

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

In the Matter of:	)	
Jane Chu	)	
Former Executive Vice President and	)	AA-EC-2017-76
Chief Financial Officer	)	
	)	
Merchants Bank of California, N.A.	)	
Carson, California	)	

**CONSENT ORDER**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate cease and desist and civil money penalty proceedings against Jane Chu (“Respondent”) pursuant to 12 U.S.C. § 1818(b) and (i) on the basis of Respondent’s activities while serving as the Chief Financial Officer (“CFO”) and Executive Vice President (“EVP”) 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 was 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 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) Respondent, during all relevant times, served as EVP and CFO of the Bank.
- (2) While serving as CFO of the Bank, Respondent simultaneously served as CFO of a company owned and controlled by the Bank’s Chairman of the Board, President and Chief Executive Officer (the “Company”). While serving in these dual CFO roles, Respondent facilitated transactions for the Company pursuant to an agreement between the Company and a currency dealer, which primarily transacted in Iraqi dinar, whereby the Company negotiated checks on behalf of the currency dealer through the Company’s accounts at the Bank. This arrangement allowed the Bank’s President and the currency dealer to circumvent the Bank’s account opening procedures, including the Bank’s Customer Due Diligence and Enhanced Due Diligence procedures, because the Bank had previously rejected the currency dealer’s application to become a direct customer of the Bank.

(3) In connection with the arrangement described in Paragraph (2), Respondent knowingly made factually inaccurate statements to the Company's independent certified public accountant for the purpose of concealing a source of the Company's revenue attributable to its relationship with the currency dealer. The factually inaccurate statements resulted in the Company supplying inaccurate financial records to the Bank in support of its open line of credit at the Bank.

(4) In several instances over a period between 2010 and 2013, the Bank processed duplicative batches of remote deposit capture ("RDC") transactions causing the payors' accounts to be debited twice or more. The duplicate RDC transactions resulted in the accumulation of funds in the Bank's Federal Reserve Bank account to which the Bank was not entitled ("duplicate funds"). Respondent inappropriately credited the duplicate funds to the Bank's income account. The Bank recognized the duplicate funds as income in its December 31, 2015 Call Report, which contributed to the Bank's violation of 12 U.S.C. § 161(a), "Consolidated Reports of Condition and Income." Respondent caused, brought about, or participated in the Bank's violation of 12 U.S.C. § 161(a).

(5) Respondent also credited the accounts of three customers of the Bank with duplicate funds to which those customers were not entitled. The three customers were owned and controlled by Bank insiders. The three customers also employed Respondent or otherwise paid Respondent to perform accounting services for them.

(6) Respondent, on multiple occasions, facilitated lending relationships between Bank insiders and between Bank insiders and Bank customers. The Bank's Code of Ethics policy explicitly prohibited each of the aforementioned lending relationships.

(7) At all relevant times, Respondent oversaw the Bank's Accounting Department. While doing so, Respondent failed to properly implement sufficient internal controls. The Accounting Department generally lacked formalized procedures, which contributed to incomplete or nonexistent documentation. Among other things, Respondent's journal entries frequently lacked support and failed to meet a standard of reliability expected of a CFO.

(8) This is the second enforcement action by the OCC against Respondent as CFO of this Bank. On June 27, 2012, the OCC entered into a Consent Order with Respondent for a civil money penalty (OCC Order No. 2012-129). The June 2012 Consent Order cited Respondent for having caused, brought about, participated in, counseled, or aided or abetted the Bank's violations of 12 U.S.C. § 84, 12 U.S.C. § 371c-1, 12 C.F.R. Part 32, and 12 C.F.R. Part 215, and engaged in unsafe or unsound practices.

(9) 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), Federal law. 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 thirty-five thousand dollars (\$35,000), which shall be paid in full according to the following payment schedule:

- (a) Five thousand dollars (\$5,000) shall be paid upon Respondent's execution of this Order;
- (b) A ten thousand dollar (\$10,000) installment shall be paid no later than May 31, 2018;

(c) A second ten thousand dollar (\$10,000) installment shall be paid no later August 31, 2018; and

(d) The final installment of ten thousand dollars (\$10,000) and any outstanding balance shall be paid no later than November 30, 2018.

(2) Respondent shall make payments 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-2017-76) shall be entered on the submitted payments.

(3) If Respondent fails to comply with any provision of this Order, then the entire balance of the civil money penalty amount described in this Article shall become immediately due and payable.

(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.

(5) 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 her current place of residence, by completing the form attached hereto as Appendix A.

(6) 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 her new address within seven (7) days of such change in address, by sending written notice to Enforcement Director, 400 7th Street S.W., Washington, DC 20219.

## **ARTICLE IV**

### **BANKRUPTCY**

(1) If Respondent files for bankruptcy protection, Respondent shall notify the Enforcement Director within ten (10) days of the filing and shall provide a copy of the filing to the Enforcement Director.

(2) In any bankruptcy proceeding in which it is or may be contended that Respondent's obligation to pay a civil money penalty pursuant to this Order is subject to discharge, Respondent will in no manner contest the assertion of the OCC or any officer, employee, or agent of the OCC or any agent, officer, or representative of the United States, pursuant to 11 U.S.C. § 523(a) or otherwise, that the civil money penalty obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

## **ARTICLE V**

### **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) Not prepare or revise an insured depository institution's Call Reports and/or financial statements without prior review and approval from an executive officer or the Board of Directors of the insured depository institution of which Respondent is an institution-affiliated party;
- (f) Have completed a minimum of forty (40) hours of coursework in accounting, finance and/or banking from a nationally accredited post-secondary institution based in the United States, prior to accepting an offer of employment or contract to perform work within any accounting department (including but not limited to employment as a CFO) of an insured depository institution;
- (g) Provide the President or Chief Executive Officer of the insured depository institution of which Respondent intends to become an institution-affiliated party (within the meaning of 12 U.S.C. § 1813(u)) with documentary proof and written certification of compliance with Paragraph (1)(f) of this Article within ten (10) days of accepting an offer of employment or contract to perform work within the insured depository institution. Respondent shall provide written certification of compliance with this paragraph to the Director, Enforcement and Compliance Division, at the address in Paragraph (j), within ten (10) days after acceptance of

offer of employment at, or contact to perform work for, the insured depository institution.

- (h) Participate at least annually in twenty (20) hours of training regarding accounting issues particular to insured depository institutions, if Respondent is an institution-affiliated party with any insured depository institution;
- (i) Disclose to the Board of Directors of any insured depository institution of which Respondent is an institution-affiliated party, any entities or individuals to whom Respondent renders accounting or bookkeeping services in exchange for a fee, wage or other financial benefit;
- (j) Provide the President or Chief Executive Officer 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
- (k) 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 (j), within ten (10) days after acceptance of such position.



## **ARTICLE VI**

### **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/Jane Chu

02-20-18

\_\_\_\_\_  
Jane Chu

\_\_\_\_\_  
Date

**IT IS SO ORDERED.**

/s/Michael R. Brickman

3/5/2018

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Michael R. Brickman  
Deputy Comptroller for Special Supervision

\_\_\_\_\_  
Date