

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

In the Matter of: Susan Cavano Chief Banking Officer and former Chief Operating Officer Merchants Bank of California, N.A. Carson, California)))))))	AA-EC-2017-77
--	---------------------------------	---------------

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate cease and desist and civil money penalty proceedings against Susan Cavano (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while serving as the Chief Operating Officer (“COO”), Chief Banking Officer (“CBO”), and Senior Vice President (“SVP”) of Merchants Bank of California, N.A., Carson, California (“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(b) 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 is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is an officer 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 of this Order. *See* 12 U.S.C. § 1818(i)(3).

(3) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is 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 personal cease and desist and civil money penalty action against Respondent pursuant to 12 U.S.C. § 1818(b) and (i).

ARTICLE II

COMPTROLLER’S FINDINGS

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

(1) In February 2017, the Bank consented to the assessment of a \$1,000,000 civil money penalty for violations of consent orders the Bank entered into with the OCC 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. *See* OCC Order No. 2017-013. Article I, “Comptroller’s Findings,” of OCC Order No. 2017-013 is incorporated by reference herein.

(2) Respondent, during all relevant times, served as SVP, and COO or CBO, and caused, brought about, or participated in violations of the 2010 Consent Order, the 2014 Consent Order, and 12 C.F.R. § 21.21. Respondent failed to take the necessary actions to ensure that the Bank corrected the deficiencies resulting in violations of the 2010 Consent Order, the 2014 Consent Order, and 12 C.F.R. § 21.21.

(3) Respondent hindered the Bank Secrecy Act (“BSA”) Department’s effectiveness by interfering with the BSA Officer’s authority to determine that the Bank exit customer relationships that posed excessive BSA/Anti Money Laundering (“AML”)/Office of Foreign Assets Control (“OFAC”) risk to the Bank and staffing within the BSA Department. Respondent, by undermining the BSA Officer’s ability to exercise her authority, impeded the BSA Department’s ability to remediate the deficiencies identified in the 2014 Consent Order and correct the Bank’s violation of 12 C.F.R. § 21.21.

(4) Respondent knowingly made false statements to the OCC and advised other Bank employees to corroborate those false statements if confronted by the OCC.

(5) At all relevant times, Respondent oversaw the Bank’s Operations Department. The Bank’s Operations Department lacked sufficient internal controls. Respondent failed to:

- (a) document and enforce individual check and daily batch remote deposit capture (“RDC”) limits, and implement a well-documented process to track RDC limit exceptions;
- (b) obtain and retain due diligence documentation for large checks, and place prudent restrictions on high-risk commercial check cashing activities;
- (c) implement appropriate internal controls that required Bank employees to retain documentation related to the approval of daily RDC deposit limit exceptions;
- (d) collect Customer Due Diligence and Enhanced Due Diligence information or obtain input from the BSA Department prior to approving large wire transfers; and

(e) implement appropriate internal controls that required Bank employees to use descriptive transactions codes when logging transactions. Extensive use of generic transaction codes hindered the BSA Department's ability to monitor transactions effectively at the Bank.

(6) In addition to failing to implement adequate controls in the Bank's Operations Department, Respondent also:

- (a) granted blanket approval for a Bank employee to deposit third party checks into the employee's account at the Bank; and
- (b) facilitated the Bank's payment of expenses on behalf of third-party entities owned and controlled by the Bank's Chairman of the Board, President and Chief Executive Officer.

(7) By reason of the foregoing conduct, Respondent engaged in reckless unsafe or unsound practices and violated, as that term is defined under 12 U.S.C. § 1813(v), regulations and orders. These practices and violations were a part of a pattern of misconduct.

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 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-2017-77) 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 IV

ORDER TO CEASE AND DESIST

Respondent consents to, and it is ORDERED that:

(1) Whenever Respondent is employed by or is otherwise affiliated with an insured depository institution (as defined in 12 U.S.C. § 1813(c)(2)) or otherwise becomes an institution-affiliated party within the meaning of 12 U.S.C. § 1813(u), Respondent shall:

- (a) Comply fully with all laws, regulations, and policies applicable to any insured depository institution with which she is affiliated;
- (b) Avoid engaging in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code;
- (c) Fulfill the fiduciary duties of loyalty and care owed to any insured depository institution with which she is or may become affiliated and shall, at all times, avoid placing her own interests above those of the institution;
- (d) Adhere to the written policies and procedures of any insured depository institution or agency to which she may become affiliated, or seek and receive written permission from appropriate authorized individuals to do otherwise;

- (e) Participate at least annually in training regarding BSA/AML compliance and best practices in bank operations, if Respondent is or becomes an institution-affiliated party with any insured depository institution;
- (f) Refrain from any making BSA/AML staffing decisions, including, but not limited to number of staff, hiring, firing, and salary determinations, without review and approval from an executive officer of the insured depository institution of which Respondent is or becomes an institution-affiliated party;
- (g) Provide the board of directors of the insured depository institution of which Respondent is an institution-affiliated party with a copy of this Order. Respondent shall provide written certification of compliance with this paragraph to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 400 7th St., SW, Washington, D.C. 20219, within ten (10) days of execution of this Order; and
- (h) With respect to any future employment, prior to accepting any offer of a position that causes Respondent to become an institution-affiliated party of an insured depository institution, provide the President or Chief Executive Officer of the insured depository institution with a copy of this Order. Respondent shall provide written notice of such acceptance to the Director, Enforcement and Compliance Division, at the address in Paragraph (i), within ten (10) days after acceptance of such position.

ARTICLE V

CLOSING

- (1) By executing this Order, Respondent waives:
 - (a) the right to a Notice of Charges for Issuance of an Order to Cease and Desist and Notice of Civil Money Penalty Assessment under 12 U.S.C. § 1818(b) and (i);
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) 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 she 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 her hand.

/s/Susan Cavano

Susan Cavano

3/3/18

Date

IT IS SO ORDERED.

/s/Michael R. Brickman

Michael R. Brickman
Deputy Comptroller for Special Supervision

3/7/2018

Date