

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

<b>In the Matter of:</b>	)	
	)	
Matthew Raphaelson	)	AA-EC-2020-53
Former Group Finance Officer and Head of	)	
Finance/Strategic Planning	)	
	)	
Wells Fargo Bank, N.A.	)	
Sioux Falls, South Dakota	)	

**CONSENT ORDER**

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) intends to initiate prohibition and civil money penalty proceedings against Matthew Raphaelson (“Respondent”) pursuant to 12 U.S.C. § 1818(e) and (i) on the basis of Respondent’s activities while serving as the Strategic Planning Leader, Finance Manager, Head of Strategy & Initiatives, and Group Finance Officer in the Community Bank of Wells Fargo Bank, N.A. (“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), (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 was an 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 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 these prohibition and civil money penalty actions 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) From 2002 through 2011, Respondent served as a Strategic Planning Leader in the Community Bank, responsible for financial planning, and was involved in the implementation of the Community Bank’s cross-sell strategy and sales model. In 2011, Respondent became the Community Bank’s Group Finance Officer and Head of Finance/Strategic Planning. In that role, he participated in the implementation of its incentive compensation program, sales planning, and cross-sell metric. In 2015, Respondent became the Community Bank’s Head of Strategy & Initiatives and remained in that position until the Bank

terminated him for cause in 2017. Respondent reported to the Head of the Regional Bank from 2001 through 2007 and to the Head of the Community Bank from 2007 through 2016.

(2) Respondent was a member of the Community Banking Risk Management Committee, Cross-Sell Steering Committee, Sales Tracking System Steering Committee, and Incentive Compensation Risk Management Steering Committee.

(3) From at least 2002 until 2016, the Community Bank had a systemic sales practices misconduct problem.<sup>1</sup>

(4) The root cause of the systemic sales practices misconduct was the Community Bank's business model that imposed unreasonable sales goals on its employees along with unreasonable pressure to meet these goals. Additionally, the Community Bank's controls were ineffective and were not reasonably designed to prevent or detect the misconduct.

(5) For many years Respondent knew or should have known about the systemic sales practices misconduct problem in the Community Bank, its root cause, and the risks to the Bank from failing to adequately address the problem.

(6) Throughout his tenure as the Community Bank's Strategic Planning Leader, Finance Manager, and Head of Strategy & Initiatives, Respondent helped to develop and promote a business model that incentivized systemic sales practices misconduct. Respondent participated in setting the Community Bank's sales goals and its sales incentive program. The incentive compensation plans in the Community Bank consisted in part of sales goals that were a significant root cause of systemic illegal activity by employees. Respondent did not give appropriate consideration to concerns from regional leaders about the unreasonably high sales

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<sup>1</sup> The term "sales practices misconduct" as used herein refers to the practice of Bank employees issuing products and services to customers without the customers' consent, or transferring customers' funds from one account to another without consent, or obtaining the customers' consent by making a false or deceptive statement.

goals and the risks associated with incentivizing sales of secondary deposit products and criticism of the sales model and its impact on sales practices misconduct.

(7) Respondent failed to fulfill his oversight, governance, risk management, and escalation responsibilities on the Community Banking Risk Management Committee, Cross-Sell Steering Committee, Sales Tracking System Steering Committee, and Incentive Compensation Risk Management Steering Committee.

(8) By reason of the foregoing conduct, grounds exist for the OCC to initiate these prohibition and civil money penalty actions against Respondent pursuant to 12 U.S.C. § 1818(e) and (i)(2)(B).

### 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 Nine Hundred Twenty-Five Thousand Dollars (\$925,000), which shall be paid as follows:

- (a) Two Hundred Twenty-Five Thousand Dollars (\$225,000) shall be paid upon Respondent's execution of this Order.
- (b) Seven Hundred Thousand Dollars (\$700,000) shall be paid on or before March 15, 2021.

(2) Respondent shall make payment in full according to the above schedule via pay.gov or wire transfer, in accordance with instructions provided by the OCC. The docket number of this case (AA-EC-2020-53) shall be referenced in connection with 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**

### **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 OCC by mail to Director, Enforcement, Office of the Comptroller of the Currency, 400 7th Street, SW, Washington, DC 20219 or by email to the address provided by the OCC.

(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) Pursuant to 12 U.S.C. § 1818(b), Respondent consents to, and it is ordered that Respondent shall cooperate fully and promptly with the OCC in any investigation, litigation, or

Initials: MR  
Date: 9/15/2020

administrative proceeding related to the subject matter of this Order, including sales practices misconduct at the Bank.

- (2) 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(b), (e), and (i);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b), (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.

(3) 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.

(4) 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.

(5) 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.

(6) This Order shall not be construed as an adjudication on the merits and, except as set forth in paragraph (5) 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.

(7) 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.

(8) 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.

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

(10) 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.

(11) 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/  
Matthew Raphaelson

9/15/2020  
Date

**IT IS SO ORDERED.**

//s// 9/21/2020  
Gregory J. Coleman  
Deputy Comptroller  
Large Bank Supervision

Initials: MR  
Date: 9/15/2020