

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

In the Matter of:	)	
	)	
Capital One, N.A.	)	
McLean, Virginia	)	AA-EC-2018-62
	)	
Capital One Bank (U.S.A.), N.A.	)	
Glen Allen, Virginia	)	
	)	

CONSENT ORDER

**WHEREAS**, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over Capital One, N.A., McLean, Virginia and Capital One Bank (U.S.A.), N.A., Glen Allen, Virginia (collectively referred to as “Bank”);

**WHEREAS**, the OCC intends to initiate civil money penalty proceedings against the Bank pursuant to 12 U.S.C. § 1818(i), through the issuance of a Notice of Assessment of a Civil Money Penalty, for deficiencies in the Bank’s Bank Secrecy Act/Anti-Money Laundering (“BSA/AML”) compliance program that resulted in (1) violations of 12 U.S.C. § 1818(s) and its implementing regulation, 12 C.F.R. § 21.21, and 12 C.F.R. § 21.11 that resulted in the issuance of a consent Cease and Desist Order on July 10, 2015 (“2015 Consent Order”); (2) violations of the 2015 Consent Order; and (3) additional violations of 12 C.F.R. § 21.11 and violations of 31 C.F.R. § 1010.410(f)(1).

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, by and through its duly elected and acting Boards of Directors (“Board”), consents to the issuance of this Consent Order (“Order”), by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”); and

**NOW, THEREFORE**, pursuant to the authority vested in the OCC by Section 8(i) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(i), the OCC hereby orders that:

**ARTICLE I**

**JURISDICTION**

(1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(3) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this civil money penalty action against the Bank pursuant to 12 U.S.C. § 1818(i).

**ARTICLE II**

**COMPTROLLER’S FINDINGS**

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

(1) In the 2015 Consent Order, the Comptroller found that the Bank violated 12 U.S.C. § 1818(s) and its implementing regulation, 12 C.F.R. § 21.21 (BSA Compliance Program), and 12 C.F.R. § 21.11 (Suspicious Activity Report Filings). Specifically, the 2015 Consent Order addressed the following conduct:

(a) The Bank failed to adopt and implement a compliance program that adequately covered the required BSA/AML program elements due to an inadequate system of internal controls and ineffective independent testing, and the Bank failed to file all necessary Suspicious Activity Reports (“SARs”) related to suspicious customer activity;

- (b) Some of the critical deficiencies in the elements of the Bank's BSA/AML compliance program that resulted in a violation of 12 U.S.C. § 1818(s)(3)(A) and 12 C.F.R. § 21.21, included the following:
  - (i) the Bank lacked an enterprise-wide BSA/AML risk assessment;
  - (ii) the Bank had systemic deficiencies in its transaction monitoring systems, risk management, and quality assurance programs for its remote deposit capture services;
  - (iii) the Bank had systemic deficiencies in its customer due diligence processes and failed to have customer due diligence and enhanced due diligence policies and processes specific to Correspondent Banking; and
  - (iv) the Bank lacked a process by which BSA/AML control decisions are escalated to Risk Management.
- (c) The Bank failed to identify significant volumes of suspicious activity and file the required SARs concerning suspicious customer activities, in violation of 12 C.F.R. § 21.11.

(2) The Bank conducted look-backs pursuant to the 2015 Consent Order and related supervisory activities and, as a result, had to file additional SARs which constituted additional violations of 12 C.F.R. § 21.11.

(3) The Bank failed to timely achieve compliance with the 2015 Consent Order (from July 1, 2016 to July 6, 2017) in violation of the Order.

(4) Subsequent to the issuance of the 2015 Consent Order, the Bank failed to file additional SARs in violation of 12 C.F.R. § 21.11 and initiated wire transfer transactions which contained inadequate or incomplete information in violation of 31 C.F.R. § 1010.410(f)(1).

(5) The Bank has undertaken corrective action, and is committed to taking all necessary and appropriate steps to remedy the deficiencies identified by the OCC, and to enhance the Bank's BSA/AML compliance program.

### **ARTICLE III**

#### **ORDER FOR A CIVIL MONEY PENALTY**

(1) The Bank shall make payment of a civil money penalty in the total amount of one hundred million (\$100,000,000) which shall be paid upon the execution of this Order.

(2) Such payment shall be made by a wire transfer sent in accordance with instructions provided by the OCC and the docket number of this case (AA-EC-2018-62) shall be entered on the wire confirmation. A photocopy of the wire confirmation shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 400 7<sup>th</sup> Street, S.W., Washington, D.C. 20219.

### **ARTICLE IV**

#### **WAIVERS**

- (1) The Bank, by executing and consenting to this Order, waives:
- (a) any and all procedural rights to the issuance of a Notice of Assessment of a Civil Money Penalty pursuant to 12 U.S.C. § 1818;
  - (b) any and all procedural rights available in connection with the issuance of this Order;

- (c) any and all rights to a hearing and final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
- (d) any and all rights to seek any type of administrative or judicial review of this Order;
- (e) any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. §2412;
- (f) any and all rights to assert this proceeding, the consent to and/or the issuance of this Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) any and all rights to challenge or contest the validity of this Order.

## **ARTICLE V**

### **CLOSING**

(1) This Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the OCC, based on the violations of law described in the Comptroller's Findings set forth in Article II of this Order. The OCC releases and discharges the Bank from all potential liability for a civil money penalty order that has been or might have been asserted by the OCC based on the violations described in Article II of this Order, to the extent known to the OCC as of the effective date of the Order. Nothing in this Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions, other than a civil money penalty order against the Bank based on the Comptroller's findings set forth in Article II of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against the Bank's institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) based on the Comptroller's findings set forth in Article II of this Order, or any other findings; or
- (d) utilizing the Comptroller's findings set forth in Article II of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

(2) Nothing in this Order is a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) This Order is:

- (a) an "order issued with the consent of the depository institution" within the meaning of 12 U.S.C. § 1818(h)(2);
- (b) an "effective and outstanding . . . order" within the meaning of 12 U.S.C. § 1818(i)(1); and
- (c) a "final order" within the meaning of 12 U.S.C. § 1818(i)(2) and (u).

(4) This Order is effective upon its issuance by the OCC, through the Comptroller's duly authorized representative.



IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Capital One, N.A. have hereunto set their signatures on behalf of the Bank.

/s/  
\_\_\_\_\_  
Richard D. Fairbank

October 17, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
R. Scott Blackley

October 18, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Ann Fritz Hackett

October 17, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Lewis Hay, III

October 18, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Benjamin P. Jenkins III

October 16, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Peter Thomas Killalea

October 17, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Mayo A. Shattuck III

October 17, 2018  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Sanjiv Yajnik

October 17, 2018  
\_\_\_\_\_  
Date



IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Capital One Bank (U.S.A.), N.A. have hereunto set their signatures on behalf of the Bank.

/s/  
Richard D. Fairbank

October 17, 2018  
Date

/s/  
R. Scott Blackley

October 16, 2018  
Date

/s/  
Aparna Chennapragada

October 18, 2018  
Date

/s/  
Pierre E. Leroy

October 17, 2018  
Date

/s/  
Peter E. Raskind

October 16, 2018  
Date

/s/  
Bradford H. Warner

October 17, 2018  
Date

/s/  
Catherine G. West

October 17, 2018  
Date

/s/  
Michael J. Wassmer

October 17, 2018  
Date