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STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

**S.C. Supreme Court**

Appeal from Richland County  
In the Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Appellate Case No. 2015-000218

CACH, L.L.C.....Respondent,

v.

Toby Hoffman, Jr., a/k/a  
Carl W. Hoffman, Jr.....Petitioner.

**REQUEST FOR JUDICIAL NOTICE**

The petitioner requests this court take judicial notice of the entry of a consent order entered between Bank of America, N.A. and the U.S. Comptroller of the Currency in the Department of the Treasury, on May 29, 2015.

The order was entered to remedy certain non-home debt collection practices, to include the preparation and submission of affidavits and other sworn documents used in the bank's debt collection litigation.

The enforcement action contains these findings, material to the issues presented in this appeal:

- (3) In connection with the Bank's sworn document and Collections Litigation processes, the Bank:

- (a) Filed or caused to be filed in courts affidavits executed by its employees making assertions in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;
  - (b) Filed or caused to be filed in courts numerous affidavits when the Bank did not follow proper notary procedures;
  - (c) Failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its sworn document and Collections Litigation processes; and
  - (d) Failed to sufficiently oversee outside counsel and other third-party providers handling sworn document and Collections Litigation services.
- (4) The unsafe or unsound practices and violations of law identified in this Article were, in part, the result of deficiencies in the Bank's enterprise compliance risk management function, including deficiencies with respect to independent testing, governance routines, risk assessment, and oversight.

*See*, Order, pp. 3-4. These are the very type of documents and submissions at issue in this appeal, which presents the question of the reliability of these submissions as business records adequate to collect a judgment by a third party buyer of debt, in this case, CACH, L.L.C. Indeed, the findings extend "Collections Litigation," as attempts by the Bank (or a third party acting on its behalf) to collect debts, within the reach of the order. *See*, Order at p. 2.

The order and accompanying stipulation are included in its entirety for the benefit of this court in addressing the issues presented by this appeal.

Respectfully submitted,



JOHN D. ELLIOTT  
Attorney for Petitioner  
P.O. Box 607

1122 Lady Street-Suite 710  
Columbia, SC 29202  
Phone: 803.252.9236  
Fax: 803.799.2079  
E-Mail: jayel@mindspring.com

Columbia, South Carolina  
November 24<sup>th</sup>, 2015

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

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**In the Matter of:**

Bank of America, N.A.  
Charlotte, North Carolina

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**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted examinations of Bank of America, N.A., Charlotte, North Carolina, and FIA Card Services, N.A.,<sup>1</sup> Wilmington, Delaware. The OCC has identified (i) unsafe or unsound practices in connection with Bank of America, N.A.’s (the “Bank’s”) efforts to comply with the Servicemembers Civil Relief Act (“SCRA”), (ii) SCRA violations, and (iii) unsafe or unsound practices in connection with the Bank’s sworn document and collections litigation practices. The OCC has informed the Bank of the findings resulting from the examinations.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated May 29, 2015, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order (“Order”) by the Comptroller. The Bank has begun corrective action, and is committed to taking

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<sup>1</sup> The FIA Card Services, N.A. charter was consolidated into Bank of America, N.A. in October of 2014.

all necessary and appropriate steps to remedy the deficiencies, unsafe or unsound practices, and violations of law identified by the OCC, and to enhance the Bank's SCRA compliance practices and sworn document and collections litigation practices.

## ARTICLE I

### COMPTROLLER'S FINDINGS

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

- (1) For purposes of this Order, the following definitions shall apply:
  - (a) "Accounts" refers to accounts for an extension of credit in all lines of business, except home lending, regardless of whether they are in Collections Litigation.
  - (b) "Collections Litigation" refers to attempts by the Bank (or a third party acting on its behalf), through legal proceedings in the United States, to (i) collect, or establish liability for, debts or liabilities in connection with Accounts in all lines of business, except home lending, or (ii) establish the Bank's right, title, and interest in and to collateral and/or realize on and liquidate collateral in connection with such Accounts.
  - (c) "Collections Litigation Accounts" refers to Accounts in Collections Litigation with respect to the credit cards and demand deposit overdrafts lines of business where sworn documents were filed by or on behalf of the Bank in state or federal courts.
  - (d) "Legal Requirements" refers to all applicable: federal and state laws (including the U.S. Bankruptcy Code and the Servicemembers Civil Relief

Act (“SCRA”)); rules; regulations; and court orders, rules and requirements.

- (e) “SCRA benefits” refers to the benefits provided by 50 U.S.C. app. § 527 (“Section 527”). Section 527 provides that, upon a servicemember’s providing both written notice and a copy of his/her military orders to the creditor (and any orders further extending that military service), which shall occur no later than 180 days after the servicemember’s termination or release from military service, an obligation or liability that was incurred by the servicemember, or by the servicemember and his or her spouse jointly, before the servicemember entered military service, shall not bear interest (as that term is defined in 50 U.S.C. app. § 527(d)(1)) at a rate in excess of six percent (6%) per year during:
  - (i) The period of military service (i.e., active duty, as defined in 10 U.S.C. § 101(d)), and one year thereafter for an obligation or liability consisting of a mortgage, trust deed, or other security in the nature of a mortgage, and, pursuant to 50 U.S.C. app § 516, in the case of reservists, during the period beginning on the date of receipt of the order to report and ending on the date on which the reservist reports for military service;
- (f) “SCRA protection” refers to all of the protections provided by the SCRA other than the SCRA benefits, including protections related to default judgments provided by 50 U.S.C. app. § 521 (“Section 521”). SCRA

protection is to be provided whether or not a servicemember has made a request for such protection.

(g) “SCRA-Protected Servicemember” refers to servicemembers as defined in 50 U.S.C. app. § 511(1) and (2).

(2) In connection with the Bank’s efforts to comply with the SCRA, the Bank:

(a) Failed to have in place effective policies and procedures across the Bank to ensure compliance with the SCRA;

(b) Failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its SCRA compliance processes;

(c) Failed to devote to its SCRA compliance processes adequate internal controls, compliance risk management, internal audit, third party management, and training; and

(d) Engaged in violations of the SCRA.

(3) In connection with the Bank’s sworn document and Collections Litigation processes, the Bank:

(a) Filed or caused to be filed in courts affidavits executed by its employees or employees of third-party service providers making assertions in which the affiant represented that the assertions in the affidavit were made based on personal knowledge or based on a review by the affiant of the relevant books and records, when, in many cases, they were not based on such personal knowledge or review of the relevant books and records;

(b) Filed or caused to be filed in courts numerous affidavits when the Bank did not follow proper notary procedures;

(c) Failed to devote sufficient financial, staffing and managerial resources to ensure proper administration of its sworn document and Collections Litigation processes; and

(d) Failed to sufficiently oversee outside counsel and other third-party providers handling sworn document and Collections Litigation services.

(4) The unsafe or unsound practices and violations of law identified in this Article were, in part, the result of deficiencies in the Bank's enterprise compliance risk management function, including deficiencies with respect to independent testing, governance routines, risk assessment, and oversight.

(5) By reason of the conduct set forth above, the Bank engaged in unsafe or unsound practices and violations of law.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. §1818(b), the Comptroller hereby ORDERS that:

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) The Board shall appoint and maintain a Compliance Committee of at least three (3) directors of the Bank, of which a majority may not be employees or officers of the Bank or any of its subsidiaries or affiliates. At formation and thereafter in the event of a change in the membership, the names of the members of the Compliance Committee shall be submitted to the Examiner-in-Charge for a written determination of no supervisory objection by the Examiner-in-Charge. The Compliance Committee shall be responsible for monitoring and overseeing the Bank's compliance with the provisions of this Order, and approving measures necessary to

ensure compliance with the remaining articles of this Order (unless other specific approvals are required). The Compliance Committee shall maintain minutes of its meetings.

(2) Within ninety (90) days of the effective date of this Order, and thereafter within thirty (30) days after the end of each calendar quarter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail the actions taken to comply with each Article of this Order, and the results and status of those actions.

(3) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Examiner-in-Charge within ten (10) days of the first Board meeting following receipt of such report, unless additional time is granted by the Examiner-in-Charge through a written determination of no supervisory objection.

### ARTICLE III

#### COMPREHENSIVE ACTION PLAN

(1) The Bank shall submit to the Examiner-in-Charge for review and written determination of no supervisory objection by the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through XV of this Order ("Action Plan"). The Bank shall submit the Action Plan to the Examiner-in-Charge, within ninety (90) days of the effective date of this Order, for a prior written determination of no supervisory objection by the Deputy Comptroller. In the event the Deputy Comptroller asks the Bank to revise the Action Plan, the Bank shall promptly make necessary and appropriate revisions and resubmit the Action Plan to the Examiner-in-Charge for review and determination of no supervisory objection by the Deputy Comptroller.

- (2) The Action Plan shall address, at a minimum:
- (a) Financial resources to develop and implement an adequate infrastructure to support existing and projected future SCRA, sworn document and Collections Litigation compliance activities, the Bank's enterprise compliance risk management program, and ensure compliance with this Order;
  - (b) Organizational structure, managerial resources, and staffing to support existing and projected future SCRA, sworn document and Collections Litigation compliance activities, the Bank's enterprise compliance risk management program, and ensure compliance with this Order;
  - (c) Metrics to measure and ensure the adequacy of staffing levels relative to existing and projected future SCRA, sworn document and Collections Litigation compliance activities, and the Bank's enterprise compliance risk management program; and
  - (d) Governance and controls to ensure compliance with the applicable Legal Requirements, and the requirements of this Order.

(3) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through XV of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

(4) Following no supervisory objection to the Action Plan, the Bank shall not take any action that will cause a significant deviation from, or material change to, the Action Plan, unless and until the Bank has received prior written notice of no supervisory objection from the Deputy Comptroller.

(5) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan. The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains effective SCRA, sworn document, and Collections Litigation compliance activities, as well as associated risk management, compliance, quality control, internal audit, training, staffing, and related functions. In each instance in this Order in which the Board is required to ensure adherence to, or undertake to perform, certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) Authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) Require that the reporting by Bank management is timely, adequate and accurate, including reporting of such actions directed by the Board to be taken under this Order and the results of such actions; and
- (c) Remedy non-compliance with any Article of this Order by requiring timely and appropriate corrective action.

#### ARTICLE IV

##### BANK ENTERPRISE COMPLIANCE RISK MANAGEMENT PROGRAM

(1) Within ninety (90) days of the effective date of this Order, the Bank shall submit a written plan (“Compliance Risk Management Plan”) to effectively implement an enterprise-wide compliance risk management program with respect to the Bank’s compliance with all applicable laws, regulations, and regulatory guidance. The Board shall approve and ensure the Bank

submits this Compliance Risk Management Plan to the Examiner-in-Charge for a prior written determination of no supervisory objection. The Compliance Risk Management Plan shall include a timeline for the implementation of each element in the program, and any deviation from such timeline must be approved by the Examiner-in-Charge through a written determination of no supervisory objection. The Bank's enterprise-wide compliance risk management program shall, at a minimum:

- (a) Establish and implement clear roles and responsibilities for each employee level within the enterprise compliance risk management program, and establish formally-defined roles and responsibilities that include sufficient detail to ensure the identification, measurement, monitoring and control of compliance risk within the Bank;
- (b) Align appropriate staffing expertise and resources to properly implement and administer the enterprise compliance risk management program, and require that management conducts a talent assessment for each compliance segment within the Bank and develops a formal action plan to address identified gaps;
- (c) Establish and implement a comprehensive training program and track appropriate role-specific training on applicable laws, rules, and regulations for first line units and compliance risk management, and establish standards for the frequency and method (e.g., formal, on-the-job, external) of training to be conducted for both the first line units and compliance risk management. The training program shall include mandatory and periodic training requirements that are needed to ensure adherence to applicable

policies and procedures adopted by the Bank and respond to regulatory changes;

(d) Establish and implement comprehensive enterprise-wide state of compliance reporting to the Board of Directors on at least a quarterly basis, and establish centralized management information systems, which shall include:

(i) An overall summary of the state of compliance for the Bank;

(ii) A thematic analysis of compliance concerns identified by compliance, internal audit, and regulatory authorities;

(iii) Risk metrics, limits, and limit breach reporting that reflects the level of compliance, adherence to policy, monitoring and testing results, and potential areas of concern;

(iv) Identification of significant and unresolved deficiencies identified by compliance, internal audit, and regulatory authorities;

(v) A summary of regulatory changes and prospective regulatory changes and the Bank's efforts to proactively ensure compliance with such changes; and

(vi) A summary of monitoring and testing results.

(e) Require continued development, enhancement, and implementation of monitoring and testing for compliance with applicable laws, rules, and regulations, and ensure that the monitoring and testing activities adequately address the risks identified in the annual risk assessments.

(2) Upon receipt of a determination of no supervisory objection to the Compliance Risk Management Plan submitted pursuant to Paragraph (1) of this Article, the Board shall ensure that the Bank implements and adheres to the Compliance Risk Management Plan. Any proposed material changes to or significant deviations from the approved Compliance Risk Management Plan shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection.

(3) The Bank's Internal Audit department shall periodically conduct an assessment of the Bank's compliance with the Compliance Risk Management Plan. Such initial implementation assessment shall occur within sixty (60) days after the Bank's receipt of a determination of no supervisory objection to the Compliance Risk Management Plan, and subsequent assessments shall occur periodically but at least annually thereafter, and the findings shall be memorialized in writing. Within ten (10) days of completing each assessment, Internal Audit shall provide its written findings to the Audit Committee and the Examiner-in-Charge.

(4) The Board shall ensure that there is oversight of the Compliance Risk Management Plan and the enterprise-wide compliance risk management program required by this Article by the Bank's senior risk managers, senior management and the Compliance Committee.

(5) At such time as the Bank believes it has achieved full compliance with Article IV of this Order, the Bank's Internal Audit department shall conduct an assessment of the effectiveness of the Bank's enterprise-wide compliance risk management program, and the findings shall be memorialized in writing. Within ten (10) days of completing such assessment, Internal Audit shall provide its written findings to the Audit Committee and the Examiner-in-

Charge.

## ARTICLE V

### SCRA RISK ASSESSMENT AND RISK MANAGEMENT PLAN

(1) Within sixty (60) days of the effective date of this Order, the Bank shall conduct a written, comprehensive assessment of the Bank's risks in SCRA compliance operations, including, but not limited to, operational, compliance, legal, and reputational risks.

(2) The Bank shall submit an acceptable plan to effectively manage or mitigate identified risks on an ongoing basis, with oversight by the Bank's senior risk managers and senior management. The assessment and plan shall be presented to the Compliance Committee for review and approval. Within ninety (90) days of the effective date of this order, the assessment and plan shall be provided to the Examiner-in-Charge for review and written determination of no supervisory objection by the Examiner-in-Charge.

## ARTICLE VI

### SCRA COMPLIANCE PLAN

(1) Within ninety (90) days of the effective date of this Order, the Bank shall submit to the Examiner-in-Charge for a written determination of no supervisory objection by the Examiner-in-Charge an acceptable written plan to ensure the Bank's compliance with the SCRA ("SCRA Compliance Plan"). The SCRA Compliance Plan shall be implemented within one hundred twenty (120) days of the receipt of a written determination of no supervisory objection by the Examiner-in-Charge. The SCRA Compliance Plan shall include a timeline for the completion of each element in the plan, and any deviation from such timeline must be approved

by the Examiner-in-Charge through a written determination of no supervisory objection. The SCRA Compliance Plan shall require, at a minimum:

- (a) The enhancement and implementation of adequate written policies and procedures to ensure compliance with the SCRA and the Bank's related standards, including, but not limited to:
  - (i) Uniform standards and processes for determining whether a servicemember who submits a request for SCRA benefits is eligible for such benefits in all accounts that the borrower may have, not just the account that is the subject of the request;
  - (ii) Policies and procedures for notifying a servicemember of the Bank's denial to provide SCRA benefits or SCRA protection;
  - (iii) Policies and procedures for determining whether real or personal secured property is owned by an SCRA-Protected Servicemember before referring a loan for foreclosure or repossession and during the foreclosure or repossession process (not including the home lending line of business) in order to determine whether a court order is required pursuant to the SCRA prior to foreclosure or repossession;
  - (iv) Processes to ensure that all factual assertions made in affidavits of military service filed by the Bank or on behalf of the Bank are accurate, complete, and reliable;
  - (v) Procedures for when a search of the Department of Defense Manpower Data Center ("DMDC") database, or an equivalent

database acceptable to the OCC, must be conducted before filing an affidavit in connection with obtaining a default judgment on an Account, initiating the foreclosure or repossession process, or making a determination of eligibility for SCRA benefits;

- (vi) Procedures for filing an affidavit in connection with obtaining a default judgment on an Account;
  - (vii) Procedures for initiating and pursuing a waiver under a written agreement, as provided in 50 U.S.C. app. § 517; and
  - (viii) Consistent procedures regarding state laws that provide more benefits or protection to servicemembers than those provided by the SCRA.
- (b) The enhancement and implementation of written policies and procedures governing documentation and record retention requirements, which shall include:
- (i) Written procedures and processes to ensure that the requirements of this subparagraph are consistently applied and complied with throughout the Bank;
  - (ii) Written procedures requiring that the Bank obtain and maintain sufficient documentation to evidence: (1) the dates of SCRA-protected military service for servicemembers who request SCRA benefits or who are otherwise potentially entitled to SCRA protection; (2) the method, date, and results of military status verifications prior to filing an affidavit in connection with

obtaining a default judgment on an Account of a SCRA-Protected Servicemember; (3) dates of correspondence with the SCRA-Protected Servicemember; and (4) the calculation of benefits provided pursuant to 50 U.S.C. app. § 527;

- (iii) Written procedures and processes for documenting the basis of the Bank's determination of an Account's eligibility for SCRA benefits or protections or of the Bank's denial of such benefits or protections; and
  - (iv) The establishment of an effective record retention system and procedures to assure the maintenance and accessibility of complete records within the Bank that demonstrates its compliance with the SCRA and the requirements of this Paragraph.
- (c) The development of standard internal guidance, guidelines, checklists or other documentation formats that convey complete and accurate information regarding the SCRA that is to be used by all Bank employees, irrespective of their duties, and third party vendors who are involved in:
- (i) Providing customer service to servicemembers in connection with the servicing of their Accounts;
  - (ii) Servicing of Accounts; or
  - (iii) Foreclosure or repossession proceedings (not including the home lending line of business).
- (d) The enhancement and implementation of written policies and procedures for conducting periodic reviews and updating, as applicable, the guidance,

guidelines, checklists, and other documentation formats required by Paragraph (1)(c) of this Article.

- (e) The enhancement and implementation of written policies and procedures to ensure that risk management, quality assurance, internal audit, vendor management, and corporate compliance have the requisite authority and status within the Bank to promptly identify deficiencies in the SCRA policies, procedures, or processes and to ensure that the Bank promptly remediates such deficiencies.
- (f) The enhancement and implementation of processes and procedures for ongoing monitoring, testing, and reporting within and across each applicable line of business and applicable vendors by persons with the requisite knowledge and expertise (and, where appropriate, who are independent of the Bank's business lines) to:
  - (i) Ensure compliance with the SCRA, the SCRA Compliance Plan, and the SCRA Training Program, as defined in Paragraph (3) of this Article;
  - (ii) Verify that the policies and procedures described in Paragraphs (1)(a) and (1)(b) of this Article are being followed and are effective in detecting and preventing violations of the SCRA; and
  - (iii) Ensure consistent adherence to the guidance, guidelines, checklists and other documentation formats described in Paragraph (1)(c) of this Article.

- (g) Reporting, on at least a monthly basis, by the senior manager or managers responsible for conducting and overseeing the monitoring and testing required by Paragraph (1)(f) of this Article, the findings from the monitoring and testing to a specified senior manager of the Bank, with a copy to the risk manager who is independent of that particular line of business.
- (h) Periodic reporting of the results of the internal monitoring and testing to the Board and Compliance Committee.
- (i) Processes to ensure that policies, procedures, and processes are updated on an ongoing basis as necessary to incorporate any changes in the SCRA or applicable state laws.

(2) Upon receipt of a written determination of no supervisory objection to the SCRA Compliance Plan submitted pursuant to Paragraph (1) of this Article, the Board shall ensure that the Bank implements and adheres to the SCRA Compliance Plan. Any proposed changes to or deviations from the approved SCRA Compliance Plan shall be submitted in writing to the Examiner-in-Charge for prior review and determination of no supervisory objection by the Examiner-in-Charge.

(3) Within ninety (90) days of receiving a determination of no supervisory objection to the SCRA Compliance Plan, the Bank shall develop a written program to ensure that all SCRA Covered Bank Personnel, as defined herein, are trained on the requirements of the SCRA, related Legal Requirements, and the SCRA Compliance Plan, as well as on identifying violations of the SCRA (“SCRA Training Program”). For the purpose of this Paragraph, “SCRA Covered Bank Personnel” refers to all Bank employees and other staff (including temporary employees,

contractors, agents, or third parties) who engage in any aspect of Bank operation where the SCRA may be applicable, personnel responsible for developing, implementing, and/or ensuring adherence to, the SCRA Compliance plan (including employees who are responsible for conducting the monitoring and testing required by this Article) and Bank employees involved in providing customer service to servicemembers in connection with the servicing of their Accounts, in servicing of accounts, or in foreclosure or repossession proceedings (not including the home lending line of business). At a minimum, the SCRA Training Program shall require that:

- (a) The training is developed and provided by individuals or an entity with sufficient knowledge and expertise;
- (b) The training is conducted:
  - (i) On at least an annual basis for all SCRA Covered Bank Personnel whose responsibilities, and the SCRA, have not substantially changed since their previous SCRA training and who are not new hires;
  - (ii) Within a reasonable time frame from the date of hire for a new hire who is SCRA Covered Bank Personnel; and
  - (iii) Within a reasonable time frame after policies and procedures are updated to reflect new or updated requirements, or from the date of change in responsibilities for any SCRA Covered Bank Personnel whose responsibilities have substantially changed such that his or her previous SCRA training is not specific to his or her new responsibilities;

- (c) The training is specific to the SCRA Covered Bank Personnel's responsibilities; and
  - (d) Additional, enhanced training is provided to SCRA Covered Bank Personnel in the Bank's Legal, Internal Audit, and Compliance units, and to senior management in each line of business.
- (4) The Board shall ensure that there is oversight of the SCRA Compliance Plan required by this Article by the Bank's senior risk managers, senior management and the Compliance Committee.

## ARTICLE VII

### REVIEW OF ACCOUNTS FOR SCRA COMPLIANCE

- (1) For purposes of this Article, "Enrolled" describes Accounts that are eligible to receive the SCRA benefits as requested by the borrower or eligible for SCRA protection.
- (2) Within ninety (90) days of the effective date of this Order, the Bank shall submit an acceptable plan for conducting the SCRA Review ("SCRA Review Plan") to the Examiner-in-Charge for prior written determination of no supervisory objection by the Examiner-in-Charge. The SCRA Review Plan shall include:
- (a) Expertise and resources to be dedicated to this review; and
  - (b) A written commitment that any (including all draft and finalized) communications, workpapers, or work product associated with the SCRA Review shall be made available to the OCC promptly upon request.

(3) Within one hundred and eighty (180) days of receiving a written determination of no supervisory objection to the SCRA Review Plan, the Bank shall review Accounts in all lines of business, except home lending, for compliance with the SCRA (“SCRA Review”).

(4) The purpose of the SCRA Review shall be to identify SCRA-Protected Servicemembers eligible for remediation (“Eligible SCRA-Protected Servicemembers”) and consist of a review of:

- (a) Default judgments obtained in any line of business, except home lending, between January 1, 2006 and the effective date of this Order to evaluate whether the judgments were obtained against any SCRA-Protected Servicemembers;
- (b) Repossessions of collateral or foreclosures obtained in connection with an Account in any line of business, except home lending, between January 1, 2006 and the effective date of this Order to evaluate whether the repossessions or foreclosures were obtained against any SCRA-Protected Servicemembers and were in compliance with 50 U.S.C. app. § 532 or 50 U.S.C. app. § 533, as appropriate;
- (c) Accounts that were Enrolled, between January 1, 2006 and the effective date of this Order, for SCRA benefits to evaluate whether the calculation of the benefits provided was in compliance with 50 U.S.C. app. § 527; and
- (d) Accounts where a borrower, between January 1, 2006 and the effective date of this Order, submitted a request for SCRA benefits, but the account was not Enrolled, to evaluate whether the Bank complied with 50 U.S.C. app. § 527.

(5) The Bank represents that it has completed several plans to review Enrolled Accounts for compliance with the SCRA. These plans shall be documented as part of the SCRA Review Plan required by this Article and be subject to the requirements of this Article, and shall include an accounting of the Eligible SCRA-Protected Servicemembers identified by the review.

(6) Upon receipt of a written determination of no supervisory objection to the SCRA Review Plan submitted pursuant to Paragraph (2) of this Article, the Board shall ensure that the SCRA Review is conducted in accordance with the SCRA Review Plan to which a determination of no supervisory objection has been provided. Any proposed changes to or deviations from the approved SCRA Review Plan shall be submitted to the Examiner-in-Charge for prior review and determination of no supervisory objection by the Examiner-in-Charge.

(7) The Bank's Internal Audit shall conduct assessments of the SCRA Review Plan and the SCRA Review to ensure the procedures and methodology used are adequate to identify Eligible SCRA-Protected Servicemembers. Such assessments shall occur at appropriate intervals during the development and the execution of the SCRA Review Plan and the SCRA Review, and the findings for each phase of the assessment shall be memorialized in writing. No later than the next monthly Compliance Committee meeting after completing the assessment, Internal Audit shall provide its written findings to the Compliance Committee and the Examiner-in-Charge.

(8) The Bank shall prepare a written report detailing the findings of the SCRA Review ("SCRA Review Report"), which shall be completed within thirty (30) days of completion of the SCRA Review. Promptly upon completion, the SCRA Review Report shall be submitted to the Examiner-in-Charge and the Board.

## ARTICLE VIII

### REMEDICATION FOR ELIGIBLE SCRA-PROTECTED SERVICEMEMBERS

(1) Within sixty (60) days of the submission of the SCRA Review Report to the Examiner-in-Charge and the Board, as required by Article VII of this Order, the Bank shall submit an acceptable SCRA remediation plan ("SCRA Remediation Plan") to the Examiner-in-Charge for prior written determination of no supervisory objection by the Deputy Comptroller.

The SCRA Remediation Plan shall include the following:

- (a) A description of the methods to be used to compile a list of Eligible SCRA-Protected Servicemembers and their addresses.
- (b) A description of the procedures used to provide remediation to each Eligible SCRA-Protected Servicemember as required by Paragraph (2) of this Article.
- (c) A description of the methods used to calculate the amount of remediation to be provided to each Eligible SCRA-Protected Servicemember as required by Paragraph (2) of this Article.
- (d) A description of the procedures for providing and tracking remediation to Eligible SCRA-Protected Servicemembers.
- (e) A description of procedures for requesting that:
  - (i) All three (3) major consumer credit bureaus amend or delete trade lines or amend or delete negative entries, as appropriate, for Eligible SCRA-Protected Servicemembers that are attributable specifically to wrongful repossession, default judgment, inaccurate balances, or interest overcharges; and

(ii) With regard to Accounts sold to unaffiliated third parties, such third parties request that all three (3) major consumer credit bureaus amend or delete trade lines or amend or delete negative entries, as appropriate, for Eligible SCRA-Protected Servicemembers that are attributable specifically to wrongful repossession, default judgment, inaccurate balances, or interest overcharges.

(f) A description of the procedures for monitoring compliance with the SCRA Remediation Plan.

(2) The Bank represents that it has completed several plans to reimburse Eligible SCRA-Protected Servicemembers. These plans shall be documented as part of the SCRA Remediation Plan required by this Article and be subject to the requirements of this Article, and shall include an accounting of amounts the Bank has already reimbursed to Eligible SCRA-Protected Servicemembers.

(3) The Bank shall provide remediation to each Eligible SCRA-Protected Servicemember in accordance with the SCRA Remediation Plan required by Paragraph (1) of this Article.

(4) The Bank's Internal Audit shall periodically conduct assessments of the SCRA Remediation Plan and the methodology used to determine the amount of remediation for each Eligible SCRA-Protected Servicemember, the procedures used to provide and track remediation, and the procedures used for requesting the updating or removal of negative entries at the credit reporting agencies. Such assessments shall occur at appropriate intervals during the development and execution of the SCRA Remediation Plan, and the findings shall be

memorialized in writing. No later than the next monthly Compliance Committee meeting after completion of each assessment, Internal Audit shall provide its written findings to the Compliance Committee and the Examiner-in-Charge.

(5) Upon receipt of a written determination of no supervisory objection to the SCRA Remediation Plan submitted pursuant to Paragraph (1) of this Article, the Board shall ensure that the Bank implements and adheres to the SCRA Remediation Plan. Any proposed changes to or deviations from the approved SCRA Remediation Plan shall be submitted in writing to the Examiner-in-Charge for prior review and determination of no supervisory objection by the Deputy Comptroller.

## ARTICLE IX

### INTERNAL AUDIT – SCRA PROGRAM

(1) Within ninety (90) days of the effective date of this Order, the Bank shall develop a comprehensive written SCRA compliance audit program (“SCRA Audit Program”). A copy of this program shall be promptly provided to the Examiner-in-Charge. At a minimum, the Audit Program shall be sufficient to:

- (a) Detect irregularities and weak practices in the Bank's SCRA compliance operations;
- (b) Determine the Bank's level of compliance with the SCRA and all related applicable Legal Requirements;
- (c) Assess and report on the effectiveness of policies, procedures, controls, and management oversight relating to the Bank's SCRA compliance operations; and

- (d) Evaluate the Bank's adherence to established policies and procedures relating to the Bank's SCRA compliance operations.
- (2) At a minimum, the SCRA Audit Program shall include:
- (a) Written policies and procedures for conducting audits of the Bank's compliance with Articles V and VI of this Order. These policies and procedures shall specify the frequency, scope, and depth of these audits.
  - (b) Written procedures for testing the calculations used by the Bank or a Third-Party Provider for calculating the amount of the SCRA benefits that the Bank has provided to servicemembers eligible for the benefits under 50 U.S.C. app. § 527.
  - (c) A written plan for testing whether SCRA benefits were timely applied, as required by 50 U.S.C. app. §§ 516 and 527.
  - (d) A written plan for testing the Bank's default judgment processes to ensure compliance with 50 U.S.C. app. § 521, including compliance with military status verification procedures to ensure that sufficient documentation is created and maintained.
  - (e) Written policies and procedures for expanding its sampling when exceptions are detected, including based on potential violations of the SCRA.
  - (f) A written plan for testing the Bank's collateral repossession processes to ensure compliance with the SCRA, in particular to ensure that any repossession did not occur without the necessary court order having first been obtained.

- (g) Comprehensive written procedures for providing the training required by the SCRA Training Program required by Article VI of this Order to all SCRA Covered Bank Personnel, as defined in Article VI of this Order.
- (h) A written plan to test Bank and Third-Party Provider systems supporting SCRA compliance. For third-party providers the program shall include the testing of system data feeds, reconciliation processes, and information security.

(3) The Board shall ensure that the Bank implements and adheres to the Audit Programs developed pursuant to this Article.

## ARTICLE X

### SCRA THIRD PARTY MANAGEMENT

(1) Within ninety (90) days of the effective date of this Order, the Bank shall submit to the Examiner-in-Charge for a written determination of no supervisory objection by the Examiner-in-Charge acceptable policies and procedures for outsourcing SCRA compliance functions to any agent, independent contractor, consulting firm, law firm, or other third-party (including any affiliate of the Bank) (“Third-Party Providers”). Third-party management policies and procedures to ensure ongoing compliance with the SCRA shall be implemented promptly after the receipt of a written determination of no supervisory objection by the Examiner-in-Charge. The Bank shall obtain a written determination of no supervisory objection from the Examiner-in-Charge in order to use new Third-Party Providers in connection with SCRA compliance before it fully implements the policies and procedures required by this Article. The policies and procedures shall include, at a minimum:

- (a) Appropriate oversight to ensure that Third-Party Providers comply with the SCRA, related OCC supervisory guidance, and the Bank's SCRA standards as appropriate;
- (b) Processes to perform appropriate due diligence on potential and current Third-Party Provider SCRA compliance capabilities;
- (c) Processes to ensure that contracts with Third-Party Providers provide for adequate oversight to require Third-Party Provider adherence to the SCRA and the Bank's SCRA standards and processes to ensure timely action with respect to Third-Party Provider performance failures;
- (d) Processes to ensure periodic audits or reviews, as appropriate, of the work of Third-Party Providers subject to SCRA compliance to assess timeliness, competence and completeness, and to ensure compliance with the SCRA, related applicable Legal Requirements, and related supervisory guidance; and
- (e) Processes to review SCRA-related customer complaints, legal action, investigations, and negative media about significant Third-Party Provider services.

## ARTICLE XI

### SCRA MANAGEMENT INFORMATION SYSTEMS

(1) Within ninety (90) days of the effective date of this Order, the Bank shall submit to the Examiner-in-Charge an acceptable plan for improvements to its management information systems ("MIS") for SCRA compliance activities for prior written determination of no supervisory objection by the Examiner-in-Charge. The MIS plan shall be implemented within

ninety (90) days of the receipt of a written determination of no supervisory objection by the Examiner-in-Charge. The MIS plan shall include a timeline for the completion of each element of the plan, and any deviation from such timeline must be approved by the Examiner-in-Charge through a written determination of no supervisory objection. The MIS plan shall include, at a minimum:

- (a) A description of the various components of MIS used by the Bank for SCRA compliance activities;
- (b) A description of and timetable for any needed changes (if any) to:
  - (i) Monitor compliance with the SCRA, all related applicable Legal Requirements, and related supervisory guidance, and the requirements of this Order;
  - (ii) Ensure the ongoing accuracy of records related to SCRA compliance activities; and
  - (iii) Ensure that SCRA compliance staffs have sufficient and timely access to information provided by the borrower.
- (c) A description of testing to ensure the integrity and accuracy of the MIS and to ensure that SCRA reports generated by the system provide necessary information for adequate monitoring and quality controls.

## ARTICLE XII

### SCRA REPORTS

- (1) In addition to the reporting requirements of Article II of this Order, within ninety (90) days of the effective date of this Order, and thereafter within thirty (30) days after the end of

each calendar quarter, the Bank shall monitor and report, in writing, to the Compliance Committee:

- (a) The number of denials of SCRA benefit requests received (“SCRA requests”);
- (b) Discussion of trends in the level of the denials of SCRA requests;
- (c) The number of Accounts receiving SCRA benefits; and
- (d) The volume of customer complaints involving the SCRA.

(2) Within ten (10) days of receiving the written reports required by Paragraph (1) of this Article, the Compliance Committee shall forward copies of the reports to the Examiner-in-Charge.

### ARTICLE XIII

#### SWORN DOCUMENT, COLLECTIONS LITIGATION, AND RELATED PRACTICES

(1) Within ninety (90) days of the effective date of this Order, the Bank shall submit to the Examiner-in-Charge its Collections Litigation compliance action plans for a written determination of no supervisory objection. Upon receipt of a written determination of no supervisory objection to the Bank’s Collections Litigation compliance action plans, the Board shall ensure that the Bank maintains and adheres to the processes outlined in the Collections Litigation compliance action plans.

(2) The Bank's Internal Audit department shall continue its periodic assessment of the Bank's adherence to the Collections Litigation compliance action plans referenced in paragraph (1) of this Article. Findings shall be memorialized in writing, and the written findings shall be submitted within thirty (30) days of each assessment to the Audit Committee and the Examiner-

in-Charge. Assessments shall occur periodically according to the Bank's Internal Audit schedule for auditing the Bank's Collections Litigation compliance action plans.

(3) The Board shall ensure that there is continued oversight of the processes outlined in the Collections Litigation compliance action plans.

#### ARTICLE XIV

##### COLLECTIONS LITIGATION ACCOUNT REVIEW

(1) Within ninety (90) days of the effective date of this Order, the Bank shall submit an acceptable plan for conducting the Collections Litigation Account Review (“Collections Litigation Account Review Plan”) that will identify Collections Litigation Accounts eligible for remediation (“Eligible Collections Litigation Accounts”) to the Examiner-in-Charge for no supervisory objection by the Examiner-in-Charge.

(2) The Bank represents that it has completed several plans for conducting the Collections Litigation Account Review. These plans shall be documented as part of the Collections Litigation Account Review Plan required by this Article and be subject to the requirements of this Article, and shall include an accounting of the Eligible Collections Litigation Accounts identified by that review.

(3) The Bank’s Internal Audit shall submit an assessment of the Collections Litigation Account Review Plan and the Collections Litigation Account Review to ensure the procedures and methodology used are adequate to identify Eligible Collections Litigation Accounts.

(4) The Bank shall submit a written report detailing the findings of the Collections Litigation Account Review (“Collections Litigation Account Review Report”) to the Examiner-in-Charge.

## ARTICLE XV

### REMEDIATION FOR ELIGIBLE COLLECTIONS LITIGATION ACCOUNTS

(1) The Bank shall develop an acceptable plan to provide remediation to the affected owners of the Eligible Collections Litigation Accounts (“Collections Litigation Remediation Plan”), and submit it to the Examiner-in-Charge for no supervisory objection by the Deputy Comptroller.

(2) The Bank shall provide remediation to the owner of each Eligible Collections Litigation Account in accordance with the Collections Litigation Remediation Plan required by Paragraph (1) of this Article.

(3) The Bank represents that it has completed several plans to provide remediation to the affected owners of the Eligible Collections Litigation Accounts. These plans shall be documented as part of the Collections Litigation Remediation Plan required by this Article and be subject to the requirements of this Article, and shall include an accounting of the amounts the Bank has already reimbursed to the owners of the Eligible Collections Litigation Accounts.

(4) The Bank’s Internal Audit shall conduct an assessment of the Collections Litigation Remediation Plan and the methodology used to determine the amount of remediation for the owner of each Eligible Collections Litigation Account.

## ARTICLE XVI

### APPROVAL, IMPLEMENTATION AND REPORTS

(1) The Bank shall submit the written plans, programs, policies, and procedures required by this Order for review and determination of no supervisory objection to the Examiner-in-Charge within the applicable time periods set forth in Articles IV through XV. The Bank shall submit the plans, programs, policies, and procedures to the Examiner-in-Charge for prior written determination of no supervisory objection. In the event the Deputy Comptroller or the Examiner-in-Charge asks the Bank to revise the plans, programs, policies, or procedures, the Bank shall promptly make necessary and appropriate revisions and resubmit the materials to the Examiner-in-Charge for review and a determination of no supervisory objection. Upon receiving written notice of no supervisory objection from the Deputy Comptroller or the Examiner-in-Charge, the Board shall ensure the Bank implements and thereafter adheres to the plans, programs, policies, and procedures. Unless otherwise specified, following implementation of the plans, programs, policies, and procedures, the Bank shall not take any action that will cause a significant deviation from, or material change to the plans, programs, policies, and procedures, unless and until the Bank has received prior written notice of no supervisory objection from the Deputy Comptroller or the Examiner-in-Charge.

(2) During the term of this Order, the Bank shall revise the required plans, programs, policies and procedures as necessary to incorporate new, or changes to, applicable Legal Requirements and supervisory guidelines following the procedures above.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plans, programs, policies and procedures required by this Order.

(4) Within ninety (90) days of the effective date of this Order, and thereafter within thirty (30) days after the end of each calendar quarter following the effective date of this Order, the Bank shall submit to the Examiner-in-Charge a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The progress report shall include information sufficient to validate compliance with this Order. The OCC may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

(5) All communication regarding this Order shall be sent to:

Michael T. McDonald  
Acting Examiner-in-Charge  
National Bank Examiners  
101 South Tryon  
NC1-002-11-34  
Charlotte, NC 28255-0002

or such other individuals or addresses as directed by the OCC.

## ARTICLE XVII

### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain action plans, programs, policies, and procedures for review or prior written determination of no supervisory objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action

affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) This Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the practices and violations described in the Comptroller's Findings set forth in Article I of this Order. The Comptroller releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the Comptroller based on the practices and violations described in Article I of this Order, to the extent known to the Comptroller as of the effective date of this Order.

Nothing in the Stipulation or this Order, however, shall prevent the Comptroller from:

- (a) Instituting enforcement actions, other than a cease and desist order, against the Bank based on the findings set forth in Article I of this Order;
- (b) Instituting enforcement actions against the Bank based on any other findings;
- (c) Instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of this Order, or any other findings; or
- (d) Utilizing the findings set forth in Article I of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in the Stipulation or this Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of the Stipulation or this Order.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise. The time limitations may be extended in writing by the Deputy Comptroller for good cause upon written application by the Bank. Any request to extend any time limitation shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with the time limitation, and shall be accompanied by relevant supporting documentation. The Deputy Comptroller's decision regarding the request is final and not subject to further review.

(6) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate any activities done by a subsidiary into its plans, policies, programs, and processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Without limiting the foregoing, nothing in this Order shall prevent any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency.

(8) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 29<sup>th</sup> day of May, 2015.

                  /s/                    
Ron A. Pasch  
Deputy Comptroller  
Large Bank Supervision

                  5/29/15                    
Date

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

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**In the Matter of:**

Bank of America, N.A.  
Charlotte, North Carolina

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) AA-EC-2015-1  
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**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), based upon information derived from the exercise of his regulatory and supervisory responsibilities, intends to issue a cease and desist order to Bank of America, N.A., Charlotte, North Carolina (the “Bank”), pursuant to 12 U.S.C. § 1818(b), for (i) unsafe or unsound practices in connection with the Bank’s efforts to comply with the Servicemembers Civil Relief Act (“SCRA”), (ii) SCRA violations, and (iii) unsafe or unsound practices in connection with the Bank’s sworn document and collections litigation practices;

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, through its duly elected and acting Board of Directors (the “Board”), has agreed to execute this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”), that is accepted by the Comptroller, through his duly authorized representative;

**NOW, THEREFORE**, in consideration of the above premises, it is stipulated by the Bank that:

ARTICLE I  
JURISDICTION

- (1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*
- (2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).
- (3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

ARTICLE II  
CONSENT

- (1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order by the Comptroller.
- (2) The terms and provisions of the Consent Order apply to Bank of America, N.A., Charlotte, North Carolina, and all its subsidiaries, even though those subsidiaries are not named as parties to the Consent Order.
- (3) The Bank consents and agrees that the Consent Order, which shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), will become effective upon its execution by the Comptroller through his authorized representative, and will be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).
- (4) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(b), and not as

a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(5) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute this Stipulation.

(6) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(7) The Consent Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the practices and violations described in the Comptroller's Findings set forth in Article I of the Consent Order. The Comptroller releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the Comptroller based on the practices and violations described in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. Nothing in this Stipulation or the Consent Order, however, shall prevent the Comptroller from:

- (a) Instituting enforcement actions, other than a cease and desist order, against the Bank based on the findings set forth in Article I of the Consent Order;
- (b) Instituting enforcement actions against the Bank based on any other findings;
- (c) Instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of the Consent Order, or any other

findings; or

- (d) Utilizing the findings set forth in Article I of the Consent Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in this Stipulation or the Consent Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by executing this Stipulation and consenting to the Consent Order, waives:
  - (a) Any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) Any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (h), and 12 C.F.R. Part 19;
  - (d) Any and all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) Any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or the Consent Order, whether arising under common law or under

the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;

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

#### ARTICLE IV

##### ELIGIBLE BANK – OTHER PROVISIONS

- (1) As a result of the Consent Order:
  - (a) The Bank is an “eligible bank” pursuant to 12 C.F.R. § 5.3(g)(4) for the purposes of 12 C.F.R. Part 5 regarding rules, policies and procedures for corporate activities, unless otherwise informed in writing by the Office of the Comptroller of the Currency (“OCC”);
  - (b) The Bank is not subject to the limitation of 12 C.F.R. § 5.51(c)(6)(ii) for the purposes of 12 C.F.R. § 5.51 requiring OCC approval of a change in directors and senior executive officers, unless otherwise informed in writing by the OCC;
  - (c) The Bank is not subject to the limitation on golden parachute and indemnification payments provided by 12 C.F.R. § 359.1(f)(1)(ii)(C) and

12 C.F.R. § 5.51(c)(6)(ii), unless otherwise informed in writing by the OCC;

- (d) The Bank's status as an "eligible bank" remains unchanged pursuant to 12 C.F.R. § 24.2(e)(4) for the purposes of 12 C.F.R. Part 24 regarding community and economic development, unless otherwise informed in writing by the OCC; and
- (e) The Consent Order shall not be construed to be a "written agreement, order, or capital directive" within the meaning of 12 C.F.R. § 6.4, unless the OCC informs the Bank otherwise in writing.

## ARTICLE V

### CLOSING

(1) Except as contemplated by paragraph (7) of Article II of this Stipulation, the provisions of this Stipulation and the Consent Order shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, he deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.

(2) Nothing in this Stipulation or the Consent Order shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation or the Consent Order constitutes, nor shall the Bank contend that it constitutes, a release, discharge, compromise, settlement, dismissal or resolution of any actions, or in any way affects any actions, that may be or have been brought by any other representative of the United

States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.





Accepted by:

THE COMPTROLLER OF THE CURRENCY

By:                     /s/                      
Ron A. Pasch  
Deputy Comptroller  
Large Bank Supervision

5/29/15  
Date