

SURVEY OF THE BANKING REGULATORY AGENCIES’
ENFORCEMENT ACTIONS AGAINST INDIVIDUAL BANKERS
BETWEEN 2017 AND 2022

*Jose P. Ceppi**

CONTENTS

INTRODUCTION.....	265
I. STATUTORY BACKGROUND	266
A. <i>The Agencies’ Authority Over Insured Depository Institutions and Their IAPs</i>	266
B. <i>The Board’s Supervisory Authority</i>	266
C. <i>The OCC’s Supervisory Authority</i>	267
D. <i>The FDIC’s Supervisory Authority</i>	267
II. THE AGENCIES’ ENFORCEMENT DECISIONS AND ORDERS.....	268
A. <i>The Board’s IAP Enforcement Decisions and Orders</i>	268
i. <i>The Board’s IAP C&D Orders</i>	268
a. <i>The Board’s C&D Order Alleging Failure to Manage and Supervise</i>	268
b. <i>The Board’s C&D Order Alleging Foreign Exchange Market Manipulation</i>	269
c. <i>The Board’s C&D Order Alleging Improper Lending Practices</i>	269

* From November 2016 until January 2022, Mr. Ceppi served as Senior Counsel, in the Enforcement Section of the Legal Division of the Board of Governors of the Federal Reserve System. Earlier in his career, Mr. Ceppi also served as Counsel, Senior Counsel and Assistant General Counsel with the FDIC. The views expressed in this article are only those of the author and they do not necessarily reflect those of any of the Agencies. The author is deeply grateful to Scott Alvarez for his helpful comments and insights and to his spouse, Patricia Ceppi, for her assistance with this work and understanding during the research and writing process.

d.	<i>The Board's C&D Order Alleging Unauthorized CSI Disclosure and Misrepresentations</i>	269
ii.	<u><i>The Board's R&P Orders</i></u>	270
a.	<i>The Board's R&P Order Alleging Failure to Manage and Supervise</i>	271
b.	<i>The Board's R&P Orders Alleging IAP Failure to Comply with Legal and Regulatory Requirements ...</i>	271
c.	<i>The Board's R&P Orders Alleging Improper Accounting, Lending, and Sales Practices</i>	273
d.	<i>The Board's R&P Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties</i>	274
e.	<i>The Board's R&P Orders Alleging Misrepresentations and Other Misconduct</i>	275
iii.	<u><i>Discussion of the Board's IAP Enforcement Decisions and Orders</i></u>	276
a.	<i>The Board's IAP Enforcement Actions, as Those at the Other Agencies, Primarily Focused on Lower-Level IAPs</i>	277
b.	<i>The Board's IAP Enforcement Program, Unlike Those of the OCC and the FDIC, Did not Primarily Focus on Cash Theft and Embezzlement Misconduct</i>	277
c.	<i>The Board's IAP Enforcement Program Relied Far Less on C&D Orders Than the OCC's Program</i>	278
d.	<i>The Board IAP Enforcement Program Included Enforcement of Non-Banking Laws, Unlike the OCC's Program</i>	278
e.	<i>The Board Did Not Issue Enforcement Orders Against Senior Officers of the Largest Institutions it Supervises</i>	279
f.	<i>The Board Issued Far Fewer IAP CMP Assessments Than the Other Agencies, but with a Higher Average Per Order Than the OCC and the FDIC</i>	279
B.	<i>The OCC's IAP Enforcement Decisions and Orders</i>	280
i.	<u><i>The OCC's IAP C&D and CMP Orders</i></u>	280

a.	<i>The OCC's C&D and CMP Orders Alleging Failure to Manage and Supervise</i>	280
b.	<i>The OCC's C&D and CMP Orders Alleging Failure to Comply with Legal and Regulatory Requirements</i> ...	281
c.	<i>The OCC's C&D and CMP Orders Alleging Improper Accounting, Banking, Lending, and/or Sales Practices</i>	283
d.	<i>The OCC's C&D Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties</i>	287
e.	<i>The OCC's R&P Orders Alleging Misrepresentation and Other Misconduct</i>	289
ii.	<u><i>The OCC's R&P Decisions and Orders</i></u>	290
a.	<i>The OCC's C&D and CMP Orders Alleging Failure to Manage and Supervise</i>	291
b.	<i>The OCC's R&P Orders Alleging Failure to Comply with Legal and Regulatory Requirements</i>	292
c.	<i>The OCC's R&P Orders Alleging Improper Banking, Lending, and Sales Practices</i>	293
d.	<i>The OCC's R&P Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties</i>	294
e.	<i>The OCC's R&P Orders Alleging Misrepresentation and Other Misconduct</i>	296
iii.	<u><i>The OCC's Adjudicated Decisions and Orders</i></u>	297
iv.	<u><i>Discussion of the OCC's IAP Enforcement Decisions and Orders</i></u>	298
a.	<i>The OCC Enforcement Actions Against the Wells Fargo Senior Office IAPs</i>	298
b.	<i>The OCC Issued the Most C&D and CMP Orders Among the Agencies</i>	299
c.	<i>The OCC Issued a Large Number of R&P Orders, and Most of These Focused on Lower-Level IAPs, and Included the Highest Average CMPs</i>	300
d.	<i>The OCC Did Not Issue R&P Orders for IAP Violations of Non-Banking Laws</i>	301

C. <i>The FDIC IAP Enforcement Decisions and Orders</i>	301
i. <i>The FDIC's C&D Orders and Orders to Pay</i>	301
a. <i>The FDIC's C&D Orders and OTP Alleging IAP Failure to Manage and Supervise</i>	301
b. <i>The FDIC's C&D Orders and OTP Alleging Failure to Comply with Legal Requirements</i>	302
c. <i>The FDIC's C&D Order Alleging Improper Banking Practices</i>	302
d. <i>The FDIC's C&D Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties</i>	303
e. <i>The FDIC's C&D Order Alleging Misrepresentations</i>	303
ii. <i>The FDIC R&P Orders</i>	303
a. <i>The FDIC's R&P Orders Alleging Failure to Comply with Legal and Regulatory Requirements</i>	305
b. <i>The FDIC's R&P Orders Alleging Improper Banking/Lending Practices/Sales Practices</i>	306
c. <i>The FDIC's R&P Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties</i>	308
d. <i>The FDIC's R&P Orders Alleging Other Misconduct</i>	309
iii. <i>The FDIC's Adjudicated Decisions and Orders to Prohibit IAPs</i>	309
iv. <i>Discussion of the FDIC's IAP Enforcement Decisions and Orders</i>	311
a. <i>The FDIC Issues the Highest Number of IAP Enforcement Decisions and Orders</i>	311
b. <i>The FDIC C&D Orders and DOPs Focused on Senior-Level IAPs and Covered an Array of IAP Misconduct</i>	311
c. <i>The FDIC's R&P Orders Were Mostly Issued Against Lower-Level IAPs and Principally Addressed Cash Theft and Embezzlement Misconduct</i>	311

d. <i>The FDIC's DOP Orders Reviewed Involved Large CMP Assessments and Were Directed at Senior-Level IAPs</i>	312
e. <i>The FDIC's IAP CMP Assessments on Average Were Lower Than Those of the Board and Higher Than Those of the OCC</i>	312
III. REVIEW OF THE AGENCIES' IAP ENFORCEMENT PROGRAMS AND RECOMMENDED ACTIONS	312
A. <i>The Agencies' C&D and CMP Orders Issued to IAPs</i>	312
B. <i>The Agencies' R&P Orders</i>	313
C. <i>The Agencies' IAP CMP Assessments</i>	314
D. <i>Recommendations for Improving the Agencies' IAP Enforcement Programs</i>	314
CONCLUSION	315

INTRODUCTION

The federal banking regulatory agencies, the Board of Governors of the Federal Reserve System (the “Board”), the Federal Deposit Insurance Corporation (the “FDIC”), and the Office of the Comptroller of the Currency (the “OCC” and collectively the “Agencies”) play a critical role in the supervision and enforcement of the laws governing the banking system in the United States. The aim of this survey is to review and compare the enforcement actions of the Agencies against individual bankers, defined in the law as Institution Affiliated Parties (“IAPs”), between 2017 and 2022.¹ This six-year period provides a meaningful span to assess recent trends in the Agencies’ approach to IAP enforcement matters. Moreover, as the FDIC only began including in its orders the basis for the enforcement actions against IAPs sometime in 2017, this period provides the most meaningful database to evaluate these actions.²

Between 2017 and 2022, the Agencies issued a total of 536 enforcement decisions and orders against IAPs at the institutions they supervise.³ Given that a majority of these orders involved alleged misconduct that is criminal in nature, such as cash theft and embezzlement of funds, and thus which is policed by the criminal authorities, the focus of this review is on other types of IAP misconduct leading the Agencies to pursue these actions. Before doing so, it is pertinent to briefly lay out the legal framework that enables the Agencies to pursue such matters.

¹ The term IAP is defined in 12 U.S.C. § 1813(u), inter alia, as “(1) any director, officer, employee, or controlling stockholder (other than a bank holding company or savings and loan holding company) of, or agent for, an insured depository institution...”

² In February 2017, the FDIC began including in its orders the IAP’s position at the affiliated institution and a brief description of the alleged misconduct involved. *See e.g.*, Figueroa, FDIC Order No. FDIC-16-0151K (Feb. 14, 2017). Moreover, the FDIC did not begin consistently doing so until the beginning of 2018. *See FDIC Enforcement Decisions and Orders (ED&O)*, FDIC, <https://orders.fdic.gov/s/> [<https://perma.cc/2HTK-3774>] (last visited Mar. 18, 2023).

³ The Agencies’ enforcement actions are publicly available through their respective websites. *See Enforcement Actions & Legal Developments*, BD. OF GOVERNORS OF THE FED. RESRV. SYS., <https://www.federalreserve.gov/supervisionreg/legal-developments.htm> [<https://perma.cc/9DX7-LJJT>] (last visited Mar. 18, 2023); *FDIC Enforcement Decisions and Orders (ED&O)*, FDIC, <https://orders.fdic.gov/s/> [<https://perma.cc/2HTK-3774>] (last visited Mar. 18, 2023); *Enforcement Actions*, OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://occ.gov/topics/laws-and-regulations/enforcement-actions/index-enforcement-actions.html> [<https://perma.cc/LTS5-QRL9>] (last visited Mar. 18, 2023).

I. STATUTORY BACKGROUND

A. The Agencies' Authority Over Insured Depository Institutions and Their IAPs

Sections 8(b) and 8(e) of the Federal Deposit Insurance Act (the “FDI Act”) provide the Agencies with the legal authority to seek broad remedies against FDIC insured depository institutions (“Institutions”) and IAPs engaged in unsafe or unsound practice and/or violations of law, rule, regulation, or condition imposed in writing by one of the Agencies. These conditions consist of (1) a cease and desist order (“C&D order”), which may include the assessment of civil money penalties (“CMPs”) and/or an order of restitution in favor of an aggrieved party, and (2), with respect to IAPs, an order of removal and prohibition from the banking industry (“R&P order”).⁴ Hence, the Agencies have broad powers to police the actions of Institutions and their IAPs, as they may impose significant penalties against them and, in the case of IAPs, permanently prohibit them from the banking industry. As each of the Agencies supervises different Institutions, it is pertinent to briefly review their respective supervisory authority, starting with the Board, then the OCC and the FDIC.

B. The Board's Supervisory Authority

The Board has supervisory authority over state-chartered banks which are members of the Federal Reserve System (“Member Banks”), bank holding companies (“BHCs”), foreign branches of U.S. banks, U.S. branches of foreign banks, and Edge Act companies.⁵ Currently, about 84% of commercial banks in the U.S. are part of a BHC structure. More than 75% of banks with assets less than \$100 million are owned by BHCs. This percentage increases to 100% for banks with more than \$10 billion in assets.⁶ However, the Board does not have authority

⁴ Section 8(b) of the FDI Act provides the Agencies authority to issue C&D orders and section 8(e) provides the authority to issue R&P orders. 12 U.S.C. § 1818(b) and (e). Authority for the Agencies to assess CMPs for violations of the banking laws is found in section 8(i)(2) of the FDI Act. 12 U.S.C. § 1818(i)(2). There are certain additional requirements for the issuance of these remedies by the Agencies, which are not relevant to this survey. Section 3(c)(2) of the FDI Act defines the term “insured depository institution” as any bank or savings association the deposit of which are insured by the FDIC.

⁵ See 12 U.S.C. § 321.

⁶ See *Bank Holding Companies and Financial Holding Companies*, BOARD OF GOVERNORS OF THE FED. RESERVE SYS., <https://www.fedpartnership.gov/bank-life->

to pursue enforcement actions against any Institution, or its IAPs, that is controlled by a BHC, unless the Institution is a Member Bank. Thus, the Board's enforcement authority is not properly measured by the assets controlled by BHCs, but by the number of Member Banks, which were 699 in total, as of June 30, 2022.⁷ Moreover, because the Board's authority in the case of a BHC with a national bank or a state-chartered non-member bank ("Non-Member Bank") subsidiary is limited to the holding company, the Board does not have enforcement authority against IAPs of these subsidiary Institutions.⁸

C. The OCC's Supervisory Authority

The OCC is the primary federal regulator of national banks, federal branches and agencies of foreign banks, and federally chartered savings and loan associations ("FS&Ls").⁹ As of 2021, these Institutions numbered 1,118. Of this total, 797 were national banks, 52 were federal branches and agencies and the remaining 269 were FS&Ls.¹⁰ Many of the national banks are among the largest banks in the U.S. The OCC has enforcement authority over these national banks and FS&Ls and their respective IAPs.

D. The FDIC's Supervisory Authority

The FDIC is the primary federal regulator of Non-Member Banks and of state-chartered savings and loan associations ("SS&Ls"), and their respective

cycle/grow-shareholder-value/bank-holding-companies [https://perma.cc/369D-2VLG] (last visited Mar. 18, 2023).

⁷ BOARD OF GOVERNORS OF THE FED. RESERVE SYS., SUPERVISION AND REGULATION REPORT 23 (Nov. 2022).

⁸ The Board frequently issues enforcement actions against BHCs, for their unsafe or unsound practices or violations of laws. *See e.g.*, Goldman Sachs Group, Inc., Board of Governors of the Fed. Reserve Sys. Docket Nos. 20-018-B-HC, 20-018-CMP-HC (Oct. 20, 2020) (board issued a \$154 million CMP against Goldman Sachs Group, Inc. for the firm's failure to maintain appropriate oversight, internal controls, and risk management with respect to its involvement in a far-reaching scheme to defraud a Malaysian state-owned investment and development company).

⁹ *See* 12 U.S.C. § 1461.

¹⁰ *See Key Data & Statistics*, OFF. OF THE COMPTROLLER OF THE CURRENCY, <https://www.occ.gov/about/what-we-do/key-data-and-statistics/index-occ-and-federal-banking-system-at-a-glance.html> [https://perma.cc/H5EY-G8UR] (last visited Mar. 18, 2023).

IAPs.¹¹ As of March 31, 2022, these Institutions numbered 3,100, which is the largest group of federally regulated Institutions. Of these, 2,796 were commercial banks and the remaining 376 were SS&Ls. The vast majority of the 2,796 Non-Member Banks consists of smaller banks known as “community banks,” which are generally less complex in structure and operation than regional or national institutions due to their small size and principal focus on retail banking.

With this broad background in mind, it is now pertinent to review how the Agencies have used this broad regulatory authority over their respective IAPs, by examining their significant IAP enforcement decisions and orders during the period in question.

II. THE AGENCIES’ ENFORCEMENT DECISIONS AND ORDERS

A. The Board’s IAP Enforcement Decisions and Orders

The Board’s IAP decisions and orders will be examined first, as this Agency has the smallest number of Institutions under its supervision. During the review period, the Board issued 87 enforcement orders against IAPs of its Institutions.

i. The Board’s IAP C&D Orders

Between 2017 and 2022, the Board issued six C&D orders against IAPs from the institutions it supervises, which did not involve the simultaneous issuance of a R&P order.¹² The following is a summary of these orders.

a. The Board’s C&D Order Alleging Failure to Manage and Supervise

On October 15, 2020, the Board issued a C&D order against Weldon Riggs (“Riggs”), Director of Wholesale Lending, First Savings Bank, Jefferson, IN, alleging that Riggs, as supervisor of a loan production office (“LPO”) of the bank in Louisville, Kentucky, permitted the unauthorized management of the LPO by

¹¹ 12 U.S.C. §§ 1813 (d)(2) and (q)(3).

¹² These C&D orders generally require the IAP to (1) cease and desist from the misconduct identified in the order, (2) comply with all pertinent laws and regulations, (3) avoid any unsafe or unsound practices (4) promptly report any potential violations of laws and regulations to the pertinent regulator, (5) abide by the policies and procedures, of any Institution with whom the IAP is affiliated and report any deviation thereof, and (6) disclose the contents of the order to their current banking employer or any future such employer prior to accepting a new position. Sometimes, they also include some type of training requirement.

an individual whom the bank had declined to hire, and provided this person with unauthorized access to bank computer equipment and electronic credentials reserved for bank employees, which permitted unauthorized access to the bank systems.¹³

b. The Board's C&D Order Alleging Foreign Exchange Market Manipulation

On April 21, 2021, the Board issued a C&D order, with a \$25,000 CMP assessment, against Peter Little ("Little"), Head of the Foreign Exchange ("FX") Desk, Barclays Bank PLC, alleging that Little exchanged confidential information with competing banks to coordinate their respective FX spot trading activity, and failed to supervise staff engaged in this trading.¹⁴

c. The Board's C&D Order Alleging Improper Lending Practices

On January 24, 2018, the Board issued a C&D order, with a \$25,000 CMP assessment, against Jeffrey R. Davis ("Davis"), Vice President, Putnam County Bank, Hurricane, WV, alleging that Davis approved loans exceeding his lending limit and failed to disclose loan information to the bank's board.¹⁵

d. The Board's C&D Orders Alleging Unauthorized CSI Disclosure and Misrepresentations

On June 14, 2019 and August 18, 2020, the Board issued C&D orders against Youlei Tang, Vice President ("VP"), Goldman Sachs & Co., New York, NY, and Gregory White, Sr. Credit Analyst, Heartland Bank, Little Rock, AK, respectively, alleging that Tang and White, without authorization, disclosed Confidential Supervisory Information ("CSI"), in Tang's case, to his personal e-mail addresses, and kept copies of these documents at his residence, and in White's case, to the press.¹⁶ On May 9, 2022, the Board issued a C&D order against Orlando Romero

¹³ Riggs, Board of Governors of the Fed. Reserve Sys. Docket No. 20-020-B-I (Oct. 15, 2020).

¹⁴ Little, Board of Governors of the Fed. Reserve Sys. Docket No. 18-010-E-I (Oct. 15, 2020).

¹⁵ Davis, Board of Governors of the Fed. Reserve Sys. Docket Nos. 17-040-B-I, 17-040-CMP-I (Jan. 24, 2018).

¹⁶ Tang, Board of Governors of the Fed. Reserve Sys. Docket No. 19-010-B-I (June 4, 2019); White, Board of Governors of the Fed. Reserve Sys. Docket No. 20-013-B-I (Aug. 18, 2020). *See* 12 C.F.R. § 261.2 (defining CSI as "nonpublic information that is

(“Romero”), Branch Manager, Deutsche Bank AG, New York, NY, alleging that Romero altered an employment offer letter from a prospective employer and used it to obtain benefits from his employer bank.¹⁷

ii. The Board’s R&P Orders

Between 2017 and 2022, the Board issued 81 R&P orders against IAPs affiliated to Institutions it supervises. Although a majority of these matters dealt with branch-level IAP misconduct at Member Banks, such as embezzlement and/or cash theft, there is a significant number of senior-level IAPs who were subject to Board R&P orders for other types of misconduct. Table 1 below breaks down the Board R&P orders by the employment level of the IAP involved in each order.

TABLE 1
Board’s 2017–2022 R&P Orders by IAP Employment Level

Employment Level of IAP Involved	2017	2018	2019	2020	2021	2022	Total
Senior-level IAPs ¹⁸	1	4	6	2	6	2	21
Managers	2	4	3	1	2	6	18
Lower-level IAPs	5	3	4	1	8	11	32
Unknown	2	1	3	2	0	2	10

Of the 71 IAPs involved in these Board R&P orders with a disclosed position, some 29.5% were senior-level IAPs, 25.3% were managers, and the remaining 45.2% were lower-level IAPs. Table 2 below shows the types of alleged misconduct involved in the Board R&P orders for this period.

exempt from disclosure pursuant to 5 U.S.C. 552(b)(8) and includes information that is or was created or obtained in furtherance of the Board’s supervisory, investigatory, or enforcement activities, . . . relating to any supervised financial institution, and any information derived from or related to such information.”).

¹⁷ Romero, Board of Governors of the Fed. Reserve Sys. No. 22-002-B-I (May 9, 2022).

¹⁸ For purposes of analysis, IAPs holding officer positions at the Senior Vice President (“SVP”) or above and bank directors are classified as “senior-level IAPs.” The term “managers” includes any IAP holding a position that is designated as a manager and who is not otherwise classified as a senior-level IAP. The term “lower-level IAP” includes all other IAPs, except those whose position is not designated in the applicable order.

TABLE 2
Board's 2017–2022 R&P Orders by Category of Alleged Misconduct

Type of Misconduct Involved	2017	2018	2019	2020	2021	2022	Total
Embezzlement	1	4	5	2	5	5	22
Cash theft	0	0	3	0	2	0	5
Other	9	8	8	4	9	16	54
Unknown	0	0	0	0	0	0	0

Of the 81 Board R&P orders issued during this period, 27 orders, or 33.3% of the orders, pertain to instances of cash theft and embezzlement. For the reasons previously stated, the discussion below focuses on the 54 Board R&P orders that address other types of alleged IAP misconduct. For purposes of analysis, these R&P orders were divided into five broad categories of misconduct: (1) failure to manage and supervise; (2) failure to comply with legal and regulatory requirements; (3) improper practices (accounting, banking, lending, sales and others); (4) conflicts of interest and breaches of fiduciary duties; and (5) misrepresentations and other miscellaneous misconduct.

a. The Board's R&P Order Alleging Failure to Manage and Supervise¹⁹

On January 31, 2020, the Board issued a R&P order against Andrea Vella ("Vella"), Co-Head of Financing Group, Goldman Sachs Services (B.V.I.) Ltd., alleging that Vella engaged in unsafe and unsound practices by failing to properly supervise staff at the bank, and to prevent the involvement of a risky third-party in the firm's bond offerings for the Malaysian government.²⁰

b. The Board's R&P Orders Alleging IAP Failure to Comply with Legal and Regulatory Requirements

The Board issued 14 R&P orders during this period involving allegations of violation of law and/or regulatory requirements by an IAP of a Board supervised institution. Below is a summary of these orders.

¹⁹ As many of these orders include multiple allegations against the affected IAP, it was necessary to determine which allegation was dominant, in order to classify the order under that proper category.

²⁰ Vella, Board of Governors of the Fed. Reserve Sys. Docket No. 20-001-E-I (Jan. 31, 2020).

CARES Act Violations: In 2022, the Board issued 12 R&P orders alleging violations of the Coronavirus Aid, Relief, and Economic Security Act (“CARES Act”) by IAPs who obtained CARES Act benefits, loans and grants, based on material misrepresentations.²¹ The Board appears to have prioritized policing compliance with the CARES Act among IAPs at its supervised institutions, as there is only one other non-Board issued R&P order of this type, one issued by the FDIC, as noted below.

FCPA Violations: On February 15, 2019, the Board issued a R&P order against Timothy Fletcher (“Fletcher”), former Managing Director, J.P. Morgan Securities Asia Pacific, Ltd., Hong Kong, China (the “Firm”), alleging that Fletcher violated the Foreign Corrupt Practices Act (“FCPA”), by participating in the Firm’s referral hiring program, whereby internship and job candidates referred by government officials were given preferential treatment, to gain favor with these officials.²² On March 11, 2019, the Board issued a R&P order against Ng Chong Hwa, former Managing Director, The Goldman Sachs Group, Inc (“Goldman Sachs”), for alleged violations of the FCPA, by obtaining three bond offering for Goldman Sachs through the promise of bribes to Malaysian and United Arab Emirates government officials.²³ On March 11, 2019, the Board issued a R&P order, with a \$1,425,000 CMP assessment, against Tim Leissner, former Managing Director, Goldman Sachs, for alleged violations of the FCPA, by participating in a scheme to divert proceeds from a Malaysian Government bond offering to bribe foreign government officials and others.²⁴

Reg O Violation: On August 15, 2022, the Board issued a R&P order, with a \$90,000 CMP assessment, against Ronald D. Paul (“Paul”), former Chief Executive Officer (“CEO”) and Chair of the Board of Directors, Eagle Bank, Bethesda, MD, alleging that Paul violated Regulation O of the Board (“Reg O”), by causing the bank to make extensions of credit totaling \$99 million to Paul’s

²¹ Pinazo, Board of Governors of the Fed. Reserve Sys. Docket No.21-032-E-I (Mar. 25, 2022). *See generally*, CARES Act, Public Law No. 116-136 (Mar. 27, 2020).

²² Fletcher, Board of Governors of the Fed. Reserve Sys. Docket Nos. 17-007-E-I, 17-007-CMP-I (Feb. 15, 2019).

²³ Hwa, Board of Governors of the Fed. Reserve Sys. Docket No. 19-007-G-I (Mar. 11, 2019).

²⁴ Leissner, Board of Governors of the Fed. Reserve Sys. Docket Nos. 19-008-E-I, 19-008-CMP-I (Mar. 11, 2019).

related interests without the approval of a majority of the bank's board of directors.²⁵

c. The Board's R&P Orders Alleging Improper Accounting, Lending, and Sales Practices

The Board issued 11 R&P orders during this period involving allegations of IAP improper accounting, lending, and sales practices, as discussed below.

Improper Accounting Practices: On July 10, 2018, the Board issued a R&P order against Michelle A. Kennedy ("Kennedy"), former Chief Financial Officer ("CEO"), Hinsdale Bank & Trust, Hinsdale, IL, alleging that Kennedy concealed an unreconciled balance of approximately \$2.7 million in the bank's books and records.²⁶

Improper Lending Practices and Failure to Supervise: On May 13, 2019, the Board issued a R&P order against Adam Koontz ("Koontz"), former President and CEO, Fayette County Bank, St. Elmo, IL, alleging that Koontz (1) engaged in improper lending practices; and (2) failed to properly supervise the lending practices of subordinate employees.²⁷ On September 16, 2021, the Board issued a R&P order against Brent Harness ("Harness"), Community President, Simmons Bank, Pine Bluff, AR, alleging that Harness engaged in improper lending practices, including making loans in excess of his lending limit, originating multiple unauthorized advances on a customer's account, transferring these advances to another unrelated customer's account and permitting unauthorized overdrafts.²⁸

Improper Sales Practices: Between December 13, 2017, and June 8, 2018, the Board issued R&P orders against five branch-level former IAPs of Regions Bank, Birmingham, AL, alleging that they engaged in improper sales practices by inflating customers' income on loan applications to qualify them for customer loans, and in one case, originating such loans without customers' approvals in order to receive variable compensation from the bank.²⁹

²⁵ Paul, Board of Governors of the Fed. Reserve Sys. Docket Nos. 22-021-E-I, 22-021-CMP-I (Aug. 15, 2022). Paul approved loans exceeding his lending limit and failed to disclose loan information to the bank's board in violation of 12 C.F.R. § 215.

²⁶ Kennedy, Board of Governors of the Fed. Reserve Sys. Docket No 18-026-E-I (July 10, 2018).

²⁷ Koontz, Board of Governors of the Fed. Reserve Sys. Docket No. 19-014-E-I (May 13, 2019).

²⁸ Harness, Board of Governors of the Fed. Reserve Sys. Docket No. 21-020-E-I (Sept. 16, 2021).

²⁹ See e.g., Harrison, Board of Governors of the Fed. Reserve Sys. Docket No. 17-42-E-I (Dec. 13, 2017); Kendrick, Board of Governors of the Fed. Reserve Sys. Docket

d. The Board's R&P Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties

The Board issued five R&P orders during this period alleging IAP conflicts of interest and breaches of fiduciary duties. First on August 30, 2017, the Board issued a R&P against Daniel Brennan (“Brennan”), VP and Mortgage Lending Manager, Regions Bank, alleging that Brennan made improper payments, exceeding \$20,000, to a loan processor at the bank who processed his and his team’s loan applications.³⁰ Second, on October 18, 2018, the Board issued a R&P order against Joel Shumate (“Shumate”), former Senior Vice President (“SVP”), First Iowa State Bank, Keosauqua, IA, alleging that Shumate originated two loans without disclosing the true purpose of the loans, which was for the borrower to purchase cattle from him and his father.³¹ Third, on May 26, 2020, The Board issued a R&P order against Aaron K. Hill (“Hill”), former Head of LPO, Evolve Bank & Trust, Memphis, TN, alleging that Hill (1) concealed his and his wife’s ownership and control of a third-party vendor used by the LPO to manage mortgage leads and (2) caused this vendor to overcharge the bank for its services through duplicative or inflated invoices.³²

Fourth, on March 24, 2021, the Board issued a Final Decision and Prohibition Orders against Frank Smith, President, and Mark Kiolbasa, Executive Vice President (“EVP”), Farmers State Bank, Pine Bluffs, WY, determining that Smith and Kiolbasa, while employed by another bank, Central Bank & Trust, Lander, WY (“Central”), (1) acted in a manner contrary to Central’s safety and soundness, by deliberately misappropriating Central’s trade secrets and confidential customer information, (2) intentionally transferring Central’s trade secrets and confidential customer information to Farmers, a direct competitor of Central, for their benefit, and (3) purposefully soliciting Central’s customers prior to leaving Central’s employment to move their business to Farmers.³³

No. 18-18-E-I (Apr. 25, 2018); Frazier, Board of Governors of the Fed. Reserve Sys. Docket Nos. 18-17-E-I, 18-017-B-I (May 21, 2018).

³⁰ Brennan, Board of Governors of the Fed. Reserve Sys. Docket No. 17-029-E-I (Aug. 30, 2017).

³¹ Shumate, Board of Governors of the Fed. Reserve Sys. Docket No 18-029-E-I (Oct. 18, 2018).

³² Aaron K. Hill and Jessica A. Hill, Board of Governors of the Fed. Reserve Sys. Docket No. 20-008-E-I (May 26, 2020).

³³ Frank E. Smith & Mark A. Kiolbasa, Board of Governors of the Fed. Reserve Sys. Docket No. 18-036-E-I (March 24, 2021). Smith and Kiolbasa appealed the Board’s decision to prohibit them from banking. On July 11, 2023, the U.S. Court of Appeals for

e. The Board's R&P Orders Alleging Misrepresentations and Other Misconduct

Misrepresentations: The Board issued eight R&P orders based on allegations of IAP misrepresentations and other miscellaneous misconduct. First, on December 13, 2017, the Board issued a R&P order against Lowell McCoy (“McCoy”), former Board Member, NBRS Financial, Rising Sun, MD, alleging that McCoy misrepresented the ultimate recipients of certain loans to circumvent the bank’s lending limits without disclosing the true nature of the loans to the bank’s board.³⁴ Second, on August 16, 2018, the Board issued a R&P order against Jacob Goldstein (“Goldstein”), former President and CEO, NBRS Financial, alleging that Goldstein misrepresented the true beneficiary of loans he originated for nominee borrowers, which ultimately were for his benefit.³⁵ Third, on January 29, 2019, the Board issued a R&P order against Fred Daibes (“Daibes”), former CEO & Chair of the Board, Mariner’s Bancorp, Edgewater, NJ, alleging that Daibes and others orchestrated a nominee loan scheme designed to circumvent the bank’s lending limits by ensuring that the proceeds of loans made to third-parties flowed to Daibes and concealing Daibes’ beneficial interests in those loans from the bank and FDIC.³⁶

Fourth, on May 1, 2019, the Board issued a R&P against Christopher O’Connell (“O’Connell”), EVP, Centennial Bank, Lubbock, TX, alleging that O’Connell altered invoices to obtain bank reimbursement for personal expenses and used a bank credit card for such expenses, with a bank loss of \$69,000.³⁷ Fifth, on May on May 13, 2020, the Board issued a R&P order, with a \$30,000 C&D order of restitution to the bank, against Thomas Hinkebein, President, Whitaker Bank, Lexington, KY, alleging that Hinkebein charged personal and family

the Tenth Circuit affirmed the Board’s removal and prohibition of Smith and Kiolbasa. *Smith v. Board of Governors of the Fed. Reserve Sys.*, 2023 WL 1234567 (10th Cir. July 11, 2023).

³⁴ McCoy, Board of Governors of the Fed. Reserve Sys. Docket No. 17-42-E-I (Dec. 13, 2017).

³⁵ Goldstein, Board of Governors of the Fed. Reserve Sys. Docket No. 18-026-E-I (Aug. 16, 2018).

³⁶ Daibes, Board of Governors of the Fed. Reserve Sys. Docket No. 19-002-G-1 (Jan. 29, 2019).

³⁷ O’Connell, Board of Governors of the Fed. Reserve Sys. Docket No. 19-012-E-I (May 1, 2019).

expenses to the bank by misrepresenting them as business expenses and misappropriated property of the bank.³⁸

Manipulation of FX Markets: The Board issued three orders concerning the manipulation of the FX spot market by certain FX traders at banks it oversees. First, on January 4, 2017, the Board issued a R&P order against Jason Katz (“Katz”), FX Trader, Barclays Bank plc, New York Branch.³⁹ Second, on May 19, 2017, the Board issued a Final Decision and an Order of Prohibition, with a \$1.2 million CMP assessment, against Christopher Ashton (“Ashton”), FX Trader, Barclays Bank PLC, London, England.⁴⁰ Third, on July 21, 2017, the Board issued a R&O order against Michael Weston (“Weston”), FX Trader, Barclays Bank plc, New York Branch.⁴¹ The Board alleged, and determined in the case of Ashton, that these IAPs used electronic chat rooms to discuss the coordination of trading around FX benchmark fixes and disclosed confidential information of their institutions and their customers to traders at other organizations.

Commercial Kickbacks: On September 7, 2021, the Board issued a R&P order, with a \$100,000 CMP assessment, against Bhushan Bhangale (“Bhangale”), Data Manager, BNP Paribas USA, Inc, alleging that Bhangale (1) entered into an arrangement whereby Bhangale obtained contingent workers for the bank from certain third-party information technology (“IT”) sourcing companies, and (2) in exchange, Bhangale received a percentage of the fees received by the IT companies from the bank for the contingent workers’ services.⁴²

iii. Discussion of the Board’s IAP Enforcement Decisions and Orders

During this period, the Board’s IAP enforcement program (1) focused on non-senior-level IAP’s misconduct, but, nonetheless, nearly 30% of these actions were issued against senior-level IAPs, (2) did not primarily focus on IAP misconduct involving cash theft and/or embezzlement, but on other types of misconduct, (3) addressed IAP misconduct mostly through R&O orders as

³⁸ Hinkebein, Board of Governors of the Fed. Reserve Sys. Docket Nos. 20-002-E-I, 20-002-B-I (May 20, 2020).

³⁹ Katz, Board of Governors of the Fed. Reserve Sys. Docket No. 17-001-E-I; 17-001-B-I (Jan. 4, 2017).

⁴⁰ Ashton, Board of Governors of the Fed. Reserve Sys. Docket No. 16-015-E-I, and 16-015-CMP-I (May 19, 2017).

⁴¹ Weston, Board of Governors of the Fed. Reserve Sys. Docket No. 17-019-E-I (July 21, 2017).

⁴² Bhangale, Board of Governors of the Fed. Reserve Sys. Docket Nos. 21-022-E-I, and 21-022-CMP-I (Sept. 7, 2021).

opposed to C&D orders, (4) emphasized enforcement of non-banking laws, such as the CARES Act and the FCPA, (5) did not issue enforcement orders against senior-level IAPs of the largest BHCs it supervises, and (6) issued fewer CMP assessments, but with a higher average assessment per order, than the other Agencies.

a. The Board's IAP Enforcement Actions, as Those at the Other Agencies, Primarily Focused on Lower-Level IAPs

During the relevant period, the Board issued 29.5% of its R&P orders against senior-level IAPs, in line with the 30% issued by the OCC and 29% by the FDIC. Out of the 42 Board IAP enforcement orders reviewed above, 11 of them, or 26%, were issued against IAPs who held positions of President, CEO, or Board Member (a combined 8), EVP (2), and CFO (1). A recent scholarly article suggests that the Board's IAP enforcement actions may not reveal the full picture as to senior level IAP Board-issued sanctions for misconduct, stating that the Board may use informal mechanisms, short of formal action, to deal with senior-level IAP misconduct.⁴³ Even if that were the case, the Board's enforcement orders show that it has not shied away from pursuing actions against senior-level IAPs at the Institutions it supervises, when appropriate.⁴⁴

b. The Board's IAP Enforcement Program, Unlike Those of the OCC and the FDIC, Did Not Primarily Focus on Cash Theft and Embezzlement Misconduct

During the relevant period, the Board issued approximately 50% of its R&P orders based on IAP misconduct primarily involving embezzlement and cash theft. This record contrasts with those of the OCC and the FDIC. The OCC issued 57.7% of its R&P orders based primarily on these two types of misconduct. The FDIC issued 68.5% of its R&P orders based on these two types of IAP misconduct. Thus, during this period, the Board focused more of its R&P orders on other types of IAP misconduct, which often are more resource intensive.

⁴³ Da Lin & Lev Menand, *The Banker Removal Power*, 108 VA. L. REV. 1, 40 (2022).

⁴⁴ See e.g., Paul, *supra* note 25 (R&P order with a \$90,000 CMP); Leissner, *supra* note 24 (R&P with a \$1.425 million CMP assessment).

c. The Board's IAP Enforcement Program Relied Far Less on C&D Orders Than the OCC's Program

During the relevant period, the Board issued a total of six IAP C&D orders and a total of 81 R&P orders. Hence, out of a total of 87 Board-issued IAP enforcement actions, 6.9% of them were IAP C&D orders. In turn, the OCC issued a total of 210 IAP enforcement actions during this period, with 73 of these being C&D orders (including orders to pay CMPs), which represent 34.8% of all its IAP orders. For its part, of the FDIC's 239 IAP enforcement orders, 23 of these were C&D orders, or 9.6% of all its IAP orders. Thus, both the Board and the FDIC relied far less on C&D orders to address IAP misconduct than did the OCC during this period.

One plausible explanation for the Board's less frequent use of C&D orders might be that the Board appears to have used its enforcement tools only against the most serious IAP misconduct, and when it chose to bring an action against an IAP, it was stricter than the OCC in the tools used. One example of this is the fact-pattern where two IAPs, without authorization, transferred their employer's confidential bank and customer information to another financial institution where they planned to take employment and an ownership interest, and solicited bank customers to move their business to their future employer. In 2021, when the Board faced this scenario, it issued R&P orders against two senior bank officers.⁴⁵ The OCC faced this scenario four times during the review period: June 2017, January 2018, May 2018, and June 2020.⁴⁶ Unlike the Board, in each case, the OCC issued a C&D order against the affected IAPs, with CMP assessments of \$8,000, \$5,000, \$7,500, \$5,000 and \$5,000, respectively.⁴⁷

d. The Board IAP Enforcement Program Included Enforcement of Non-Banking Laws, Unlike the OCC's Program

During the relevant period, the Board's IAP enforcement program included 15 orders where the misconduct at issue was the IAP's violation of a non-banking law, such as the CARES Act or the FCPA.⁴⁸ In the case of the CARES Act, in 2022, the Board issued 12 R&P orders against IAPs for violations of this statute,

⁴⁵ See Smith et al, Board of Governors of the Fed. Reserve Sys. Docket No. 18-036-E-I (Mar. 24, 2021).

⁴⁶ See Strother, *infra* note 83; Swon, *infra* note 86; Means, *infra* note 87; and Elkins, *infra* note 89.

⁴⁷ *Id.*

⁴⁸ See *supra* notes 21–23.

including R&P orders against IAPs of non-banking subsidiaries of BHCs it supervises.⁴⁹ It also issued three R&P orders based on violations of the FCPA. Conversely, the OCC did not issue such orders and the FDIC issued two such orders.

e. The Board Did Not Issue Enforcement Orders Against Senior Officers of the Largest Institutions it Supervises

During the relevant period, the Board did not issue enforcement orders against senior officer IAPs at the largest BHCs it supervises, such as those at Wells Fargo & Company (“WFC”), as a result of the systemic sales practice misconduct at WFC’s banking subsidiary Wells Fargo Bank, N.A.⁵⁰ Although the Board did not issue such an order, on February 2, 2018, it issued a public reprimand to WFC’s CEO, John Stumpf, stating, *inter alia*, as follows: “The . . . Board has been troubled by the sales practice abuses at WFC, and the ongoing disclosures of misconduct in other areas. In particular, your performance in addressing these problems is an example of ineffective oversight that is not consistent with the Federal Reserve’s expectations for a firm of WFC’s size and scope of operations.”⁵¹ Moreover, as previously noted, the Board does not have jurisdiction over IAPs affiliated with a BHC’s banking subsidiaries, such as Wells Fargo, which are Non-Member Banks or national banks. Thus, in those cases, the Board had no choice but to defer to either the OCC or the FDIC to take appropriate enforcement action.⁵²

f. The Board Issued Far Fewer IAP CMP Assessments than the Other Agencies, but with a Higher Average Amount Per Order than the OCC and the FDIC

During the period under review, the Board issued six CMP assessments against IAPs of Institutions it supervises. The average amount of these

⁴⁹ See *e.g.*, Pinazo, Board of Governors of the Fed. Reserve Sys. Docket No. 21-032-E-I (Mar. 25, 2022) (prohibition of former employee of Merrill Lynch Wealth Management).

⁵⁰ A recent article opines that the Board is ceding some of its enforcement jurisdiction to the other Agencies in failing to pursue IAPs more aggressively at these BHCs. See Lin & Menand, *supra* note 43.

⁵¹ Letter from Michael S. Gibson, Director, Division of Supervision and Regulation, Board of Governors of the Fed. Reserve Sys., to John Stumpf, CEO, Wells Fargo & Company (Feb. 18, 2018) (on file with the Board of Governors of the Federal Reserve System).

⁵² See 12 U.S.C. §1813(q) (defining “appropriate Federal banking agency”).

assessments, not counting two outsize assessments (one for \$1.42 million and the other for \$1.25 million) was \$52,000. In turn, the OCC issued 91 CMP assessments against IAPs. Seven of these assessments were issued against Wells Fargo executives, with an average assessment of \$3.668 million per IAP. Not counting these seven assessments, the OCC average assessment per IAP was \$22,558. Lastly, the FDIC issued 39 CMP assessments against IAPs during this period, with an average assessment of \$30,380 per IAP.

Another CMP metric that is pertinent is the comparison of the number of CMP assessments per Agency to the total number of enforcement orders the Agency issued during that period. Doing this exercise shows that the Board was far behind the two other Agencies in this respect, with 6.9% of the Board's IAP enforcement actions including a CMP assessment. In the case of the OCC, 49.4% of the IAP enforcement actions included a CMP assessment. For the FDIC, 16.5% of its IAP enforcement actions included a CMP assessment.

B. The OCC's IAP Enforcement Decisions and Orders

i. The OCC's IAP C&D and CMP Orders

The OCC issued a total of 50 C&D orders, all with CMP assessments, and 23 Orders to Pay with CMP assessments ("CMP orders") during the period under review. Below is a summary of the most significant of these orders, utilizing the categories used above.

a. The OCC's C&D and CMP Orders Alleging Failure to Manage and Supervise

On December 13, 2018, the OCC issued six CMP orders against IAPs of First Citizens Bank of Polson, N.A., of Polson, MT, for failure to properly supervise bank staff. The OCC issued the first CMP assessment, for \$2,000, against Robert Sloan ("Sloan"), former EVP and Director, alleging that Sloan failed to provide proper oversight of employees to ensure that the bank complied with its reporting requirements to the OCC.⁵³ Subsequently, the OCC issued five other CMP orders, each for \$2,000, against five directors of the bank alleging that they failed to adequately supervise the bank to ensure that the bank complied with its reporting obligations to the OCC: Rick Skates, Richard Pederson, Jolanda Ingram, Catherine Francis, and David Doepke.⁵⁴

⁵³ Sloan, OCC Docket No. AA-EC-2018-073 (Dec. 13, 2018).

⁵⁴ See e.g., Skates, OCC Docket No. AA-EC-2018-72 (Dec. 13, 2018).

On September 15, 2021, the OCC issued a C&D order, with a \$16,000 CMP assessment, against Patrick Hurley (“Hurley”), former President, CEO and Director, First National Bank of Fairfield, IA, alleging that Hurley failed to: (1) adequately supervise and ensure that bank staff engaged in safe and sound banking practices, (2) adequately review the bank’s problem loan and exception reports to detect unsafe or unsound lending activities, and (3) ensure the bank’s internal controls were sufficient to protect the bank’s interests.⁵⁵

b. The OCC’s C&D and CMP Orders Alleging Failure to Comply with Legal and Regulatory Requirements

Bank Secrecy Act (“BSA”) Violations: On August 18 and 27, 2020, the OCC issued C&D orders, with CMP assessments, against three former officers of City National Bank of New Jersey: Preston Pinkett III, Chair of the Board, CEO and President, on August 18 for \$75,000; Karen Highsmith, SVP for Operations, on August 27 for \$6,000; and Ridhima Ahluwalia, SVP and Sr. Risk Officer, on August 27 for \$14,000.⁵⁶ With respect to Pinkett, the OCC alleged he (1) failed to ensure the bank had a BSA program commensurate with increased risk facing the bank, (2) failed to fully disclose conflicts of interest involving third-party relationships or recuse himself from such matters, and (3) failed to control the bank’s expenses and hold management accountable for known deficiencies.⁵⁷ With respect to Highsmith, the OCC alleged that he (1) failed to correct the bank’s BSA program deficiencies, (2) failed to ensure adequate oversight of the bank’s high-risk customers, and (3) did not appropriately report suspicious activity. Lastly, with respect to Ahluwalia, the OCC alleged that he (1) failed to develop an effective risk framework for the bank, including performing risk assessments on customers or lines of business, (2) provided inadequate oversight of the bank’s high-risk customers, and (3) failed to appropriately report suspicious activity.

Between May 12 and June 14, 2022, the OCC issued \$10,000 CMP orders against seven current and former Directors of Mission National Bank of San Francisco, CA, alleging that they failed to ensure that the bank submitted an acceptable strategic plan to the OCC and achieved compliance with a 2020 Consent Order imposed on the bank: Ruell Medina, Alma Vivar, Julio Prada,

⁵⁵ Hurley, OCC Docket No. AA-ENF-2021-37 (Sept. 20, 2021).

⁵⁶ Pinkett, OCC Docket No. AA-EC-2020-20 (Aug. 18, 2020); Highsmith, OCC Docket No. AA-EC-2020-21 (Aug. 27, 2020); Ahluwalia, OCC Docket No. AA-EC-2020-23 (Aug. 27, 2020).

⁵⁷ Pinkett, *supra* note 56; *see* 12 U.S.C. §§ 1829b and 1951–59; 31 U.S.C. §§ 5311–5330; *see also* 31 C.F.R. § 103 (2010).

David Choi, Cesar Alegria, JoAnne Loughlin, and William Chan.⁵⁸ On June 6, 2022, The OCC issued a CMP order, with a \$5,000 assessment against Robert Sweeney, former Director and CEO of the bank, based on the same allegations as those made against the bank directors.⁵⁹

Reg O Violation and Failure to Supervise: On June 21, 2017, the OCC issued an order with a \$10,000 CMP assessment against Ron Roming, President and Director of Citizens Savings and Loan Association, based in FSB, Leavenworth, KS, for causing and contributing to the bank's issuance of loans to bank insiders, which violated Reg O.⁶⁰ On August 15, 2019, the OCC issued two CMP orders to Directors of Beauregard Federal Savings Bank, based in DeRidder, LA. The first order was against Rafael Stark ("Stark"), EVP and Director, for \$15,000, that he obtained six loans from the bank without approval by the bank board, in violation of Reg O. The second order was against Carroll Green ("Green"), President and Director, for \$5,000, alleged that he failed to ensure the bank complied with Reg O.⁶¹

OCC Consent Orders Violations: On February 6, 2018, the OCC issued CMP orders against several individuals at Merchants Bank of California, N.A., based in Carson, CA, alleging that they participated in violations of OCC Consent Orders ("Orders") and failed to take actions to ensure the bank corrected the deficiencies resulting in the Orders: Philip Scott, Chair of the Board, for \$20,000; Theodore Roberts, Director for \$5,000; and Janice Hall, former Director for \$5,000.⁶² On March 5 and 7, 2018, the OCC issued two other C&D orders relating to this bank. The first, with a \$35,000 CMP assessment, was issued on March 5 against Jane Chu ("Chu"), former EVP & CFO, alleging that Chu (1) allowed a currency dealer, which the bank had previously refused as a customer, to conduct business through the bank, (2) made inaccurate statements to the bank's independent CPA, (3) oversaw improper accounting practices, and (4) failed to implement adequate internal controls.⁶³ On March 7, the OCC issued the second

⁵⁸ See e.g., Medina, OCC Docket No. AA-WE-2022-12 (May 12, 2022); Vivar, OCC Docket No. AA-WE-2022-14 (June 10, 2022); Prada, OCC Docket No. AA-WE-2022-17 (June 10, 2022).

⁵⁹ Sweeney, OCC Docket No. AA-WE-2022-13 (July 12, 2022).

⁶⁰ Roming, OCC Docket No. AA-WE-2017-29 (July 10, 2017).

⁶¹ Stark, OCC Docket No. SO-2019-41 (Aug. 15, 2019); Green, OCC Docket No. SO-2019-40 (Aug. 5, 2019).

⁶² Scott, OCC Docket No. AA-EC-2017-80 (March 15, 2018); Roberts, OCC Docket No. AA-EC-2017-78 (Feb. 6, 2018); Hall, OCC Docket No. AA-EC-2017-79 (Apr. 26, 2018).

⁶³ Chu, OCC Docket No. AA-EC-2017-76 (Mar. 5, 2018).

C&D, with a \$5,000 CMP assessment, against Susan Cavano, Chief Banking Officer and former COO, for (1) making false statements to the OCC, as well as (2) participating in a violation of the Orders, hindering the bank's BSA effectiveness, and failing to institute adequate controls of the bank's operations department.⁶⁴

Between August 17 and September 15, 2020, the OCC issued CMP orders against five former directors of City National Bank of New Jersey alleging that the directors caused violations of OCC Consent Orders and Prompt Corrective Actions, and failed to ensure that management controlled expenses and corrected identifiable concerns: H. O'Neil Williams, for \$10,000; Lemar Whigham, for \$3,000; Michael Hopson, for \$14,000; Ronald Anglin, for \$14,000; and Alfonso Carney, for \$14,000.⁶⁵

On September 12, 2022, the OCC issued a C&D order, with a \$50,000 CMP assessment, against John Austin III, former Chair of the Board at CornerstoneBank, based in Atlanta, GA, alleging that Respondent caused the bank to violate an OCC Consent Order, when he caused the bank to open 12 accounts for non-U.S. businesses without obtaining OCC's no supervisory objection, and used for his benefit and that of some personal clients the services of a third-party contractor of the bank, without disclosure to the bank's board.⁶⁶

c. The OCC's C&D and CMP Orders Alleging Improper Accounting, Banking, Lending, and/or Sales Practices

Improper Accounting Practices: On July 10, 2017, the Comptroller of the Currency (the "Comptroller") issued an order, with a \$10,000 CMP assessment, against William Blanton ("Blanton"), former Director, Interim CEO and Vice Chair of Board, United Americas Bank, N.A., Atlanta, GA, resulting from a contested proceeding, determining that Blanton (1) allowed a series of large overdrafts by a significant bank customer, without adequate controls in place, when capital levels were critically deficient, and (2) rebooked a series of previously written-down loans in contravention of generally accepted accounting principles, and (3) caused the bank to file materially inaccurate Call Reports.⁶⁷

On October 25, 2017, the OCC issued five cease and desist ("C&D") orders against IAPs of First National Bank, Edinburg, TX. The first, with a \$3,000 CMP

⁶⁴ Cavano, OCC Docket No. AA-EC-2017-77 (Mar. 7, 2018).

⁶⁵ See e.g., O'Neil Williams, OCC Docket No. AA-EC-2020-28 (Aug. 17, 2020).

⁶⁶ Austin, OCC Docket No. AA-ENF-2022-30 (Sept. 12, 2022).

⁶⁷ Blanton, OCC Docket No. AA-EC-2015-24 (July 10, 2017); see Blanton v. Off. of the Comptroller of the Currency, 909 F.3d 1162 (D.C. Cir. 2018).

assessment, was issued against Eduardo Leal, former Controller and Chief Operating Officer (“COO”), for failing to record discounts offered to purchasers of bank-owned properties (“OREO”). The properties were financed with below market loan terms without justification.⁶⁸ The OCC issued four other C&D orders, each with a \$5,000 CMP assessment, against four directors of the bank, Jack McClelland, Arcadio Guerra, Oscar Garza, and Dwayne Blair. The orders alleged that they approved loans with concessionary terms to unqualified borrowers to sell the bank’s OREO at above-market prices and to avoid recognizing losses on these assets, which resulted in the bank filing materially inaccurate Call Reports.⁶⁹

Improper Banking Practices: On January 3, 2017, the OCC issued three C&D orders against IAPs of Certus Bank, N.A., Greenville, SC. The first was a C&D order, with a \$27,000 CMP assessment, against Kathy Webb, the former bank President. The court issued the order for causing the bank to make a \$150,000 payment to a third-party outside of the scope of the contract with such party, failing to present to the bank’s board strategically important decisions and/or contracts exceeding her authority, and causing the bank to incur excessive expenses.⁷⁰ The second C&D, with a \$3,500 CMP assessment, was issued against Milton Jones (“Jones”), former Executive Chair of the Board, for failing to present to the bank’s board certain strategically important contracts exceeding management’s authority and causing the bank to violate the law and regulations in connection with the purchase of three condos for executive use.⁷¹ The third C&D order, with a \$25,500 CMP assessment, was issued against Walter Davis, former CEO and Director, for the same misconduct alleged against Jones.⁷²

On November 18, 2022, the OCC issued a C&D order, with a \$15,000 CMP assessment, against Matthew Sprang (“Sprang”), President of Agency Banking, Westfield Bank FSB, Westfield Center, OH. Sprang had renewed certain letters of credit without ensuring there was sufficient collateral, concealed the renewals and collateral shortfall and exceeded his lending authority.⁷³

Improper Lending Practices: On December 12, 2017, the OCC issued a C&D order, with a \$10,000 CMP assessment, against Mark Perkins, former CFO and Director, First Community National Bank, Cuba, MO, for causing the bank to originate loans that violated the bank’s lending policy, failing to provide proper credit analysis, failing to hold adequate collateral and/or management approval.

⁶⁸ Leal, OCC Docket No. AA-EC-2017-52 (Oct. 25, 2017).

⁶⁹ McClelland, OCC Docket No. AA-EC-2017-49 (Oct. 2, 2017).

⁷⁰ Webb, OCC Docket No. AA-EC-2016-86 (Jan. 3, 2017).

⁷¹ Jones, OCC Docket No. AA-EC-2016-88 (Jan. 3, 2017).

⁷² Davis, OCC Docket No. AA-EC-2016-87 (Jan. 3, 2017).

⁷³ Sprang, OCC Docket No. AA-CE-2022-49 (Nov. 18, 2022).

This conduct caused the bank a \$95,500 loss.⁷⁴ On March 11, 2019, the OCC issued an order assessing a \$10,000 CMP against William Blanton, former Director, Interim CEO, and Vice Chair of Board, United Americas Bank, N.A., Atlanta, GA, alleging that Blanton allowed a bank customer to maintain large overdrafts without adequate controls and directed the re-booking of a charged-off loan, causing the bank to file inaccurate Call Reports.⁷⁵

On October 13, 2020, the OCC issued a C&D order, with a \$12,000 CMP assessment, against David Galloni (“Galloni”), former VP of Commercial Lending and Chief Lending Officer, Cfs bank, Charleroi, PA. Galloni failed to ensure that the bank’s credit underwriting process properly assessed borrowers’ ability to repay their loans, approved numerous large overdrafts, and waived overdraft fees in violation of bank policy.⁷⁶ On August 22, 2022, the OCC issued a C&D order, with a \$20,000 CMP assessment, against Tony Fritz (“Fritz”), former Chief Lending Officer (“CLO”) and Director, The First National Bank and Trust Company of Vinita, OK. Fritz failed to ensure the bank’s credit administration and risk management practices and controls were effective, originated multiple unsafe or unsound loans, and failed to credibly challenge senior managers who kept loan portfolios.⁷⁷

On October 12, 2022, the OCC issued a C&D, with a 10,000 CMP assessment, against Michael Reemtsma (“Reemtsma”), Relationship Manager, Heritage Bank, N.A., Spicer, MN, alleging that Reemtsma failed properly to document the intended uses of funds for certain commercial loans and the source of repayment for these loans.⁷⁸

Improper Sales Practices: On January 8 and 21, 2020, the OCC issued two C&D orders against former Wells Fargo Bank officers, for their role in the bank’s sales practices misconduct. The first, dated January 1, with a \$1.25 million CMP assessment, was issued against Michael Loughlin (“Loughlin”), former Chief Risk Officer. The order alleged that Loughlin should have known, as early as 2012, that the bank’s business model was root cause of sales practices misconduct, and that the bank’s controls were ineffective to detect such conduct.⁷⁹ From at least 2013, Loughlin’s efforts to advise the CEO and the bank’s board that the Community

⁷⁴ Perkins, OCC Docket No. AA-EC-2017-68 (Dec. 12, 2017).

⁷⁵ This order supersedes and terminates a July 10, 2017 OCC Order, where Respondent was ordered to pay a \$10,000 CMP, as a result of the U.S. Court of Appeals for the D.C. Circuit’s ruling in *Blanton*, 909 F.3d at 1165.

⁷⁶ Galloni, OCC Docket No. AA-ENF-2020-62 (Oct. 13, 2020).

⁷⁷ Fritz, OCC Docket No. AA-ENF-2022-34 (Aug. 22, 2022).

⁷⁸ Reemtsma, OCC Docket No. AA-ENF-2022-31 (Oct. 12, 2022).

⁷⁹ Loughlin, OCC Docket No. AA-EC-2019-86 (Jan. 8, 2020).

Bank's business model posed significant risks and incentivized illegal activity, that the relevant controls were inefficient, and that the Community Bank was not resolving the issue were inadequate. The court issued a second order, dated January 21, with a \$2.25 million CMP assessment, against Hope Hardison ("Hardison"), former Chief Administrative Officer and HR Director, alleging that Hardison should have known, as early as 2013, that the root cause of sales practices misconduct at the Community Bank was its business model and that the bank's controls were ineffective to detect such conduct.⁸⁰ According to the OCC, Hardison failed to adequately oversee the bank's Ethics Line program, and rated the Community Bank's risk management function as "satisfactory," despite the systemic issues found in its sales practice.

On September 21, 2020, the OCC issued C&D orders, with CMP assessments, against two former Wells Fargo senior executives, related to the bank's sales practices misconduct. The OCC issued the first order, with a \$400,000 CMP assessment, against Kenneth Zimmerman ("Zimmerman"), former Head of Deposit Products Group, alleging that Zimmerman participated in the creation of the Community Bank's business model that incentivized sales practice misconduct. Zimmerman failed to meet his oversight responsibilities of governance, risk management and escalation of the risk posed by the business model.⁸¹ The OCC issued the second order, with a \$350,000 CMP assessment, against Tracy Kidd ("Kidd"), former Head of Community Bank Human Resources, alleging that Kidd failed to meet her responsibilities, as a member of the Community Bank's Risk Management Committee, to escalate sales practice misconduct issues to senior management and did not credibly challenge the Community Bank's leadership regarding the systemic sales practice issues.⁸²

On January 13, 2021, the OCC issued a C&D order, with a \$3.5 million CMP assessment, against James Strother ("Strother"), former General Counsel of Wells Fargo, alleging that Strother played a critical role in enabling improper sales practices at the Community Bank by failing to escalate the misconduct to the bank's board and advise it on the legal risks of sales practices misconduct.⁸³

⁸⁰ Hardison, OCC Docket No. AA-EC-2019-69 (Jan. 21, 2020).

⁸¹ Zimmerman, OCC Docket No. AA-EC-2020-54 (Sept. 21, 2020).

⁸² Kidd, OCC Docket No. AA-EC-2020-52 (Sept. 21, 2020).

⁸³ Strother, OCC Docket No. AA-EC-2019-70 (Jan. 13, 2021).

d. The OCC's C&D Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties

On June 2, 2017, the OCC issued a C&D order, with an \$8,000 CMP assessment, against Timothy Perry (“Perry”), former Sr. Mortgage Loan originator of Barrington Bank and Trust, Barrington, IL, alleging that Perry (1) transferred confidential bank customer information to a mortgage lender with whom he was negotiating future employment, (2) sent completed mortgage loans applications from four bank customers to his then prospective employer, (3) collected confidential bank customers and prospective customers’ financial information and added it to his personal electronic database, and (4) transmitted this database and the applications from his bank-owned email address to his personal email account and then to his prospective employer, all without permission from the bank and all via unencrypted email.⁸⁴

On June 21, 2017, the OCC issued an order assessing a \$5,000 CMP against Sylvia Thoe (“Thoe”), Director, First National Bank, Waupaca, WI, alleging that Thoe failed to (1) oversee or control the use of bank funds by its former President, CEO, and Chair of the Board for his personal expenses despite knowing that he had previously used bank funds for personal expenses, (2) ensure that disinterested and independent directors determined and approved the compensation of the bank’s former President, CEO, and Chair, allowing him to receive excessive compensation, and (3) recuse herself from voting on the former President, CEO, and Chair’s compensation, even though she had a conflict of interest because the former President was personally indebted to Thoe and her husband for more than \$2 million.⁸⁵

On June 21, 2017, the OCC issued a C&D order, with a \$15,000 CMP assessment against Kyle Swon (Swon”), former Director, WCF Financial Bank, Webster City, IW, alleging that Swon caused bank subordinates to extend 18 loans and 17 term extensions to him, where the credit involved more than normal risk of repayment and other unfavorable terms for the bank.⁸⁶

On January 8, 2018, the OCC issued a C&D order, with a \$5,000 CMP assessment, against Joshua Means (“Means”), former Market President, Central National Bank and Trust Company of Enid, Enid, OK, alleging that Means, while employed with the bank, (1) removed from the bank confidential information, including three customers tax returns and financial statements, planning to use that information at a bank with whom he was engaged in negotiations regarding future

⁸⁴ Perry, OCC Docket No. AA-EC-2017-14 (June 2, 2017).

⁸⁵ Thoe, OCC Docket No. AA-EC-2017-25 (June 21, 2017).

⁸⁶ Swon, OCC Docket No. AA-WE-2017-64 (Nov. 2, 2017).

employment, (2) solicited the loan business of at least six bank customers for such financial institution, and (3) made materially false statements to the OCC regarding his solicitation of bank customers' loan business to another financial institution and his removal of confidential customer information from the bank.⁸⁷

On May 22, 2018, the OCC issued a C&D order, with a \$7,500 CMP assessment, against Stacy Folkers ("Folkers"), former Residential Loan Originator, Barrington Bank & Trust Company, Barrington, IL, alleging that Folkers, while employed with the bank, (1) sent records related to 24 actual or prospective bank customers to a competitor financial institution where she had accepted a position and (2) obtained records and signatures from these customers in order to close their loans at the competitor financial institution.⁸⁸ At least six of these customers obtained a combined \$1.14 million in mortgages from that institution. Folkers allegedly diverted these loan opportunities even though her employment agreement with the bank prohibited soliciting business for a competitor, disclosing loan application information to a third-party, and working as an agent for another lending business.

On July 23, 2019, the OCC issued a C&D order, with a \$9,500 CMP assessment, against Chris Elkins ("Elkins"), former SVP and Commercial Lender, Simmons First National Bank, Pine Bluff, AK, alleging that Elkins (1) received a \$35,000 personal loan from a bank borrower for whom he served as loan officer and failed to report to the bank the personal loan and (2) originated several loans not in compliance with the bank's underwriting policies & procedures.⁸⁹

On June 23, 2020, the OCC issued C&D orders against Jeffrey Wettstein ("Wettstein"), former Director of West Coast Sales, with a \$5,000 CMP assessment, and Michael Shara ("Shara"), former Branch Manager, with a \$5,000 CMP assessment, Barrington Bank & Trust Company, N.A., Barrington, IL, alleging that Wettstein (1) arranged for him and several other bank employees to move to another bank, while still employed by the bank, (2) with certain bank employees he supervised, sent, without authorization, confidential bank customer information to the bank they were moving.⁹⁰ In the case of Shara, the OCC alleged that he sent confidential bank customer, and prospective customer, information to another bank where he had or intended to accept a position. Two of these customers obtained loans from the other bank.

⁸⁷ Means, OCC Docket No. AA-EC-2017-43 (Jan. 8, 2018).

⁸⁸ Folkers, OCC Docket No. AA-EC-2018-17 (May 22, 2018).

⁸⁹ Elkins, OCC Docket No. AA-EC-2019-29 (July 23, 2019).

⁹⁰ Wettstein, OCC Docket No. AA-EC-2020-42 (June 23, 2020); Shara, OCC Docket No. AA-EC-2020-41 (June 23, 2020).

On April 27, 2022, the OCC issued a C&D order, with \$30,000 CMP assessment, against Rafeal Stark, CEO, President and Director, Beauregard Federal Savings Bank, DeRidder, LA, alleging that he (1) borrowed \$10,000, or more, from his subordinates, without disclosure to the bank's board, (2) originated unsecured loans to borrowers to provide them the funds to cover the down payments on real estate loans, and (3) allowed the bank to approve real estate loans using false information on the loan documents.⁹¹

e. The OCC's C&D and CMP Orders Alleging Misrepresentation and Other Misconduct

Improper Disclosure of OCC Non-Public Information: On September 19 and October 28, 2019, the OCC issued two "Orders for CMP," each with a \$7,500 assessment. The first, dated September 19, was issued against Amie Dorman ("Dorman"), former Executive Director, Global Regulatory Relations Group, Morgan Stanley Private Bank, alleging that Dorman (1) took with her from the bank certain non-public OCC information and later, when working at another bank, disclosed this information without authorization.⁹² On October 28, the OCC issued an order against Roseann McSorley ("McSorley"), former Managing Director and Chief Administrative Officer of Oversight and Controls, JPMorgan Chase Bank, N.A., alleging that McSorley disclosed non-public OCC information, upon terminating her employment with the bank, without authorization.⁹³ McSorley allegedly retained with her certain non-public OCC information and, upon working at another bank, disclosed this information. When questioned by the new employer's investigators about the information, McSorley denied having the information.

Failure to Manage Bank-Owned Securities: On February 26, 2021, the OCC issued a \$5,000 CMP order against Michael Welge ("Welge"), President, CFO and Chair of the Board, Chester National Bank, Chester, IL, alleging that Welge failed to document or cause to document the credit analysis necessary to show that a bank-owned corporate security remained "investment grade" despite being downgraded by two credit rating agencies.⁹⁴

⁹¹ Stark, OCC Docket No. AA-ENF-2022-10 (Apr. 27, 2022). This is the second OCC issued CMP assessment against Stark, the first, for \$15,000, was issued on August 5, 2019.

⁹² Dorman, OCC Docket No. AA-EC-2019-50 (Sept. 30 2019).

⁹³ McSorley, OCC Docket No. AA-EC-2019-49 (Oct. 28, 2019).

⁹⁴ Welge, OCC Docket No. AA-CE-2020-79 (Feb. 26, 2021).

ii. The OCC's R&P Decisions and Orders

Between 2017 and 2022, the OCC issued 131 R&P orders against IAPs affiliated with the Institutions it regulates. As was the case with the Board and the FDIC, the vast majority of these orders addressed branch-level IAP misconduct. Table 3 breaks down the OCC's R&P orders by the employment level of the IAPs involved and Table 4 by the type of misconduct involved.

TABLE 3
OCC's 2017–2022 R&P Orders by IAP Employment Level

Employment level of IAP Involved	2017	2018	2019	2020	2021	2022	Total
Senior-level IAPs	8	7	7	5	3	7	38
Managers	3	5	3	2	4	2	19
Lower-level IAPs	14	19	14	12	3	8	69
Unknown	1	1	2	1	0	0	5

Of the 126 IAPs involved in these orders with known positions, 29.46% of these were senior-level IAPs, and another 15.1% were managers, with the remaining 55.4% being lower-level IAPs.

TABLE 4
OCC's 2017–2020 R&P Orders by Type of Alleged Misconduct

Type of Misconduct Involved	2017	2018	2019	2020	2021	2022	Total
Embezzlement	8	14	5	5	3	1	40
Cash theft	4	8	7	10	3	2	34
Other	7	13	9	4	8	5	57

Table 4 shows that of the 131 OCC R&P orders issued during this period, 56.5% pertain to allegations of cash theft and embezzlement. For the same reasons stated with respect to the Board's R&P orders, the discussion below focuses on the remaining 57 R&P orders involving other types of alleged IAP misconduct. Given the large volume of OCC R&P orders, below is a summary of the most significant of these decisions and orders.

a. The OCC's R&P Orders Alleging Failure to Manage and Supervise

On June 20, 2018, the OCC issued a R&P, with a \$25,000 CMP assessment, against Cyndi Wilkinson (“Wilkinson”), former SVP, Trust Officer and Regional Manager, BOKF, N.A., alleging that Wilkinson failed to (1) adequately supervise bank employees within the trust department, which she managed, (2) take appropriate action upon receiving notice that employees, including those she directly supervised, engaged in violations of law and unsafe or unsound practices, and (3) notify bank management that the administration of certain accounts was in violation of law, policy, and governing documents.⁹⁵

On January 22, 2020, the OCC issued a R&P order, with a \$17.5 million CMP assessment, against John Stumpf (“Stumpf”), former CEO and Chair of the Board, Wells Fargo, alleging that Stumpf (1) was, or should have been aware, that the bank’s sales practices misconduct was caused by the business model of the bank’s Community Bank, which imposed unreasonable sales goals on its employees, along with unreasonable pressure to meet these goals, (2) failed to properly supervise, and hold accountable, the Head of the Community Bank for the systemic sales practices misconduct, (3) failed adequately to respond to numerous warning signs he received regarding the sales practices misconduct at the Community Bank, and (4) remained inadequately informed about the reasonableness of sales goals and sales pressure, and the deficient controls at the Community Bank.⁹⁶ This appears to be the largest IAP CMP assessment by any of the Agencies to date. The R&P order notes that, in addition to the \$17.5 million penalty, Stumpf had forfeited a total of approximately \$70 million in bank equity-related awards, bonuses and salary, in connection with his separation from the bank.⁹⁷

On September 21, 2020, the OCC issued a R&P order, with a \$925,000 CMP assessment, against Matthew Raphaelson (“Raphaelson”), former Group Finance

⁹⁵ Wilkinson, OCC Docket No. AA-EC-2018-22 (June 20, 2018).

⁹⁶ Stumpf, OCC Docket No. AA-EC-2019-83 (Jan. 22, 2020).

⁹⁷ Currently, an OCC administrative enforcement proceeding is pending against four former Wells Fargo Bank, N.A. senior officers, arising from the bank’s sales practices misconduct. *See* Carrie Tolsted et al., Notice of Charges, OCC Docket No. AA-EC-2019-82 (Jan. 23, 2020). In this action, the OCC seeks a R&P order against Carrie Tolsted (“Tolsted”), former Head of the Community Bank, and a \$25 million CMP assessment, a R&P order against Claudia Anderson, former Community Bank Group Risk Officer, and a \$5 million CMP assessment, a C&D order against David Julian, former Chief Auditor, and a \$2 million CMP assessment, and a C&D order against Paul McLinko, former Executive Audit Director, and a \$500,000 CMP assessment.

Officer and Head of Finance/Strategic Planning, Community bank, Wells Fargo, alleging that Raphaelson (1) was or should have been aware that the bank's systemic sales practices misconduct was caused by the business model of the bank's Community Bank, (2) helped develop the Community Bank's sales incentive program that caused the misconduct, and (3) failed to undertake his oversight, governance, and risk management functions for the Community Bank.⁹⁸

On September 15, 2021, the OCC issued a R&P order, with a \$16,000 CMP assessment, against Patrick Hurley ("Hurley"), former President, CEO & Director, First National Bank in Fairfield, IW, alleging that Hurley failed to properly supervise and ensure that a bank SVP did not engage in improper lending practices and conflicts of interests.⁹⁹

b. The OCC's R&P Orders Alleging Failure to Comply with Legal and Regulatory Requirements

Reg O Violation: On December 16, 2021, the OCC issued a R&P order against Carroll Green ("Green"), former CFO and Chair of the Board, Beauregard FSB, DeRidder, LA, alleging that Green (1) obtained a \$75,000 loan from the bank for his own benefit by using a director of the bank as a borrower in name only, (2) caused the bank to approve the loan using inaccurate loan documents, and (3) failed to disclose that he was the intended beneficiary of such nominee loan, resulting in the bank's violating Reg O.¹⁰⁰

OCC C&D Order Violation: On April 10, 2018, the OCC issued two R&P orders, with CMP assessments, against Daniel Roberts ("Roberts"), former CEO, President, and Chair of the Board, with a \$175,000 CMP, and Rodrigo Garza ("Garza"), former EVP and Director, with a \$75,000 CMP, Merchants Bank of California, N.A., Carson, CA, alleging that Roberts and Garza (1) caused or participated in violations of a 2010 Consent Orders issued to the bank, and the procedures for monitoring BSA compliance, (2) failed to take the necessary actions to ensure that the bank corrected the deficiencies resulting in the violations of these orders, and (3), with respect to Roberts, caused the bank's risk profile to increase by recruiting higher-risk businesses as clients, without ensuring the bank had a commensurate BSA/AML program to manage such risk.¹⁰¹

⁹⁸ Raphaelson, OCC Docket No. AA-EC-2020-53 (Sept. 21, 2020).

⁹⁹ Hurley, OCC Docket No. AA-ENF-2021-37 (Sept. 15, 2021).

¹⁰⁰ Green, OCC Docket No. AA-ENF-2021-52 (Dec. 17, 2021). The OCC issued Green a separate \$5,000 CMP assessment on August 19, 2019.

¹⁰¹ Roberts, OCC Docket No. AA-EC-17-74 (Apr. 10, 2018); Garza, OCC Docket No. AA-EC-2017-75 (Apr. 16, 2018).

c. The OCC's R&P Orders Alleging Improper Banking, Lending, and Sales Practices

Improper Banking Practices: On February 17, 2017, the OCC issued a R&P order, with a \$5,000 CMP assessment, against Marrien Neilson (“Neilson”), former SVP, Regional Manager and National Sales Consultant, BOKF, N.A., Tulsa, OK, alleging that Neilson (1) permitted the use of debt service reserves established for certain bonds for which the bank served as trustee without either proper notice to the bondholders or setting a plan for replenishment of the reserve accounts, (2) failed to declare a default pursuant to the terms of the bonds, (3) accepted instructions regarding forbearance agreements for specific bond requirements from a party not authorized to provide them, and (4) authorized payments by the bank to bondholders prior to ensuring that funds had been received from the borrower.¹⁰²

On September 12, 2018, the OCC issued a R&P order, with a \$100,000 CMP assessment, against Dircue Magalhaes (“Magalhaes”), former Private Banking Sr. Manager, Royal Bank of Canada, Miami Federal Branch, Miami, FL, alleging that Magalhaes made international funds transfers for high-risk customers, through an informal network, with no record-keeping, and failed to conduct adequate due diligence on these transactions.¹⁰³

Improper Lending Practices On September 6, 2017, the OCC issued a R&P order, with a \$5,000 CMP assessment, against Edward Fitzgerald (“Fitzgerald”), former President, The National Republic Bank of Chicago, Chicago, IL, alleging that Fitzgerald hid loan delinquencies, issued a \$25 million loan, despite problems with collateral, caused the bank to repurchase a substandard loan, and permitted a customer to keep large overdrafts.¹⁰⁴

On October 25, 2017, the OCC issued two R&P orders, each with a \$75,000 CMP assessment, against former senior officers of First National Bank, Edinburg, TX. The OCC issued the first against Michael McCarthy (“McCarthy”), former CLO and Director, and issued the second against Robert Gandy (“Gandy”), former President, CEO and Director, alleging that McCarthy and Gandy approved loans to unqualified borrowers to finance the purchase of bank stock and OREO assets and made improper accounting entries in the bank’s books.¹⁰⁵

¹⁰² Neilson, OCC Docket No. AA-CE-2017-1 (Feb. 16, 2017).

¹⁰³ Magalhaes, OCC Docket No. AA-EC-2018-54 (Sept. 18, 2018).

¹⁰⁴ Fitzgerald, OCC Docket No. AA-EC-2017-20 (Sept. 6, 2017).

¹⁰⁵ McCarthy, OCC Docket No. AA-EC-2017-47 (Oct. 25, 2017); Gandy, OCC Docket No. AA-EC-2017-46 (Oct. 25, 2017).

On October 28 and November 3, 2022, the OCC issued three R&P orders against (1) Amy Lu (“Lu”), former Loan Officer (October 28), (2) YiHou Han (“Han”), former VP and Managing Director for Residential Lending (October 28), and (3) Tina J. Chen (“Chen”), Residential Loan Officer (November 3), Sterling Bank and Trust, FSB, Southfield, MI, alleging that Lu, Han and Chen falsified mortgage loan applications, created false supporting documentation, including employment verifications, gift letters, and borrowers ratios.¹⁰⁶

d. The OCC’s R&P Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties

On March 24, 2017, the OCC issued a R&P order, a C&D restitution order for \$1.6 million, and a \$100,000 CMP assessment, against Archie Overby (“Overby”), former CEO, President and Chair of the Board, First National Bank Waupaca, WI, alleging that Overby caused the bank to pay him (1) excessive compensation, a total of \$3,573,000 between 2010 and 2014, and (2) medical and personal expenses, a total of \$1,620,514, which included the bank’s payment of \$332,930 to cover his personal income taxes.¹⁰⁷

On November 21, 2017, the OCC issued a R&P order, with a C&D with restitution of \$100,000 to the bank, against Tom Whitehead (“Whitehead”), former CFO and Director, One Bank and Trust, N.A., Little Rock, AK, alleging that Whitehead (1) caused the bank to pay expenses related to the purchase of a condominium for the personal benefit of the bank’s CEO. (2) participated in the CEO’s misappropriation of \$765,130 in sale proceeds of a bank-owned condominium and the concealment of the transactions on the Bank’s records, and (3) caused the bank to make residential mortgage loans to the CEO’s children based on false income and employment information.¹⁰⁸

On May 22, 2018, the OCC issued a R&P order, with a \$10,000 CMP assessment, against Justin Schwartz (“Schwartz”), former SVP and Market President, Nebraska Land National Bank, North Platte, NE, alleging that Schwartz (1) received four personal loans, ranging from \$2,500 to \$143,000, from bank

¹⁰⁶ Lu, OCC Docket No. AA-ENF-2022-53 (Oct. 28, 2022); Han, OCC Docket No. AA-ENF-2022-52 (Oct. 28, 2022); Chen, OCC Docket No. AA-ENF-2022-50 (Nov. 3, 2022). *See* United States v. Amy Lu, No. 2:21-cr-00084 (C.D. Cal., Apr. 13, 2021), and United States v. YiHou Han, No. 2:21-CR-202256 (C.D. Cal. May 19, 2021) (Lu and Han pleaded guilty to bank fraud for their actions at the bank).

¹⁰⁷ Overby, OCC Docket No. AA-EC-2016-27 (Mar. 24, 2017). *See* Notice of Charges, Overby, OCC Docket No. AA-EC-2016-27 (June 30, 2016).

¹⁰⁸ Whitehead, OCC Docket No. AA-EC-2017-61 (Nov. 21, 2017).

customers, while serving as their loan officer, and failed to disclose his financial relationship with these customers, (2) made material changes to loan terms without authorization, and failed to record the modifications on the bank's books, (3) caused the bank to originate loans that misstated the purpose of the loans, (4) made false statements to customers regarding the status of loans, (5) forged a customer's signature on two modification agreements, and (6) altered a customer's personal financial statement.¹⁰⁹

On October 13, 2020, the OCC issued a R&P order, with a \$25,000 CMP assessment, against David Monegro ("Monegro"), former SVP, Sr. Compliance and BSA Officer, City National Bank of New Jersey, Newark, NJ, alleging that Monegro (1) failed to upgrade the bank's BSA compliance program to account for increased risk to the bank and failed to report to the bank \$35,000 in compensation Monegro received from a bank consultant he supervised.¹¹⁰

On September 16, 2021, the OCC issued a R&P order, with a \$140,000 CMP assessment, against Jared Schultz ("Schultz"), former SVP, First National Bank in Fairfield, Fairfield, IA, alleging that Schultz made unauthorized loans (1) to bank customers to fund purchases of his own cattle, without disclosure to the bank, (2) to his business partner, without disclosure to the bank that their business benefited from such loans, (3) based on inaccurate or false documents that overvalued the collateral, (4) totaling over \$800,000 to a substandard bank customer, without proper underwriting, with a bank loss over \$1.2 million, and (5) purchased property from a bank customer and released the bank's collateral interest in the property.¹¹¹

On August 18, 2022, the OCC issued a R&P order, with a \$100,000 CMP assessment, against James Ratcliff ("Ratcliff"), former EVP & Vice Chair of Board, The First National Bank and Trust Company of Vinita, Vinita, OK, alleging that Ratcliff (1) caused the bank to engage and pay numerous entities he owned, as third-party vendors, without disclosure to the bank of his ownership (2) participated in setting the financial arrangements between the bank and these entities, (3) failed to ensure that services provided by third-party vendors were properly tracked and documented, (4) failed to ensure employee compensation was commensurate with the employees' responsibilities and actual work performed, (5) directed bank employees and contractors to perform work for his entities at the bank's expense, and (6) approved and/or originated multiple unsafe or unsound loans.¹¹²

¹⁰⁹ Schwartz, OCC Docket No. AA-EC-2018-29 (May 22, 2018).

¹¹⁰ Monegro, OCC Docket No. AA-EC-2020-19 (Oct. 13, 2020).

¹¹¹ Schultz, OCC Docket No. AA-ENF-2021-36 (Sept. 16, 2021).

¹¹² Ratcliff, OCC Docket No. AA-ENF-2022-32 (Aug. 18, 2022).

On September 23, 2022, the OCC issued a R&P order, with a \$70,000 CMP assessment, against H. Dee Robison (“Robison”), former CEO, President & Director, The First National Bank and Trust Company of Vinita, Vinita, OK, alleging, inter alia, that Robison (1) failed to disclose conflicts of interests to the bank board and to recuse himself from decisions on loans to entities in which he held an interest, (2) failed to ensure third-party vendors, including those he had an interest in, properly documented the work they performed for the bank, (3) failed to ensure the bank performed appropriate diligence before engaging such service providers, (4) approved and/or originated multiple unsafe or unsound loans, and (5) originated loans to cover customers’ overdrafts and overdraft fees.¹¹³

On November 8, 2022, the OCC issued a R&P order against Tommy Skaggs, Jr. (“Skaggs”), former Loan Officer, The Lincoln National Bank of Hodgenville, Hodgenville, KY, alleging that Skaggs originated loans for family members, which contained false information and originated a loan for a business associate and, with false applicant information, with Skaggs using part of the loan proceeds for his own benefit.

e. The OCC’s R&P Orders Alleging Misrepresentation and Other Misconduct

Misrepresentation: On February 7, 2022, the OCC issued a R&P order, with a \$100,000 CMP assessment, against Francis Eversman (“Eversman”), former President, COO and Director, Tempo Bank, FSB, Trenton, IL, alleging that Eversman (1) caused the bank to originate 15 nominee mortgage loans, totaling \$3,588,800, for the benefit of a third party, by submitting the loan package to the Loan Committee with false information, and (2) concealed the existence of the nominee loans from the bank and the OCC.¹¹⁴

On August 28 and September 1 and 12, 2022, the OCC issued R&P orders against three IAPs formerly affiliated with Washington Federal Bank of Savings, Chicago, IL (“Washington Federal”), Jane Iriondo (“Iriondo”), former Corporate Secretary, Rosallie Corvite (“Corvite”), former CFO, and Cathy Torres (“Torres”), former Loan Officer.¹¹⁵ With respect to Iriondo, the OCC alleged that she (1) altered appraisals on properties by inflating the property and comparable values,

¹¹³ Robison, OCC Docket No. AA-ENF-2022-33 (Sept. 23, 2022).

¹¹⁴ Eversman, OCC Docket No. AA-ENF-2022-1 (Feb. 7, 2022).

¹¹⁵ Iriondo, OCC Docket No. No. AA-ENF-2022-41 (Aug. 28, 2022) (includes C&D order with restitution to the bank); Corvite, OCC Docket No. No. AA-ENF-2022-38 (Sept. 1, 2022) (includes C&D order with restitution to the bank); Torres, OCC Docket No. AA-ENF-2022-42 (Sept. 12, 2022).

(2) provided false information on bank loans to the Federal Home Loan Bank, (3) participated in the creation of a fictitious loan trial balance provided to OCC, and (4) provided the OCC altered wire confirmations that showed certain unpaid loans had been paid off on certain dates. With respect to Corvite, the OCC alleged that she (1) sent an email to a bank consultant whose reports were provided to OCC, which falsely showed the maturity dates of several loans, (2) filed a Call Report which falsely understated the bank's delinquent loans, and (3) participated in the creation of a fictitious loan trial balance provided to the OCC. Finally, with respect to Torres, the OCC alleged that she altered appraisals, backdated Office of Foreign Assets Control queries and created fictitious documents provided to the OCC.

Manipulation of FX Trading Market: On January 3, 2017, the OCC issued a R&P order against Christopher Cummins ("Cummins"), former FX Trader, Citibank, N.A., alleging that Cummins, while working as an FX Trader at the bank, (1) engaged in conversations with other FX dealers at competing financial institutions, who traded similar currencies, in private electronic chat rooms, (2) entered into and engaged in a conspiracy with other FX dealers in the chat room to suppress or eliminate competition by fixing prices for certain foreign currencies, (3) coordinated on the price, size, and timing of FX bids and offers on the electronic FX trading platform, (4) agreed to refrain from trading where one or more of competing FX dealers had a stronger need to buy or sell than the others, (5) coordinated on pricing to quote to specific customers, and (6) employed measures to hide their coordinated conduct from customers and other FX market participants.¹¹⁶

iii. The OCC's Adjudicated Decisions and Orders

During the relevant period, the Comptroller issued six adjudicated Decisions of Prohibition ("DOP") against IAPs of OCC-supervised Institutions, four of which were based on IAP misconduct other than cash theft or embezzlement. In each case, the IAP defaulted on the enforcement action filed by the OCC with the Office of Financial Institutions Adjudications. These four matters are summarized below.¹¹⁷

¹¹⁶ Cummins, OCC Docket No. AA-EC-17-5 at 3 (Jan. 3, 2017) (stating that Cummins entered a guilty plea to a criminal charge of violating section 1 of the Sherman Antitrust Act).

¹¹⁷ Mulder, OCC Docket No. AA-EC-2019-43 (Sept. 3, 2020); Douglas, OCC Docket No. AA-EC-20-39 (Jan. 8, 2021); Jackson, OCC Docket No. AA-EC-2021-22 (Sept. 14, 2021); Cunningham, OCC Docket No. AA-EC-2021-11 (Sept. 21, 2021).

On September 3, 2020, the Comptroller issued a DOP, with a \$250,000 CMP assessment and \$2.36 million restitution order, against William Mulder (“Mulder”), SVP, Firststar Bank, N.A., Sallisaw, OK, determining that Mulder submitted false financial documents to the bank to secure a line of credit, including fictitious life insurance policies and trust documents. On January 8, 2021, the Comptroller issued a DOP, with a \$35,000 CMP assessment, against Denton Douglas (“Douglas”), VP of Business Banking, PNC Bank, N.A., determining that Douglas circumvented the bank’s Know Your Client controls by carrying out a plan with a third party to use a nominee account holder for 11 business accounts at the bank. On September 14, 2021, the Comptroller issued a DOP against Addisha Jackson (“Jackson”), Branch Banker, JPMorgan Chase Bank, N.A., determining that Jackson provided 19 bank customers’ confidential credit and debit card information to a third party who used the information to conduct unauthorized transactions on those customers’ accounts. Finally, on September 21, 2021, the Comptroller issued a DOP, with a \$75,000 CMP assessment, against Derline Cunningham (“Cunningham”), Branch Manager, Citizens Bank, N.A., Providence, RI, determining that Cunningham provided false bank customer account information to another bank that suffered losses after relying on this information, for which she received \$46,000 from the bank customers she assisted by providing false information.

iv. Discussion of the OCC’s IAP Enforcement Decisions and Orders

The OCC’s IAP enforcement program during this period was very active, which leads to the following observations: (1) the combined enforcement actions against the Wells Fargo IAPs stand out as a significant achievement for the program, (2) the OCC issued the largest number of IAP C&D and CMP orders among the Agencies, with most of these focused on senior-level IAPs, (3) the OCC issued the second highest number of R&P orders among the Agencies and slightly more of these were focused on senior-level IAPs than was the case for the Board, and (4) the OCC did not issue R&P orders for IAP violations of non-banking laws.

a. The OCC Enforcement Actions Against the Wells Fargo Senior Officer IAPs

The OCC’s issued enforcement orders against seven senior-level Wells Fargo IAPs for their role in the bank’s systemic sales practices misconduct during the period. The total amount of the CMP assessments against the seven IAPs was approximately \$25.7 million, which is unparalleled in the annals of IAP CMP assessments by the Agencies. First, former CEO John Stumpf paid the largest CMP

assessment, \$17 million, and agreed to a R&P order. Second, the bank's former General Counsel, James Strother, paid the second largest CMP assessment, at \$3.5 million, and agreed to a C&D order. Third, the bank's former Chief Administrative Officer and HR Director, Hope Hardison, agreed to a \$2.25 million CMP assessment and a C&D order. Fourth, the bank's former Chief Risk Officer, Michael Loughlin, agreed to a \$1.25 million assessment and a C&D order. These enforcement actions against the most senior officers of one of the top-tier banking organizations in the U.S. are unprecedented.

Moreover, the OCC has not completed its Wells Fargo senior officer IAP enforcement activity, as it is currently seeking R&P orders and large CMP assessments against four other former Wells Fargo executives.¹¹⁸ The status of the OCC's action against Tolstedt is unclear at this time, but she is the subject a parallel SEC action, arising from the same alleged misconduct at the bank.¹¹⁹ When these cases are concluded, it is possible that the OCC will have successfully concluded actions against 11 former Wells Fargo senior officers, and recovered over \$50 million in CMP from these IAPs. Again, such large individual recoveries and sweeping steps to make an example of these IAPs are unprecedented.

b. The OCC Issued the Most C&D and CMP Orders Among the Agencies

During the period, the OCC issued 50 IAP C&D orders, each with CMP assessments, and 23 separate CMP orders. Sixty-five of these 73 orders were directed at senior-level IAPs, including 24 bank directors. The average CMP collected, putting aside the Wells Fargo CMP assessments, was \$11,600 per order. The Wells Fargo assessments total \$7.75 million, which certainly places them in a different category from the other 66 OCC CMP assessments during the period in question. The OCC issued its C&D and CMP orders for an array of misconduct as shown on Table 5 below.

¹¹⁸ Report and Recommendation - Executive Summary, Tolstedt et al., OCC AA-EC-2019-82, OCC AA-EC-2019-81, OCC AA-EC-2019-70, OCC AA-EC-2019-71, OCC AA-EC-2019-72; *see supra* note 97.

¹¹⁹ *See* Sec. & Exch. Comm'n v. Tolstedt, 545 F. Supp. 3d 788, 796 (N.D. Cal. 2021).

TABLE 5
OCC's 2017–2022 C&D and CMP Orders by Type of Alleged Misconduct

Failure to supervise staff	5
BSA violations	6
Reg O violations	2
Violations of OCC Consent Orders	17
Improper accounting practices	1
Improper banking practices	14
Improper sales practices	4
Conflicts of interest & breach of fiduciary duties	11
Misrepresentations	2
Miscellaneous	11
Total	73

The OCC demonstrated the importance it placed on BSA and OCC Consent Order compliance by focusing 23 of its 73 orders specifically on those two areas. Finally, the OCC issued eleven C&D orders to address IAP conflicts of interest and breaches of fiduciary duties and, in some cases, preferred this approach, as opposed to the Board's use of R&P orders to address such misconduct.¹²⁰

c. The OCC Issued a Large Number of R&P Orders, and Most of These Focused on Lower-Level IAPs, and Included the Highest Average CMPs

The OCC issued a total of 131 R&P orders against IAPs during this period. Of these, 73% focused on lower-level IAPs, including managers. Of the OCC R&P orders reviewed, 82% of them included CMP assessments. The average CMP assessment for these OCC R&P orders was \$132,500, excluding two Wells Fargo R&P orders issued during this period with outsized CMP assessments, one to John Stumpf for \$17.5 million and the other to Matthew Raphaelson for \$950,000. This average CMP assessment is far greater than the \$11,600 average CMP assessment of the OCC's C&D orders.

¹²⁰ Compare Smith & Kiolbasa, *supra* note 33 (the Board's R&P orders against Frank Smith and Mark Kiolbasa), with Strother, *supra* note 83, Swon, *supra* note 86, Means, *supra* note 87, and Elkins, *supra* note 89 (the OCC's C&D orders against Timothy Perry, Joshua Means, Stacy Folkers, Jeffrey Wettstein and Michael Shara).

d. The OCC Did Not Issue R&P Orders for IAP Violations of Non-Banking Laws

Unlike the Board and to a lesser extent than the FDIC, the OCC did not issue R&P orders during the period based on IAPs' violations of non-banking laws. Conversely, the Board issued 15 R&P orders for IAPs' violations of both the CARES Act and the FCPA. The FDIC issued one R&P order alleging a CARES Act violation and another alleging a violation of the Investment Advisors Act (the "Advisors Act").¹²¹

C. The FDIC IAP Enforcement Decisions and Orders

i. The FDIC's IAP C&D Orders and Orders to Pay

Between 2017 and 2022, the FDIC issued a total of 23 IAP C&D orders and Orders to Pay ("OTP"). Below is a summary of the most significant ones, organized in the same order as the C&D orders of the other Agencies.

a. The FDIC's C&D Orders and OTP Alleging IAP Failure to Manage and Supervise

On February 14, 2017, the FDIC issued an OTP, with a \$30,000 CMP assessment, against Jorge Figueroa ("Figueroa"), the Executive Vice President of Corporate and International Banking at Banamex USA in Center City, California, alleging that Figueroa failed to ensure his staff fully complied with the BSA and implement regulations.¹²² On September 27, 2017, the FDIC issued eight separate C&D orders, each one directed at a separate director of Vantage Point Bank in Horsham, Pennsylvania, including Jess Amchin, Parag Amin, Michael Brenner, Marshal Granor, Lawrence Isaacman, Gayla McCluskey, Anil Patel, and Mehul Patel (collectively the "Directors").¹²³ In the orders, the FDIC alleged that the Directors failed to (1) ensure that the bank's mortgage department had qualified management, (2) supervise management by ensuring that appropriate policies and controls were established and implemented, and (3) provide sufficient independent

¹²¹ See 15 U.S.C. § 80b-1-21.

¹²² Figueroa, *supra* note 2.

¹²³ Amchin, FDIC Order No. FDIC-17-0138b (Sept. 27, 2017). The seven other Vantage Point Bank orders also issued on September 27, 2017 are found in the following FDIC dockets: Amin, No. 17- 0139b; Brenner, No. 17-0140b; Granor, No. 17-0141b; Isaacman, No.17-0143b; McCluskey, No. 17-0144b; Patel, No. 17-0142b; and Patel, No. 17-0145b.

reviews and audits of this function. Finally, on April 21, 2020, the FDIC issued a C&D order against John Harter (“Harter”), President and CEO of Allendale County Bank in Fairfax, South Carolina, alleging that Harter failed to develop and implement effective procedures and controls to ensure that correspondent accounts were timely and accurately reconciled and to monitor for suspicious activity.¹²⁴

b. The FDIC’s C&D Orders and OTP Alleging Failure to Comply with Legal Requirements

Reg O Violation: On May 18, 2018, the FDIC issued an OTP, with a \$15,000 CMP assessment, against Robert Fick (“Fick”), a Director at Valley Bank in Moline, Illinois, alleging that Fick violated Reg O, in connection with certain loans issued to him from the bank and his related interests, but with no loss to the bank.¹²⁵ On August 5, 2019, the FDIC issued a C&D order, with a \$10,000 CMP assessment, against Edward Hanson (“Hanson”), the CFO and Director of Crown Bank in Edina, Minnesota, alleging that Hanson violated Reg O, by assisting the former bank CEO to execute and conceal certain transactions that violated Reg O’s restrictions on extensions of credit to bank insiders and that he failed to report to the bank the former CEO’s misappropriation of funds from a third-party’s bank account.¹²⁶

Potential Violation of Section 23A of the Federal Reserve Act: On August 9, 2019, the FIDC issued a C&D order, with a \$25,000 CMP assessment, against Carlos Montoya (“Montoya”), the President and CEO of Aztec American Bank in Berwyn, Illinois.¹²⁷ The FDIC alleged that Montoya caused the bank to inject funds into its holding company by approving bank payments to two bank employees so they would be able to buy stock in the bank’s holding company, which could be deemed to have violated section 23A of the Federal Reserve Act.¹²⁸

c. The FDIC’s C&D Order Alleging Improper Banking Practices

On January 7, 2019, the FDIC issued a C&D order, with a \$15,000 CMP assessment, against Wayne Hoffner (“Hoffner”), the President and Loan Officer of The Union Bank in Beulah, North Dakota, alleging that Hoffner failed to disclose to both the bank’s board and the FDIC the purpose of certain loans, after

¹²⁴ Harter, FDIC Order No. FDIC-18-0129b (Apr. 21, 2020).

¹²⁵ Fick, FDIC Order No. FDIC-17-0172 (May 18, 2018).

¹²⁶ Hanson, FDIC Order No. FDIC-19-0047b, 19-0046k (Aug. 5, 2019).

¹²⁷ Montoya, FDIC Order No. FDIC-19-036k, 0035b (Aug. 9, 2019).

¹²⁸ 12 U.S.C. § 371b-2.

becoming aware that the proceeds were not to be used for their intended purposes as well as releasing collateral to a loan, which made it unsecured.¹²⁹

d. The FDIC's C&D Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties

On October 14, 2022, the FDIC issued a C&D order against Joshua Tye (“Tye”), a Loan Officer at TBK Bank, SSB in Dallas, Texas, alleging that Tye originated loans in which he had a personal interest, which he did not disclose to the bank, including loans proceeds that were paid for his benefit. On December 3, 2019, the FDIC issued a C&D order against Kimberly Owen (“Owen”), a Branch President and Loan Officer at Peoples Bank and Trust Company in McPherson, Kansas, alleging that Owen manipulated payment due dates on loans and overdraft lines for herself and her family members, which ultimately concealed delinquencies on those credits.¹³⁰

e. The FDIC's C&D Order Alleging Misrepresentations

On June 23, 2020, the FDIC issued a C&D order against Anil Bansal (“Bansal”), the Chair of the Board of Directors of Indus American Bank in Edison, New Jersey, alleging that Bansal, without the board’s approval, finalized the purchase of real property for \$1.95 million for the bank and falsely completed a board resolution claiming that a special board meeting had authorized Bansal to complete the purchase.¹³¹

ii. The FDIC's R&P Orders

Between 2017 and 2022, the FDIC issued 202 R&P orders against IAPs at its supervised Institutions. Most of these orders focused on lower-level IAPs, as shown on Table 6.

¹²⁹ Hoffner, FDIC Order No. FDIC-17-0105b, 17-0243k (Jan. 7, 2019).

¹³⁰ Owen, FDIC Order No. FDIC-19-0146b (Dec. 3, 2019).

¹³¹ Bansal, FDIC Order No. FDIC-18-0035b (June 23, 2020).

TABLE 6
FDIC's 2017–2020 R&P Orders by IAP Employment Level

Employment Level of IAP Involved	2017	2018	2019	2020	2021	2022	Total
Senior-level IAPs	5	12	7	8	2	2	38
Managers	1	9	4	7	9	9	38
Lower-level IAPs	0	18	10	11	7	8	53
Unknown ¹³²	50	10	9	6	2	2	77

Of the 129 IAPs involved in these FDIC R&P orders for which their position is known, 29% were senior-level IAPs, another 29% were managers, and the remaining 42% were lower-level IAPs. Thus, as was the case with the Board, the FDIC's R&P orders also primarily focused on lower-level IAPs, including managers.

As shown below on Table 7, most of the FDIC's R&P orders for this period addressed IAP misconduct involving cash theft and embezzlement.

TABLE 7
FDIC's 2017–2022 R&P Orders by Type of IAP Alleged Misconduct

Type of Misconduct Involved	2017	2018	2019	2020	2021	2022	Total
Embezzlement	1	24	15	24	11	12	87
Cash theft	0	5	2	2	1	3	13
Other	7	13	9	4	8	5	46
Unknown ¹³³	48	7	4	2	0	1	56

Out of the 146 FDIC R&P orders where the alleged misconduct is known, 68.5% of the orders pertain to instances of cash theft and embezzlement. For the reasons previously noted, the discussion below focuses on the 46 FDIC R&P orders addressing other types of alleged misconduct.

¹³² Most FDIC enforcement orders in 2017 do not include information on the position of the affected IAP.

¹³³ Most 2017 FDIC IAP orders did not include information concerning the alleged misconduct involved.

a. The FDIC's R&P Orders Alleging Failure to Comply with Legal and Regulatory Requirements

BSA Violations: On February 14, 2017, the FDIC issued a R&P order against Francisco Moreno (“Moreno”), with an unknown position, Banamex, USA, Center City, CA, alleging that Moreno caused the bank to violate the BSA.¹³⁴ On the same date, the FDIC issued two other R&P orders against other Banamex IAPs, for similar alleged misconduct. The first was issued against the bank’s CEO and Chair of the Board, Salvador Villar, with a \$90,000 CMP assessment.¹³⁵ The FDIC issued a second R&P order against Donald Noseworthy, with an unknown position, with a \$70,000 CMP assessment.¹³⁶ On August 5, 2017, the FDIC issued a R&P order against Helen Popovic (“Popovic”), Assistant Vice President (“AVP”) of Operations and BSA, Edgebrook Bank, Chicago, IL, alleging that Popovic violated the BSA, by using her control and supervision over the bank's deposit operations and BSA reporting functions to facilitate and conceal scams perpetrated by bank customers.¹³⁷

CARES Act Violation: On April 19, 2022, the FDIC issued a R&P order against Azhar Rana (“Rana”), with an unknown position, Lakeland Bank, Newfoundland, NJ, alleging that Rana violated the CARES Act, by submitting a fraudulent application for and later obtaining a Federal Paycheck Protection Program loan of approximately \$5.6 million.¹³⁸

FDIC C&D Order Violation: On April 3, 2018, the FDIC issued a R&P order against John Ptak (“Ptak”), President, CFO and Director, Edgebrook Bank, Chicago, IL,, alleging that Ptak violated an FDIC C&D Order issued on May 31, 2012, by engaging in lending practices after being prohibited from doing so.¹³⁹ The FDIC alleged that Ptak engaged in a scheme to hide the bank’s true financial condition. As a part of the scheme, without the knowledge or permission of the board, Ptak approved, and caused the bank to pay, and post-possessed expenses of borrowers who purchased bank-owned properties.

¹³⁴ Moreno, FDIC Order No. FDIC-16-0146e (Feb. 14, 2017).

¹³⁵ Villar, FDIC Order No. FDIC-16-0144e, 16-0145k (Feb. 14, 2017).

¹³⁶ Noseworthy, FDIC Order No. FDIC-16-0148e, 16-0149k (Feb. 14, 2017).

¹³⁷ Popovic, FDIC Order No. FDIC-16-0220e (May 5, 2017).

¹³⁸ Rana, FDIC Order No. FDIC-21-0065e (Apr. 19, 2022) (explaining Rana pleaded guilty to one count of bank fraud, and one count of money laundering, before the U.S. District Court for the District of New Jersey, for the underlying conduct leading to the R&P on July 1, 2021).

¹³⁹ Ptak, FDIC Order No. FDIC-16-0005e (Apr. 3, 2018).

FDIC's Golden Parachute Regulation Violation: On February 11, 2019, the FDIC issued a R&P order against Walter Harter, Jr. ("Harter"), CFO, EVP and Chair of the Board, Allendale County Bank, Fairfax, SC, alleging that Harter violated this regulation by causing the bank to pay him an unauthorized "golden parachute" payment, and (2) making a loan to a company which he controlled and using the proceeds to pay off family members' loans in anticipation of the bank's failure, according to the order.¹⁴⁰

Reg O Violations: On August 28, 2020, the FDIC issued a R&P order against Robert Hager ("Hager"), CEO, Border State Bank, Greenbush, MN, alleging that Hager originated loans to nominee borrowers, who then transferred the proceeds to him, and issued unauthorized letters of credit which he failed to properly account for in the bank's general ledger.¹⁴¹ On June 1, 2022, the FDIC issued a R&P order against Matthew Mensinger ("Mensinger"), SVP and Director of Lending, First Keystone Community Bank, Berwick, PA, alleging that Mensinger structured and assisted in approving three nominee loans and that he received their proceeds.¹⁴²

Advisors Act and SEC Rule Violations: On December 15, 2017, the FDIC issued a R&P order against John Rafal ("Rafal"), President, CEO & Director, Essex Savings Bank, CT, alleging that Rafal violated sections 206(1) and (2) of the Advisors Act,¹⁴³ and caused a violation of section 206(4) of the law and Securities and Exchange Commission ("SEC") Rule 206(4)-3,¹⁴⁴ by fraudulently scheming to circumvent the SEC rule regarding payments by investment advisors to third parties for client solicitations, and sending emails to clients and others falsely stating that the SEC had issued a "no action letter" completely exonerating Rafal of any misconduct.

b. The FDIC's R&P Orders Alleging Improper Banking/Lending Practices/Sales Practices

Improper Banking Practices: On February 20, 2020, the FDIC issued a R&P order, with a \$150,000 CMP assessment, against Thomas Wu ("Wu"), CEO and President, United Commercial Bank, San Francisco, CA, alleging that Wu ". . .

¹⁴⁰ Harter, FDIC Order No. FDIC-18-0165e (Feb. 11, 2019). The FDIC Golden Parachute Regulation limits or prohibits the payment of golden parachutes by troubled insured depository institutions and covered companies to bank insiders. 12 C.F.R. § 359.

¹⁴¹ Hager, FDIC Order No. FDIC-19-0003e (Aug. 28, 2020).

¹⁴² Mensinger, FDIC Order No. FDIC-21-0074e (June 1, 2022).

¹⁴³ Rafal, FDIC Order No. FDIC-14-0225e (Dec. 15, 2017); 15 U.S.C. § 80b-6 (1940).

¹⁴⁴ 17 C.F.R. § 275.206(4)-1-3.

orchestrated a scheme to manipulate information related to certain loans at the Bank in order to mask the deterioration of the Bank's loan portfolio and to delay reserving for and/or recognizing losses in that portfolio."¹⁴⁵

Improper Lending Practices: On August 18, 2018, The FDIC issued an R&P order, with a \$15,000 CMP assessment, against Robert Bortolotti ("Bortolotti"), CLO, First Choice Bank, Lawrenceville, NJ, alleging that Bortolotti (1) originated loans and extended the maturity dates on loans to substandard borrowers, (2) caused inaccurate past-due reports on the loans to be provided to the bank's board, and (3) falsified bank documents on these loans.¹⁴⁶ On September 20, 2018, the FDIC issued a R&P order against Salvatore Fratanduono ("Fratanduono"), SVP and CLO, Prudential Bank, Philadelphia, PA, alleging that Fratanduono unilaterally approved an imprudent \$625,000 loan to the bank's largest borrower, which caused a bank loss.¹⁴⁷

On February 22, 2019, the FDIC issued a R&P order against Robert Newcomb, Jr. ("Newcomb"), VP and Loan Officer, First Bank, Nashville, TN, alleging that Newcomb extended secured credit to borrowers, but the security was over-valued, did not exist, or was not owned by the borrower.¹⁴⁸ On February 22, 2019, the FDIC issued a R&P order against S. Rene Brozovich ("Brozovich"), President and Director, The Farmers and Merchants State Bank of Argonia, Argonia, KS, alleging that Brozovich extended credit to a borrower in an amount that, when added to the borrower's existing bank debt, exceeded the borrower's capacity to repay.¹⁴⁹

On June 14, 2019, the FDIC issued a R&P order against Darren Gosling ("Gosling"), EVP and CLO, FortuneBank, Arnold, MO, alleging that Gosling concealed loan losses by (1) making new loans to uncreditworthy borrowers and nominee loans, (2) inflating the value of collateral, (3) misapplying proceeds of the new loans, and (4) falsifying bank records.¹⁵⁰ On December 10, 2019, the FDIC issued a R&P order against Dana Rathje ("Rathje"), Market President and Director, Frontier Bank, Omaha, NE, alleging that Rathje (1) made loans to uncreditworthy borrowers, without proper underwriting and no reasonable expectation of repayment, (2) diverted funds from one customer's account, without approval, to

¹⁴⁵ Wu, FDIC Order No. FDIC-11-294e, 11-295k (Feb. 20, 2020).

¹⁴⁶ Bortolotti, FDIC Order No. FDIC-18-0030k (Aug. 18, 2018).

¹⁴⁷ Fratanduono, FDIC Order No. FDIC-18-0123e (Sept. 20, 2018).

¹⁴⁸ Newcomb, FDIC Order No. FDIC-18-0097e (Feb. 22, 2019).

¹⁴⁹ Brozovich, FDIC Order No. FDIC-18-0087e (Feb. 22, 2019).

¹⁵⁰ Gosling, FDIC Order No. FDIC-18-042e (June 14, 2019).

the account of another unrelated customer, and (3) extended credit in excess of his lending authority.¹⁵¹

c. The FDIC's R&P Orders Alleging Conflicts of Interest and Breaches of Fiduciary Duties

On September 20, 2018, the FDIC issued a R&P order, with a \$50,000 CMP assessment, against Thomas W. Wilder, IV (“Wilder”), President, CEO and Chair of the Board, Bank of Jackson County, Graceville, FL. The order alleged that Wilder operated a financing company he owned (“FINCO”) out of the bank’s premises, made loans from FINCO to bank customers, paid FINCO expenses with bank funds, and used bank employees for FINCO business, all without the approval from or disclosure to the board of the bank.¹⁵² On October 26, 2018, the FDIC issued a R&P order against Gregory St. Angelo (“St. Angelo”), General Counsel, First NBC Bank, New Orleans, LA, alleging that in 2016 St. Angelo received, in his capacity as General Counsel for the bank, \$150,000 of unearned attorneys’ fees, which he did not return to the bank.¹⁵³

On November 29, 2018, the FDIC issued a R&P order against Vincent Bautista (“Bautista”), Sr. Trust Officer, First International Bank & Trust, Watford City, ND, alleging that Bautista invoiced bank trust accounts he managed for services he was unauthorized to perform and obtained a loan from a trust beneficiary for his benefit, without the approval from the bank.¹⁵⁴ On January 7, 2021, the FDIC issued a R&P order against A. Riccitelli (“Riccitelli”), Loan Manager, Blue Hill State Bank, Boston, MA. The order alleged that Riccitelli originated a \$4.2 million loan, failed to disclose to the bank that the borrower was a personal creditor of his, and that the borrower’s total indebtedness, as reflected in the loan package, was inaccurate. The result was a \$3.3 million loss to the Bank.¹⁵⁵

On March 19, 2021, the FDIC issued a R&P order, with a \$15,000 CMP, against William Martin (“Martin”), VP & Loan Officer, Anderson Brothers Bank, Mullins, SC. The order alleged that Martin originated several balance increases to a commercial loan for the benefit of an acquaintance, that was not a party to the loan, generated four nominee loans for the benefit of this acquaintance, falsified

¹⁵¹ Rathje, FDIC Order No. FDIC-19-0132e (Dec. 10, 2019).

¹⁵² Wilder, FDIC Order No. FDIC-17-0169e, 17-0167k (Sept. 20, 2018).

¹⁵³ St. Angelo, Order No. FDIC-18-0059e (Oct. 26, 2018).

¹⁵⁴ Bautista, FDIC Order No. FDIC-18-0107e (Nov. 29, 2018).

¹⁵⁵ Riccitelli, FDIC Order No. FDIC-20-0127e (Jan. 7, 2021).

bank records, failed to disclose the true nature and purpose of the subject loans, and failed to properly secure collateral.¹⁵⁶

On August 27, 2021, the FDIC issued a R&P order, with a \$40,000 CMP assessment, against Catana Gray (“Gray”), VP of Corporate Trust Dept., Herring Bank, Amarillo, TX. The order alleged that Gray accepted a series of church bonds over the course of twenty-five years. The bonds were issued from a bond broker in her and her husband's name and totaled \$100,000. The bank acted as trustee, Gray paid agent and registrar, without disclosing to the bank the acceptance of the bonds.¹⁵⁷

d. The FDIC's R&P Orders Alleging Other Misconduct

On March 22, 2021, The FDIC issued a R&P order against W. Weisbrod (“Weisbrod”), with an unknown position, Lincoln 1st Bank, Lincoln Park, NJ, alleging that Weisbrod participated in a rapid-growth strategy for the bank without effective planning, adequate risk-reporting, or policy guidance, which caused financial loss to the bank.¹⁵⁸

iii. The FDIC's Adjudicated Decisions and Orders to Prohibit IAPs

The FDIC issued fourteen adjudicated decisions and orders to prohibit an IAP (“DOPs”), issued in contested or defaulted proceedings, adjudicated through an administrative proceeding before an Office of Financial Institution Adjudication Administrative Law Judge (“ALJ”). In these cases, the FDIC’s Board of Directors determines the case through a DOP after an ALJ issues a Recommended Decision. Below is a summary of some of these matters.

Reg O Violation: On October 15, 2019, the FDIC issued a DOP against Donald Watkins, Sr. (“Watkins”), Chair of the Board, Alamerica Bank, Birmingham, AL. The DOP determined that Watkins, received the proceeds from four loans the bank made to nominee borrowers in excess of the amounts permitted by Reg O over two years. Also, that he failed to inform the bank of his relationship to these loans or the proceeds.¹⁵⁹

¹⁵⁶ Martin, FDIC Order No. FDIC-19-0109e, 19-0110k (Mar. 19, 2021).

¹⁵⁷ Gray, FDIC Order No. FDIC-20-0037e, 20-0102k (Aug. 27, 2021).

¹⁵⁸ Weisbrod, FDIC Order No. FDIC-20-0132e, 20-0146b (Mar. 22, 2021) (Weisbrod consented to waive any claim to one-half of the balance of his account in the bank’s deferred compensation plan).

¹⁵⁹ Watkins, FDIC Order No. FDIC-17-0154e, 17-0155k (Oct.15, 2019).

Imprudent Banking/Lending Practices: On July 16, 2019, the FDIC issued a DOP with a \$175,000 CMP assessment against Diana Yates (“Yates”), former CFO, The Bank of Oswego, Lake Oswego, OR. The DOP determined that Yates imprudently used \$675,000 of bank funds to fund a customer’s wire transfer, originated a \$1.7 million loan to cover the transfer, aided and abetted a straw buyer’s purchase of OREO, failed to protect the bank’s collateral, made false statements to the FDIC, and made false entries in the bank’s records to conceal her actions.¹⁶⁰ Yates was found guilty of conspiracy to commit bank fraud and creating false bank entries in a separate criminal proceeding, but her conviction was vacated by the U.S. Court of Appeals for the 9th Circuit.¹⁶¹ The court of appeals overturned Yates’s conviction for bank fraud because the prosecutors argued an improper fraud theory to the jury. The court also held that the executives’ withholding of accurate information from the bank’s directors was insufficient to create the property interest necessary to uphold the conviction.

On September 17, 2019, the FDIC issued a DOP with a \$250,000 CMP assessment against Michael Sapp (“Sapp”), President, Tennessee Commerce Bank, Franklin, TN. The DOP found that Sapp sought to hide losses on a \$16 million loan by creating a shell company subsidiary to hold the loan, instead of writing off the loan, granted a loan for such amount to the subsidiary, bought a life insurance policy without regulatory approval, held the policy in another shell company, and sought to conceal his imprudent lending from the bank’s board and the regulators.¹⁶²

On December 15, 2020, the FDIC issued DOP with a \$125,000 CMP assessment against Harry Calcutt, III (“Calcutt”), President & CEO, Northwestern Bank, Traverse City, MI. The DOP found that Calcutt, imprudently increased the bank’s exposure to its largest borrower relationship to enable the borrower to make payments on his defaulted existing loans, while concealing the true nature of the transaction from the bank’s board and the regulators.¹⁶³

¹⁶⁰ Yates, FDIC Order No. FDIC-14-0213e, 14-0217k (July 16, 2019).

¹⁶¹ See *United States v. Yates*, 16 F.4th 256 (9th Cir. 2021).

¹⁶² Sapp, FDIC Order No. FDIC-13-477e, 13-478k (Sept. 17, 2019).

¹⁶³ Calcutt, FDIC Order No. FDIC-12-568e, 13-115k (Dec. 15, 2020).

iv. Discussion of the FDIC's IAP Enforcement Decisions and Orders

a. *The FDIC Issued the Highest Number of IAP Enforcement Decisions and Orders*

The FDIC issued 239 IAP enforcement decisions and orders, the highest number among the Agencies during the period. This reflects the fact that the FDIC has the largest number of IAPs under its jurisdiction. The FDIC issued 23 C&D orders and 14 DOPs, which were principally focused on senior-level IAPs and covered a broad array of misconduct. The FDIC issued 202 R&P orders during the period in question.

b. *The FDIC C&D Orders and DOPs Focused on Senior-Level IAPs and Covered an Array of IAP Misconduct*

First, fifteen of the FDIC's twenty-three C&D orders and fourteen DOPs focused on senior-level IAPs. Second, the FDIC's C&D and CMP orders covered a broad range of misconduct, including (1) failure to supervise staff, (2) violations of law and regulations, (3) improper banking practices, (4) conflicts of interest, and (5) misrepresentations. Third, five of these orders included a CMP assessment, with an average assessment at \$17,000.

c. *The FDIC's R&P Orders Were Mostly Issued Against Lower-Level IAPs and Principally Addressed Cash Theft and Embezzlement Misconduct*

The FDIC issued 71% of its 202 R&P Orders against lower-level IAPs, among those IAPs whose position is designated in the order. Of this group, 29% were managers and 42% were non-manager lower-level IAPs. Of these orders, 68.5% were for misconduct involving cash theft and embezzlement, which is significantly higher than the percentage at the Board, 19%, and slightly lower than at the OCC, with 73%.

Of the FDIC R&P orders reviewed above, twelve out of twenty-four, or 50%, were directed at senior-level IAPs and covered a broad range of alleged misconduct. Half of the twenty-four reviewed FDIC R&P orders were directed at senior-level IAPs, including five CEOs, one each of President, General Counsel, and CFO. Also, of these 24 IAPs, three did not have a position designated in their orders. The twenty-four R&P orders focused on a wide spectrum of misconduct, ranging from violations of laws and regulations, FDIC C&D Order violations, with seven dealing with improper banking and lending practices, and six with conflicts of interest and breaches of fiduciary duties.

d. The FDIC's DOP Orders Reviewed Involved Large CMP Assessments and Were Directed at Senior-Level IAPs

Of the four DOP orders reviewed, two included CMP assessments, with an average assessment of \$212,500. This amount is significantly higher than the average FDIC assessments on its R&P, C&D and CMP orders, albeit the DOP order sample is very small. The four DOP orders reviewed were directed at senior-level IAPs, one was Chair of the Board, two were Presidents, and one was a CFO. Three of the orders addressed improper banking and lending practices and the other concerned Reg O Violations.

e. The FDIC's IAP CMP Assessments on Average Were Lower Than Those of the Board and Higher Than Those of the OCC

The average FDIC IAP CMP assessment during the period was \$36,841 compared with an average of \$22,511 for the OCC (excluding the seven large Wells Fargo assessments) and \$56,000 for the Board (excluding one assessment of \$1.425 million). Thus, the FDIC is in the middle of the Agencies on this enforcement yardstick. However, the Board's figures are not as relevant in this category, as it only issued six CMP assessment during the relevant period, compared with 41 at the FDIC and 89 at the OCC.

III. REVIEW OF THE AGENCIES' IAP ENFORCEMENT PROGRAMS AND RECOMMENDED ACTIONS

A. The Agencies' C&D and CMP Orders Issued to IAPs

During the period in question, the Agencies issued C&D orders and CMP orders, including OTPs, against 108 IAPs under their jurisdiction. There were six by the Board, 73 by the OCC, including 23 CMP orders, and 23 by the FDIC. These numbers show some variance in the Agencies' approach to the use of enforcement tools, short of issuing R&P orders, with the Board issuing fewer of these orders. Conversely, the OCC, and the FDIC to a lesser extent, relied more on these orders. In the case of the OCC, its C&D and CMP orders frequently focused on senior-level IAP misconduct, with 65 out of 73 such orders, issued against them, albeit with relatively small dollar CMPs. However, a counterpoint is that the OCC, by extensively using these orders against senior level IAPs, appears to have been more lenient than the Board, in this respect. For example, in five conflict of interest cases with similar fact patterns, the OCC issued C&D orders, with minimal CMP

assessments, whereas the Board issued two R&P orders against the IAPs in question.¹⁶⁴ Nonetheless, the Board might consider increasing its C&D orders and CMP assessments, given the fact that a significantly lower percentage of its IAP enforcement actions involve these orders and CMP assessments than the other Agencies.

B. The Agencies' R&P Orders

During the period in question, the Agencies issued R&P orders against 412 IAPs under their jurisdiction, 81 by the Board, 129 by the OCC and 206 by the FDIC. Of the R&P orders reviewed here, the FDIC's and the OCC's orders consisted primarily of actions addressing misconduct involving cash thefts and embezzlement of funds, with 68.5% for the FDIC and 73% for the OCC. Conversely, only 50% of the Board's R&P orders during the period focused on cash theft and embezzlement misconduct.

The Agencies issued the vast majority of their R&P orders against lower-level IAPs of their respectively regulated Institutions, including managers below the SVP position. The Board issued 70.5%, the OCC issued 70%, and the FDIC issued 71% of their respective R&P orders against lower-level IAPs. Thus, the Agencies might consider increasing their senior-level IAP enforcement efforts. Certainly, this would require increased resources dedicated to this function, as enforcement actions against senior-level IAPs are more resource intensive, generally presenting more complex fact patterns than cases lower-level IAPs. Moreover, these cases are more likely to be contested, which involve additional resources and time to be resolved. Finally, the Agencies' R&P orders reviewed above addressed a wide range of categories of alleged misconduct, as shown on Table 8 below.

¹⁶⁴ See Schwartz, *supra* note 109.

TABLE 8

The Agencies 2017–2020 Reviewed R&P Orders by Category of Misconduct

Misconduct Category	Total	Board Orders	OCC Orders	FDIC Orders
Failure to Manage and Supervise	5	1	4	0
Failure to Comply with Laws	29	16	3	10
Improper Accounting, Banking, Lending & Sales Practices	26	11	8	7
Conflicts of Interest	22	8	8	6
Misrepresentations & Other Misconduct	14	8	5	1

C. The Agencies' IAP CMP Assessments

The OCC was the most prolific issuer of CMP assessments against its IAPs, with 89 such assessments. The FDIC issued slightly fewer than half of these, with 41, and the Board is a distant third, with six CMP assessments.

D. Recommendations for Improving the Agencies' IAP Enforcement Programs

A recent article suggests that section 8(e) of the FDI Act be amended to include a new separate basis for IAP removal and prohibition, namely, managerial and supervisory failure.¹⁶⁵ The article suggests that so long as the Agencies need to show that these IAPs knew or should have known that their actions were wrongful, current removal authority makes it nearly impossible to remove senior-level IAPs for failure to adequately manage their institutions.¹⁶⁶

Certainly, an enlargement of the Agencies' removal power would increase their ability to remove and prohibit bank executives and directors based on an objective measure of whether their institutions were adequately managed. There are, however, strong arguments weighing against such a proposal. First, one could argue that current law is sufficiently broad to allow the Agencies to remove bank executives and directors for failure to adequately manage and supervise their institutions. This is evidenced by the fact that the Agencies issued ten R&P orders during the period for such conduct. Second, it also could be argued that eliminating

¹⁶⁵ See Lin & Menand, *supra* note 43 at 73–78.

¹⁶⁶ *Id.* at 74.

the scienter requirement for bank executive and director removal would unduly expand removal authority beyond any reasonable bounds. In the final analysis, it remains for the policy makers to assess whether the Agencies' IAP enforcement efforts during the review period show the need for expansion of the Agencies' removal and prohibition powers.

This article also recommends that the Board, and by implication the other Agencies, should exercise its discretion to issue R&P orders for a limited time, instead of the current practice of lifetime removal.¹⁶⁷ Such a change in Agency practice might make the Agencies less reluctant to issue R&P orders, particularly against senior officers and directors, given their limited time. However, such change could lead to less consistency among the Agencies. Also, the Agencies would face a more difficult and burdensome administrative process of keeping up with temporary R&P orders and responding to likely IAP requests to shorten existing prohibitions.

One suggestion is for the Agencies to increase their focus on senior-level IAPs misconduct. Of course, pursuing enforcement actions against senior-level IAPs, in general, involves significantly greater resources and is more time consuming, with some matters lasting several years. Although the Agencies should continue their frequent actions against lower-level IAPs, they could give more emphasis to senior level IAP misconduct. The OCC's recent actions against the Wells Fargo senior-level IAPs demonstrate that the Agencies have the ability and legal authority to pursue senior-level IAPs for misconduct, which includes their failure to adequately manage and supervise large and complex financial organizations.

CONCLUSION

This article provides a review of the Agencies' IAP enforcement programs since 2017. It reviews 96 significant enforcement actions of the Agencies over this period, highlighting the IAPs' employment level and the factual basis of the enforcement orders. It shows that the Agencies' IAP enforcement efforts during the period reviewed were primarily focused on lower-level IAPs and on misconduct involving cash theft and embezzlement of funds. However, the Agencies' actions also showed significant focus on senior-level IAPs and more complex forms of IAP misconduct. The survey concludes with a suggestion that the Agencies should increase their focus on senior-level IAP misconduct.

¹⁶⁷ *Id.* at 72–73.