

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

In the Matter of)
)
WILLIAM BRIAN MULDER,)
Former Senior Vice President)
)
Firststar Bank, N.A.)
Sallisaw, Oklahoma)
(Now Known as Firststar Bank))

OCC AA-EC-2019-43

**NOTICE OF CHARGES FOR ORDER OF PROHIBITION,
CEASE-AND-DESIST ORDER REQUIRING RESTITUTION,
AND 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 Northern District of Oklahoma, or such other location to be determined by the Administrative Law Judge, pursuant to 12 U.S.C. § 1818(b), (e), and (i), concerning the charges set forth herein to determine whether orders should be issued by the Comptroller of the Currency (“Comptroller”) against William Brian Mulder (“Respondent”), former Senior Vice President at Firststar Bank, N.A., Sallisaw, Oklahoma (“Bank”). Such orders would prohibit 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); require Respondent to make restitution; and require Respondent to pay a civil money penalty.

The OCC intends to order Respondent to make restitution to federally insured depository institutions for losses totaling \$2,359,256.56 pursuant to 12 U.S.C. § 1818(b)(6). Moreover, after taking into account the financial resources and any good faith of the 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 hereby assesses a civil money penalty in the amount of \$250,000 against Respondent pursuant to 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 an Order of Prohibition, a Cease-and-Desist Order Requiring Restitution, and an Order Assessing 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 a Senior Vice President 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), and was chartered and examined by the OCC when Respondent was employed by the Bank. *See* 12 U.S.C. § 1 *et seq.*

(4) The OCC is the "appropriate Federal banking agency" as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain these prohibition, cease-

and-desist, and civil money penalty actions against Respondent pursuant 12 U.S.C. § 1818(b), (e), and (i).

(5) While an “institution-affiliated party” of the Bank, Respondent engaged in misconduct with respect to a loan from another entity that is both an “insured depository institution” and a “business institution” for purposes of 12 U.S.C. § 1818(e)(2) that caused the institution to suffer a loss. *See* 12 U.S.C. § 1818(e).

ARTICLE II

RESPONDENT VIOLATED THE LAW AND ENGAGED IN UNSAFE OR UNSOUND PRACTICES WITH REGARD TO A \$3.9 MILLION LINE OF CREDIT FROM THE BANK

(6) This Article repeats and re-alleges all previous Articles in this Notice.

(7) As described herein, in 2012 and 2013, Respondent violated the law, including 18 U.S.C. §§ 1344, 1014, and 1005, and engaged or participated in unsafe or unsound practices when he submitted materially inaccurate and fabricated documents to the Bank and pledged fictitious assets as collateral in order to obtain increases on a Bank line of credit in his name until it ultimately totaled \$3,900,000.

(8) On or about August 16, 2012, Respondent was hired by the Bank as a Senior Vice President. On or about July 21, 2014, the Bank terminated Respondent’s employment with the Bank.

(9) At all relevant times, as a Senior Vice President of the Bank, Respondent was obligated to comply with all applicable laws and regulations, and to carry out his duties and responsibilities in a safe and sound manner.

(10) Prior to working for the Bank, Respondent was employed by Merrill Lynch, Pierce, Fenner and Smith Inc. (“Merrill Lynch”) as a Wealth Management Specialist, primarily selling life insurance products, from approximately July 1997 until April 8, 2012.

(11) In approximately April 2011 and September 2011, Respondent, as a Bank customer, obtained two loans from the Bank that totaled approximately \$1,352,010.

(12) In approximately September 2011, Respondent consolidated the two loans into a single line of credit of approximately \$2,803,000 (“Existing Line of Credit”).

August 2012 Line of Credit

(13) On or about August 28, 2012, Respondent modified his Existing Line of Credit at the Bank to increase the credit limit to \$3,651,000 (“August 2012 Line of Credit”).

(14) To secure the August 2012 Line of Credit, Respondent pledged a total of approximately \$3,726,652 in cash value of five life insurance policies (Merrill Lynch policy numbers¹ XXXXX1477, XXXXX0934, XXXXX0645, XXXXX6544, and XXXXX7111) as collateral for the loan.

(15) In connection with the August 2012 Line of Credit, Respondent executed a Debt Modification Agreement in which he readopted the terms of the Existing Line of Credit, which was collateralized by the cash value of five life insurance policies (Merrill Lynch policy numbers XXXXX1477, XXXXX0934, XXXXX0645, XXXXX6544, and XXXXX7111), and for which Respondent provided the Bank with purported confirmations of assignments on the policies.

(16) In or around 2007, Merrill Lynch sold its life insurance division and ceased selling life insurance products.

¹ For the reasons provided in this Notice of Charges, Enforcement counsel alleges that such policies never existed, but is nonetheless treating the policy numbers in this Notice consistent with the current practices and expectations of the Administrative Law Judge.

(17) After 2007, Merrill Lynch no longer issued policy status statements on life insurance policies.

(18) Merrill Lynch has no record of the life insurance policies Respondent offered to the Bank as collateral on the August 2012 Line of Credit.

(19) The life insurance policies Respondent offered to the Bank as collateral on the August 2012 Line of Credit did not exist.

(20) In connection with the August 2012 Line of Credit, Respondent provided the Bank with a personal financial statement dated March 30, 2012 that contained material inaccuracies regarding his cash assets, real estate values, and the cash value of life insurance policies.

(21) The personal financial statement Respondent provided to the Bank in connection with the August 2012 Line of Credit contained material inaccuracies that overstated his ability to repay the loan.

(22) In connection with the August 2012 Line of Credit, Respondent represented to the Bank that he was the sole beneficiary of a trust valued at approximately \$152,000,000.

(23) The trust in which Respondent claimed to have an interest and referenced in paragraph (22) above never existed.

(24) On or about August 28, 2012, the Bank sold a participation in the August 2012 Line of Credit to Bank A² in the amount of \$850,000.

August 2013 Line of Credit

(25) On or about August 28, 2013, Respondent requested and the Bank approved a modification to Respondent's August 2012 Line of Credit to increase the credit limit to

² The identity of Bank A, as well as all other individuals or entities described by alias herein, will be separately disclosed to Respondent.

\$3,900,000 (“August 2013 Line of Credit”).

(26) To secure the August 2013 Line of Credit, Respondent pledged approximately \$3,926,188 in cash value of five life insurance policies (Merrill Lynch policy numbers XXXXX1477, XXXXX0934, XXXXX0645, XXXXX6544, and XXXXX7111) as collateral for the loan.

(27) In connection with the August 2013 Line of Credit, Respondent executed a Promissory Note dated August 28, 2013 which identified the collateral for the loan as the cash value of life insurance policies.

(28) In connection with the August 2013 Line of Credit, Respondent provided the Bank with statements for the Merrill Lynch policies reflecting approximately \$3,926,188 in cash value of the five life insurance policies collateralizing the loan.

(29) In or around 2007, Merrill Lynch sold its life insurance division and ceased selling life insurance products.

(30) After 2007, Merrill Lynch no longer issued policy status statements on life insurance policies.

(31) Merrill Lynch has no record of the life insurance policies Respondent offered to the Bank as collateral on the August 2013 Line of Credit.

(32) The life insurance policies Respondent offered to the Bank as collateral on the August 2013 Line of Credit did not exist.

(33) In connection with the August 2013 Line of Credit, Respondent provided the Bank with a personal financial statement dated March 25, 2013 that contained material inaccuracies regarding his cash assets, real estate values, and the cash value of life insurance policies.

(34) The personal financial statement Respondent provided to the Bank in connection with the August 2013 Line of Credit contained material inaccuracies that overstated his ability to repay the loan.

(35) In connection with the August 2013 Line of Credit, Respondent represented to the Bank that he was the sole beneficiary of a trust valued at approximately \$205,000,000.

(36) The trust in which Respondent claimed to have an interest and referenced in paragraph (35) above never existed.

(37) In connection with the August 2013 Line of Credit, Respondent represented to the Bank that he was employed by Brokerage Firm A.

(38) Respondent was never employed by Brokerage Firm A.

(39) On or about October 25, 2013, Respondent provided the Bank with a letter from Certified Public Accountant A purporting to show trust assets valued at approximately \$200,764,311.

(40) The October 25, 2013 letter from Certified Public Accountant A purporting to show Respondent's trust assets was neither written nor signed by Certified Public Accountant A.

(41) The October 25, 2013 letter from Certified Public Accountant A purporting to show Respondent's trust assets is a fabricated document.

(42) On or about August 28, 2013, the Bank sold a participation in the August 2013 Line of Credit to Bank A in the amount of \$850,000.

(43) On or about August 28, 2013, the Bank sold a participation in the August 2013 Line of Credit to Bank B in the amount of \$350,000.

(44) On or about January 29, 2014, the Bank sold a participation in the August 2013 Line of Credit to Bank C in the amount of \$200,000.

(45) In or about June 2014, the Bank discovered that Respondent had submitted materially inaccurate and fabricated documents to the Bank and pledged fictitious assets as collateral on the Existing Line of Credit, August 2012 Line of Credit, and August 2013 Line of Credit.

(46) In or about July 2014, the Bank terminated Respondent's employment with the Bank.

(47) In or about August 2014, the Bank brought a civil lawsuit against Respondent in Oklahoma state court to recover losses on the Existing Line of Credit, August 2012 Line of Credit, and August 2013 Line of Credit.

(48) In or about August 2014, Respondent submitted a Letter of Acceptance, Waiver, and Consent to the Financial Industry Regulatory Authority ("FINRA") consenting to a bar from associating with any FINRA member.

(49) In or about September 2014, the Bank filed a bond claim with Bonding Company A in which a Bank officer certified that the Bank had suffered a loss of \$3,900,000 on the Existing Line of Credit, August 2012 Line of Credit, and August 2013 Line of Credit as a result of Respondent's dishonesty or theft while employed as a Senior Vice President.

(50) In or about December 2015, Bonding Company A provided the Bank with a partial settlement of approximately \$1,072,648.

(51) In or about June 2016, Bonding Company A provided the Bank with a partial settlement of approximately \$475,000.

(52) By reason of the foregoing conduct, Respondent caused the following net losses as of June 30, 2016:

- (a) The Bank incurred a net loss of \$1,507,917.95;

- (b) Bank A incurred a net loss of \$512,692.10;
- (c) Bank B incurred a net loss of \$211,108.49; and
- (d) Bank C incurred a net loss of \$120,633.44.

(53) Respondent knowingly executed a scheme to defraud federally insured financial institutions, or obtained credits by means of false or fraudulent pretenses, representations, or promises in violation of 18 U.S.C. § 1344.

(54) Respondent made materially false statements for the purpose of influencing the action of a federally insured financial institution in connection with a loan in violation of 18 U.S.C. § 1014.

(55) Respondent intentionally provided false documents and made false representations that caused false entries to be made in the books and records of a federally insured financial institution in violation of 18 U.S.C. § 1005.

ARTICLE III

RESPONDENT VIOLATED THE LAW AND ENGAGED IN UNSAFE OR UNSOUND PRACTICES WITH REGARD TO A \$250,000 LOAN FROM BANK C

(56) This Article repeats and re-alleges all previous Articles in this Notice.

(57) As described herein, in 2014, Respondent violated the law, including 18 U.S.C. §§ 1344, 1014, and 1005, and engaged or participated in unsafe or unsound practices when he submitted materially inaccurate and fabricated documents to Bank C and executed an assignment of a fictitious asset as collateral in order to obtain a \$250,000 loan from Bank C.

(58) On or about June 26, 2014, Respondent received a \$250,000 loan from Bank C (“Bank C Loan”) via his affiliated entities, The Mulder Family Trust and Mulder Properties LLC.

(59) In connection with the Bank C Loan, Respondent executed an assignment pledging the cash value of one life insurance policy (Merrill Lynch policy number XXXXX0871) that Bank C could utilize at its discretion as collateral on the loan.

(60) In connection with the Bank C Loan, Respondent provided Bank C with a statement for the Merrill Lynch policy for which Respondent executed an assignment reflecting approximately \$1,045,999 in cash value of the life insurance policy.

(61) In connection with the Bank C Loan, Respondent executed a Promissory Note in which he agreed that the loan would be secured in part by the cash value of a life insurance policy.

(62) In or around 2007, Merrill Lynch sold its life insurance division and ceased selling life insurance products.

(63) After 2007, Merrill Lynch no longer issued policy status statements on life insurance policies.

(64) Merrill Lynch has no record of the life insurance policy for which Respondent executed an assignment to Bank C (Merrill Lynch policy number XXXXX0871).

(65) The life insurance policy Respondent offered to Bank C as collateral on the Bank C Loan did not exist.

(66) In connection with the Bank C Loan, Respondent provided Bank C with statements for six other Merrill Lynch policies (Merrill Lynch policy numbers XXXXX2230, XXXXX1477, XXXXX0934, XXXXX0645, XXXXX6544, and XXXXX7111) reflecting a total of approximately \$5,921,356.97 in cash value of the six life insurance policies.

(67) Merrill Lynch has no record of the six other Merrill Lynch policies for which Respondent submitted statements to Bank C (Merrill Lynch policy numbers XXXXX2230, XXXXX1477, XXXXX0934, XXXXX0645, XXXXX6544, and XXXXX7111).

(68) The six other life insurance policies for which Respondent submitted statements to Bank C did not exist.

(69) In connection with the Bank C Loan, Respondent provided Bank C with a personal financial statement dated March 28, 2014 that contained material inaccuracies regarding his cash assets, real estate values, and the cash value of life insurance policies.

(70) The personal financial statement Respondent offered to Bank C in connection with the Bank C Loan contained material inaccuracies that overstated his ability to repay the loan.

(71) In connection with the Bank C Loan, Respondent represented to Bank C that he was the sole beneficiary of a trust valued at approximately \$201,000,000.

(72) The trust in which Respondent claimed to have an interest and referenced in paragraph (71) never existed.

(73) In connection with the Bank C Loan, Respondent provided Bank C with a brokerage account statement from Brokerage Firm A in his name purporting to show a portfolio value of approximately \$3,484,768.

(74) Brokerage Firm A indicated that it has no record of a brokerage account in Respondent's name.

(75) By reason of the foregoing conduct, Respondent caused Bank C to incur a net loss of \$6,904.58 on the Bank C Loan as of August 23, 2016.

(76) Respondent knowingly executed a scheme to defraud federally insured financial institutions, or obtained credits by means of false or fraudulent pretenses, representations, or promises in violation of 18 U.S.C. § 1344.

(77) Respondent made materially false statements for the purpose of influencing the action of a federally insured financial institution in connection with a loan in violation of 18 U.S.C. § 1014.

(78) Respondent intentionally provided false documents and made false representations that caused false entries to be made in the books and records of a federally insured financial institution in violation of 18 U.S.C. § 1005.

ARTICLE IV

LEGAL BASES FOR REQUESTED RELIEF

(79) This Article repeats and re-alleges all previous Articles in this Notice.

(80) By reason of Respondent's misconduct as described in each of Articles II and III, the OCC seeks an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e) on the following grounds:

(a) Respondent violated the law, including 18 U.S.C. §§ 1344, 1014, and 1005, and engaged or participated in unsafe or unsound practices;

(b) By reason of Respondent's violations of law and unsafe or unsound practices, the Bank, Bank A, Bank B, and Bank C suffered or were likely to suffer financial loss or other damage and/or Respondent received financial gain or other benefit; and

(c) Respondent's violations of law and unsafe or unsound practices involved personal dishonesty and/or demonstrated a willful and/or continuing disregard for

the safety or soundness of the insured depository institutions and/or business institutions.

(81) By reason of Respondent's misconduct as described in each of Articles II and III, the Comptroller seeks a Cease-and-Desist Order Requiring Restitution against Respondent pursuant to 12 U.S.C. § 1818(b)(6) on the following grounds:

(a) Respondent violated the law, including 18 U.S.C. §§ 1344, 1014, and 1005, and/or engaged or participated in unsafe or unsound practices; and

(b) Respondent's violations and/or unsafe or unsound practices resulted in Respondent's unjust enrichment and/or involved reckless disregard for the law.

(82) By reason of Respondent's misconduct described in each of Articles II and III, the OCC 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. §§ 1344, 1014, and 1005;

(83) By reason of Respondent's misconduct as described in each of Articles II and III, the OCC 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 the law, including 18 U.S.C. §§ 1344, 1014, and 1005; and

(b) Respondent's violations were part of a pattern of misconduct, and/or caused or were likely to cause more than a minimal loss to the insured depository institutions and/or business institution, and/or resulted in pecuniary gain or other benefit to Respondent.

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 D8115A, 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, DC 20219, hearingclerk@occ.treas.gov, and with the attorney whose name appears on the accompanying certificate of service. **Failure to file a written 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 the 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 Institutions Adjudication, 3501 North Fairfax Drive, Suite D8115A, Arlington, VA 22226-3500.

Respondent is encouraged to file any request electronically with the Office of Financial Institutions Adjudication at ofia@fdic.gov. A copy of any request, along with the written Answer, shall be served on the Hearing Clerk, Office of the Chief Counsel, Office of the

Comptroller of the Currency, Washington, DC 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 an assessment to constitute a final and appealable order for a civil money penalty pursuant to 12 U.S.C. § 1818(i).**

PRAYER FOR RELIEF

The OCC prays for relief in the form of the issuance of:

- (1) an Order of Prohibition against Respondent pursuant to 12 U.S.C. § 1818(e);
- (2) a Cease-and-Desist Order Requiring Restitution for losses totaling \$2,359,256.56 against Respondent pursuant to 12 U.S.C. § 1818(b)(6) and payable as follows: \$1,507,917.95 to the Bank, \$512,692.10 to Bank A, \$211,108.49 to Bank B, and \$127,538.02 to Bank C; and
- (3) an Order of Assessment of a Civil Money Penalty in the amount of \$250,000 against Respondent pursuant to 12 U.S.C. § 1818(i).

The OCC further prays that such Orders requiring payment of restitution and assessment of a civil money penalty specify that such obligations shall not be dischargeable in any bankruptcy proceeding (*see* 11 U.S.C. § 523(a)), and that payments to the Bank, Bank A, Bank B, and Bank C shall be subject to offset against any other payments he made or will make to those institutions related to losses on the loans described in this Notice of Charges.

Witness, my hand on behalf of the OCC, given at Washington, DC, this 11th day of July 2019.

//s// Digitally Signed, Date: 2019.07.11

Michael R. Brickman
Deputy Comptroller for Special Supervision