

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

In the Matter of:)	
Daniel Roberts)	
Former Chairman of the Board, President, and CEO)	AA-EC-2017-74
)	
Merchants Bank of California, N.A.)	
Carson, California)	
)	

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition and civil money penalty proceedings against Daniel Roberts (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i) on the basis of Respondent’s activities while serving as President, Chief Executive Officer (“CEO”) and Chairman of the Board 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(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 is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent is the controlling shareholder and director, previously served as the Chairman of the Board, President, and CEO 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 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) In February 2017, Respondent, in his capacity as a director, without admitting or denying any wrongdoing, consented on behalf of the Bank 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 President, CEO, and Chairman of the Board of Directors of the Bank 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 also 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. Between 2011 and 2014, Respondent caused the Bank's risk profile to increase by recruiting higher-risk businesses as clients without ensuring the Bank had a commensurate Bank Secrecy Act/Anti-Money Laundering ("BSA/AML") program to manage such risk. Respondent knew, or should have known, the Bank was ill-equipped to monitor and control the risk associated with this substantial growth in higher-risk activity, given the Bank's continued noncompliance with the 2010 Consent Order and violation of 12 C.F.R. § 21.21.

(3) In addition to having caused, brought about or participated in the Bank's violation of its 2010 and 2014 Consent Orders and the Bank's violation of 12 C.F.R. § 21.21, Respondent engaged in unsafe or unsound practices and breached his fiduciary duties to the Bank while serving as Chairman of the Board, President and CEO of the Bank, as described in Paragraphs (4)-(7), below.

(4) In September 2013, Respondent, through a company he owned and controlled, entered into an agreement to negotiate checks on behalf of a currency dealer through his company's accounts at the Bank in exchange for a percentage of the gross deposits. The Bank had previously declined to enter into an account relationship with the currency dealer. Between November 2013 and the conclusion of the relationship in May 2014, Respondent's company negotiated over \$13 million worth of checks on behalf of the currency dealer through its accounts at the Bank. Respondent, by negotiating the currency dealer's checks through his company's accounts, allowed the currency dealer to circumvent the Bank's account opening procedures, including Customer Due Diligence and Enhanced Due Diligence procedures of the Bank. Respondent failed to provide the BSA Department with updated and accurate due diligence information regarding anticipated account activity.

(5) Respondent caused the Chief Financial Officer (“CFO”) of his company, who was also a Bank employee, to make inaccurate statements to the company’s independent certified public accountant. These inaccurate statements resulted in Respondent’s company supplying inaccurate financial records to the Bank in support of its open line of credit at the Bank.

(6) Respondent, between 1999 and 2014, entered into lending relationships with Bank directors and a Bank customer, both in his personal capacity and through entities he owned and controlled. The Bank’s Code of Ethics policy explicitly prohibited each of the aforementioned lending relationships. Respondent failed to disclose these lending relationships to the Bank’s Board of Directors (“Board”) as a whole, which compromised the Board’s decision-making process and increased the risk of insider abuse, uncontrolled conflicts of interest, and biased decision making by the Board.

(7) Respondent directed a former Bank employee to create inaccurate bank records in furtherance of Respondent’s business pursuits. The former Bank employee prepared multiple letters on Bank letterhead, representing himself as a Bank employee vouching for the financial strength of Respondent’s companies, and making representations about the management of these entities. The letters contained material inaccuracies about Respondent’s companies’ relationship with the Bank and material misrepresentations related to the former employee’s position at the Bank.

(8) This is the second enforcement action by the OCC against Respondent as Chairman of the Board, President, and CEO. On June 27, 2012, the OCC entered into a Consent Order with Respondent for a civil money penalty and personal cease and desist order (OCC Order No. 2012-131). Respondent 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, breached his fiduciary duties, and violated, as that term is defined under 12 U.S.C. § 1813(v), regulations and orders. These practices, breaches, and violations were a part of a pattern of misconduct, resulted in financial gain or other benefit to Respondent, and demonstrated willful and continuing disregard for the safety and soundness of the Bank.

ARTICLE III

ORDER OF REMOVAL AND 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:

- (e) any insured depository institution, as defined in 12 U.S.C. § 1813(c);

- (f) any institution treated as an insured bank under 12 U.S.C. § 1818(b)(3), (b)(4) or (b)(5);
- (g) any insured credit union under the Federal Credit Union Act;
- (h) any institution chartered under the Farm Credit Act of 1971;
- (i) any appropriate Federal depository institution regulatory agency; and
- (j) 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 one hundred and seventy-five thousand dollars (\$175,000), which shall be paid in full according to the following payment schedule:

- (a) Fifty thousand dollars (\$50,000) shall be paid upon Respondent's execution of this Order;
- (b) A thirty-one thousand two hundred and fifty dollar (\$31,250) installment shall be paid no later than June 30, 2018;

- (c) A second thirty-one thousand two hundred and fifty dollar (\$31,250) installment shall be paid no later than September 30, 2018;
- (d) A third thirty-one thousand two hundred and fifty dollar (\$31,250) installment shall be paid no later than December 31, 2018; and
- (e) The final installment of thirty-one thousand two hundred and fifty dollars (\$31,250) and any outstanding balance shall be paid no later than March 31, 2019.

(2) Respondent shall make payments by cashier's or certified checks made payable to the Treasurer of the United States, and shall deliver the payments 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-2017-74) 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 his 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 his

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 V

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 VI

CLOSING

- (1) By executing this Order, Respondent waives:
- (a) the right to a Notice of Intention to Prohibit Further Participation under 12 U.S.C. § 1818(e) and Notice of Civil Money Penalty Assessment 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(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/Daniel Roberts

05 April, 2018

Daniel Roberts

Date

IT IS SO ORDERED.

/s/Michael R. Brickman

April 10, 2018

Michael R. Brickman
Deputy Comptroller for Special Supervision

Date