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

In the Matter of:	)	
Patrick Adams	)	
Former President and Chief Executive Officer	)	AA-EC-2011-50
T Bank, N.A.	)	
Dallas, Texas	)	

NOTICE OF CHARGES FOR ISSUANCE OF AN ORDER TO CEASE AND DESIST
NOTICE OF ASSESSMENT OF A CIVIL MONEY PENALTY

On the 28th day of November, 2011, or such other date as determined by the Administrative Law Judge, a hearing will commence at 10:00 a.m. in Dallas, Texas, pursuant to 12 U.S.C. § 1818(b) and (i), concerning the charges set forth herein to determine whether an Order should be issued against Patrick Adams ("Respondent"), former President and Chief Executive Officer of T Bank, N.A., Dallas, Texas ("Bank"), requiring Respondent to take affirmative and corrective action pursuant to 12 U.S.C. § 1818(b) and to pay a civil money penalty pursuant to 12 U.S.C. § 1818(i).

The Comptroller of the Currency ("Comptroller" or "OCC") seeks a final Order requiring the Respondent to cease and desist from certain activities and to take certain corrective action, pursuant to 12 U.S. C. § 1818(b). In addition, the Comptroller assesses a $100,000 civil money penalty against the Respondent, as authorized by 12 U.S.C. § 1818(i)(2)(B). Pursuant to 12 U.S.C. § 1818(i)(2)(G), the Comptroller has considered the Respondent's financial resources and good faith, any history of previous violations, and such other matters as justice may require, and has fully considered the

Respondent's submissions concerning these matters. The penalty is payable to the Treasurer of the United States.

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

In support of this Notice of Charges and Notice of Assessment of a Civil Money Penalty ("Notice"), the Comptroller charges the following:

Article I

Jurisdiction

At all times relevant to the charges set forth below:

(1) The Bank was 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 Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(b) and (i)(2).

(3) The Comptroller is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q)(1) and for purposes of 12 U.S.C. § 1818(b) and (i) to initiate and maintain an enforcement proceeding against an institution-affiliated party.

(4) Respondent was the President and Chief Executive Officer of the Bank from on or about November 2, 2004 until his resignation on or about July 9, 2010, and is 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)). Therefore, Respondent is subject to the authority of the

Comptroller to initiate and maintain an enforcement proceeding against Respondent pursuant to 12 U.S.C. § 1818.

Article II

Background Facts and Summary

(5) The Bank opened for business in late 2004 after receiving a charter from the OCC to operate as a national bank. Respondent helped organize the Bank, and upon opening, became its President, Chief Executive Officer ("CEO") and a member of the Bank's Board of Directors.

(6) In his capacities as President and CEO, Respondent was responsible for managing the affairs of the Bank with reasonable skill, care, and diligence to minimize risk and ensuring that the Bank was being operated in a safe and sound manner and in compliance with all applicable laws, rules, and regulations, including compliance with consumer protection and anti-money laundering laws and regulations.

(7) From approximately December 2005 until August 2007, under Respondent's direction and supervision, the Bank opened and maintained account relationships with a company named Giact Systems, Inc. ("Giact") and approximately sixty-six (66) other businesses for which Giact performed client services ("Giact Merchant-Clients").

(8) Giact was a third-party payment processor that facilitated the transfer of funds from consumers' bank accounts to the Giact Merchant-Clients' accounts in connection with goods or services marketed by the Giact Merchant-Clients via the internet and other means.

(9) Many of the Giact Merchant-Clients for which Giact processed payments used sales practices or sold goods and services that historically pose a high risk of financial harm to consumers, such as merchant finance cards, credit repair services, discount travel clubs, prepaid debit cards, herbal and nutritional supplements, and similar products and services.

(10) Most of the payments that Giact processed for the Giact Merchant-Clients were in the form of Remotely Created Checks ("RCCs") that Giact created, using consumer bank account information supplied by the Merchant-Client, and then deposited electronically into the appropriate Merchant-Client's accounts at the Bank.

(11) An RCC, often also referred to as a "demand draft," is a payment instrument that looks like a check but does not bear the signature of the consumer from whose account the funds are being withdrawn. Because RCCs are not signed by the consumer, they present a higher than normal risk of fraud and financial harm to consumers.

(12) Indications that consumer harm may be occurring in connection with payment processor relationships utilizing RCCs include: high rates of return of the RCCs being deposited, consumer complaints that the withdrawals from their accounts were not authorized, inquiries from law enforcement and other government agencies, and lawsuits against the payment processor or the merchants.

(13) Because of the strategic, compliance, transaction, reputation, and other risks associated with payment processor account relationships, the OCC advised financial institutions of the need to have strong risk management programs to mitigate these risks,

including enhanced due diligence, account monitoring, and ensuring compliance with Bank Secrecy Act and Anti-Money Laundering ("BSA/AML") rules and regulations.

(14) On or about December 6, 2005, the Bank, with Respondent's knowledge and approval, opened an account for Giact. After opening the Giact account, Giact began referring the Giact Merchant-Clients to the Bank.

(15) Between January 2006 and August 2007, the Bank opened accounts for approximately sixty-six (66) Giact Merchant-Clients.

(16) During the course of the Bank's relationship with Giact and the Giact Merchant-Clients, approximately $64 million in RCCs were processed through the Bank.

(17) A significant percentage of the RCCs that were deposited into the Bank were returned to the Bank after the deposited RCCs were presented to the consumer's bank for payment.

(18) Returned items, as described herein, were due to various reasons, including transactions that were not authorized by the consumer, account closure, or insufficient funds.

(19) Based on information provided by Giact, Respondent knew that the rate of RCCs returned by consumers' banks would be high for many of the Merchant-Clients.

(20) Returned RCCs generated fee income for the Bank at a rate of three to five dollars per return.

(21) The return rate for several of the Merchant-Clients was in excess of fifty percent (50%).

(22) As a result of these returns, the Bank realized approximately $1.95 million in return fees.

(23) Without the $1.95 million in return fees that were generated by the Giact Merchant-Clients, the Bank would not have been profitable.

(24) As described herein, throughout the period of time the Bank maintained account relationships with Giact and the Giact Merchant-Clients, Respondent failed to ensure that the Bank conducted adequate due diligence on the Giact Merchant-Client accounts and failed to develop and maintain adequate internal controls to manage and minimize the risks associated with the relationships. Respondent also ignored significant compliance concerns with the relationships identified by the Bank's auditors and outside counsel.

(25) Respondent engaged in unsafe or unsound practices by failing to ensure that the Bank had adequate internal controls in place to manage and minimize the risks with the Giact and Giact Merchant-Client relationships.

(26) Respondent disregarded or was consciously indifferent to known or obvious risks of substantial harm to the Bank and consumers posed by his failure to ensure that the Bank had adequate internal controls in place to manage and minimize the risks with the Giact and Giact Merchant-Client relationships. Accordingly, Respondent's conduct was reckless.

(27) As a result of Respondent's recklessly engaging in unsafe or unsound practices in connection with the Giact and Giact Merchant-client relationships, the Bank was exposed to undue strategic, compliance, transaction, reputation and legal risk, and consumers were exposed to undue harm.

Article III

Lack of Adequate Due Diligence on Giact and the Giact Merchant-Clients

(28) As described herein, Respondent recklessly engaged in unsafe or unsound practices by failing to ensure that the Bank performed adequate due diligence prior to establishing account relationships with Giact and the Giact Merchant-Clients, and failed to conduct adequate ongoing due diligence during the period of time the relationships were maintained by the Bank, despite knowing there were substantial risks of harm to the Bank and consumers.

(29) In connection with the initial due diligence on Giact prior to account opening, Respondent failed to ensure that the Bank fully reviewed and considered Giact's information security practices, disaster recovery program, or BSA/AML practices.

(30) On or about August 3, 2006, the Bank entered into a General Assurances Agreement with Giact. The General Assurances Agreement was a contract that set forth the duties of both the Bank and Giact during the course of their relationship.

(31) Among other provisions, the General Assurances Agreement required Giact to conduct "industry standard due diligence" on its Merchant-Clients and provide information obtained during that process to the Bank if the Bank requested that information. "Industry standard due diligence," as defined by the General Assurances Agreement, consisted of the Merchant-Client's "business practices, procedures, credit standing, history of consumer complaints, lawsuits and judgments."

(32) Respondent failed to ensure that Giact met its obligations to conduct adequate "industry standard due diligence" on its Merchant-Clients, and to provide the

required information to the Bank. In most instances, the only due diligence the Bank obtained from Giact was the Merchant-Client's tax returns, bank statements, credit standing, and basic organizational information, such as the names of the principals and Articles of Incorporation.

(33) From approximately December 2005 until October 2006, Respondent also failed to ensure that the Bank conducted its own independent due diligence on the Giact Merchant-Clients or to verify the accuracy of certain "industry standard due diligence" provided to the Bank by Giact.

(34) During the period of time that Respondent failed to ensure that the Bank received adequate "industry standard due diligence" from Giact on the Merchant-Clients and failed to ensure that the Bank conducted adequate independent due diligence on the Merchant-Clients, Respondent was aware that several Merchant-Clients had high rates of deposited items being returned to the Bank.

(35) In April 2006, Respondent was put on notice by the Bank's outside counsel that the Bank could possibly be held liable for "fraud or legal violations" if the Bank "substantially assist[ed] a telemarketer, or [became] aware, or constructively aware, of a telemarketer's violation of law." Further, outside counsel informed the Bank that, pursuant to amendments to 12 C.F.R. § 229 that were to become effective as of July 1, 2006, the Bank would be liable for the amount of any unauthorized RCCs that were returned.

(36) In May 2006, Respondent became aware that one of the Giact Merchant-Clients may have been engaged in deceptive practices in violation of the Texas Deceptive Trade Practices Act.

(37) In October, 2006, Respondent directed the Bank to engage outside counsel to conduct due diligence for the Bank on some of the new Merchant-Clients being referred to the Bank by Giact prior to account opening.

(38) Thereafter, despite receiving negative information about some of the Giact Merchant-Clients doing business with the Bank, Respondent failed to ensure that the Bank conducted further due diligence or to require outside counsel to conduct due diligence on the Giact Merchant-Client accounts that had been established at the Bank prior to October 2006.

(39) On or about November 2006, the Bank began receiving due diligence reports from its outside counsel regarding the newly-referred Giact Merchant-Clients. The reports indicated that some of the Giact Merchant-Clients might be engaged in illegal activities that could be harmful to consumers, and that one Giact Merchant-Client appeared to have designed its organization structure so as to avoid civil or criminal liability. Outside counsel warned the Bank that it could incur reputation risk in connection with the Merchant-Client account relationships.

(40) Despite the warnings from outside counsel, Respondent allowed the Bank to open accounts for Giact Merchant-Clients for which it had received negative information. Despite the obvious risks posed by these new Giact Merchant-Clients, Respondent then failed to ensure that the Bank conducted ongoing due-diligence and account monitoring on these Merchant-Clients.

(41) In February 2007, despite knowing that Giact was referring Merchant-Clients to the Bank that could be engaged in activities harmful to consumers, Respondent directed outside counsel to stop performing due diligence on Giact Merchant-Clients

prior to account opening. Instead, Respondent directed outside counsel to wait sixty (60) days after the account was opened before conducting the due diligence so that Respondent could determine whether the volume of account activity justified the cost of performing the due diligence.

(42) During February 2007 and March 2007, the Bank continued to receive due diligence reports from outside counsel indicating the Giact Merchant-Clients could be engaged in activities that could be harmful to consumers.

(43) Despite the warnings and other negative information received from outside counsel discussed herein, and the advice to continuously monitor Giact Merchant-Clients, Respondent failed to ensure that the Bank conducted adequate on-going due diligence or account monitoring on the Merchant-Clients, and failed to direct the Bank to close accounts of Merchant-Clients that appeared to be harming consumers.

(44) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices. and Respondent's conduct was reckless because it involved disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank and consumers.

Article IV

Lack of Adequate Internal Controls on Giact and the Giact Merchant-Clients

(45) As described herein, Respondent recklessly engaged in unsafe or unsound practices by failing to ensure that the Bank had adequate policies, procedures, systems, and internal controls in place to manage and mitigate the risks associated with the Bank's relationship with Giact and the Giact Merchant-Clients despite having knowledge that the relationships posed a substantial risk of harm to the Bank and consumers.

(46) Based on his knowledge and experience, Respondent was aware that when a high number of checks deposited into an account are returned unpaid, it is a signal that the account activity needs to be closely monitored and investigated. From the beginning of the Bank's relationship with Giact and the Giact Merchant-Clients, the actual return rates were both high and higher than projected at account opening.

(47) Respondent was aware of the high return rates in the Giact Merchant-Clients' accounts.

(48) In May 2006, Respondent became aware that one of the Giact Merchant-Clients may have been engaged in deceptive practices in violation of the Texas Deceptive Trade Practices Act.

(49) On or about May 11, 2007, the Bank's Board of Directors, including the Respondent, received a Bank Secrecy Act ("BSA") audit report ("Audit Report") prepared by a consultant retained to review the Bank's compliance with the BSA. The Audit Report criticized the Bank's practice of not appropriately monitoring account activity and for not performing adequate due diligence on its account holders.

(50) Despite the high return rates, warnings from outside counsel, and criticisms in the Audit Report, Respondent failed to ensure that the Bank developed and implemented adequate policies, procedures, systems and controls to manage the Bank's relationship with Giact and the Giact Merchant-Clients, including policies governing when a new account should not be opened or when an existing account should be closed.

(51) Despite the high return rates, warnings and advice as to how to mitigate risk from outside counsel, and despite the criticisms in the Audit Report, Respondent also failed to ensure that the Bank developed and implemented adequate policies, procedures

systems and controls for monitoring why consumers' banks were returning items to the Giact Merchant-Clients' accounts unpaid.

(52) On or about June 12, 2007, Respondent solicited a new audit from Davis, Kinard & Co. PC. ("DKC").

(53) Respondent failed to properly define the scope of the audit to be performed by DKC by excluding from the proposed scope the account relationships with Giact and the Giact Merchant-Clients. Further, by personally setting the audit scope, Respondent failed to ensure the independence of the audit.

(54) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices and Respondent's conduct was reckless because it involved disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank and consumers.

Article V

Lack of Internal Controls to Monitor and Respond to Consumer Complaints

(55) As described herein, Respondent recklessly engaged in unsafe or unsound practices by failing to ensure the Bank had adequate policies, procedures and controls for monitoring and responding to consumer complaints.

(56) Beginning on or about August 2006 and continuing through the duration of the Bank's relationships with Giact and the Giact Merchant-Clients, Respondent became aware that the Bank was receiving daily complaints from consumers alleging that some of the Giact Merchant-Clients were making unauthorized debits from the consumers' bank accounts.

(57) Beginning on or about September 2006 and continuing through most of the duration of the Bank's relationships with Giact and the Giact Merchant-Clients, the Bank received numerous consumer complaints that some of the Giact Merchant-Clients did not have accurate or functional contact information for consumers to request refunds.

(58) Despite the volume of consumer complaints and despite outside counsel's specific advice to monitor consumer complaints relating to the Giact Merchant-Clients, and despite the criticisms in the Audit Report, Respondent failed to ensure that the Bank developed and implemented adequate policies, procedures, systems and controls to track, investigate, or respond to the consumer complaints received by the Bank in connection with the activities of the Giact Merchant-Clients.

(59) Despite consumer complaints that the Giact Merchant-Clients' contact information was not accurate, Respondent failed to ensure that the Bank verified the contact information that the Giact Merchant-Clients provided to consumers to obtain refunds.

(60) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices and Respondent's conduct was reckless because it involved disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank and consumers

Article VI

Continued Deposit of Items into Merchant-Client Accounts

(61) As described herein, Respondent recklessly engaged in unsafe or unsound practices by allowing the continued deposit of items into the Giact Merchant-Clients' accounts despite warnings that consumers were being harmed.

(62) During the course of the Bank's relationship with Giact and the Giact Merchant-Clients, Respondent either knew or should have known that consumers might be harmed by the Giact Merchant-Clients.

(63) Despite the possibility that consumers were being harmed by the Giact-Merchant-Clients, Respondent continued the Bank's relationship with the Giact Merchant-Clients.

(64) Because Respondent allowed the Bank's relationship with the Giact Merchant-Clients to continue, the Bank was exposed to additional risk of loss, and consumers were exposed to additional risk of harm.

(65) By reason of the foregoing conduct, Respondent engaged in unsafe or unsound practices and Respondent's conduct was reckless because it involved disregard of, and evidenced a conscious indifference to, a known or obvious risk of substantial harm to the Bank and consumers.

Article VII

Requested Relief

Grounds for the Issuance of a Cease and Desist Order

(66) By reason of Respondent's misconduct described in Articles III through VI, the Comptroller seeks an order to cease and desist against Respondent pursuant to 12 U.S.C. § 1818(b) on the grounds that he engaged in unsafe or unsound practices in conducting the business of the Bank.

Grounds for the Assessment of a Civil Money Penalty

(67) By reason of Respondent's misconduct described in Articles III through VI, the Comptroller seeks an assessment of a civil money penalty against Respondent pursuant to 12 U.S.C. § 1818(i)(2)(B) on the following grounds:

(a) Respondent engaged in unsafe or unsound practices as described in Article III through VI.

(b) Respondent continued the Bank's relationships with Giact and the Giact Merchant-Clients and failed to make any significant changes to the Bank's risk management practices in disregard of, and evidencing a conscious indifference to, the known or obvious risks of substantial harm to the Bank and consumers. Accordingly, Respondent's conduct was reckless within the meaning of 12 U.S.C. § 1818(i)(2)(B).

(c) Respondent's unsafe or unsound practices were part of a pattern of misconduct within the meaning of 12 U.S.C. §1818(i)(2)(B), as he engaged in numerous unsafe or unsound practices over a period of at least ten (10) months.

Article VII

Opportunity for a Hearing

(68) 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, Federal Deposit Insurance Corporation,

3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226. 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 upon the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, D.C. 20219 and with the attorney whose name appears on the accompanying certificate of service. **Failure to answer within this time period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice, and shall, upon the 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.**

(69) Respondent is also directed to file, with the Answer, a written request for a hearing before the Comptroller concerning the assessment of civil money penalties contained in this Notice within twenty (20) days after date of service of this Notice, in accordance with 12 U.S.C. § 1818(i) and 12 C.F.R. § 19.19(a) and (b). The original and one copy of any request shall be filed, along with the written Answer, with the Office of Financial Institution Adjudication, Federal Deposit Insurance Corporation, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226. 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 also be served upon the Hearing Clerk, Office of the Chief Counsel, Office of the Comptroller of the Currency, 250 E Street SW, Washington, D.C. 20219 and with the attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this time period shall cause this assessment in this Notice 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 a final Order to Cease and Desist and an Order of Civil Money Penalty in the amount of one-hundred thousand dollars ($100,000) (proposed Order is attached).

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C. this 26th day of September, 2011.

//signed/

Kristina B. Whittaker
Deputy Comptroller
Special Supervision Division

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

In the Matter of:	)	
Patrick Adams	)	
Former President and Chief Executive Officer	)	AA-EC-2011-50
T Bank, N.A.	)	
Dallas, Texas	)	

PROPOSED CEASE AND DESIST ORDER AND
PROPOSED ORDER FOR THE ASSESSMENT OF A CIVIL MONEY PENALTY

WHEREAS, the Comptroller of the Currency of the United States of America ("Comptroller"), pursuant to 12 U.S.C. §§ 1818(b)(1) and 1818(i)(2), and 12 C.F.R. §§ 19.18 and 19.20, has served upon Respondent a Notice of Charges on the___ day of September, 2011; and,

WHEREAS, a hearing was conducted on the matter pursuant to 12 U.S.C. §§ 1818(b)(1) and 1818(i)(2)(H), and 12 C.F.R. Part 19;

NOW, WHEREFORE, the Comptroller hereby imposes the following Order requiring Respondent to cease and desist from certain unsafe or unsound banking practices and assessing a civil money penalty ("Order"):

Article I

JURISDICTION

(1) The Bank was 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 Bank was an "insured depository institution" as defined in 12 U.S.C. § 1813(c)(2) and within the meaning of 12 U.S.C. § 1818(b) and (i)(2).

(3) The Comptroller is the "appropriate Federal banking agency" within the meaning of 12 U.S.C. § 1813(q)(1) and for purposes of 12 U.S.C. § 1818(b) and (i) to initiate and maintain an enforcement proceeding against an institution-affiliated party.

(4) Respondent was the President and Chief Executive Officer of the Bank from on or about November 2, 2004 until his resignation on or about July 9, 2010, and is 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)). Therefore, Respondent is subject to the authority of the Comptroller to initiate and maintain an enforcement proceeding against Respondent pursuant to 12 U.S.C. § 1818.

Article II

PERSONAL CEASE AND DESIST ORDER

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

(1) In the event that Respondent is currently an "institution-affiliated party" (as defined in 12 U.S.C. §1813(u)) of any insured depository institution or agency (as defined in 12 U.S.C. §1818(e)(7)(A)), he shall immediately provide a copy of this Order to the chief executive officer and board of directors of the institution or agency, and, within ten (10) days of disclosure, provide written certification of compliance with this disclosure obligation to the Director of the Enforcement and Compliance Division, Officer of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) Prior to accepting any new position that causes him to become an "institution-affiliated party" (as defined in 12 U.S.C. §1813(u)) of any insured depository institution or

agency (as defined in 12 U.S.C. §1818(e)(7)(A), Respondent shall provide the chief executive officer and board of directors of the institution or agency with a copy of this Order.

(3) Respondent shall, prior to accepting any position that would cause him to become an "institution-affiliated party" (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), notify the chief executive officer and the board of directors of such institution or agency that when he was employed by the Bank, he recklessly engaged in unsafe or unsound practices, in connection with the Bank's relationship with a payment processor, Giact, and the payment processor's merchant clients ("Giact Merchant-Clients") who also established accounts at the Bank, by:

(a) failing to ensure that the Bank conducted adequate initial and ongoing due diligence on Giact and the Giact Merchant-Clients despite knowing there were substantial risks of harm to the Bank and consumers;

(b) failing to ensure that the Bank had adequate policies, procedures, systems and controls in place to manage and mitigate the risks associated with the Bank's relationships with Giact and the Giact Merchant-Clients despite having knowledge that these relationships posed substantial risk of harm to the Bank and consumers;

(c) failing to ensure that the Bank had adequate policies, procedures, and controls for monitoring and responding to consumer complaints; and

(d) allowing the continued deposit of items into the accounts of the Giact Merchant-Clients despite warning that consumers were being harmed.

(3) Within ten (10) days of his acceptance of any position described in paragraph (2) of this Article, Respondent shall provide written notice of such acceptance to the Director of the

Enforcement and Compliance Division, at the address above, together with a written certification of his compliance with paragraph (2) of this Article.

(4) At any time that Respondent is an "institution-affiliated party" (as defined in 12 U.S.C. §1813(u)) of any insured depository institution or agency (as defined in 12 U.S.C. §1818(e)(7)(A), Respondent shall:

(a) be restricted from involving himself in any relationship that the insured depository institution or agency with which he is affiliated has with any covered payment processor as defined in paragraph (5) of this Article;

(b) be diligent to ensure that—within the scope of Respondent's duties and influence at the insured depository institution or agency with which he is affiliated—customers or third parties are not using that institution or agency (or the services thereof) to facilitate or perpetuate fraudulent activity;

(c) be diligent to ensure that—within the scope of Respondent's duties and influence at the insured depository institution or agency with which he is affiliated—the institution or agency complies with all applicable federal banking agency guidance, including those pertaining to third-party service providers, payment processors, automated clearing house activity, customers that process or deposit remotely created checks, and customers that process or accept deposits through remote deposit capture;

(d) not directly supervise any employee at the insured depository institution or agency with which he is affiliated who is involved with any relationship

that the institution or agency has with a Covered Payment Processor, as defined in paragraph (5) of this Article;

(e) comply fully with all laws, rules, regulations, and outstanding enforcement action(s) pertaining to the institution or agency to which he is or may become affiliated;

(f) not engage in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code, in the conduct of the affairs of the institution or agency to which he is or may become affiliated; and

(g) adhere to the written policies and procedures of any depository institution or agency to which he is or may become affiliated, or receive written permission from the appropriate authorized individual to do otherwise.

(5) "Covered Payment Processor," for purposes of this Order is defined as:

(a) a merchant that deposits RCCs and specializes primarily or exclusively in the direct marketing of services or products to end-user consumers whereby a sales person uses the telephone, internet, or direct mail to solicit prospective customers and contacts are typically unsolicited by the consumer;

(b) a third party payment processor that regularly deposits RCCs on behalf of any merchant that specializes primarily or exclusively in the direct marketing of services or products to end-user consumers whereby a sales person uses the telephone, internet, or direct mail to

solicit prospective customers and contacts are typically unsolicited by the consumer; and

(c) an originator or merchant that:

(i) has a monthly average RCC return rate in excess of 2.5%; or

(ii) has a monthly average of unauthorized ACH return rate in excess of 1%; or

(d) a payment processor that regularly processes payments on behalf of any entity described in paragraph 5(c).

(6) If Respondent is uncertain whether a situation implicates Paragraphs (1) through (4) of this Article, or if Respondent is uncertain about his duties arising from these or any other requirements under this Order, he shall obtain and abide by the written advice of counsel regarding his duties and responsibilities with respect to the matter. To comply with this paragraph, Respondent shall engage counsel who is in no way affiliated with the institution or agency and who has never been subject to any sanctions by any Federal banking agency, either by agency order or consent.

Article III

ORDER FOR CIVIL MONEY PENALTY

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

(1) Respondent shall pay a civil money penalty in the amount of one hundred thousand dollars ($100,000) which shall be paid upon execution of this Order.

(2) Respondent shall make payment in full by check made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case shall be entered on all checks.

(3) Respondent shall deliver a copy of the check to the Director of Enforcement & Compliance ("Director"), Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219, with reference to the docket number of this case.

(4) Within seven (7) days from the issuance of this Order, Respondent shall notify the Director of Enforcement of the address of his current place of residence by completing the form attached hereto as Appendix A.

Article IV

BANKRUPTCY

In any bankruptcy proceeding in which it is or may be contended that the Respondent's obligation to pay restitution pursuant to this Order is subject to discharge, the Respondent will in no manner contest the Comptroller's assertion, pursuant to 11 U.S.C. § 23(a)(11) or otherwise, that the restitution obligation in the Order arises out of acts which result in claims not dischargeable in bankruptcy.

Article V

CLOSING

(1) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Respondent, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(2) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

IT IS SO ORDERED, this ____ day of _____, 2011.

_____ _____

Administrative Law Judge Date