

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

In the Matter of:	)	
	)	AA-EC-10-93
Woodforest National Bank	)	
The Woodlands, TX	)	

**CONSENT ORDER FOR A CIVIL MONEY PENALTY**

Whereas, the Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted an examination of Woodforest National Bank, The Woodlands, Texas (“Bank” or “Woodforest”), and has identified deficiencies in the Bank’s compliance with consumer laws. The findings of this examination have been made known to the Bank.

Whereas, the Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order for a Civil Money Penalty,” dated October 1, 2010 (“Stipulation”), that is accepted by the Comptroller. By this Stipulation, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order for a Civil Money Penalty (“Order”) by the Comptroller.

ARTICLE I

COMPTROLLER’S FINDINGS

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

- (1) The Bank operates an overdraft program known as PrivilegePay. Until approximately December 31, 2009, customers were automatically enrolled in PrivilegePay thirty (30) days after account opening. Customers enrolled in PrivilegePay are charged a per

transaction fee each time a transaction causes a customer's account to become overdrawn.

(2) The Bank imposes limits on the amount by which an account may be overdrawn at any time although some customers are allowed to exceed the overdraft limit for their accounts. Prior to September 2009, the Bank had no daily, monthly, or other limit on the amount of overdraft fees a customer could incur. The Bank also did not monitor customer accounts for excessive usage of PrivilegePay. The combination of these factors caused some customers to incur excessive aggregate amounts of overdraft fees.

(3) Prior to approximately May 15, 2010, accounts that were not brought to a positive balance within seven days were charged a "continuous overdraft fee." This practice was unfair because, once continuous overdraft fees began, many Bank customers were unable to avoid the assessment of continuous overdraft fees.

(4) The Bank marketed or promoted its deposit account products through a brochure that highlighted the free or low cost features of certain accounts while omitting information about costly features of the account, such as overdraft protection. The brochure also suggested that certain accounts were well-suited for customers who had previous difficulty in managing their Bank accounts while omitting information about the costs of overdraft protection. The brochure was deceptive because it omitted information about high-cost features of accounts at the Bank, such as PrivilegePay.

(6) Prior to December 31, 2009, the Bank provided a written disclosure at account opening that described the features of PrivilegePay but did not mention that consumers could be automatically reinstated into PrivilegePay after their use of the program was suspended or terminated. The omission of this information was deceptive because it led customers to believe that they would not be automatically reinstated into PrivilegePay.

(7) Based on the actions described above, the OCC has determined that Woodforest, in material respects, violated:

- (a) 15 U.S.C. § 45(a)(1) (unfair or deceptive acts or practices in or affecting commerce); and
- (b) 12 C.F.R. § 205.10(e) (conditioning credit on repayment by preauthorized electronic fund transfers).

As a result of the examination and investigation, and pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C § 1818, the Comptroller hereby orders that:

## ARTICLE II

### ORDER FOR A CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing, the Bank hereby consents to the payment of a civil money penalty in the amount of \$1,000,000, which shall be paid upon execution of this Order.

- (a) Payment of the penalty shall be made by a wire transfer to the Comptroller's account #2071-0001, ABA Routing #021030004.
- (b) A photocopy of the confirmation of the wire transfer shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

ARTICLE III

CLOSING

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

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

(3) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(i)(2), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

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

(5) The provisions of this Order constitute a settlement of the Civil Money Penalty proceeding contemplated by the Comptroller.

IT IS SO ORDERED, this 7th day of October 2010.

/s/

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Gilbert D. Barker  
Deputy Comptroller  
Southern District

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

<b>In the Matter of:</b>	)	
	)	AA-EC-10-93
Woodforest National Bank	)	
The Woodlands, TX	)	

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER FOR A CIVIL MONEY PENALTY**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a civil money penalty proceeding against Woodforest National Bank, The Woodlands, Texas (“Bank”) pursuant to 12 U.S.C. § 1818(i) for violations of law relating to the operation of the Bank’s overdraft program.

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order and Order for a Civil Money Penalty, dated October \_\_, 2010 (“Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

**ARTICLE I**

**Jurisdiction**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## ARTICLE II

### Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

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

## ARTICLE III

### Waivers

(1) The Bank, by signing this Stipulation and Consent, hereby waives:

(a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);

- (b) any and all procedural rights available in connection with the issuance of the Order;
- (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19
- (d) all rights to seek any type of administrative or judicial review of the Order; and
- (e) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

Other Action

(1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

/s/  
Gilbert D. Barker  
Deputy Comptroller  
Southern District

10/06/2010  
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/ _____ Kenneth Babcock	10/01/10 _____ Date
/s/ _____ Dave Bratton	10/01/10 _____ Date
/s/ _____ Gerald Cobb	10/01/10 _____ Date
/s/ _____ Larry Eichenbaum	10/01/10 _____ Date
/s/ _____ Robert Marling, Jr.	10/01/10 _____ Date
/s/ _____ James V. Morell	10/01/10 _____ Date
/s/ _____ Robert Peterson	10/01/10 _____ Date
/s/ _____ Michael Richmond	10/01/10 _____ Date
/s/ _____ George V. Sowers	10/01/10 _____ Date
/s/ _____ B.J. Westbrook	10/01/10 _____ Date