

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

In the Matter of:	)	
	)	
Edward Fitzgerald	)	AA-EC-2017-20
Former President	)	
	)	
The National Republic Bank of Chicago	)	
Chicago, Illinois	)	

**CONSENT ORDER**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition and civil money penalty proceedings against Edward Fitzgerald (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i) on the basis of Respondent’s activities while serving as President of The National Republic Bank of Chicago, Chicago, Illinois (“Bank”);

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 consent to the issuance of this Consent Order (“Order”) issued pursuant to 12 U.S.C. § 1818(e) and (i);

NOW, THEREFORE, it is stipulated by and between the OCC, through the duly authorized representative of the Comptroller of the Currency (“Comptroller”), and Respondent that:

**ARTICLE I**

**JURISDICTION**

(1) The Bank was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a director and officer of the Bank and was 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 of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and was chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this prohibition and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(e) and (i).

## **ARTICLE II**

### **COMPTROLLER’S FINDINGS**

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

(1) During 2011 and 2012, in order to mask loan delinquencies, Respondent directed the Bank to advance at least \$368,000 in proceeds from a loan and a certificate of deposit (“CD”) to make payments on contractually unrelated credits. The Bank charged off \$4.9 million related to the loan in 2013 and charged off a \$250,000 credit collateralized by the CD in 2014.

(2) In November 2011, Respondent caused the Bank to issue a \$2.6 million nominee loan. Respondent was aware prior to funding that the loan proceeds would go not to the named borrower but instead to the Bank’s largest loan customer. Respondent failed to inform the Board of Directors (“Board”) or the OCC of this fact. In 2013, the Bank charged off \$4.9 million in connection with a loan to the actual recipient of the funds.

(3) In December 2011, Respondent caused the Bank to issue a \$24.9 million loan despite significant problems with the collateral, including interests pledged by several entities controlled by the borrower. Respondent was aware that the senior lenders to the collateral

entities restricted subordinated debt, and Respondent agreed not to file UCC financing statements on the collateral because the borrower said doing so would default the senior liens. Respondent failed to inform the Board—until directed to do so by the OCC in 2013—that the collateral entities’ senior lenders restricted subordinated debt, that the borrower asked the Bank not to file UCC financing statements, and that the Bank in fact did not file the financing statements. In 2014, the Bank charged off \$17.1 million in connection with this loan.

(4) In October 2013, Respondent caused the Bank to repurchase a \$2 million participation in the \$24.9 million loan referred to in paragraph (3). Respondent was aware at the time of the repurchase that this loan had an outstanding balance of \$24.46 million, that the OCC had downgraded it to substandard, and that the Board had placed it on non-accrual. Respondent was also aware that the borrower had not made its July, August, or September 2013 loan payments and that the loan was due to mature in December 2013. Respondent nevertheless caused the Bank to repurchase this participation despite the fact that the Bank was under no legal obligation to do so, and that the participant would have had to share ratably in any loss. In 2014, the Bank charged off \$17.1 million in connection with this loan.

(5) Respondent permitted a customer to maintain frequent, continuous, and large overdrafts in his various deposit accounts from 2011 through March 2014 without adequate controls, including a right of offset between the accounts. From November 2013 through March 2014, at a time when the Bank’s overall condition, capital, and earnings were critically deficient, Respondent permitted this customer to maintain a deposit relationship that in the aggregate was negative in the hundreds of thousands of dollars.

(6) Between 2010 and 2014, Respondent instructed Bank personnel to order multiple real estate appraisals on the same properties within a few weeks to a few months of each other

to ensure that the loan file contained the appraisal that confirmed the Bank's desired real estate value. In addition, on multiple occasions in 2013 and 2014, Respondent caused the Bank to use an appraisal company after the Board removed it from its list of approved appraisers.

(7) By reason of the foregoing conduct, Respondent engaged in violations of law, regulation, and order, including 12 U.S.C. § 161, 18 U.S.C. § 1005, and 12 C.F.R. § 32.3, recklessly engaged in unsafe or unsound practices, and breached his fiduciary duty to the Bank; which violations, practices, and breaches were part of a pattern of misconduct and caused or were likely to cause more than a minimal loss to the Bank. Respondent's misconduct resulted in loss or risk of loss to the Bank, and demonstrated personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank.

### **ARTICLE III**

#### **ORDER OF PROHIBITION**

Respondent consents to, and it is ORDERED that:

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the "appropriate Federal banking agency," as defined in 12 U.S.C. § 1813(q); or
- (d) vote for a director, or serve or act as an "institution-affiliated party," as defined in 12 U.S.C. § 1813(u).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. § 1818(b)(3), (b)(4) or (b)(5);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Agency and any Federal Home Loan Bank.

(3) The prohibitions of paragraphs (1) and (2) of this Article shall cease to apply with respect to a particular institution if Respondent obtains the prior written consent of both the OCC and the institution's "appropriate Federal financial institutions regulatory agency," as defined in 12 U.S.C. § 1818(e)(7)(D).

(4) 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.

#### **ARTICLE IV**

##### **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 five thousand dollars (\$5,000), which shall be paid in full upon Respondent's execution of this Order.

(2) Respondent shall make payment in full by cashier's or certified check made payable to the Treasurer of the United States, and shall deliver the payment to: Office of the

Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case (AA-EC-2017-20) shall be entered on the submitted payment.

(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.

## **ARTICLE V**

### **CLOSING**

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Intention to Prohibit Further Participation and a Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(e) and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(e) and (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 United States, the OCC, or any officer, employee, or agent of the OCC, 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 of the Bank) to incur, directly or indirectly, any expense relative to the negotiation and issuance of this Order except as permitted by 12 C.F.R. § 7.2014 and Part

359. In addition, Respondent shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate of the Bank) with respect to such amounts except as permitted by 12 C.F.R. § 7.2014 and Part 359; provided, however, Respondent may not obtain or accept such indemnification with respect to payment of the civil money penalty.

(3) 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 OCC or any officer, employee, or agent of the OCC to cause or induce Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) This Order constitutes a settlement of any proceedings arising out of the facts, omissions, or violations described in the Comptroller's Findings (Article II of this Order). The OCC agrees not to institute the proceedings referenced in the first whereas clause of this Order for the specific acts, omissions, or violations described in Article II of this Order unless such acts, omissions, or violations reoccur. 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 of misconduct or the continuation of a pattern of misconduct.

(5) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (4) above, shall not inhibit, estop, bar, or otherwise prevent the OCC from taking any action affecting Respondent if, at any time, the OCC deems it appropriate to do so to fulfill the responsibilities placed upon the OCC by the several laws of the United States.

(6) Nothing in this Order shall preclude any proceedings brought by the OCC to enforce the terms of this Order, and nothing in this Order 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.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818, and expressly does not form, and may not be construed to form, a contract binding on the United States, the OCC, or any officer, employee, or agent of the OCC. Respondent expressly acknowledges that no officer, employee, or agent of the OCC has statutory or other authority to bind the United States, the United States Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer, employee, or agent of those entities, to a contract affecting the OCC's exercise of its supervisory responsibilities.

(8) This Order is "issued with the consent of . . . the institution-affiliated party concerned," pursuant to 12 U.S.C. § 1818(h)(2).

(9) 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.

(10) The provisions of this Order are effective upon issuance by the OCC, through the Comptroller's duly 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 OCC, through the Comptroller's duly authorized representative.

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

S/Edward Fitzgerald

9/1/17

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Edward Fitzgerald

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Date

**IT IS SO ORDERED.**

S/Michael R. Brickman

9/6/17

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Michael R. Brickman  
Deputy Comptroller for Special Supervision

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Date