

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

In the Matter of:)
)
Merchants Bank of California, N.A.)
Carson, California) AA-EC-2016-40

CONSENT ORDER FOR A CIVIL MONEY PENALTY

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted examinations of Merchants Bank of California, N.A., Carson, California (“Bank”). The OCC has identified deficiencies in the Bank’s practices that resulted in violations of the consent orders entered into by the Bank on June 23, 2010 (“2010 Consent Order”) and June 26, 2014 (“2014 Consent Order”), as well as a continued violation of 12 C.F.R. § 21.21, and has informed the Bank of the findings resulting from the examinations.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of an Order for a Civil Money Penalty, dated February 27, 2017, that is accepted by the Comptroller (“Stipulation”). By this Stipulation, which is incorporated herein by reference, the Bank has consented to the issuance of this Consent Order for a Civil Money Penalty (“Order”) by the Comptroller.

ARTICLE I

COMPTROLLER’S FINDINGS

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

- (1) On June 23, 2010, the Bank entered into the 2010 Consent Order. The 2010 Consent Order contained Article XIII – BSA Program, which required the Bank to, among other

things, develop and adhere to a revised Bank Secrecy Act (“BSA”) Program. Article XIII required the revised BSA Program to contain, among other things, policies and procedures for: the appropriate identification and monitoring of transactions that pose greater than normal risk for compliance with the BSA; the monitoring of suspicious cash, monetary instruments, wire transfers, and other activities for all types of transactions, accounts, customers, products, services, and geographic areas; expanded account-opening procedures for all accounts that pose greater than normal risk for compliance with the BSA; maintenance of an integrated, accurate system for all Bank areas to produce periodic reports designed to identify unusual or suspicious activity, including patterns of activity, to monitor and evaluate unusual or suspicious activity, and to maintain accurate information needed to produce these reports.

(2) Between June 2010 and April 2013, the Bank was in continuous non-compliance with Article XIII of the 2010 Consent Order.

(3) Between 2011 and 2014, the Bank expanded its exposure from high-risk business, notwithstanding that it was ill-equipped to monitor and control the risk associated with this substantial growth in high-risk activity, as evidenced by the Bank’s continued non-compliance with Article XIII of the 2010 Consent Order.

(4) The OCC identified multiple BSA deficiencies that existed as of April 2013 that represented non-compliance with Article XIII of the 2010 Consent Order and potentially a violation of 12 C.F.R. § 21.21. These deficiencies included an inadequate risk assessment process, inadequate system of internal controls, inadequate suspicious activity monitoring and reporting process, and inadequate customer due diligence and enhanced due diligence programs; the BSA Officer and staff did not have sufficient technical expertise and experience to adequately monitor and identify suspicious activity; the BSA officer and staff lacked proper

training; and the BSA/AML independent audit had failed to identify these significant internal control weaknesses.

(5) The Bank remained in non-compliance with Article XIII of the 2010 Consent Order and was found to be in violation of 12 C.F.R. § 21.21 as of June 30, 2013. The violation of 12 C.F.R. § 21.21 was the result of the Board's failure to implement an effective BSA Program that addressed the regulatory requirements contained in 12 C.F.R. § 21.21. The Board's failure to implement an effective program included substantial deficiencies in all four pillars of the BSA Program under 12 C.F.R. § 21.21(d)(1)-(4), including the system of internal controls, independent testing, BSA Officer, and BSA Training. As of May 25, 2016, the Bank had yet to correct these deficiencies and remains in violation of 12 C.F.R. § 21.21.

(6) On June 26, 2014, the Bank entered into the 2014 Consent Order, which terminated and replaced the 2010 Consent Order. At the time of termination and replacement, the Bank remained in non-compliance with Article XIII of the 2010 Consent Order.

(7) The 2014 Consent Order contains twenty (20) actionable articles related to the Bank's BSA Program. As of May 25, 2016, the Bank was in non-compliance with nineteen (19) of 20 actionable articles in the 2014 Consent Order. Non-compliance with those 19 articles represents, but is not limited to, the failure to clear the backlog of high-risk customer reviews; failure to close accounts for which the Bank cannot ensure the legitimacy of the sources and uses of funds, as required by Article IV of the Consent Order; failure to adhere to the prohibition on new account openings and the provision of new services, as required by Article VI of the Consent Order; failure to implement sufficient risk management practices and monitoring for remote deposit capture transactions; failure to implement a monitoring process for activities involving armored car or FX transactions, while simultaneously increasing FX

transaction activity; failure to timely complete suspicious activity reviews; failure to submit and implement a revised BSA Program; and failure to implement and adhere to policies and procedures that provide for the identification, analysis, and monitoring of accounts.

(8) During the relevant period, the Bank violated the 2010 Consent Order and the 2014 Consent Order.

(9) During the period from June 30, 2013 to May 25, 2016, the Bank continuously violated 12 C.F.R. § 21.21.

(10) By reason of the foregoing conduct, the Bank violated regulations and orders.

ARTICLE II

ORDER FOR A CIVIL MONEY PENALTY

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, 12 U.S.C. § 1818(i), the Comptroller orders, and the Bank consents to the following:

(1) The Bank shall make payment of a civil money penalty in the total amount of one million dollars (\$1,000,000), which shall be paid upon the execution of this Order:

(a) If a check is the selected method of payment, the check shall be made payable to the Treasurer of the United States and shall be delivered to:
Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri
63197-9000.

(b) If a wire transfer is the selected method of payment, it shall be sent in accordance with instructions provided by the Comptroller.

(c) The docket number of this case (AA-EC-2016-40) shall be entered on the payment document or wire confirmation and a photocopy of the payment document or confirmation of the wire transfer shall be sent immediately,

by overnight delivery, to the Director of Enforcement and Compliance,
Office of the Comptroller of the Currency, 400 7th Street, S.W.,
Washington, D.C. 20219.

(2) 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(h) and (i).

ARTICLE III

OTHER PROVISIONS

(1) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(i)(2), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(2) This Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the Comptroller, based on the practices and violations of law described in the Comptroller's Findings set forth in Article I of this Order. The Comptroller releases and discharges the Bank and its subsidiaries from all potential liability for a civil money penalty that has been or might have been asserted by the Comptroller based on the practices and violations described in Article I of this Order, to the extent known to the Comptroller as of the effective date of this Order. Nothing in the Stipulation or this Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions other than a civil money penalty against the Bank based on the findings set forth in Article I of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;

- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of this Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in the Stipulation or this Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of the Stipulation or this Order.

(3) 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 27th day of February, 2017.

/s/

Julie A. Thieman
Director for Special Supervision

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

In the Matter of:

Merchants Bank of California, N.A.
Carson, California

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AA-EC-2016-40

**STIPULATION AND CONSENT TO THE ISSUANCE
OF AN ORDER FOR A CIVIL MONEY PENALTY**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”), based upon information derived from the exercise of his regulatory and supervisory responsibilities, intends to initiate a civil money penalty proceeding against Merchants Bank of California, N.A., Carson, California (“Bank”), pursuant to 12 U.S.C. § 1818(i), for the Bank’s violations of the June 23, 2010 Consent Order, June 26, 2014 Consent Order, and 12 C.F.R. § 21.21;

WHEREAS, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, through its duly elected and acting Board of Directors (“Board”), has agreed to execute this Stipulation and Consent to the Issuance of a Civil Money Penalty (“Stipulation”), that is accepted by the Comptroller, through his duly authorized representative;

NOW, THEREFORE, in consideration of the above premises, it is stipulated by the Bank that:

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

ARTICLE II

CONSENT

- (1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order for a Civil Money Penalty (“Consent Order”) by the Comptroller.
- (2) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that the Consent Order shall become effective upon its execution by the Comptroller through his authorized representative, and shall be fully enforceable by the Comptroller pursuant to 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 this Stipulation.

(5) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States 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.

(7) The Consent Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the Comptroller, based on the practices and violations of regulation, final orders, and law described in the Comptroller's Findings set forth in Article I of the Consent Order. The Comptroller releases and discharges the Bank from all potential liability for a civil money penalty that has been or might have been asserted by the Comptroller based on the practices and violations described in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. Nothing in this Stipulation or the Consent Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions other than a civil money penalty against the Bank based on the findings set forth in Article I of the Consent Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of the Consent Order, or any other findings; or

- (d) utilizing the findings set forth in Article I of the Consent Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in this Stipulation or the Consent Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

ARTICLE III

WAIVERS

- (1) The Bank, by executing this Stipulation and consenting to the Consent Order, waives:
 - (a) Any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(i);
 - (b) Any and all procedural rights available in connection with the issuance of the Consent Order;
 - (c) Any and 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) Any and all rights to seek any type of administrative or judicial review of the Consent Order;
 - (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 the Consent 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;

- (f) Any and all rights to assert this proceeding, this Stipulation, consent to the issuance of the Consent Order, and/or the issuance of the Consent Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) Any and all rights to challenge or contest the validity of the Consent Order.

ARTICLE IV

CLOSING

(1) The provisions of this Stipulation and the Consent Order 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.

(2) Nothing in this Stipulation or the Consent Order shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation or the Consent Order constitutes, nor shall the Bank contend that it constitutes, a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Merchants Bank of California, N.A., Carson, California, have hereunto set their hands on behalf of the Bank.

/s/
Daniel Roberts

14 February 2017
Date

/s/
Philip Scott

2/14/17
Date

/s/
Theodore Roberts

2-14-2017
Date

/s/
Scott Racusin

2/14/17
Date