent”) pursuant to 12 U.S.C. § 1818(i) on the basis of Respondent’s activities while serving as a director of Pacific National Bank, Miami, Florida (“Bank”), during the period of September 2008 to the present;

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, Respondent, without admitting or denying any wrongdoing, desires to enter into this Consent Order (“Order”);

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

Initials: AB  
Date: 03/23/11

## Article I

### JURISDICTION

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is a director of the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), having served in such capacity within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

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

## Article II

### COMPTROLLER’S FINDINGS

The Comptroller finds, and Respondent nether admits nor denies, the following:

(1) Respondent was a director of the Bank during the period of September 2008 through the present (“Respondent’s Tenure”), and the Chairman of the Board of Directors (“Board”) during the period of November 2009 through the present.

(2) On December 16, 2005, the Bank executed a Consent Order (“2005 Order”) with the OCC. As a director, and later as the Chairman of the Board, Respondent was

responsible for ensuring the Bank's compliance with the 2005 Order, which required the Bank to, among other things, develop and implement a program of policies, procedures, practices, and internal controls to assure ongoing Bank Secrecy Act ("BSA") compliance; adopt and implement an independent BSA audit program and to expand its BSA audit procedures; and develop and implement a comprehensive BSA training program.

(3) The 2005 Order was in effect from December 16, 2005 to December 15, 2010, when it was replaced by a new Consent Order issued against the Bank.

(4) During the examinations conducted as of March 25, 2009 and March 23, 2010 ("2009 Examination" and "2010 Examination," respectively), the OCC found that the Bank was in non-compliance with several of the requirements of the 2005 Order. At the conclusion of the 2009 Examination, the OCC identified deficiencies causing the non-compliance, and provided guidance for correcting the deficiencies to the Bank's Board, including Respondent, following the examination.

(5) At the conclusion of the 2010 Examination, the OCC found that the Bank not only had the same deficiencies but also new deficiencies, all of which continued the Bank's non-compliance with the requirements of the 2005 Order.

Respondent, in his capacity as a director, and later as the Chairman of the Board, failed to take the necessary actions to ensure Bank compliance with the provisions of the 2005 Order.

(6) By reason of the foregoing conduct, Respondent violated and caused the Bank to violate a final order that was issued pursuant to 12 U.S.C. §1818(b).

Article III

ORDER FOR CIVIL MONEY PENALTY

Respondent consents to, and it is ORDERED that:

(1) Respondent shall pay a civil money penalty in the amount of twelve thousand five hundred dollars (\$12,500.00), which shall be paid in two increments of six thousand two hundred fifty dollars (\$6,250) with the first increment due upon the signing of this Order and the second increment is due on June 22, 2011. Respondent shall make payment by certified check or money order made payable.

(2) Respondent shall make the payments by cashier's check or money order, made payable to the Treasurer of the United States, and shall deliver the payments to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-11-07) shall be entered on each of the submitted payments and Respondent shall deliver a copy of each payment to the OCC, Director of Enforcement at 250 E Street, SW, Washington, DC 20219.

(3) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818.

(4) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of the Enforcement & Compliance Division ("Enforcement Director") of the address of his current place of residence, by completing the form attached hereto as Appendix A.

(5) Until the civil money penalty is paid in full, upon each and every subsequent change in place of residence, if any, Respondent shall notify the Enforcement Director of his new address within seven (7) days of such change in address.

#### Article IV

#### OTHER PROVISIONS

- (1) By consenting to the issuance of this Order, Respondent waives:
- (a) the right to the issuance of a Notice under 12 U.S.C. § 1818(i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. Part 19;
  - (c) all rights to seek judicial review of this Order;
  - (d) all rights in any way to contest the validity of this Order; and
  - (e) any and all claims for fees, costs or expenses against the 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 acknowledges that:
- (a) He shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under this Order, or any legal (or other professional) expense relative to the

negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part 359; and Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359.

- (b) He has read the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller or his agents or employees to cause or induce him to agree to consent to the issuance of this Order or to execute this Order.

(3) This Order constitutes a settlement of the civil money penalty proceeding arising out of the specific acts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). However, the specific acts, omissions, or violations described in Article II may be used by the OCC in future enforcement actions to establish a pattern or practice of misconduct or the continuation of a pattern or practice of misconduct.

(4) This Order shall not be construed as an adjudication on the merits and, except as set forth above in paragraph (3), 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 further agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, the specific acts, omissions, or violations referenced in this Order, or otherwise creating the impression that this Order is without factual basis. If Respondent violates this provision, the OCC may set aside this settlement and commence administrative proceedings on the actions alleged herein. Nothing in this paragraph shall affect Respondent's testimonial obligations.

(6) Nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

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

<u>/s/Andrés Baquerizo</u>	<u>03/23/11</u>
Andrés Baquerizo	Date

**IT IS SO ORDERED.**

<u>/s/Henry Fleming</u>	<u>4/14/11</u>
Henry Fleming Director Special Supervision Division	Date