

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

In the Matter of:

Transact Bank, National Association
Denver, Colorado

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) AA-WE- 2021-6
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CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over Transact Bank, National Association, Denver, Colorado (formerly known as Colorado National Bank) (“Bank”);

WHEREAS, the Bank entered into a Formal Agreement on May 31, 2016, EA 2016-058 (“2016 Agreement”) for engaging in certain unsafe and unsound practices related to the Bank’s capital, strategic planning, corporate governance, credit administration, trust administration, and Bank Secrecy Act/Anti-Money Laundering compliance program;

WHEREAS, the Bank became subject to a supervisory condition imposed in writing on March 20, 2019, to adhere to a Capital Commitment described in a February 20, 2019 letter, Supervisory Condition #2019-02 (“2019 Supervisory Condition”);

WHEREAS, the OCC has determined that the Bank has not attained full compliance with the 2016 Agreement and has failed to adhere to the 2019 Supervisory Condition;

WHEREAS, the OCC intends to initiate cease and desist proceedings against the Bank pursuant to 12 U.S.C. § 1818(b), through the issuance of a Notice of Charges, for engaging in

unsafe or unsound practices, including those relating to capital and strategic planning, capital levels, earnings performance, and board and management supervision;

WHEREAS, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, by and through its duly elected and acting Board of Directors (“Board”), consents to the issuance of this Consent Order (“Order”), which is intended to replace and supersede the 2016 Agreement and 2019 Supervisory Condition and has been tailored to address the Bank’s remaining unsafe and unsound practices, by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”);

NOW, THEREFORE, pursuant to the authority vested in the OCC by Section 8(b) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the OCC hereby orders 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) 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.*

(3) 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 cease and desist action against the Bank pursuant to 12 U.S.C. § 1818(b).

ARTICLE II

COMPTROLLER'S FINDINGS

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

- (1) The Bank did not achieve full compliance with the 2016 Agreement.
- (2) The Board and Management have not corrected all deficiencies that led to the 2016 Agreement, and the Bank is engaging in unsafe and unsound practices.
- (3) The Bank failed to adhere to the 2019 Supervisory Condition.
- (4) The Bank's capital and strategic planning, capital levels, and earnings performance, are deficient given the Bank's complexity and risk profile.

ARTICLE III

COMPLIANCE COMMITTEE

(1) The Board shall maintain a Compliance Committee of at least three (3) members of which a majority shall be directors who are not employees or officers of the Bank or any of its subsidiaries or affiliates. The Board shall remain responsible for the Bank's adherence to the provisions of this Order. In the event of a change of the membership, the Board shall submit in writing to the Assistant Deputy Comptroller ("ADC") within ten (10) days the name of any new or resigning committee member. The Compliance Committee shall monitor and oversee the Bank's compliance with the provisions of this Order. The Compliance Committee shall meet at least monthly and maintain minutes of its meetings.

(2) Within thirty (30) days after the end of each quarter, the Compliance Committee shall submit to the Board a written progress report setting forth in detail:

- (a) a description of the corrective actions needed to achieve compliance with each Article of this Order;

(b) the specific corrective actions undertaken to comply with each Article of this Order; and

(c) the results and status of the corrective actions.

(3) Upon receiving each written progress report, the Board shall forward a copy of the report, with any additional comments by the Board, to the ADC within fifteen (15) days of the first Board meeting following the Board's receipt of such report.

ARTICLE IV

HIGHER CAPITAL MINIMUMS

(1) Effective immediately, the Bank shall achieve and maintain the following capital ratios as defined in and as calculated in accordance with 12 C.F.R. Part 3:

(a) tier 1 capital to adjusted total assets at least equal to ten (10%); and

(b) total risk-based capital to risk-weighted assets at least equal to twelve percent (12%).

(2) In addition to the minimum ratios required by paragraph (1) of this Article, the Bank's tier 1 capital shall, in no event, be less than \$7.2 million.

(3) Notwithstanding any existing or future election to use the community bank leverage ratio ("CBLR") framework under 12 C.F.R. § 3.12, the Bank is subject to the minimum capital levels prescribed in paragraph (1) of this Article pursuant to the OCC's authority to impose affirmative corrective actions pursuant to 12 U.S.C. § 1818(b)(6) and must demonstrate compliance with these requirements by completing Schedule RC-R to the Consolidated Reports of Condition and Income in accordance with the instructions for banks that have not made the CBLR election in addition to Schedule RC-R, CBLR.

(4) The requirement in this Order to meet and maintain a specific capital level for any capital measure means that the Bank may not be deemed to be “well capitalized” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6, pursuant to 12 C.F.R. § 6.4(b)(1)(i)(E).¹

(5) The Bank may declare or pay a dividend or make a capital distribution only:

- (a) when the Bank is in compliance with the minimum capital requirements in paragraphs (1) and (2) of this Article, and would remain in compliance immediately following the declaration or payment of any dividend or capital distribution;
- (b) when the dividend or capital distribution would comply with 12 U.S.C. §§ 56, 60 and 1831o(d)(1) and 12 C.F.R. § 3.11(a)(4); and
- (c) following the ADC’s prior written determination of no supervisory objection to the dividend or capital distribution.

ARTICLE V

CAPITAL AND STRATEGIC PLAN

(1) By April 16, 2021, the Board shall develop a written strategic plan for the Bank covering at least the next three (3) years from the date of this Order, complete with specific time frames that incorporate the requirements of this Article (hereafter “Capital and Strategic Plan”). A copy of the Bank’s Capital and Strategic Plan shall be forwarded to the ADC for a prior written determination of no supervisory objection.

(2) The capital planning process shall be consistent with safe and sound practices and ensure the integrity, objectivity, and consistency of the process through adequate governance. Refer to the “Capital and Dividends” booklet of the *Comptroller’s Handbook* for related safe and

¹ The Bank may not solicit, accept, renew, or roll over any brokered deposit (as defined in 12 C.F.R. § 337.6(a)(2)) except in compliance with the applicable restrictions of 12 U.S.C. § 1831f and 12 C.F.R. § 337.6.

sound principles. The Board shall document the initial capital planning process and thereafter review and document the capital planning process at least annually or more frequently, if appropriate, or required by the ADC in writing.

(3) The Capital and Strategic Plan shall establish objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, and capital and liquidity adequacy, together with strategies to achieve those objectives, and shall, at a minimum, include:

- (a) a mission statement that forms the framework for the establishment of strategic goals and objectives;
- (b) specific plans for the maintenance of adequate capital, consistent with the Bank's overall condition and risk profile, which shall include:
 - (i) an assessment of the adequacy of the Bank's capital structure in relation to its business lines, planned new business lines, internal and external risk, and underlying operation and financial assumptions (including projected growth);
 - (ii) projections for growth and capital requirements, based on a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
 - (iii) projections for dividends and capital reductions over the next three (3) year period, if any;
 - (iv) identification and projections of the primary sources and timing of additional capital to meet the Bank's future needs, including its

- ability to raise additional capital from new or existing stockholders; and
- (v) contingency plans that identify alternative sources to strengthen capital.
- (c) an assessment of the Bank's present and future operating environment;
 - (d) the development of strategic goals and objectives to be accomplished over the short and long term;
 - (e) an identification of the Bank's present and future product lines (assets and liabilities) and market segments;
 - (f) a management employment and succession program to promote the retention and continuity of capable management;
 - (g) a risk management program that is consistent with the size, complexity and geographic diversification of the Bank's business and corporate structure and includes;
 - (i) identification of existing credit, interest rate, liquidity, operational, compliance, price, strategic, and reputation risks, and a written analysis of those risks;
 - (ii) action plans and time frames to control risks where exposure is high, including BSA/AML risk;
 - (iii) policies, procedures, or standards which limit the degree of risk the Board is willing to incur, consistent with the Bank's Capital and Strategic Plan and financial condition. This requirement includes analyzing and limiting the risks associated with any new lines of

business or growth that the Board undertakes. The procedures shall ensure that strategic direction and risk tolerance are effectively communicated and followed throughout the Bank and shall describe the actions to be taken where noncompliance with risk policies is identified; and

(iv) systems to identify, measure and control risks within the Bank.

Measurement systems shall provide timely and accurate risk reports by customer, by department or division, and bank wide as appropriate;

(h) control systems to mitigate risks associated with planned new products, growth, expansion of existing lines of business, or any proposed changes in the Bank's operating environment;

(i) a compensation plan that outlines the method of compensation for key officers and employees, including salary, benefits, deferred compensation, stock options or incentives, retention bonuses, and severance payments and that is consistent with regulatory requirements and supervisory guidance in effect at the time of submission;

(j) financial forecasts and projections for major balance sheet and income statement accounts, targeted financial ratios, and growth projections over the period covered by the Capital and Strategic Plan;

(k) a funding plan that establishes policies and limits for the Bank's expected sources of funding and a contingency funding plan that identifies alternative funding sources and strategies for their implementation; and

(1) a plan addressing the Bank's written and implemented BSA compliance program, including, at a minimum, a system of internal controls to assure ongoing compliance with the BSA; independent testing for BSA compliance; a designated individual or individuals responsible for coordinating and monitoring BSA compliance; and training for appropriate personnel. In addition, the BSA compliance program should include a Customer Identification Program with risk-based procedures that enable the Bank to form a reasonable belief that it knows the true identity of its customers.

(4) If the Bank's written Capital and Strategic Plan outlines a sale or merger of the Bank, the written Capital and Strategic Plan shall, at a minimum, address the steps and the associated timeline to ensure that within one-hundred and eighty (180) days after the receipt of the ADC's written determination of no supervisory objection to the Capital and Strategic Plan, a definitive agreement for the sale or merger is executed.

(5) Prior to adoption by the Board, a copy of the Capital and Strategic Plan, and any subsequent amendments, revisions, or updates shall be submitted to the ADC for prior written determination of no supervisory objection. At the next Board meeting following receipt of the ADC's written determination of no supervisory objection, the Board shall adopt and Bank management, subject to Board review and ongoing monitoring, shall immediately implement and ensure adherence to the Capital and Strategic Plan and any amendments or revisions thereto.

(6) Until the Capital and Strategic Plan required under this Article has been submitted by the Bank for the ADC's review, has received a written determination of no supervisory objection from the ADC, and has been adopted by the Board, the Bank shall not significantly

deviate from the products, services, asset composition and size, funding sources, structure, operations, policies, procedures, and markets of the Bank that existed immediately before the effective date of this Order without first obtaining the ADC's prior written determination of no supervisory objection to such significant deviation.

(7) The Board shall review the effectiveness of the Capital and Strategic Plan at least monthly and amend the Capital and Strategic Plan as needed or directed by the OCC. The Board shall provide an assessment of the effectiveness of the Capital and Strategic Plan to the OCC, along with any proposed amendments within thirty-five (35) days of each quarter end. Any amendment to the Capital and Strategic Plan, and any significant deviation from the Capital and Strategic Plan, must be submitted to the ADC for review and prior written determination of no supervisory objection.

(8) If the Bank fails to submit an acceptable Capital and Strategic Plan, fails to implement or adhere to a Capital and Strategic Plan to which the ADC has taken no supervisory objection, or fails to achieve and maintain the minimum capital as required under Article IV of this Order, then in the sole discretion of the ADC, the Bank shall, upon written direction of the ADC, within thirty (30) days develop and shall submit to the ADC for review and prior written determination of no supervisory objection a Disposition Plan that shall detail the Board's proposal to sell or merge the Bank, or implement a voluntary liquidation plan in accordance with 12 C.F.R. § 5.48.

(a) In the event that the Disposition Plan submitted by the Bank's Board outlines a sale or merger of the Bank, the Disposition Plan shall, at a minimum, address the steps that will be taken and the associated timeline to ensure that a definitive agreement for the sale or merger is executed not

later than ninety (90) days after receipt of the ADC's written determination of no supervisory objection to the Disposition Plan.

- (b) If the Disposition Plan outlines a voluntary liquidation of the Bank, the Disposition Plan shall detail the actions and steps necessary to accomplish the liquidation in conformance with 12 C.F.R. § 5.48, and the dates by which each step of the liquidation shall be completed, including the date by which the Bank will terminate its charter. In the event of liquidation, the Bank shall hold a shareholder vote, pursuant to 12 C.F.R. § 5.48, and commence liquidation within forty-five (45) days of receiving the ADC's written determination of no supervisory objection to the Disposition Plan.

ARTICLE VI

GENERAL BOARD RESPONSIBILITIES

(1) The Board shall ensure that the Bank has timely adopted and implemented all corrective actions required by this Order, and shall verify that the Bank adheres to the corrective actions and they are effective in addressing the Bank's deficiencies that resulted in this Order.

(2) In each instance in which this Order imposes responsibilities upon the Board, it is intended to mean that the Board shall:

- (a) authorize, direct, and adopt corrective actions on behalf of the Bank as may be necessary to perform the obligations and undertakings imposed on the Board by this Order;
- (b) ensure the Bank has sufficient processes, management, personnel, control systems, and corporate and risk governance to implement and adhere to all provisions of this Order;

- (c) require that Bank management and personnel have sufficient training and authority to execute their duties and responsibilities pertaining to or resulting from this Order;
- (d) hold Bank management and personnel accountable for executing their duties and responsibilities pertaining to or resulting from this Order;
- (e) require appropriate, adequate, and timely reporting to the Board by Bank management of corrective actions directed by the Board to be taken under the terms of this Order; and
- (f) address any noncompliance with corrective actions in a timely and appropriate manner.

ARTICLE VII

WAIVERS

- (1) The Bank, by executing and consenting to this Order, waives:
 - (a) any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818;
 - (b) any and all procedural rights available in connection with the issuance of this Order;
 - (c) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
 - (d) any and all rights to seek any type of administrative or judicial review of this Order;
 - (e) any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents 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;

- (f) any and all rights to assert this proceeding, the consent to and/or the issuance of this Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) any and all rights to challenge or contest the validity of this Order.

ARTICLE VIII

OTHER PROVISIONS

(1) As a result of this Order, the Bank is in “troubled condition,” as set forth in 12 C.F.R. § 5.51(c)(7)(ii), unless otherwise informed in writing by the OCC. In addition, as a result of this Order, the Bank is not is not an eligible bank for purposes of 12 C.F.R. § 5.3(g) and 12 C.F.R. § 24.2(e), unless otherwise informed in writing by the OCC.

(2) This Order supersedes all prior OCC communications issued pursuant to 12 C.F.R. §§ 5.3(g)(5), 5.51(c)(7)(ii), and 24.2(e)(4).

ARTICLE IX

CLOSING

(1) This Order is a settlement of the cease and desist proceeding against the Bank contemplated by the OCC, based on the unsafe or unsound practices described in the Comptroller’s Findings set forth in Article II of this Order. The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the practices described in Article II of this Order, to the extent

known to the OCC as of the effective date of this Order. Nothing in this Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions other than a cease and desist order against the Bank based on the Comptroller's Findings set forth in Article II of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) based on the Comptroller's Findings set forth in Article II of this Order, or any other findings; or
- (d) utilizing the Comptroller's Findings set forth in Article II of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

(2) Nothing in this Order is a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) This Order is:

- (a) a "cease-and-desist order issued upon consent" within the meaning of 12 U.S.C. § 1818(b);
- (b) a "cease-and-desist order which has become final" within the meaning of 12 U.S.C. § 1818(e);

- (c) an “order issued with the consent of the depository institution” within the meaning of 12 U.S.C. § 1818(h)(2);
- (d) an “effective and outstanding . . . order” within the meaning of 12 U.S.C. § 1818(i)(1); and
- (e) a “final order” within the meaning of 12 U.S.C. § 1818(i)(2) and (u).

(4) This Order is effective upon its issuance by the OCC, through the Comptroller’s duly authorized representative. Except as otherwise expressly provided herein, all references to “days” in this Order shall mean calendar days and the computation of any period of time imposed by this Order shall not include the date of the act or event that commences the period of time.

(5) The provisions of this Order shall remain effective except to the extent that, and until such time as, such provisions are amended, suspended, waived, or terminated in writing by the OCC, through the Comptroller’s duly authorized representative. If the Bank seeks an extension, amendment, suspension, waiver, or termination of any provision of this Order, the Board or a Board-designee shall submit a written request to the ADC asking for the desired relief. Any request submitted pursuant to this paragraph shall include a statement setting forth in detail the circumstances that warrant the desired relief or prevent the Bank from complying with the relevant provision(s) of the Order, and shall be accompanied by relevant supporting documentation. The OCC’s decision concerning a request submitted pursuant to this paragraph, which will be communicated to the Board in writing, is final and not subject to further review.

(6) The Bank will not be deemed to be in compliance with this Order until it has adopted, implemented, and adhered to all of the corrective actions set forth in each Article of this Order; the corrective actions are effective in addressing the Bank’s deficiencies; and the OCC

has verified and validated the corrective actions. An assessment of the effectiveness of the corrective actions requires sufficient passage of time for the Bank to demonstrate the sustained effectiveness of the corrective actions.

(7) This Order is not a contract binding on the United States, the United States Treasury Department, the OCC, or any officer, employee, or agent of the OCC and neither the Bank nor the OCC intends this Order to be a contract.

(8) Each citation, issuance, or guidance referenced in this Order includes any subsequent citation, issuance, or guidance that replaces, supersedes, amends, or revises the referenced cited citation, issuance, or guidance.

(9) No separate promise or inducement of any kind has been made by the OCC, or by its officers, employees, or agents, to cause or induce the Bank to consent to the issuance of this Order.

(10) All reports, plans, or programs submitted to the OCC pursuant to this Order shall be forwarded, by overnight mail or via email, to the following:

Assistant Deputy Comptroller
Office of the Comptroller of the Currency
Denver Field Office
1225 17th Street, Suite 300
Denver, Colorado 80202

(11) 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.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his duly authorized representative, has hereunto set his signature on behalf of the Comptroller.

//s// Digitally Signed, Dated: 2021.03.30

Gary TeKolste
Assistant Deputy Comptroller
Denver Field Office

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Transact Bank have hereunto set their signatures on behalf of the Bank.

/s/

3/29/21

James Feehan

Date

/s/

3/29/2021

Maksims Jarosevskis

Date

/s/

3/29/2021

Marks Moskvins

Date

/s/

3/29/2021

Guy Rounsaville

Date

/s/

3/29/21

John Sprengle

Date