

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

<u>In the Matter of:</u>	)	
	)	
<b>ERIC T. GULER</b> , individually, and as	)	AA-EC-2018-2
A former institution-affiliated party of	)	
	)	
Minnesota National Bank	)	
Sauk Centre, Minnesota	)	

**CONSENT ORDER**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition and civil money penalty (“CMP”) proceedings against Eric T. Guler (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i) on the basis of Respondent’s activities while serving as a General Lender and Vice President of Minnesota National Bank (“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 a former officer and employee 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 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) During the relevant period, Respondent was a General Lender and Vice President of the Bank.

In late February 2016, Respondent committed to make a \$2.6 million hotel construction loan, without loan committee approval and in excess of his \$150,000 individual lending authority. Respondent further authorized and delivered a \$327,779.16 money order payable to the hotel general contractor before the loan documents were executed and when he knew or should have known that the remitter’s account had no funds to cover the money order.

Respondent concealed his actions from Bank staff and management with regard to this loan and the related money order. The Bank suffered a loss of approximately \$327,779 from the unfunded money order.

In June 2015, Respondent signed a mortgage satisfaction document regarding a 2013 home equity line of credit loan and caused the Bank to release its security interest in the collateral property knowing that the borrower had not repaid the Bank's \$99,264 outstanding loan balance. Respondent misled another Bank employee about the repayment of the loan to secure her signature on the mortgage satisfaction document. Respondent continued to list the released collateral property on the Bank's problem loan report for months after the property release. The Bank suffered a loss of approximately \$99,264 from Respondent's release of the collateral property.

Between 2013 and 2015, Respondent made a number of loans to persons and entities in violation of the Bank's lending policies. These violations included (a) exceeding the Bank's 85 percent loan to value limitations for loans secured by non-owner occupied, one-to-four-family residential property; (b) splitting a single transaction into multiple loans to keep the individual loans within his individual lending authority; (c) splitting a single transaction into multiple loans to avoid appraisal requirements for real estate transactions over \$100,000; and (d) failing to include mandatory documentation in loan files including collateral valuations.

(2) By reason of the foregoing conduct, Respondent engaged in violations of law, regulation, or order, engaged in reckless 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 more than a minimal loss to the Bank. Respondent's misconduct resulted in loss or

risk of loss to the Bank, demonstrated his personal dishonesty, and willful or continuing disregard for the law and any applicable regulations.

### **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 one thousand dollars (\$1,000), which shall be paid in full according to the following payment schedule:

- (a) Two hundred fifty dollars (\$250) shall be paid no later than September 30, 2018;
- (b) Two hundred fifty dollars (\$250) shall be paid no later than December 31, 2018;
- (c) Two hundred fifty dollars (\$250) shall be paid no later than March 31, 2019; and
- (d) The final installment of two hundred fifty dollars (\$250) and any outstanding balance shall be paid no later than June 30, 2019.

(2) Respondent shall make payments via pay.gov or wire transfer, in accordance with instructions provided by the Comptroller. The docket number of this case (AA-EC-2018-2) shall be referenced in connection with the submitted payment.

(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 7<sup>th</sup> 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 and 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/Eric T. Guler

8/11/18

\_\_\_\_\_  
Eric T. Guler

\_\_\_\_\_  
Date

**IT IS SO ORDERED.**

/s/Michael R. Brickman

8/20/18

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Michael R. Brickman  
Deputy Comptroller for Special Supervision

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Date