#N18-001

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

In the Matter of:	)	
Hiren Patel	)	
Former Chairman of the Board, Chief Executive Officer,	)	
and Controlling Stockholder	)	AA-EC-2018-89
	)	
The National Republic Bank of Chicago	)	
Chicago, Illinois	)	

NOTICE OF CHARGES FOR PROHIBITION AND
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY

Take notice that on a date to be determined by the Administrative Law Judge, a hearing will commence in the Northern District of Illinois, pursuant to 12 U.S.C. §§ 1818(e) and (i), concerning the charges set forth herein to determine whether Orders should be issued against Hiren Patel ("Respondent"), former Chairman of the Board of Directors ("Chairman"), Chief Executive Officer ("CEO"), and controlling stockholder of The National Republic Bank of Chicago, Chicago, Illinois ("Bank"), by the Office of the Comptroller of the Currency ("OCC"), prohibiting Respondent from participating in any manner in the conduct of the affairs of any federally insured depository institution or any other institution, credit union, agency or entity referred to in 12 U.S.C. § 1818(e), and requiring Respondent to pay a civil money penalty.

After taking into account the financial resources and any good faith of Respondent, the gravity of the violations, the history of previous violations, and such other matters as justice may require, as required by 12 U.S.C. § 1818(i)(2)(G), and after soliciting and giving full consideration to Respondent's views, the Comptroller of the Currency ("Comptroller") hereby assesses a civil money penalty in the amount of one million dollars ($1,000,000) against

Respondent, pursuant to the provisions of 12 U.S.C. § 1818(i). This penalty is payable to the Treasurer of the United States.

The hearing afforded Respondent shall be open to the public unless the Comptroller, in his discretion, determines that holding an open hearing would be contrary to the public interest.

In support of this Notice of Charges for Prohibition and Notice of Assessment of Civil Money Penalty ("Notice"), the OCC charges the following:

ARTICLE I

JURISDICTION

At all times relevant to the charges set forth below:

(1) The Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2).

(2) Respondent was a director, officer, and controlling stockholder 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 hereof (*see* 12 U.S.C. § 1813(i)(3)).

(3) The Bank was a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A).

(4) Accordingly, 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

BACKGROUND

(5) This Article repeats and realleges all previous Articles in this Notice.

(6) Respondent acquired the Bank in 1984 and at all times thereafter owned a controlling interest. He eventually owned over 99 percent of the Bank.

(7) Respondent served as Chairman and CEO at all relevant times until his resignation on July 2, 2014.

(8) Respondent's practice was to meet with each potential loan customer, prior to the Bank making a loan, and to structure the deal.

(9) Respondent was involved in all important Bank decisions, and frequently consulted with the Bank's President.

The Bank's Relationship with Customer A

(10) By or before 2011, an Indianapolis hotelier ("Customer A")[1] and his related interests were the Bank's largest borrower.

(11) Customer A owned and operated various hotels throughout the country through his hotel management business ("Company A-1") and other entities he owned with his relatives.

(12) Each Customer A hotel was held by a separate single-asset entity.

(13) Between 2011 and 2014, Customer A and his related entities often had between 15 and 20 outstanding loans from the Bank.

(14) For example, as of September 30, 2012, the Bank had 15 loans to 17 entities owned by Customer A and his relatives, amounting to $173 million or 97 percent of the Bank's capital and surplus.

[1] The names of entities described by alias herein will be separately disclosed to Respondent.

(15) Respondent managed the loans to Customer A and his related entities as one relationship.

(16) Respondent was in frequent contact with Customer A regarding his loans.

Supervisory History

(17) On April 2, 2010, the OCC and the Bank entered into a Formal Agreement ("2010 Formal Agreement").

(18) Respondent was a signatory to the 2010 Formal Agreement.

(19) On or about April 29, 2013, the OCC issued a Report of Examination based on an examination beginning February 4, 2013, using financial information as of December 31, 2012 ("2013 ROE"). The OCC determined that the Bank exhibited "extremely unsafe or unsound practices" and that the overall condition of the Bank, oversight by the Board of Directors ("Board") and management, asset quality, capital levels, and earnings were "critically deficient."

(20) On August 31, 2013, the OCC issued, and the Bank consented to, a Consent Order ("Consent Order") that replaced the 2010 Formal Agreement.

(21) Respondent was a signatory to the Consent Order.

(22) On or about November 22, 2013, the OCC issued a Report of Examination based on an interim examination beginning August 5, 2013, using financial information as of June 30, 2013. The OCC again determined that the overall condition of the Bank, Board and management oversight, asset quality, capital levels, and earnings were "critically deficient."

(23) On July 2, 2014, the OCC issued to the Bank a Prompt Corrective Action Directive that required the Bank to take certain actions, including to immediately dismiss Respondent from any and all positions as a director and senior executive officer.

(24) On July 2, 2014, Respondent resigned as Chairman and CEO.

(25) On September 16, 2014, the OCC issued a Report of Examination based on an examination beginning February 24, 2014, using financial information as of December 31, 2013. The OCC again determined that the overall condition of the Bank was "critically deficient" and that the Bank exhibited "extremely unsafe or unsound practices." The OCC also concluded that Board and management oversight, asset quality, capital levels, and earnings were "critically deficient."

(26) On October 24, 2014, the OCC appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver for the Bank.

(27) The FDIC estimated that as of March 31, 2015, the Bank's failure caused a $111.6 million loss to the Deposit Insurance Fund.

(28) The Department of Treasury Office of Inspector General conducted a Material Loss Review of the Bank's failure and determined that the Bank "failed primarily because of undue influence by the chairman of the board over the bank's operations and critical decisions, as well as deficient senior management oversight and governance."

(29) The Material Loss Review continued: "These underlying causes further led to the bank having improper credit administration processes; aggressive growth resulting in a high concentration in commercial real estate (CRE) loans without commensurate credit risk management practices and adequate capital, particularly in the hotel/motel industry and to gas station/convenience stores throughout the United States; overreliance on brokered deposits; and irregular banking transactions."

ARTICLE III

RESPONDENT CAUSED THE BANK TO ISSUE A $24.9 MILLION LOAN WITH INSUFFICIENT COLLATERAL

(30) This Article repeats and realleges all previous Articles in this Notice.

(31) As described in paragraphs (32) through (69), Respondent recklessly engaged in unsafe or unsound practices and breached his fiduciary duty by causing the Bank to issue a $24.9 million loan with insufficient collateral to a related interest of Customer A.

(32) Customer A owned and/or controlled five limited liability partnerships or companies that each owned a separate hotel (collectively, "the Five Hotel Companies").

(33) In May 2011, another financial institution (the "Senior Lender") made a $17.7 million loan ("Senior Loan") to a Customer A holding company ("Holding Company A").

(34) Holding Company A and its subsidiary owned 100 percent of the interest in each of the Five Hotel Companies. As security for the Senior Loan, Holding Company A pledged to the Senior Lender its interests in its subsidiary and the Five Hotel Companies.

(35) The Senior Loan agreement stated that Holding Company A would be in default if it pledged any of its interest in the Five Hotel Companies without the prior consent of the Senior Lender.

(36) On December 15, 2011, Customer A emailed the Bank President to request a loan for his hotel projects. As collateral, Customer A suggested the Bank take corporate guaranties from the Five Hotel Companies. The Bank President forwarded this email to Respondent.

(37) On December 19, 2011, Customer A's lawyer emailed the Bank's outside counsel to say that Customer A could not pledge an interest in the Five Hotel Companies or Holding Company A.

(38) On December 21, 2011, another of the Bank's outside counsel emailed Customer A loan documents for his signature, including pledge agreements for the Five Hotel Companies.

(39) In response, on December 22, 2011, Customer A wrote to the Bank President: "[The Five Hotel Companies] can give corporate guarantee and not a pledge..it is an automatic

default on my part per loan documents..i have no problem signing this provided you know that this would create a fraudulent conveyance." The Bank President forwarded this email to Respondent the same day.

(40) On December 22, 2011, Customer A sent another email to the Bank President: "It will be violation and default under loan docs for pledge on securitize loans ..why not corp guarantee and pledge of cash flow on [the Five Hotel Companies]?" The Bank President forwarded this email to Respondent the same day.

(41) On or about December 22, 2011, Bank counsel emailed Customer A revised loan documents for his signature, including pledge agreements for the Five Hotel Companies.

(42) On or about December 22, 2011, Customer A and the Bank entered into an agreement for a $24.9 million loan in the name of a Customer A company based in Mississippi ("Company A-2").

(43) The primary collateral for the Company A-2 loan was Holding Company A's interest in the Five Hotel Companies. The pledge agreements signed by Customer A purported to grant the Bank all of Holding Company A's interest in each of the Five Hotel Companies, the same interest already pledged to the Senior Lender.

(44) At the origination of the $24.9 million Company A-2 loan, the Bank valued its total collateral to be approximately $48.4 million. That figure included the Five Hotel Companies pledges, which the Bank valued to be $39 million after the Senior Lender's liens.

(45) Customer A asked Respondent that the Bank not file financing statements perfecting its security interest in the Five Hotel Companies at the origination of the Company A-2 loan because doing so would put the senior liens against those entities in default with the Senior Lender.

(46) At Respondent's direction, the Bank did not file financing statements perfecting its security interest in the Five Hotel Companies at the time it made the loan to Company A-2.

(47) On July 30, 2012, the Bank modified the Company A-2 loan to add new collateral and release other collateral.

(48) The loan presentations submitted to and approved by the Board on or about December 20, 2011, January 18, 2012, and August 15, 2012, did not disclose that Customer A could not pledge interest in the Five Hotel Companies due to restrictions with the Senior Lender.

(49) In 2013, the Company A-2 loan deteriorated when Customer A failed to make certain loan payments entirely, made payments late, and attempted to make other payments by issuing checks drawing on nonsufficient funds.

(50) The OCC began an interim examination of the Bank on August 5, 2013. During the examination, the OCC downgraded the Company A-2 loan from special mention to substandard due to inadequate cash flow and directed that it be placed on nonaccrual.

(51) By September 2013, all of the Bank's loans to Customer A and his related entities, including Company A-2, were in default for failure to make payments when due.

(52) On September 18, 2013, the Board approved placing the Company A-2 loan on nonaccrual as of January 1, 2013, as instructed by the OCC.

(53) On or about September 23, 2013, and October 1, 2013, the Bank filed financing statements perfecting its interest in the Five Hotel Companies.

(54) On November 4, 2013, seven Customer A-related entities declared bankruptcy.

(55) On or about February 4, 2014, the current holder of the Senior Loan filed suit against the Bank seeking declaratory and injunctive relief that the pledge agreements the Bank had obtained in the Company A-2 loan were void, invalid, and unenforceable.

(56) On or about February 24, 2014, Holding Company A filed suit against the Bank seeking declaratory relief that the pledge agreements the Bank had obtained in the Company A-2 loan and the financing statements were void, invalid, and unenforceable.

(57) Examiners from the OCC and FDIC met with Respondent and the Bank President on or about March 6, 2014 ("Regulator Meeting").

(58) At the Regulator Meeting, Respondent admitted that the Bank did not file financing statements perfecting its security interest in the Five Hotel Companies at origination because Customer A said doing so would default the Senior Loan.

(59) Respondent admitted at the Regulator Meeting that the Board was not aware that the borrower asked the Bank not to file financing statements perfecting its security interest in the Five Hotel Companies.

(60) Respondent also admitted at the Regulator Meeting that the Board was not aware that the Senior Loan agreement restricted subordinated debt.

(61) Finally, Respondent admitted at the Regulator Meeting that the Board was not aware that the Bank did not file financing statements perfecting its security interest at origination in December 2011 and only filed them in September and October 2013.

(62) On or about May 21, 2014, the OCC sent a supervisory letter to the Board that directed the Bank to charge off $16 million related to the Company A-2 loan.

(63) On or about June 4, 2014, the Bank appealed this directive to the OCC Ombudsman. In its appeal of the Company A-2 charge-off, the Bank assigned no value to the Five Hotel Companies collateral: "NRB also has an assignment of Pledge Agreements on the [Five Hotel Companies'] properties and believes it could pursue this claim; however, based on the language in the documents it is uncertain if NRB would prevail. . . . Since NRB is not totally

certain it can access the value in the [Five Hotel Companies'] Pledge Agreements, no value is given at this time."

(64) On or about June 26, 2014, the Bank reached a settlement with the current holder of the Senior Loan. As part of the settlement, the Bank agreed to terminate its financing statements on the Five Hotel Companies.

(65) On or about June 27, 2014, the Bank and Customer A modified the Company A-2 loan, which released the Five Hotel Companies as guarantors. The loan modification did not include pledge agreements from the Five Hotel Companies.

(66) The Bank terminated its financing statements on the Five Hotel Companies on or about July 3, 2014.

(67) On or about August 29, 2014, the Ombudsman issued his opinion on the Bank's appeal and assigned a $17.1 million loss on the Company A-2 loan. The Ombudsman wrote: "In regards to the pledges, I concurred with the bank's assessment of providing no value to the [Five Hotel Companies'] pledges . . . ."

(68) On or about September 8, 2014, the Bank charged off $17.1 million related to the Company A-2 loan.

(69) The charge-off related to the Company A-2 loan directly contributed to the failure of the Bank.

(70) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices in connection with the Bank and breached his fiduciary duty;

(b) By reason of Respondent's misconduct, the Bank suffered or was likely to suffer financial loss or other damage; and

(c) Respondent's misconduct involved personal dishonesty and demonstrated a willful or continuing disregard on his part for the safety or soundness of the Bank.

(71) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent recklessly engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank; and

(b) Respondent's practices and breaches were part of a pattern of misconduct and caused or were likely to cause more than a minimal loss to the Bank.

ARTICLE IV

RESPONDENT CAUSED THE BANK TO REPURCHASE A $2 MILLION PARTICIPATION IN A SUBSTANDARD, NONACCRUAL LOAN

(72) This Article repeats and realleges all previous Articles in this Notice.

(73) As described in paragraphs (74) through (96), Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty, violated laws and regulations, including 12 C.F.R. §§ 32.3(a) and 32.5, and violated the Consent Order by causing the Bank to repurchase a $2 million participation in a substandard, nonaccrual loan.

(74) As described above, on or about December 22, 2011, Customer A and the Bank entered into an agreement for a $24.9 million loan to Company A-2, referred to in paragraph (42).

(75) Another customer ("the Participant") purchased from the Bank a $1 million participation in the Company A-2 loan on or about December 23, 2011.

(76) According to the participation agreement, the Bank's and the Participant's ownership interest in the loan were "ratably concurrent, and none shall have any priority over the other . . . ." The participation agreement also stated that the Bank had "no obligation to repurchase the participations sold under this Agreement upon any default by" Company A-2.

(77) In a Report of Examination issued on or about January 22, 2013, the OCC cited the Bank for a violation of the legal lending limit, 12 C.F.R. § 32.5(c)(4), based upon its loans to Customer A-related entities.

(78) On or about March 14, 2013, the Participant increased his participation in the Company A-2 loan to $2 million, which amounted to an 8.12 percent interest in the loan.

(79) In the 2013 ROE, issued on or about April 29, 2013, the OCC again cited the Bank for a violation of the legal lending limit, 12 C.F.R. § 32.5(c)(4), based upon its loans to Customer A-related entities.

(80) On multiple occasions in the first half of 2013, the Bank contacted Customer A to notify him that checks for payments on the Company A-2 loan had been returned for nonsufficient funds.

(81) The OCC began an interim examination of the Bank on August 5, 2013. During the examination, the OCC downgraded the Company A-2 loan from special mention to substandard due to inadequate cash flow and directed that it be placed on nonaccrual.

(82) On or about August 24, 2013, the Bank President emailed Customer A, copying Respondent, to say that Customer A had not paid the Company A-2 nonsufficient funds check from the previous month and that the loan was past due for its June and July payments.

(83) The Consent Order, entered on August 31, 2013, required the Bank to "take immediate and continuing action to protect its interests in those assets criticized as 'doubtful,'

‘substandard,’ or ‘special mention’ in the most recent ROE, in any subsequent ROE, by any internal or external loan review, or in any list provided to management by the OCC Examiners during any examination.”

(84) On September 18, 2013, the Board approved placing the Company A-2 loan on nonaccrual as of January 1, 2013, as instructed by the OCC.

(85) The Bank’s legal lending limit based on September 30, 2013 capital and surplus was $22.9 million.

(86) The Bank President completed an action plan memo on the Company A-2 loan on October 1, 2013. The memo noted that the loan was delinquent as of July 21, 2013, that the current balance of the loan was $24.5 million, that the loan was on non-accrual, and that the Bank had started legal proceedings.

(87) The action plan memo assigned a risk rating of “8” to the loan, which was the Bank’s worst possible rating short of a loss.

(88) Respondent directed the Bank to repurchase the Company A-2 participation from the Participant.

(89) The Bank had no legal obligation to repurchase the participation from the Participant.

(90) On or about October 10, 2013, the Bank’s controller emailed the President about the Company A-2 loan: “I also don’t believe we can just move the participation. I will confirm with [the Bank’s accounting firm]. I want to be sure this is being handled correctly now that they are on nonaccrual. Let me know if you have questions.” The President forwarded this email to Respondent that same day.

(91) On or about October 10, 2013, the Bank issued a check to the Participant to repurchase his $2 million participation.

(92) Respondent never sought approval from the Board for the repurchase of this participation.

(93) Respondent failed to inform the Board that he had directed the Bank to repurchase the participation until March 2014 when the OCC inquired whether the Board was aware.

(94) The repurchase of the participation increased the Bank's exposure on the Company A-2 loan by $2 million, in violation of the Bank's legal lending limit.

(95) As described in paragraph (68), on or about September 8, 2014, the Bank charged off $17.1 million related to the Company A-2 loan.

(96) The charge-off related to the Company A-2 loan directly contributed to the failure of the Bank.

(97) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices in connection with the Bank, breached his fiduciary duty, violated the law, including 12 C.F.R. §§ 32.3 and 32.5, and violated the Consent Order between the Bank and the OCC;

(b) By reason of Respondent's misconduct, the Bank suffered or was likely to suffer financial loss or other damage; and

(c) Respondent's misconduct demonstrated a willful or continuing disregard on his part for the safety or soundness of the Bank.

(98) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated the law, including 12 C.F.R. §§ 32.3 and 32.5, and violated the Consent Order between the Bank and the OCC.

(99) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty to the Bank, violated the law, including 12 C.F.R. §§ 32.3 and 32.5, and violated the Consent Order between the Bank and the OCC; and

(b) Respondent's practices, breaches, and violations were part of a pattern of misconduct and caused or were likely to cause more than a minimal loss to the Bank.

ARTICLE V

RESPONDENT CAUSED THE BANK TO ISSUE A $2.6 MILLION NOMINEE LOAN TO A STRAW BORROWER

(100) This Article repeats and realleges all previous Articles in this Notice.

(101) As described in paragraphs (102) through (140), Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty, and violated laws and regulations, including 18 U.S.C. § 1005, by causing the Bank to issue a $2.6 million nominee loan in which the loan proceeds went to Customer A and to enter into modifications of the nominee loan.

(102) The 2010 Formal Agreement required the Bank to implement and adhere to an asset diversification program related to its concentrations of credit, among other provisions.

(103) On May 17, 2010, the OCC wrote the Bank that it had no supervisory objection to the Board's concentrations of credit program, which included concentration limits as measured by a percentage of capital.

(104) On September 15, 2010, the Board amended its concentrations of credit program by approving a concentration limit for Customer A, which capped outstanding credit to him and his related entities to no more than 125 percent.

(105) On October 20, 2010, the Board again amended its concentrations of credit program by approving a Bank-wide limit to outstanding credit to no more than 50 percent for any person and his related entities. Customer A remained subject to the 125 percent limit for the time being, but the Board's action required the Bank to reduce Customer A's holdings to the 50 percent limit by December 31, 2012.

(106) On or about April 14, 2011, Customer A received a $1.5 million loan from a Georgia limited liability company. The maturity date of the loan was August 12, 2011, or, at Customer A's election, October 11, 2011.

(107) On or about October 4, 2011, Respondent met Customer A and another individual ("the Straw Borrower") at the Bank.

(108) Respondent suggested at the meeting that the Bank could make a loan in the name of companies owned by the Straw Borrower, but that the proceeds would in fact benefit Customer A.

(109) On October 16, 2011, the Bank President sent Respondent an email with the subject "$2,500,000 Loan for [the Straw Borrower.]" The President wrote: "Good morning, I am working on the loan for [the Straw Borrower] where the loan proceeds will be going to [Customer A]. Please let me know the rate and points you would like to charge for this loan."

(110) On or about November 18, 2011, the Bank issued a $2.6 million loan in the name of the Straw Borrower's companies ("Nominee Loan"). The maturity date for the loan was November 18, 2012.

(111) As described in paragraphs (112) through (115), the Nominee Loan proceeds went to the benefit of Customer A.

(112) On November 22, 2011, the Bank wired the Nominee Loan proceeds of $2.51 million to the Straw Borrower's law firm's account at Bank of America.

(113) On November 23, 2011, $1.54 million was wired from the law firm's account at Bank of America to a limited liability company's account at SunTrust Bank.

(114) The $1.54 million wire represented repayment of the April 14, 2011 loan made from the Georgia limited liability company to Customer A.

(115) On November 29, 2011, $900,000 was wired from the Straw Borrower's law firm's Bank of America account to a BMO Harris account belonging to Company A-1. The reference code for the wire was "LOAN FROM [STRAW BORROWER'S COMPANY]."

(116) The Straw Borrower never made any payments toward the Nominee Loan.

(117) Customer A and Company A-1 made all the payments that the Bank received on the Nominee Loan, and made the payments by check.

(118) The checks noted that the payor was Company A-1, and that they were for the payment of the Nominee Loan.

(119) On December 5, 2012, the Bank and Straw Borrower entered into a loan modification that extended the maturity date by a year to November 18, 2013.

(120) On January 28, 2013, Respondent met with Customer A and the Straw Borrower at the Bank.

(121) On or about February 1, 2013, Customer A wired $1 million to the Straw Borrower's law firm with instructions to forward it to the Bank.

(122) On February 4, 2013, the Bank received the $1 million wire from Customer A through the Straw Borrower's law firm to pay down the Nominee Loan.

(123) Respondent knew that the $1 million wire to pay down the Nominee Loan originated from Customer A.

(124) On or about February 25, 2013, the Bank and the Straw Borrower entered into a loan modification in which the Bank decreased the monthly principal and interest payment due to the $1 million pay down.

(125) The November 18, 2011 promissory note, the December 5, 2012 loan modification, the February 25, 2013 loan modification, and other loan documents falsely listed the borrower to be the Straw Borrower's companies instead of Customer A.

(126) On October 30, 2013, the Bank President emailed the Straw Borrower to request that he pay the loan, which was past due.

(127) On October 31, 2013, the Straw Borrower replied: "As you know these loans were an accommodation to National Republic Bank (NRB). NRB needed to make a loan to [Customer A] and [Company A-1] for NRB's own purpose. NRB and you have all along accepted and required payments from [Customer A] and [Company A-1]. [Customer A] and [Company A-1] paid down this loan and have been making all payments to date which you are fully aware of." The President forwarded this email to Respondent.

(128) On November 4, 2013, seven Customer A-related entities declared bankruptcy.

(129) These seven Customer A-related entities all had past due loans at the Bank.

(130) The Nominee Loan entered default on the November 18, 2013, maturity date because the Bank had not yet received full payment.

(131) The Bank placed the Nominee Loan on non-accrual on November 29, 2013.

(132) As of January 1, 2014, the Bank assigned the Nominee Loan a risk rating of "8."

(133) On February 13, 2014, the Bank sent the Straw Borrower a demand letter seeking payment of the total accrued interest on the Nominee Loan by February 24, 2014.

(134) In a credit analysis of the Nominee Loan dated February 15, 2014, the Bank noted that the Straw Borrower's "combined cash flow [wa]s not adequate to service debt," that the loan was "secured by assignment of stock of non-marketable companies hence liquidation will not be [an] easy process," and that the Straw Borrower was "non-cooperative in providing information and payments."

(135) As of March 2014, both the Bank and the OCC rated the Nominee Loan as substandard.

(136) Respondent never disclosed to the Board that the Nominee Loan proceeds in fact went to Customer A.

(137) Respondent never disclosed to the Board his involvement with the Nominee Loan.

(138) Respondent never disclosed to the OCC that the Nominee Loan proceeds in fact went to Customer A.

(139) Respondent failed to inform the Board and the OCC of this information despite the fact that Customer A was the Bank's largest borrower, that Customer A was subject to a credit concentration limit specific to him, that monthly Board packages included a section detailing the status of Customer A's loans, and that Customer A was a frequent subject of the OCC's supervision of the Bank.

(140) As of the Bank's failure on October 24, 2014, the Nominee Loan had not been repaid.

(141) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated the law, including 18 U.S.C. § 1005.

(142) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty to the Bank, and violated the law, including 18 U.S.C. § 1005; and

(b) Respondent's practices, breaches, and violations were part of a pattern of misconduct.

ARTICLE VI

RESPONDENT CAUSED THE BANK TO USE CUSTOMER A FUNDS TO MAKE PAYMENTS ON UNRELATED LOANS

(143) This Article repeats and realleges all previous Articles in this Notice.

(144) As described in paragraphs (145) through (175), Respondent recklessly engaged in unsafe or unsound practices and breached his fiduciary duty by causing the Bank to advance Customer A loan proceeds and debit his certificate of deposit ("CD") funds to pay unrelated loans, which masked the delinquent status of such loans.

Bank Issues Loans to Company S and Company N

(145) On or about October 1, 1999, the Bank issued a $600,000 loan to a company to renovate a hotel in Indiana ("Company S").

(146) After 1999, the Bank and Company S entered into several loan modifications.

(147) Neither Customer A nor any of his related entities had an ownership interest in Company S.

(148) The Bank did not have a written guaranty from Customer A or any of his related entities on the Company S loan.

(149) On or about March 23, 2004, the Bank issued a $1.5 million loan to a company to purchase a hotel property in Georgia ("Company N").

(150) After 2004, the Bank and Company N entered into several loan modifications.

(151) At the time of the loan's funding, Customer A held an ownership interest in Company N and was a guarantor on the loan.

(152) In 2008, Customer A sold his interest in Company N to another individual.

(153) After 2008, neither Customer A nor any of his related entities had an ownership interest in Company N.

(154) After 2008, the Bank did not have a written guaranty from Customer A nor any of his related entities on the Company N loan.

(155) On numerous occasions between 2011 and 2012, the Bank advanced Customer A loan proceeds and debited his CD to make payments on the loans to Company S and Company N to keep the loans current.

(156) Respondent was aware of and approved the practice of the Bank using Customer A's loan proceeds and CD funds to pay the loans to Company S and Company N.

(157) The Bank did not obtain written authorizations from Customer A to make these advances using his loan proceeds and his CD.

Bank Issues Loan to Customer A's Company and Uses Proceeds to Keep Afloat Company N and Company S Loans

(158) Customer A owned and/or controlled a company based in New Jersey ("Company A-3").

(159) The Bank issued a loan to Company A-3 in 2008 to finance the construction of a hotel in New Jersey. On September 14, 2012, the Bank modified the note, which had an existing principal balance of $14.8 million, to permit disbursements up to $19.8 million.

(160) Between January 21, 2011, and November 23, 2012, the Bank advanced at least $170,673.70 in loan proceeds from the Company A-3 loan to make payments on the Company S and Company N loans.

(161) These advances caused a dollar-for-dollar increase to the outstanding balance on the Company A-3 loan.

(162) The effect of these payments was to keep the Company N and Company S loans current and avoid delinquency, and to increase the Bank's exposure to Customer A.

(163) In 2011 and 2012, Company N did not make any loan payments and Company S on many occasions made only partial payments.

(164) The Bank advanced these funds from the Company A-3 loan despite the fact that Customer A and his companies had no interest in Company N and Company S, and were not guarantors on the loans to Company N and Company S.

(165) On or about April 26, 2013, the Bank charged off $6.35 million related to the loan to Company A-3.

Bank Depletes Customer A Certificate of Deposit to Keep Afloat Company N and Company S Loans

(166) Customer A owned and/or controlled another company based in New Jersey ("Company A-4").

(167) In 2005, the Bank issued a $1 million standby letter of credit in the name of Company A-4, which was reduced to $250,000 in 2009 and modified to automatically renew. The letter of credit allowed the beneficiary to draw the funds at sight. The collateral for this standby letter of credit was a $250,000 CD in the name of Company A-4.

(168) Between July 2011 and May 2012, the Bank debited $248,041.82 from the Company A-4 CD to make payments on the loans to Company S and Company N.

(169) These debits depleted the Company A-4 CD and left the standby letter of credit without collateral in the event the beneficiary demanded payment.

(170) The effect of these debits was to keep the Company N and Company S loans current and avoid delinquency.

(171) The Bank advanced these funds despite the fact that Customer A and his companies had no interest in Company N and Company S, and were not guarantors on the loans to Company N and Company S.

(172) After depleting all but $631.28, the Bank closed the CD on January 7, 2013, leaving the $250,000 auto-renewable standby letter of credit without collateral.

(173) On November 6, 2013, the beneficiary drew on the letter of credit in the amount of $250,000, and the Bank wired the funds to the beneficiary.

(174) In January 2014, the Bank charged off $250,000 related to the Company A-4 letter of credit.

(175) The Bank failed to list the loans to Company S and Company N as past due in reports to the Board during this time even though the borrowers and guarantors were not making payments or were making only partial payments.

(176) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices in connection with the Bank and breached his fiduciary duty;

(b) By reason of Respondent's misconduct, the Bank suffered or was likely to suffer financial loss or other damage; and

(c) Respondent's misconduct involved personal dishonesty and demonstrated a willful or continuing disregard on his part for the safety or soundness of the Bank.

(177) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent recklessly engaged in unsafe or unsound practices and breached his fiduciary duty to the Bank; and

(b) Respondent's practices and breaches were part of a pattern of misconduct and caused or were likely to cause more than a minimal loss to the Bank.

ARTICLE VII

RESPONDENT ALLOWED CUSTOMER R TO INCUR AND MAINTAIN LARGE OVERDRAFTS AND TO MAKE LOAN PAYMENTS FROM ACCOUNTS WITH INSUFFICIENT FUNDS WHILE THE BANK'S CAPITAL WAS CRITICALLY DEFICIENT

(178) This Article repeats and realleges all previous Articles in this Notice.

(179) As described in paragraphs (180) through (204), Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty, and violated laws and regulations, including 12 U.S.C. § 161, by allowing a customer and his associated entities (collectively, “Customer R”) to incur and maintain large overdrafts in accounts at the Bank and to make loan payments from accounts with insufficient funds despite the Bank’s critically deficient capital and warnings from Bank officers.

(180) Customer R owned numerous hotel properties with outstanding loans from the Bank. Customer R maintained his businesses’ deposit accounts and his personal deposit accounts at the Bank.

(181) Customer R was one of the Bank’s largest loan relationships. In December 2013, for example, the outstanding balance on Customer R’s loans was more than $25 million.

(182) Beginning in 2011, Customer R’s accounts were frequently overdrawn and appeared on the overdraft report in monthly Board packages.

(183) Respondent was aware of and approved of Customer R’s overdrafts.

(184) Occasionally, Customer R’s entire deposit relationship with the Bank was overdrawn. For example, on March 15, 2011, his net deposit figure across all his accounts was negative $2.7 million.

(185) As Chairman, Respondent had access to the monthly Board packages that included the overdraft report.

(186) Respondent had conversations with the Bank’s President and Executive Vice President about Customer R’s overdrafts.

(187) The Bank’s Executive Vice President attempted to convince Respondent to set up a line of credit to document and secure any Customer R overdrafts, but Respondent declined to

establish one because he preferred to allow Customer R to overdraw his accounts and charge him fees.

(188) On January 22, 2013, the OCC issued a letter to the Board communicating the results of its interim examination that began on October 9, 2012, using information as of June 30, 2012. In the letter, the OCC criticized the Bank's overdrafts, writing that "failure to charge-off unresolved overdrafts over 60 days past due will result in a violation of 12 U.S.C. § 161(a) . . . ."

(189) The OCC began an examination of the Bank in February 2013. On March 15, 2013, the Bank's Executive Vice President wrote to Customer R: "[T]he examination we just finished was a brute. The examiners were highly critical of our overdraft process and are insisting we change it. We cannot carry ODs for any particular length of time . . . ."

(190) The OCC advised the Bank that its loan policy was out of date and should be revised, including a section relating to overdrafts.

(191) The Board approved a revised loan policy in July 2013. The new policy stated: "Overdrafts are not desirable extensions of credit. Overdrafts should be infrequent, limited in dollar amount, and short term in nature." The policy also stated: "Overdrafts created by loan payments will be charged back, and the loan payment will not be considered made."

(192) In 2013, the Bank continuously allowed Customer R to incur and maintain overdrafts in his accounts, many of which were of a significant dollar amount, including overdrafts over 60 days past due.

(193) Some of Customer R's most significantly overdrawn accounts included: $123,172.30 as of February 28, 2013, and overdrawn for 24 days; $204,336.90 as of March 31, 2013, and overdrawn for 28 days; $300,777.05 as of May 30, 2013, and overdrawn for 93 days; $133,615.16 as of June 30, 2013, and overdrawn for seven days; $121,529.35 as of September

30, 2013, and overdrawn for 33 days; and $216,977.17 as of October 31, 2013, and overdrawn for 63 days.

(194) On November 22, 2013, the OCC issued a Report of Examination to the Bank that stated: "Capital levels are critically deficient and threaten the viability of NRB."

(195) Beginning in November 2013 and continuing to at least March 21, 2014, Customer R's total deposit relationship at the Bank was negative.

(196) During this time, Respondent knew or should have known that Customer R's total deposit relationship at the Bank was negative.

(197) Each Friday, the Vice President of Operations met with the Bank President to discuss overdrafts and Customer R's overdrawn accounts.

(198) Customer R's aggregate deposits at the Bank were overdrawn in the following amounts: $130,531.45 as of November 30, 2013; $115,348.28 as of December 15, 2013; $362,934.01 as of December 31, 2013; $317,103.98 as of January 15, 2014; $532,257.19 as of January 31, 2014; $336,211.73 as of February 15, 2014; $242,575.81 as of February 28, 2014; and $142,950.22 as of March 21, 2014.

(199) These overdrafts were unsecured and undocumented extensions of credit.

(200) In January 2014, Respondent approved Customer R to be overdrawn in his entire deposit relationship with the Bank up to $500,000.

(201) During the time Customer R's deposit relationship was negative on a global basis, the Bank accepted and processed his loan payments via checks drawing on accounts with insufficient funds in violation of loan policy.

(202) The effect of these payments was to keep Customer R's loans current and avoid delinquency.

(203) The Bank failed to list Customer R's loans as past due in reports to the Board during this period even though the most recent monthly loan payments had drawn on accounts with a negative balance.

(204) The Bank failed to list Customer R's loans as past due on its consolidated reports of condition and income as of December 31, 2013, even though the most recent monthly loan payments had drawn on accounts with a negative balance.

(205) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks a Prohibition Order against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices in connection with the Bank, breached his fiduciary duty, and violated the law, including 12 U.S.C. § 161;

(b) By reason of Respondent's misconduct, the Bank suffered or was likely to suffer financial loss or other damage; and

(c) Respondent's misconduct demonstrated a willful or continuing disregard on his part for the safety or soundness of the Bank.

(206) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated the law, including 12 U.S.C. § 161.

(207) By reason of Respondent's misconduct as described in this Article, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent recklessly engaged in unsafe or unsound practices, breached his fiduciary duty to the Bank, and violated the law, including 12 U.S.C. § 161; and

(b) Respondent's practices, breaches, and violations were part of a pattern of misconduct and caused or were likely to cause more than a minimal loss to the Bank.

ANSWER AND OPPORTUNITY FOR HEARING

Respondent is directed to file a written Answer to this Notice within twenty (20) days from the date of service of this Notice in accordance with 12 C.F.R. § 19.19(a) and (b). The original and one copy of any Answer shall be filed with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226-3500. Respondent is encouraged to file any Answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov. A copy of any Answer shall also be filed with the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219, hearingclerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to Answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the OCC's motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice to be as alleged, upon which an appropriate order may be issued.**

Respondent is also directed to file a written request for a hearing before the Comptroller, along with the written Answer, concerning the Civil Money Penalty assessment contained in this Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. § 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written Answer, with the Office of Financial Institution Adjudication, 3501 North Fairfax Drive, Suite D8116, Arlington, VA 22226-3500. Respondent is encouraged to file any request electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov.

A copy of any request, along with the written Answer, shall also be served on the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, Washington, D.C. 20219, hearingclerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment to constitute a final and unappealable order for a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i).**

PRAYER FOR RELIEF

The OCC prays for relief in the form of the issuance of an Order of Prohibition pursuant to 12 U.S.C. § 1818(e) and an Order of Civil Money Penalty Assessment against Respondent in the amount of one million dollars ($1,000,000) pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the OCC, given at Washington, DC this 7 day of February, 2018.

s/Michael R. Brickman

Michael R. Brickman
Deputy Comptroller for Special Supervision