#N19-002

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

In the Matter of:	)	
	)	
DANIEL WEISS, former General Counsel	)	
	)	OCC AA-EC-2018-95
Rabobank, N.A.	)	
Roseville, California	)	
	)	

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

Take notice that on a date to be determined by the Administrative Law Judge, a hearing will commence in the Eastern District of California, or such other location to be determined by the Administrative Law Judge, pursuant to 12 U.S.C. § 1818(e) and (i), concerning the charges set forth herein to determine whether an Order should be issued against Daniel Weiss, a former General Counsel (Respondent), of Rabobank, N.A., Roseville, California (Bank), by the Comptroller of the Currency of the United States of America (Comptroller). Such Order would prohibit the 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 require the Respondent to pay a civil money penalty.

After having considered the factors set forth in 12 U.S.C. § 1818(i)(2)(G), the Comptroller hereby assesses a civil money penalty in the amount of $50,000 against the Respondent. The penalty is payable to the Treasurer of the United States.

The hearing afforded to the 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 an Order of Prohibition and Notice of Assessment of a Civil Money Penalty (Notice), the Office of the Comptroller of the Currency (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 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 hereof. *See* 12 U.S.C. § 1818(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 these prohibition and civil money penalty actions against Respondent pursuant to 12 U.S.C. § 1818(e) and (i).

ARTICLE II
BACKGROUND

(5) Respondent was a licensed attorney with the California state bar. The Bank hired Respondent as Acting General Counsel in or around July 2009. At that time, the Bank was subject to a Formal Agreement with the OCC addressing Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance deficiencies.

(6) The OCC terminated the Formal Agreement shortly thereafter on September 11, 2009, based upon examination findings that the Bank was in compliance with all Articles of the Formal Agreement.

(7) Respondent continued to serve as the Bank's General Counsel until around September 2015, when the Bank terminated his employment for certain misconduct described herein.

(8) As an officer of the Bank, Respondent was obligated to comply with all applicable laws and regulations and to otherwise carry out his duties and responsibilities in a safe and sound manner.

ARTICLE III
RESPONDENT MADE FALSE STATEMENTS TO THE OCC AND CONCEALED BANK DOCUMENTS

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

(10) Not long after Executive A became Chief Compliance Officer (CCO) of the Bank in July 2012, she identified serious deficiencies in the Bank's BSA/AML program and communicated her findings to Bank management. Bank management disagreed with the findings of Executive A and did not find credible her assertions that the Bank's BSA/AML program had serious deficiencies.

(11) On November 10, 2012, the OCC commenced an on-site examination of the Bank's BSA/AML compliance program. The examination found the Bank's BSA/AML compliance program to be ineffective and in violation of 12 C.F.R. § 21.21.

(12) In or around December 2012, due in part to BSA/AML program concerns raised by Executive A, the Bank contracted with audit firm Crowe Horwath LLP to provide the Bank

with an independent, written assessment of the Bank's BSA/AML compliance program (Crowe Report) to determine if there were deficiencies in the Bank's program.

(13) On January 29, 2013, Respondent received an electronic copy of the Crowe Report, version 0.1, from Executive A. The findings of the Crowe Report corroborated the findings of Executive A and the OCC that the Bank's BSA/AML compliance program was deficient. Specifically, the Crowe Report found:

- The Bank does not appear to maintain a strong 'Culture of Compliance' related to BSA/AML. While risk management policies have been established, evidence that they are executed consistently through the enterprise is limited. Indications of this are in the lack of robust training and the lack of awareness of money laundering detection techniques.
- Management has not implemented effective reporting to consistently and accurately identify AML trends and key risk indicators, provide management with operational analysis, or measure the effectiveness of the program.
- Program leadership has allowed significant backlogs of SAR filing and EDD reviews to persist, only recently addressing such issues.
- The AML department does not appear to be taking an accurate risk-based approach to focus mitigation efforts on the most significant money laundering risks to the institution.
- The BSA/AML self-testing and internal audit functions have not identified operational limitations which are likely resulting in a lack of compliance with Office of Comptroller of Currency expectations.

(14) In the OCC examination exit meeting with Bank management on February 8, 2013, the OCC informed the Bank of its preliminary examination findings that the Bank's BSA/AML compliance was ineffective in violation of 12 C.F.R. § 21.21.

(15) The OCC issued a letter to the Bank on February 8, 2013, which provided the OCC's preliminary detailed examination findings and conclusion that the Bank's BSA/AML compliance program was deficient in violation of 12 C.F.R. § 21.21 (OCC Notice Letter).

(16) Respondent assisted with the Bank's response to the OCC's examination findings and OCC Notice Letter.

(17) Respondent was in possession of and had full knowledge of the Crowe Report prior to drafting the Bank's response to the OCC examination findings, including the Crowe Report's observations regarding the Bank's ineffective BSA/AML compliance program.

(18) On February 13, 2013, Respondent requested and received an electronic copy of the Crowe Report, version 0.8, from Executive A. Later that day, Respondent received an updated electronic copy of the Crowe Report, version 0.9, from a representative of Crowe Horwath LLP. Respondent distributed version 0.9 of the Crowe Report electronically to three members of the Board's BSA Executive Oversight Committee.

(19) On February 19, 2013, Respondent again received a copy of the Crowe Report, version 0.9. Three members of the Board BSA Executive Oversight Committee and four other Bank employees also received this email.

(20) On March 9, 2013, Respondent emailed a Bank Vice President to request that she email the Crowe Report to Acting CCO Laura Akahoshi (Akahoshi).[1]

(21) On March 15, 2013, the Bank responded to the OCC's letter dated February 8, 2013 regarding BSA/AML deficiencies. The Bank's response did not disclose the existence of the Crowe Report, or acknowledge its findings, which corroborated the OCC's examination findings. Instead, the Bank's response, drafted by Respondent and Akahoshi, disputed the OCC's preliminary conclusion regarding the Bank's BSA/AML compliance program. The Bank's response asserted that the OCC's preliminary conclusions were based on incomplete and in some instances inaccurate information. The Bank's response claimed that "[t]he Bank and its management team pay very close attention to, and are very serious about compliance with, BSA/AML requirements." The Bank's response concluded that a closer examination of the

[1] *See* Notice of Charges, *In the Matter of Laura Akahoshi*, OCC AA-EC-2018-20 (April 16, 2018).

Bank's compliance program by the OCC would result in a finding of no deficiency in any of the four pillars of the Bank's BSA/AML compliance program.

(22) Executive A continued to elevate concerns about the BSA/AML program to Bank management. In March of 2013, Bank management placed Executive A on forced leave, and Akahoshi became the Acting CCO. On or about March 18, 2013, Executive A became a whistleblower by alerting the OCC to the findings of the Crowe Report, which corroborated the OCC examination findings. Executive A revealed to the OCC that she had been placed on forced leave and precluded from providing input into the Bank's March 15, 2013 response to the OCC.

(23) Upon learning of the existence of the Crowe Report, on March 21, 2013, an OCC examiner emailed Akahoshi to request a copy of the Crowe Report:

> Can you please provide us with a copy of the assessment report of the Bank's BSA program that Crowe Horowath LLC was engaged to perform in January 2013? Thank you.

(24) Akahoshi forwarded the OCC examiner's email to Respondent. Akahoshi wrote:

> I think the right answer is that Crowe did not perform an assessment. That while they were engaged to perform a market study/peer benchmark for management and the board, the project was shelved before any report could be issued.

(25) Respondent replied to Akahoshi:

> I wonder why they are asking for this now?
>
> To the best of my knowledge, Crowe never provided a final report. As you note, they were engaged to provide an assessment and road map. They did produce a draft that was shared with management and perhaps Terry? My guess is that copies of the draft are floating around although our intention was to not keep any draft documents. So I believe your statement is accurate, although should we say no 'final report was issued'? The obvious concern is they then ask for the draft from Crowe.

(26) On March 22, 2013, Akahoshi emailed Respondent a draft response to the OCC examiner and requested comments.

(27) Later on March 22, 2013, Akahoshi replied to the OCC examiner:

> Crowe did not complete an assessment. While they were engaged to perform a market study/peer benchmark analysis for the benefit of management and the board, the project was suspended before any report was issued. The decision to suspend was made in light of information coming out of the internal investigation being done to develop the OCC response. In part, it became clear that Crowe had not been provided all facts necessary to understand the organization so the emerging observations and action plan were not tailored to our situation. Rather than move in a direction that wasn't reflective of the current state of affairs, management elected to take some time to more thoughtfully determine next steps.
>
> Having taken this time to better consider where we need to go in enhancing our program, we have recently asked Crowe to assist us on several projects, including the BSA/AML risk assessment. We anticipate having a draft in time for the next board meeting in early May. I'd be happy to send you a copy of the draft report.

Akahoshi forwarded the email to Respondent and Senior Executive Officer 1.

(28) On March 25, 2013, the OCC examiner emailed Akahoshi:

> Thank you for your response. In going through the information that we have, it was our understanding that Crowe Horwath provided management with a report or documents of some type related to BSA. We would like a copy of what bank management received from Crowe, even if it was only preliminary or partial.

(29) Akahoshi forwarded the OCC examiner's email to Respondent and Senior Executive Officer 1, and wrote:

> It sounds as though [the OCC] may have the early assessment even though it was never issued and certainly never accepted by management. To my knowledge we didn't make any statement to the OCC that management received a 'report or document of some type'.
>
> Let's meet to discuss some time today.

(30) Later on March 25, 2013, Akahoshi emailed Respondent a draft response to the OCC examiner that did not produce the Crowe Report. Respondent replied with certain edits to the email to highlight the Bank's efforts toward BSA/AML compliance, but did not produce the Crowe Report. Akahoshi incorporated Respondent's edits, and replied to the OCC examiner:

> I've spoken with both [Senior Executive Officer 1] and [Respondent] regarding the existence of a draft report coming out of the January BSA Program Review by Crowe Horwath. They each reported the same information which is that Crowe had a discussion with the board and members of executive management at the February 4th meeting. And while Crowe did utilize a PowerPoint presentation during the discussion, it was not provided to the Bank, as indicated by the fact that it was not included in the board packet. In this meeting and in subsequent conversations, both board members and executive management were very critical of the information being provided noting that there lacked foundation and that

> assumptions appeared to be based on inaccurate information. … I've attached a copy of a proposal Crowe submitted to the Executive Oversight Committee on March 1, 2013, which outlines their recommendations for next steps, as described above, and which we've generally accepted.

Respondent was copied on this email.

(31) On April 8, 2013, the Assistant Deputy Comptroller (ADC) for the OCC's San Francisco Field Office called Senior Executive Officer 1. The ADC informed Senior Executive Officer 1 that the OCC was aware the Bank possessed a written report from Crowe Horwath, and directed Senior Executive Officer 1 to produce the Crowe materials in the Bank's possession.

(32) On April 18, 2013, Akahoshi emailed the Crowe Report, which the Bank possessed since January 24, 2013, to the OCC. Respondent received a copy of the email.

(33) Akahoshi attached a cover letter to the production of the Crowe Report. The cover letter was drafted by Respondent and Akahoshi, and signed by Senior Executive Officer 1. The cover letter stated, in part:

> Prior to the OCC request for the 'Crowe Report' on March 25, 2013, the bank was not in possession of the Deck, which was used by Crowe Horwath to present observations at a meeting of the Compliance Committee on February 5, 2013. The PAR [Crowe Report], dated January 31, 2013, was provided only to [Executive A] with a copy to [Respondent]. It was left with [Executive A] who continued to work with Crowe Horwath to develop an execution plan. Management now understands from correspondence sent to the OCC by [Manager A] that [Executive A] shared the document with [Manager A]. We are not aware of further distribution.

(34) Respondent violated 12 U.S.C. § 481 because he continuously participated in the concealment of the Crowe Report from the OCC throughout March of 2013 until April 18, 2013, despite unambiguous, repeated, and direct requests by the OCC for the Crowe Report.

(35) The whistleblower's disclosure of the Crowe Report and additional information regarding the deficiencies in the Bank's BSA/AML program to the OCC led OCC examiners to reopen the 2012 examination of the Bank's BSA/AML compliance program. When the OCC returned to the Bank in May 2013, the findings of the Crowe Report and information from the

whistleblower were critical to the OCC, as essential personnel with in-depth knowledge regarding the BSA/AML program—the then-CCO (Executive A), the Bank's BSA Officer, and the manager of the Monitoring & Investigation Unit (Manager A)—were all on leave.

(36) As a result of the OCC's follow-up examination of the Bank, examiners found deficiencies in all four pillars of the Bank's BSA/AML program, which resulted in the OCC issuing a comprehensive BSA Consent Order against the Bank on December 5, 2013 and, in part, assessing a $50 million civil money penalty against the Bank on February 6, 2018.

(37) Respondent violated 18 U.S.C. § 1001 because he knowingly and willfully participated in the making of materially false statements regarding the Bank's possession of the Crowe Report to the OCC continuously and repeatedly throughout March of 2013 until April 18, 2013.

(38) As an attorney and General Counsel for the Bank, Respondent understood that providing complete and accurate information to examiners is critical to the function of regulators of national banks. Respondent acknowledged as much in the Bank's March 15, 2013 response to the OCC, which stated that "it is the Bank's responsibility to provide complete, accurate and timely information to the OCC in the examination process."

(39) Respondent's violations of 12 U.S.C. § 481 and 18 U.S.C. § 1001 and/or unsafe or unsound practices occurred continuously and repeatedly throughout March 2013 until April 18, 2013, and benefited Respondent through his continued employment at the Bank until the Bank became aware of the extent of Respondent's concealment from and false statements to the OCC in August of 2015. The Bank terminated Respondent's employment in September 2015 following an internal investigation conducted by the law firm Milbank Tweed for the Bank, which also found that Respondent had concealed the Crowe Report from the OCC and that

Respondent had participated in the making of continuous and repeated false statements to the OCC. Hence, Respondent received financial gain and other benefit from his misconduct in the form of salary and bonuses for over two years.

(40) Respondent's violations of 12 U.S.C. § 481 and 18 U.S.C. § 1001 and/or unsafe or unsound practices continuously and repeatedly throughout March 2013 until April 18, 2013, resulted in financial loss and other damage to the Bank. Respondent's continuous concealment of the Crowe Report from the OCC and false statements to the OCC throughout March 2013 until April 18, 2013, resulted in the Bank's guilty plea to conspiracy to obstruct an OCC examination in violation of 18 U.S.C. §§ 371 and 1517, entered on February 7, 2018 in the United States District Court in the Southern District of California, which caused the Bank to suffer losses including, but not limited to, the forfeiture of $368,701,259 and an OCC $50 million civil money penalty assessed against the Bank. The Bank also suffered significant reputational harm as a result of Respondent's conduct that led to the Bank's guilty plea; this constitutes "other damage" to the Bank.

ARTICLE IV
LEGAL BASES FOR REQUESTED RELIEF

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

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

(a) Respondent violated laws and regulations, including 12 U.S.C. § 481 and 18 U.S.C. § 1001, and/or engaged in unsafe or unsound practices in conducting the affairs of the Bank;

(b) By reason of Respondent's misconduct, the Bank suffered financial loss or other damage and Respondent received financial gain or other benefit; and

(c) Respondent's violations and/or unsafe or unsound practices involved personal dishonesty and/or demonstrated a willful or continuing disregard for the safety or soundness of the Bank.

(43) By reason of Respondent's misconduct as described in Article III, the Comptroller seeks imposition of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(A) because Respondent violated laws and regulations, including 12 U.S.C. § 481 and 18 U.S.C. § 1001.

(44) By reason of Respondent's misconduct as described in Article III, 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 violated laws and regulations, including 12 U.S.C. § 481 and 18 U.S.C. § 1001, and/or recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank; and

(b) Respondent's violations and/or practices were part of a pattern of misconduct, resulted in pecuniary gain or other benefit to the Respondent, and/or caused more than minimal loss to the Bank.

ARTICLE V
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 VS-D8113, 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, Washington, D.C. 20219, hearingclerk@occ.treas.gov, and with the attorneys whose names appear 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 allegation contained in this Notice, and shall, upon the Comptroller'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. § 1919(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 VVS-D8113, 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 attorneys whose names appear 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 Comptroller 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 for a Civil Money Penalty Assessment in the amount of $50,000 against the Respondent pursuant to 12 U.S.C. § 1818(i).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 25th day of March, 2019.

/s/ Michael R. Brickman

Michael R. Brickman
Deputy Comptroller for Special Supervision