FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of HARRY C. CALCUTT III, WILLIAM GREEN, AND RICHARD JACKSON, individually and as institution-affiliated parties of NORTHWESTERN BANK TRAVERSE CITY, MICHIGAN (INSURED STATE NONMEMBER BANK)	NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION, NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER TO PAY, AND NOTICE OF HEARING FDIC-12-568e FDIC-13-115k

The Federal Deposit Insurance Corporation ("FDIC") has determined that Harry C. Calcutt III, William Green, and Richard Jackson (collectively, "Respondents"), individually and as institution-affiliated parties of Northwestern Bank, Traverse City, Michigan ("Bank"), have directly or indirectly participated or engaged in unsafe or unsound banking practices and breaches of their fiduciary duties; that Respondents' actions were part of a pattern of misconduct; and that their unsafe and unsound practices and breaches of fiduciary duties: (1) caused the Bank to suffer financial loss or other damage; (2) with respect to Respondent Calcutt, provided financial gain or other benefit; and (3) evidence personal dishonesty and

demonstrate Respondents' willful or continuing disregard for the safety or soundness of the Bank.

The FDIC, therefore, instituted this proceeding for the purpose of determining whether appropriate orders should be issued against Respondents under the provisions of section 8(e), removing them from office and prohibiting them from further participation in the conduct of the affairs of the Bank, and any other insured depository institution or organization listed in section 8(e)(7)(A) of the Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written approval of the FDIC and such other appropriate Federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the Act, 12 U.S.C. § 1818(e)(7)(D), and under the provisions of 8(i)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §§ 1818(e) & 1818(i)(2), ordering them to pay civil money penalties.

The FDIC hereby issues this NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION pursuant to section 8(e) of the Act, 12 U.S.C. § 1818(e) and the FDIC's Rules of Practice and Procedure ("FDIC's Rules"), 12 C.F.R. Part 308; and NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES, FINDINGS OF FACT AND CONCLUSIONS OF LAW AND ORDER TO PAY pursuant to section 8(i)(2)(B) of the Act, 12 U.S.C. § 1818(i)(2)(B), and

the FDIC's Rules, 12 C.F.R. Part 308.[1]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. Preliminary Allegations

A. Jurisdiction

1. At all times pertinent to this proceeding, the Bank was a corporation existing and doing business under the laws of the State of Michigan, having its principal place of business at Traverse City, Michigan. The Bank was, at all times pertinent to this proceeding, an insured State nonmember bank, subject to the Act, 12 U.S.C. §§ 1811-1831aa, the Rules and Regulations of the FDIC, 12 C.F.R. Chapter III; and the laws of the State of Michigan.

2. At all times pertinent to this proceeding, each of the Respondents was an "institution-affiliated party" as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and for purposes of sections 8(e)(7), 8(i) and 8(j) of the Act, 12 U.S.C. §§ 1818(e)(7), 1818(i) and 1818(j).

3. The FDIC has jurisdiction over the Bank, Respondents, and the subject matter of this proceeding.

B. Respondents

4. At all times pertinent to this proceeding, Harry C. Calcutt III ("Calcutt") served as the Bank's president and chief

[1] The NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION and the NOTICE OF ASSESSMENT OF CIVIL MONETARY PENALTIES are collectively referred to in this document as the "NOTICE."

executive officer and as the chairman of the Bank's board of directors. He was also at all times a member of the Bank's senior loan committee.

5. At all times pertinent to this proceeding, William Green ("Green") served as a commercial loan officer for the Bank and a member of the Bank's classified asset committee.

6. At all times pertinent to this proceeding, Richard Jackson ("Jackson") served as the Bank's executive vice president and as a member of the Bank's board of directors. He was also a member of the Bank's senior loan committee, classified assets committee, and asset liability committee.

II. Respondents' Handling of Troubled Loan Relationship

A. Beginning of Troubled Loan Discussions

7. Beginning in August 2009, a representative of a group of the Bank's loan customers, collectively controlled by the [redacted] of Traverse City (the "[redacted] Entities"), made the Bank aware of significant financial difficulties they were facing.

8. The [redacted] Entities consisted of nineteen separate limited liability companies. Between them, the various entities had approximately $38,000,000 in loans at the Bank, representing close to 50% of the Bank's Tier One capital, as of August 2009

(collectively, "[redacted] Loans"), representing by far the Bank's largest loan relationship.

9. The [redacted] Entities represented a long-standing loan relationship for the Bank, having been customers of the Bank for several years prior to 2009.

10. Green was the loan officer assigned to all of the [redacted] Entities.

11. In an August 2009 email to Green, a representative of the [redacted] Entities advised the Bank that the [redacted] Entities were facing significant financial difficulties and needed to restructure their loans.

12. Several of the [redacted] Loans were due to mature on September 1, 2009, and as of that date, the [redacted] Entities stopped making payments on all of the [redacted] Loans.

13. Between August 2009 and December 2009, Green and Calcutt participated in extensive discussions and negotiations in an effort to reach an agreement on loan terms for each of the [redacted] Entities.

14. During this time period, Jackson also participated in internal Bank discussions with Calcutt and/or Green, as Respondents attempted to reach an agreement on loan terms for each of the [redacted] Entities.

15. In November 2009, Respondents were aware that the Bank's largest lending relationship, the [redacted] Entities, were approaching 90 days past due, at which time they would automatically be placed on non-accrual status.

16. In late November 2009, Respondents finally reached an agreement with the [redacted] Entities.

17. Pursuant to the agreement, consented to by each of the Respondents, the Bank agreed to extend to one of the [redacted] Entities, [redacted], an additional $760,000 loan and to release $600,000 in certain investment-trading funds in which the Bank held a collateral interest (collectively, the "[redacted] Transaction").

18. The purpose of the [redacted] Transaction was to provide the funding necessary to bring current all of the past-due loans to the [redacted] Entities and to provide a reserve sufficient to make payments for all of the loans to extend well into 2010.

19. Respondents agreed to establish deposit accounts for the [redacted] Entities with the understanding that the proceeds of the [redacted] Transaction would be deposited in such accounts and that the funds would thereafter be used to fund payments on each of the [redacted] Loans.

20. Each of the Respondents consented to the [redacted] Transaction and was aware of its purpose.

21. On November 30, 2009, just prior to the finalization of the [redacted] Transaction, a majority of the [redacted] Loans reached 90 days past due and were automatically placed on nonaccrual.

22. The same day, the [redacted] Entities paid $600,000, the amount of collateral released by the Bank, for the September, October, and November payments due on the outstanding [redacted] Loans, thus bringing all loans current.

23. On December 1, 2009, the [redacted] Loans were taken off nonaccrual.

24. Between November 25, 2009 and December 3, 2009, Respondents agreed to renew all of the matured [redacted] Loans. To avoid any gaps in the loan documentation, the renewal documents were backdated to September 1, 2009.

25. The Bank funded the loan to [redacted] on December 14, 2009.

26. Respondents completed the [redacted] Transaction and the renewal of approximately $30 million in loans to the [redacted] Entities without obtaining any updated appraisals or financials from the [redacted] Entities and without performing a global cash flow analysis or a global collateral analysis. In doing so, Respondents ignored well-documented criticism from regulators

during April 2008 and April 2009 examinations regarding the failure to obtain such information.

B. Failure to Follow Bank Policy Regarding Loan Approvals

27. It is the Bank's policy and practice to require loans in excess of $750,000 to be approved by the Bank's senior loan committee and the board of directors.

28. Respondents did not submit the [redacted] Transaction to the board of directors in December 2009 or discuss the [redacted] Transaction with board members at the Bank's December 2009 board meeting.

29. Likewise, Respondents did not present the renewals of all the matured [redacted] Loans in late November/early December 2009 to the board for review or discuss them at the November 2009 or December 2009 board meetings.

30. One of the renewed loans was a $4,500,000 loan to [redacted].

31. In March 2010, based on information that Green provided, the Bank's credit manager prepared a belated loan write-up for presentation to the board of directors regarding the $4,500,000 loan renewal. Inconspicuously placed in the middle of the description for this transaction, the loan write-up stated that "[a]s part of this renewal, $600,000 of [collateral] funds will be released" and "[i]n addition a new

loan of $760,000 is requested to provide for working capital requirements ….”

32. The assertion in the loan write-up that the $760,000 loan was to provide for working capital requirements was false.

33. Respondents knew that the [redacted] Loan was not going to be used for “working capital requirements” and that, along with the proceeds of the collateral released, it was being, and would continue to be, used to keep all of the [redacted] Loans current.

34. The March 2010 loan write-up also failed to state that the $4,500,000 existing loan renewal, the $760,000 loan, and the $600,000 collateral release had all, in fact, been completed three months earlier.

35. Respondents knew that the $4,500,000 existing loan renewal, the $760,000 loan, and the $600,000 collateral release had all been completed three months earlier.

36. The loan materials presented to the board in March 2010 made no reference to any of the underlying circumstances that led to the [redacted] Transaction.

37. Thus, as of March 2010, the board had not been made aware, either in writing or at any of the preceding monthly board meetings, that: (i) the [redacted] Entities, the Bank’s largest loan relationship, were having significant financial

difficulties; (ii) they had gone several months without making any payments on any of their loans; (iii) lengthy negotiations had taken place between senior bank management and the [redacted] Entities during that time; and (iv) the only reason the [redacted] loans were current at that time was because the Bank, through the [redacted] Transaction, had provided, either directly or through the release of the Bank's collateral, the funds to make all of the payments dating back to September 1, 2009.

38. Calcutt and Jackson, as members of the senior loan committee, approved the March 2010 loan write-up.

C. Continued Difficulties for [redacted] Entities

39. After the [redacted] Transaction, and with the aid of the proceeds it generated, the [redacted] Entities continued to make payments on the [redacted] Loans through August 2010.

40. Several of the [redacted] Loans were scheduled to mature again on September 1, 2010.

41. At or around that time, the [redacted] Entities again advised the Bank that they were still suffering financial difficulties and that they were unable and unwilling to continue making loan payments on several of their loans.

42. As of the September 1, 2010 maturity date, the [redacted] Entities stopped making payments on all of the [redacted] Loans.

43. Between September 2010 and December 2010, Respondents all participated in negotiations with the [redacted] Entities regarding the outstanding loans, including in-person meetings with representatives of the [redacted] Entities.

44. In December 2010, Respondents reached agreement with the [redacted] Entities to an additional release of approximately $690,000 in investment-fund collateral ("December 2010 Transaction"), and the [redacted] Loans were renewed and brought current. In renewing the [redacted] Loans, Respondents granted the [redacted] Entities interest-rate reductions and other concessions.

45. As in the prior year, the released funds were again used to make payments on all of the past-due [redacted] Loans and to bring them current.

46. Although in December 2010 the board of directors approved a short-term renewal of each of the matured [redacted] Loans, Respondents did not make the board aware that several of the [redacted] Entities were continuing to experience significant financial difficulties.

47. Respondents also did not disclose to the board that they had agreed to release additional collateral in connection with the December 2010 Transaction or that the released collateral would serve as the payment source for all of the renewed loans.

48. Despite the fact that the Bank had restructured several of the [redacted] Loans, and despite Respondents' knowledge that the [redacted] Entities were experiencing financial difficulties, the Bank never internally classified or recognized any impairment for the [redacted] Loans.

49. Throughout 2010, up to and including the completion of the December 2010 Transaction, Respondents failed to perform any form of global financial analysis or global collateral analysis with respect to the [redacted] Entities.

50. In January 2011, the [redacted] Entities stopped making payments for a third time, and all of the [redacted] Loans, including the $760,000 [redacted] loan, have been in default since that time.

51. Since January 2011, the Bank has been involved in ongoing negotiations and collection efforts with the [redacted] Entities and has initiated several foreclosure proceedings in an effort to collect the amounts owed on the [redacted] Loans.

52. To date, more than $27,000,000 remains uncollected.

53. Beginning in August 2009, the overall value of the collateral securing the [redacted] Loans has significantly deteriorated, due to declining market conditions and the failure of the [redacted] Entities to maintain properties that were no longer of value to them.

III. Misrepresentations, Material Omissions, and Other Efforts to Deceive Bank Regulators

54. Beginning in late 2009, Calcutt, Green, and Jackson, acting in concert, engaged in a course of conduct that was designed to prevent regulatory authorities from discovering the impaired status of the Bank's numerous loans to the [redacted] Entities and to conceal the fact that the [redacted] Entities were interrelated.

A. Routing of Funds to Aid Concealment

55. With the knowledge and consent of Calcutt and Jackson, Green took affirmative steps to conceal the true nature of the [redacted] Transaction from the FDIC and the Office of Financial and Insurance Regulation for the State of Michigan ("OFIR").

56. Green did this by directing the [redacted] Entities not to transfer the proceeds of the [redacted] Transaction directly into the various deposit accounts that had been set up for the payment of the [redacted] Loans.

57. Rather, Green advised the [redacted] Entities to route the proceeds indirectly.

58. Following that advice, the [redacted] Entities broke down the [redacted] Transaction funds into various amounts and moved the funds in numerous transactions before depositing them in the various deposit accounts for payment on each of the [redacted] Loans.

59. As a result, when examiners subsequently reviewed the [redacted] Entities' loan files, they did not detect that the [redacted] Transaction funds were used to make payment on all of the [redacted] Loans.

60. Likewise, the complex routing of funds concealed the fact that the [redacted] Loans had all become interdependent and had been negotiated collectively by Respondents and the [redacted] Entities.

61. In setting up the transactions as they did, Respondents thus concealed the fact that the [redacted] Entities were all interrelated.

B. Missing Loan Documentation

62. Green was responsible for placing the relevant documents in the Bank's loan files for the [redacted] Loans.

63. The Bank's loan files for the [redacted] Entities did not contain the significant amount of pertinent correspondence that addressed: (i) the [redacted] Entities' stated financial difficulties; (ii) the negotiations that occurred over a period of several months, both in 2009 and again in 2010 and into 2011; or (iii) the fact that the payments which brought and kept the loans current in December 2009 and thereafter were made possible through the use of Bank funds and cash collateral that the Bank had released.

64. The absence of such documentation further concealed the nature and purpose of the [redacted] Transaction.

65. Pertinent documentation regarding the problems facing the [redacted] Entities and the Bank were kept out of the loan files during regulatory examinations and/or visitations in June 2010, February 2011, and August 2011.

C. Officer File Memoranda

66. Though pertinent correspondence was kept out of the Bank's files relating to the [redacted] Loans, in June 2010, Green drafted a number of memoranda and placed them in the loan files for certain [redacted] Entities.

67. The memoranda purported to provide status updates and loan histories, yet none of them mentioned any of the significant difficulties or negotiations that had taken place in fall 2009 leading up to the [redacted] Transaction.

68. The memoranda also misrepresented the loan histories by making statements such as, "The loan has always performed" when, in fact, the loans had been in default with no payments being made for several months in fall 2009.

69. Green drafted a file memorandum relating to [redacted] that misrepresented the purpose of that transaction, suggesting that it was for working capital to be used by one of [redacted]' subsidiaries. The memorandum also failed to

state that the actual purpose was for making payments on all of the [redacted] Loans.

70. Green placed each of these officer file memoranda in its respective loan file shortly before the FDIC's June 2010 regulatory examination began.

D. False Call Reports

71. The [redacted] Transaction and the December 2010 Transaction were completed shortly before the end of the 2009 and 2010 calendar years, respectively.

72. Both transactions disguised the true condition of the [redacted] Entities' loan portfolio and gave the false appearance that all of the [redacted] Loans were unimpaired, performing loans.

73. As a result of Respondents' concerted acts and omissions, including their failure to recognize impairment on any of the [redacted] Loans, the Bank filed false Call Reports throughout the time period from late 2009 through mid-2012.

E. November 2009 Letter to Bank's Regulators

74. In a November 14, 2009 letter from Jackson to OFIR and copied to the FDIC, Jackson provided the Bank's formal response to an OFIR examination report, which had listed several of the [redacted] Loans for Special Mention.

75. Jackson sought input from Calcutt and Green regarding [redacted] loans for the letter to the OFIR.

76. In the letter, Jackson described several of the [redacted] Loans as "performing" loans despite the fact that they were in default at the time.

77. Although Jackson's letter purported to be a status update for the [redacted] Loans, among other loans, Jackson made no mention of the fact that, at the time: (i) the [redacted] Entities had stopped payments on all of their loans; (ii) the Bank was in the midst of extensive workout negotiations that had been ongoing for more than two months; or (iii) the [redacted] Entities had described significant financial difficulties, including poor or non-existent cash flow and the reduction in value of numerous properties that served as the Bank's collateral, to the point that the [redacted] Entities were willing to give the Bank a deed in lieu of foreclosure with respect to several such properties.

78. Green and Calcutt were both aware of the false representations contained in Jackson's letter.

F. Officer's Questionnaires

79. In May 2010 and again in July 2011, Calcutt signed an Officer's Questionnaire, each time affirming, among other things, that he was not aware of any loans since the last exam

that had been renewed or extended with acceptance of separate notes for the payment of interest.

80. At the time, Calcutt knew such statements were false.

G. Temporary Sale of [redacted] Loans

81. In May 2010, the Bank sold almost $2 million of the [redacted] Loans to two affiliates of the Bank.

82. The Bank sold the loans shortly before FDIC examiners arrived for a June 2010 examination.

83. Jackson, Calcutt, and Green participated in the decision to sell the loans to the affiliate banks.

84. Jackson communicated with the affiliate banks about the loans being sold.

85. At the time of the sale, Green assured the [redacted] Entities that they would continue to deal with himself and Calcutt on the renewals of the loans being sold.

86. Green also told the [redacted] Entities that the Bank could end up buying the loans back from the affiliate banks.

87. In late September 2010, the Bank repurchased each of the [redacted] Loans that had been sold prior to the examination. At the time of repurchase, all of the loans were in default.

88. Both the sale and the repurchase of the loans were completed without the knowledge or approval of the Bank's board of directors.

H. [redacted] Loans Excluded From External Loan Review

89. On an annual basis, the Bank contracted with a third party consultant to perform external loan review of the Bank's loan portfolio.

90. In December 2009, Calcutt and Jackson agreed to pull all of the [redacted] Loans from the sample of loans to be reviewed, even though the [redacted] Entities represented the Bank's largest lending relationship.

I. Management's Response to August 2011 Examination

91. In December 2011, the Bank issued a written response, signed by Calcutt, Jackson, and other members of Bank management, to the FDIC's August 2011 examination findings.

92. In the response, management made a number of statements that Calcutt and Jackson knew to be false, including the assertion that the board of directors was "fully aware of [the [redacted] Transaction] prior to the disbursement of the loan …" and that, in December 2010, management "had every reason to believe that the [redacted] were not experiencing financial difficulty …."

J. Other Communications with Examiners

93. During the June 2010 FDIC examination, the examiners had numerous discussions with Green regarding the [redacted] Entities, but Green never disclosed the true nature and purpose

of the [redacted] Transaction or the fact that the [redacted] Entities had stopped paying on all of the [redacted] Loans for a period of months in Fall 2009 due to financial difficulties.

94. During the August 2011 joint examination by the FDIC and OFIR, examiners specifically asked Green and Jackson about the purpose of the [redacted] Transaction, the December 2010 transaction, and whether the [redacted] Entities had been experiencing financial difficulty. Green and Jackson responded that they did not know or did not remember.

95. Throughout the August 2011 examination, examiners repeatedly asked Calcutt and other members of management if there were any additional documents or correspondence relating to the [redacted] Entities, and after several such requests, Calcutt's colleague produced a separate folder of documents, which contained select correspondence from 2010 and 2011. Even though this constituted only a small portion of the pertinent correspondence from the 2009 to 2011 time period, when asked if there was any additional correspondence, Calcutt stated that there was not.

96. Jackson and Green, who were all present, did not dispute Calcutt's statement or offer any further response.

97. At the time, each of the Respondents had additional relevant correspondence and documentation in his possession.

98. In September 2011, a memorandum from Green was presented to examiners which stated that the purpose of the [redacted] Transaction was to provide working capital for a subsidiary of [redacted] and further stated that it was unknown how the funds were used by the borrower.

99. This stated purpose was consistent with the purpose identified in Green's June 2010 officer memorandum that was placed in the [redacted] loan file shortly before the FDIC's June 2010 examination.

100. Calcutt and Jackson ratified Green's September 2011 memorandum in subsequent communications with the FDIC and OFIR on more than one occasion.

101. For example, at a September 14, 2011 meeting, Calcutt represented to the FDIC and OFIR that the purpose of the [redacted] Transaction was for working capital for use by [redacted]'s subsidiary.

102. At that same meeting, examiners specifically asked Calcutt if he had any correspondence to or from the [redacted] Entities regarding the proposed use of the $760,000 loan, and Calcutt stated, "No, I don't recall any."

103. Calcutt knew this statement was false, as there had been extensive correspondence between the parties leading up to the $760,000 loan.

104. Calcutt also stated that examiners had been given all pertinent correspondence during the examination, when, in fact, substantially all correspondence relating to the [redacted] Entities had been kept out of the loan files and had not been provided to examiners.

105. When asked by examiners where the funds came from to bring all of the loans current in December 2010, Calcutt falsely stated that the funds came from the [redacted] Entities' "vast resources between oil, gas, and rentals."

106. When asked if there were any discussions with the [redacted] Entities regarding the source of funds for such payments, Calcutt said that there were no such discussions, even though such issues had been discussed extensively over the course of several months.

107. Green and Jackson were present at the September 2011 meeting, and they did not dispute any of the statements made by Calcutt or offer any other explanations.

IV. Respondents Caused Financial Loss to the Bank

108. Respondents' handling of the [redacted] Loans in 2009 and 2010 caused the Bank to suffer financial loss and placed the Bank at risk of suffering substantial additional loss.

109. Financial loss to the Bank as result of Respondents' misconduct includes the $760,000 in loan proceeds that the Bank

lent to the [redacted] Entities in connection with the [redacted] Transaction. To date, the Bank has charged off $30,000 against the $760,000 [redacted] loan and is in the process of attempting to collect a foreclosure judgment.

110. By delaying efforts to address the specific problems facing each of the [redacted] Entities, without conducting any global financial or collateral analyses, Respondents allowed the Bank's collateral position to deteriorate for more than two years in a declining real estate market. In addition, the [redacted] Entities advised the Bank in 2009 that they were not interested in continuing to incur maintenance expenses with respect to certain properties that served as collateral for the [redacted] Loans.

111. During 2009 and 2010, a number of the [redacted] properties significantly deteriorated after the [redacted] Entities stopped maintaining them, thereby negatively impacting the Bank's collateral position.

112. As of the joint September 2012 examination by the FDIC and OFIR, the Bank had recognized close to $8.5 million in loss on the [redacted] Loans, while $777,000 was doubtful, and approximately $25 million was deemed substandard.

113. In addition, the Bank has suffered significant investigation expense costs and defense costs, which directly

resulted from Respondents' intentional concealment of the true condition of the [redacted] Loans and the nature and purpose of the [redacted] Transaction and the December 2010 Transaction.

114. Because Respondents had misrepresented the condition of the Bank to the board and the regulators, the board determined that it needed to hire a third-party consulting firm to investigate the handling of the [redacted] relationship.

115. The Bank incurred nearly $1.7 million in legal fees and expenses in connection with the investigation and in defense of Respondents, including approximately $281,000 in investigation costs paid to the third-party consulting firm.

116. Finally, the Bank suffered loss as a result of having paid excessive bonus compensation to Calcutt for 2009 and 2010.

V. Financial Gain to Calcutt

117. Pursuant to his employment agreement with the Bank, Calcutt annually earned a bonus equal to 4% of the Bank's net after-tax income.

118. As a result of Respondents' effort to conceal the [redacted] Entities' troubled financial condition and their failure to recognize any impairment on any of the [redacted] Loans, the Bank's reported after-tax income was falsely inflated for 2009 and 2010.

119. The Bank's net income calculations for 2009 and 2010

were inflated due to: (a) interest income that was improperly claimed on troubled [redacted] Loans that should have been on nonaccrual at the time, and (b) inadequate provisions for loan and lease losses (ALLL), which, based on the true condition of the [redacted] loan portfolio, should have been significantly higher.

120. In 2009 and 2010, Calcutt's bonus compensation was approximately $95,000 more than it should have been, as a result of the Bank's inflated net income figures.

121. Calcutt, as a major shareholder of the Bank's holding company, also benefited when the Bank issued substantial dividends in 2010 and 2011 based on the board of directors' false perception regarding the Bank's performance and overall financial condition.

VI. Grounds for Section 8(e) Orders

122. As a result of the foregoing acts, omissions and/or practices, Respondents have engaged in unsafe or unsound banking practices in conducting the affairs of the Bank.

123. As a result of the foregoing acts, omissions and/or practices, Respondents breached their fiduciary duty to the Bank.

124. By reason of the foregoing acts, omissions and/or practices, the Bank has suffered financial loss or other damage.

125. By reason of the foregoing acts, omissions and/or practices, Calcutt received financial gain or other benefit.

126. The acts, omissions and/or practices of the Respondents alleged herein evidence the Respondents' personal dishonesty and/or demonstrate a willful or continuing disregard for the safety and soundness of the Bank.

127. By reason of the foregoing acts, omissions and/or practices, the interests of the Bank's depositors have been prejudiced.

VII. Grounds for Assessment of Civil Money Penalties

128. As a result of the foregoing facts and conclusions, the FDIC concludes that Respondents recklessly engaged in unsafe or unsound practices in conducting the affairs of the Bank.

129. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondents breached their fiduciary duty to the Bank.

130. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondents' reckless unsafe or unsound practices and/or breaches of fiduciary duty to the Bank were part of a pattern of misconduct.

131. Further, as a result of the foregoing facts and conclusions, the FDIC concludes that Respondents' reckless

unsafe or unsound practices and/or breaches of fiduciary duty to the Bank caused more than a minimal loss to the Bank.

ORDER TO PAY

By reason of the unsafe or unsound practices and/or breaches of fiduciary duty set forth in the NOTICE OF ASSESSMENT, the FDIC has concluded that a civil money penalty should be assessed against each Respondent pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2). After taking into account the appropriateness of the penalties with respect to the size of financial resources and the good faith of each Respondent, the gravity of the unsafe or unsound practices and/or breaches of fiduciary duty, and such other matters as justice may require, IT IS HEREBY ORDERED THAT:

By reason of the unsafe or unsound practices and/or breaches of fiduciary duty set forth above, a penalty of $125,000 be, and hereby is, assessed against Respondent Harry C. Calcutt III pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2); a penalty of $100,000 be, and hereby is, assessed against Respondent William Green pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2); and a penalty of $100,000 be, and hereby is, assessed against Respondent Richard Jackson pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

FURTHER ORDERED, that the effective date of this ORDER TO PAY be, and hereby is, stayed with respect to each Respondent until 20 days after the date of receipt of the NOTICE OF ASSESSMENT by each such Respondent, during which time each such Respondent may file an answer and request a hearing pursuant to section 8(i)(2)(H) of the Act, 12 U.S.C. § 1818(i)(2)(H), and section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

If any Respondent fails to file a request for a hearing within 20 days of receipt of this NOTICE OF ASSESSMENT, the penalty assessed against such Respondent, pursuant to this ORDER TO PAY, will be final and shall be paid within 60 days after the date of receipt of this NOTICE OF ASSESSMENT.

If any Respondent requests a hearing, such Respondent is also hereby directed to file an answer to the NOTICE OF ASSESSMENT within twenty (20) days from the date of service, as provided by section 308.19 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.19.

NOTICE OF HEARING

Regardless of whether any Respondent requests a hearing on the NOTICE OF ASSESSMENT and ORDER TO PAY, notice is hereby given that a hearing will be held in Grand Rapids, Michigan, commencing sixty (60) days from the date of service of the

NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION or on such date and at such place as may be set by the Administrative Law Judge appointed to hear the matter, for the purpose of taking evidence on the charges specified in the NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER PARTICIPATION and to determine whether an appropriate order should be issued under the Act.

If any Respondent requests a hearing with respect to the charges specified in the NOTICE OF ASSESSMENT and ORDER TO PAY, evidence shall also be taken on the charges specified therein at the same time and place for the purpose of determining whether said Respondent shall be ordered to forfeit and pay a civil money penalty in accordance with section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2).

The hearing will be held before an Administrative Law Judge to be appointed by the Office of Financial Institution Adjudication pursuant to 5 U.S.C. § 3105. The hearing will be public, and in all respects will be conducted in compliance with the Act, the Administrative Procedures Act, 5 U.S.C. §§ 551 - 559, and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308.

Respondents are directed to file an answer to the NOTICE OF INTENTION TO REMOVE FROM OFFICE AND PROHIBIT FROM FURTHER

PARTICIPATION within twenty (20) days from the date of service, as provided in 12 C.F.R. § 308.19 of the FDIC Rules of Practice and Procedure.

All papers to be filed or served in this proceeding shall be filed with the Office of Financial Institution Adjudication, 3501 N. Fairfax Drive, Suite VS-D8113, Arlington, VA 22226-3500, pursuant to section 308.10 of the FDIC Rules of Practice and Procedure, 12 C.F.R. § 308.10. Respondents are encouraged to file any answer electronically with the Office of Financial Institution Adjudication at ofia@fdic.gov.

Copies of all papers filed or served in this proceeding shall be served upon the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; A.T. Dill, III, Assistant General Counsel, Enforcement Section, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429-9990; and Timothy E. Divis, Regional Counsel, Federal Deposit Insurance Corporation, 300 S. Riverside Drive, Suite 1700, Chicago, Illinois 60606.

PRAYER FOR RELIEF

WHEREFORE, the FDIC prays for relief in the form of the issuance of an ORDER OF REMOVAL AND PROHIBITION pursuant to 12 U.S.C. § 1818(e) against Respondents Harry C. Calcutt III, William

Green, and Richard Jackson, and an ORDER TO PAY CIVIL MONEY PENALTY pursuant to 12 U.S.C. § 1818(i) in the amount of $125,000 against Harry C. Calcutt III, $100,000 against William Green, and $100,000 against Richard Jackson.

Pursuant to delegated authority.

Dated at Washington, D.C., this 20th day of August, 2013.

/s/
Christopher J. Newbury
Associate Director
Division of Risk Management Supervision