UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC

In the Matter of	
Louis A. DeNaples, An Institution-Affiliated Party of First National Community Bancorp, Dunmore, Pennsylvania, and Urban Financial Group, Inc., Bridgeport, Connecticut	FRB Docket No. 09-191-B-I

FINAL DECISION

This is an administrative proceeding pursuant to the Federal Deposit Insurance Act ("the FDI Act") in which the Enforcement Counsel for the Board seeks an order requiring Respondent, Louis A. DeNaples, to cease and desist from his alleged continuing violation of section 19 of the FDI Act, 12 U.S.C. § 1829.

Under section 19, an individual who has agreed to enter into a pretrial diversion or similar program in connection with certain criminal charges must seek the Board's consent in order to continue as an institution-affiliated party of a bank holding company. Here, it is undisputed that Respondent did not seek that consent after he entered into an agreement with a state district attorney withdrawing charges of perjury in exchange for promises by the Respondent, but he did continue to be an institution-affiliated party at two bank holding companies. Respondent argues that no consent is required and that he may continue to serve as an institution-affiliated party because the withdrawal agreement was not an "agree[ment] to enter into a pretrial diversion or similar program" as that term is defined under section 19. As

discussed below, however, the Board determines that the withdrawal agreement does constitute the type of program covered by section 19, and that by failing to seek the Board's consent to his continued service as an institution-affiliated party, the Respondent has deprived the Board of its statutorily-mandated opportunity to review whether to permit his continued involvement with those companies. The Board also rejects other procedural and substantive arguments raised by Respondent. Therefore, upon review of the administrative record and additional filings made to the Board, the Board issues this Final Decision adopting the Recommended Decision ("Recommended Decision") of Administrative Law Judge C. Richard Miserendino (the "ALJ"), except as modified herein, and orders the issuance of the attached Order to Cease and Desist.

I. STATEMENT OF THE CASE

A. Statutory and Regulatory Framework

A number of provisions of the FDI Act are implicated in this administrative enforcement action. Section 19 of the FDI Act ("section 19"), 12 U.S.C. § 1829, makes it illegal for any person to become or continue to be an institution-affiliated party with respect to any bank holding company ("BHC"), own or control a BHC, or participate in the conduct of the affairs of a BHC without the consent of the Board if that person has been convicted of a criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with such an offense. 12 U.S.C. § 1829(a)(1)(A), (d)(1).[1] A person is an institution-affiliated party of a bank holding company if, among other things, he or she is an officer, director, employee, or controlling stockholder of the BHC, or has filed or is required to file a change in control

[1] The same conduct is proscribed for institution-affiliated parties of insured depository institutions absent the approval of the Federal Deposit Insurance Corporation. 12 U.S.C. § 1829(a)(1).

notice under the Change in Bank Control Act, 12 U.S.C. § 1817(j). 12 U.S.C. § 1813(u), 1818(b)(3) (applying the penalty provisions of section 1818 to bank holding companies in the same way as they apply to state member banks); In re Pharaon, 83 Federal Reserve Bulletin 347, 348 n.2 (1997).

Section 8(b) of the FDI Act, 12 U.S.C. § 1818(b), spells out the substantive requirements for issuing a cease-and-desist order. A cease-and-desist order may be imposed when the agency has reasonable cause to believe that the respondent has engaged or is about to engage in an unsafe or unsound practice in conducting the business of a depository institution, or that the respondent has violated or is about to violate a law, rule, or regulation or condition imposed in writing by the agency. 12 U.S.C. § 1818(b)(1). A cease-and-desist order may require the respondent to take affirmative action the agency determines to be appropriate to correct or remedy any conditions resulting from the violation or practice with respect to which such order is issued. 12 U.S.C. § 1818(b)(6)(F). The power to issue cease-and-desist orders includes the authority to place limitations on the activities of the respondent. 12 U.S.C. § 1818(b)(7).

Under section 8(b) and the Board's regulations, the ALJ is responsible for conducting proceedings on a notice of charges relating to a proposed order to cease and desist. 12 U.S.C. § 1818(b). The ALJ issues a recommended decision that is referred to the Board together with any exceptions to those recommendations filed by the parties. The Board makes the final findings of fact, conclusions of law, and determination whether to issue the requested orders. 12 CFR 263.38.

Respondent asserts that an additional section of the FDI Act is relevant to this proceeding. Section 8(g) of the Act sets forth a separate procedure and substantive basis for addressing certain misconduct by bank officials and employees. Under section 8(g), a federal

banking agency may issue a pre-hearing order of removal or prohibition against a bank official or employee if (1) a judgment of conviction or an agreement to enter a pretrial diversion or other similar program is entered against the respondent in connection with certain specified crimes or any crime involving dishonesty or breach of trust which is punishable by imprisonment for a term exceeding one year; and (2) continued service or participation by the respondent would threaten the interests of depositors or impair public confidence in a depository institution. 12 U.S.C. § 1818(g)(1)(C). Section 8(g)(3) sets out a procedure for post-deprivation process in the case of an order issued under section 8(g)(1), in which the respondent may seek to show that his or her continued participation in the institution's affairs would not pose a threat to the institution's depositors or impair public confidence in the institution. 12 U.S.C. § 1818(g)(3).

B. Facts[2]

First National Community Bancorp ("First National"), Dunmore, Pennsylvania, and Urban Financial Group, Inc. ("Urban Financial"), Bridgeport, Connecticut, are registered bank holding companies. Respondent is currently chairman and a director of First National, owns 10.26 percent of its voting shares, and is a member of a group that owns approximately 19.87 percent of its voting shares. Respondent is the largest shareholder of Urban Financial, owning approximately 45 percent of its shares. Accordingly, Respondent is an institution-affiliated party of both First National and Urban Financial. 12 U.S.C. § 1813(u).

On January 30, 2008, the District Attorney of Dauphin County, Pennsylvania ("District Attorney") filed a criminal complaint against Respondent that charged him with four counts of perjury in connection with testimony Respondent gave to the Pennsylvania Gaming Control

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[2] Except where specifically noted, the stated facts are undisputed by the parties. See Enforcement Counsel's Statement of Material Facts Not in Dispute ("FRB SOF"), filed March 25, 2010, and Respondent's Statement of Undisputed Material Facts ("Resp. SOF"), filed April 5, 2010.

Board while in the process of obtaining a gaming license for a casino he owned. Respondent took a leave of absence from his position as chairman and director of First National shortly after the charges were filed and to date remains on leave of absence.

On April 15, 2009, after months of negotiations, Respondent and the District Attorney entered into an Agreement for Withdrawal of Charges ("Withdrawal Agreement"). Under the written terms of the Agreement, the District Attorney agreed to withdraw all of the criminal charges but reserved the right to reinstate the charges upon a material breach of any term of the Withdrawal Agreement by Respondent. Respondent in turn agreed, among other things, to transfer his interest in the casino to a trust for the benefit of his daughter, transfer to the trust any profits accrued in the casino during the period of suspension of his gaming license, pay the cost of prosecution, and provide quarterly reports to the District Attorney regarding his compliance with the Withdrawal Agreement for two years following execution. Based on the Withdrawal Agreement, the Board initiated this enforcement proceeding against Respondent.

Following the ALJ's issuance of his Recommended Decision, the Court of Common Pleas of Dauphin County, Pennsylvania, at Respondent's request, issued two Orders relevant to this matter. The first, issued May 18, 2011 ("Expungement Order"), was a form order providing that Respondent's "arrest record regarding these charges shall be expunged" and directing "all criminal justice records upon whom this order is served" to "expunge and destroy" documents pertaining to the proceedings. The Expungement Order did not mention the Withdrawal Agreement. The second, issued September 19, 2011 ("Clarifying Order"), "clarified" the prior order by stating, in part: "Encompassed within the Expungement Order was the Agreement for Withdrawal of Charges ('Withdrawal Agreement'). Since it has been completely and forever expunged, the Withdrawal Agreement is of no force or effect."

C. Procedural History

On November 23, 2009, the Board issued a Notice of Charges and of Hearing Issued Pursuant to section 8(b) of the FDI Act ("Notice") alleging that Respondent had not sought or received the Board's permission to continue to be an institution-affiliated party within the meaning of section 19(a)(1)(A)(ii), despite the fact that he entered into a pretrial diversion agreement to resolve criminal charges. The Notice sought a cease-and-desist order requiring Respondent to resign his position as director of First National and submit an acceptable plan to the Board for the prompt divestiture of his controlling shareholdings in First National and Urban Financial.[3] Respondent timely filed an answer to the Notice, admitting that he is the chairman (albeit on a leave of absence) of First National; that he owns 10.26 percent of the voting shares of First National and has been a member of a control group that filed a notice of change in bank control with the Federal Reserve; and that he owns 45 percent of the voting shares of Urban Financial. Respondent further admitted that he has not sought or received the Board's permission to be an institution-affiliated party of First National or Urban Financial after entering into the agreement. Respondent denied that he has violated section 19, asserting that the agreement into which he entered was not a "pretrial diversion or similar program" within the meaning of section 19.

On February 12, 2010, Enforcement Counsel filed a Motion to Strike Respondent's

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[3] On November 24, 2009, the Office of the Comptroller of the Currency ("OCC") issued a substantially similar Notice of Charges seeking a cease-and-desist order requiring Respondent's resignation from his position as chairman and director of First National Community Bank ("Bank"). In his Recommended Decision, the ALJ consolidated the proceedings for the Board's Notice and the OCC's Notice of Charges. On March 23, 2012, the OCC entered order requiring Respondent to cease and desist from his continuing violation of section 19, including by resigning from all positions that he holds as an institution-affiliated party.

Request for Production of Documents. Respondent's production request had generally sought discovery concerning whether Respondent's continued participation in First National and Urban Financial would cause harm to the institutions. The ALJ granted Enforcement Counsel's Motion to Strike on the grounds that discovery concerning harm to the financial institutions was not materially relevant to a proceeding brought under section 8(b).

Enforcement Counsel and Respondent each filed motions for summary disposition accompanied by statements of material facts not in dispute. On July 23, 2010, Respondent filed a Motion for Leave to File a Notice of Supplemental Authority in Support of his Cross-Motion for Summary Disposition and the corresponding Notice of Supplemental Authority ("First Notice of Supplemental Authority"), which was denied by the ALJ on August 11, 2010.

On February 18, 2011, the ALJ issued a Recommended Decision advising that Enforcement Counsel's Motion for Summary Disposition be granted and that Respondent's Cross-Motion for Summary Disposition be denied, and recommending the issuance of the cease-and-desist order against Respondent.[4] Respondent subsequently filed exceptions to the ALJ's Recommended Decision and the matter was referred to the Board for final decision. See 12 CFR 263.38-39. On March 29, 2011, the Board issued a notice acknowledging that the complete record of the matter had been submitted to the Board. See 12 CFR 263.40.

Nonetheless, on April 4, 2011, Respondent filed with the Board a Request to Reopen the Record and Notice of Supplemental Authority in Support of his Exceptions ("Second Notice of Supplemental Authority"), which was opposed by Enforcement Counsel. On April 27, 2011, Respondent filed a Reply in Support of Notice of Supplemental Authority ("Third Notice of

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[4] The ALJ's Recommended Decision also recommended that the OCC grant the OCC Enforcement Counsel's motion for summary disposition and issue the OCC Enforcement Counsel's requested cease-and-desist order. As noted earlier, the OCC issued its final decision adopting this recommendation on March 23, 2012.

Supplemental Authority") which contained further new documentary evidence in support of Respondent's exceptions. Enforcement Counsel duly opposed that supplemental filing as well. On May 25, 2011, Respondent filed a Motion for Immediate Dismissal of Cease and Desist Proceedings based on the issuance of a state court order granting his petition for expungement of his criminal record ("First Motion for Immediate Dismissal"). This was followed by a second Motion for Immediate Dismissal of Cease and Desist Proceedings based on a clarification of the state court expungement order ("Second Motion for Immediate Dismissal"). Enforcement Counsel opposed both motions. Despite the fact that these various filings were made after the Board notified parties that the record was closed, the Board has considered them in its final decision.

II. DISCUSSION

This proceeding raises several novel issues for the Board. First, the Board must consider Respondent's argument that a cease-and-desist proceeding under section 8(b) of the FDI Act is improper procedurally, and that the only way the Board could obtain the relief sought would have been to proceed under section 8(g). Second, the Board must decide whether by entering into the Withdrawal Agreement, Respondent entered into a "pretrial diversion or similar program" within the meaning of section 19 of the FDI Act. Finally, the Board must address the effect of the Expungement Order and the Clarifying Order on that determination.

Most of these issues were raised before the ALJ,[5] who recommended issuance of a cease-and-desist order against Respondent under section 8(b) based on Respondent's violations

[5] The ALJ did not address the effect of the Expungement Order or the Clarifying Order, which were issued after the issuance of the Recommended Decision.

of section 19.[6] The ALJ's recommended decision held that the Board had authority to proceed under section 8(b) to address violations of section 19. It also held that the Withdrawal Agreement was a "pretrial diversion or similar program" under section 19, and that state law did not govern the interpretation of that phrase. For the reasons set forth below, the Board affirms the ALJ's recommended decision and determines that the subsequent expungement of Respondent's criminal record does not divest the Board of authority to proceed to remedy a violation of section 19. The Board therefore issues the attached cease-and-desist order against Respondent.

A. The Board may enforce Section 19 through a cease-and-desist proceeding under Section 8(b)

Under section 8(b), the Board has the authority to serve on an institution-affiliated party within its regulatory jurisdiction a notice of charges seeking a cease-and-desist order if, in the Board's opinion, the institution-affiliated party "is violating or has violated . . . a law." 12 U.S.C. § 1818(b)(1). In the present case, after Respondent entered into the Withdrawal Agreement, the Board initiated a notice of charges against Respondent because it believed Respondent was violating section 19 of the FDI Act by continuing, without the consent of the Board, to be an institution-affiliated party of First National and Urban Financial after entering into a pretrial diversion or similar program. Section 19 is "a law" and, moreover, is within the same statute as section 8(b). The statutory language thus clearly supports the Board's authority to pursue a cease-and-desist order under section 8(b) to remedy a violation of section 19.

Despite the apparently clear statutory language, Respondent contends that section 8(b)

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[6] Respondent did not argue, either before the ALJ or in his Exceptions, that he was not an institution-affiliated party of First National or of Urban Financial or that his Withdrawal Agreement was not entered into in connection with a prosecution for an offense involving dishonesty within the meaning of section 19(a)(1). Accordingly, these issues are waived. 12 CFR 263.39(b).

cannot be used to enforce section 19 because he claims that section 19 is only a criminal statute. Respondent also argues that, to the extent the Board can address the involvement in banking of an individual who enters into a "pretrial diversion or other similar program," Section 8(g) governs because it is more specific than section 8(b) and because using section 8(b) for this purpose essentially renders the bank officer removal provision of section 8(g) superfluous. Respondent cites *Feinberg v. FDIC*, 420 F.Supp. 109 (D.D.C. 1976), to argue that only section 8(g) can be used for removal because it provides constitutionally guaranteed substantive and procedural safeguards that are lacking in section 8(b).

Respondent's first argument fails because the structure of section 19 alone shows that it is not purely a criminal statute, and because, even if it were, it would support an administrative enforcement action under section 8 of the FDI Act. Subsection 19(a)(1) prohibits certain conduct, including serving, without the appropriate regulator's consent, as an institution-affiliated party after agreeing to enter into a pretrial diversion or similar program related to a crime of dishonesty. 12 U.S.C. § 1829(a)(1). Subsection 19(b) creates a criminal penalty for "[w]hoever *knowingly violates* subsection (a)." 12 U.S.C. § 1829(b) (emphasis added). While the statute thus provides that a subset of the conduct prohibited in subsection 19(a)(1), namely "knowing" violations, may be criminally punished, this by no means limits the breadth or administrative enforceability of the prohibition contained in subsection 19(a)(1). Moreover, even assuming section 19 were purely a criminal statute, section 8(b) allows for the Board to require compliance with it through a cease-and-desist proceeding under section 8(b). See *Cousin v. OTS*, 73 F.3d 1242, 1251 (2d Cir. 1996) (criminal bribery charge is sufficient to support removal under the analogous provision of the Home Owners' Loan Act).

Respondent's second argument is based on what he sees as a conflict between

section 8(g) of the FDI Act, which sets forth a procedure for suspension or prohibition of institution-affiliated parties involved in certain crimes, and the approach taken by Board Enforcement Counsel here, which used the more general authority in section 8(b) of the FDI Act to issue a cease-and-desist order for a violation of section 19 of that Act, which in turn refers to similar crimes. In short, Respondent argues that the Board may not use section 8(b) to remove Respondent from his position, but may only use the procedures set forth in section 8(g); to hold otherwise, argues Respondent, would render section 8(g) superfluous. In support of this argument, Respondent cites a general canon of statutory interpretation which states "[w]hen both specific and general provisions cover the same subject, the specific provision will control, especially if applying the general provision would render the specific provision superfluous." *Norwest Bank Minn. Nat. Ass'n v. FDIC*, 312 F.3d 447, 451 (D.C. Cir. 2002). Respondent's argument fails, however, because section 8(g) and section 19 do not "cover the same subject." Section 19 covers cases in which a respondent has been convicted of, or has agreed to enter a pretrial diversion or similar program in connection with a prosecution for, any crimes involving "dishonesty or a breach of trust or money laundering." By contrast, section 8(g) limits its reference to crimes of dishonesty or breach of trust to those crimes punishable by imprisonment of at least a year.

Additionally, as Respondent correctly notes, section 8(g) calls for different procedures than section 8(b). This difference in procedures does not, however, make it impermissible for Enforcement Counsel to proceed under section 8(b), as Respondent argues. Rather, so long as the procedures provided for in each subsection comply with constitutional standards of due

process, the decision on how to proceed is entirely within the discretion of the Board.[7] *Feinberg*, cited by Respondent, does not suggest otherwise. In that case, the district court struck down on due process grounds an earlier version of section 8(g) (not section 8(b)) because it did not provide for any hearing, either before or after issuance of a prohibition order, substantially limited judicial review, and would likely result in a permanent loss of property of the individual being suspended. *Feinberg*, 420 F.Supp. at 112, 119-21. But section 8(b), under which Enforcement Counsel proceeded, already has all of the constitutional protections identified by the *Feinberg* court, so *Feinberg* provides no basis for challenging Enforcement Counsel's choice of enforcement mechanism.[8] Moreover, section 8(b) provides for a pre-deprivation notice and hearing, rather than the post-deprivation mechanism provided in section 8(g), so from a constitutional standpoint its protections are even greater. See 12 U.S.C. § 1818(b)(1), (h).

Respondent makes much of the fact that section 8(g) describes an additional "harm" factor as necessary to remove an institution-affiliated party, while neither section 19 nor section 8(b) contains such a requirement.[9] However, Congress could reasonably have decided,

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[7] Respondent argues that the permissive term "may" in section 8(b) (providing that if an institution-affiliated party "is violating . . . a law," the agency "may issue . . . a notice of charges" in respect thereof) means only that "while Enforcement Counsel can decide *whether* to bring an action to remove a banking official, such an action, if pursued[,] must be prosecuted under section 8(g)." Respondent's Brief in Support of Exceptions at 11. There is nothing in the statutory language of section 8(b) that compels or even permits this interpretation, and the Board declines to adopt it.

[8] Section 8(g) has since been amended, and the Supreme Court has found it to be constitutionally sound. See *FDIC v. Mallen*, 486 U.S. 230, 248 (1988).

[9] The Board notes that Respondent appears to misconstrue section 8(g) by suggesting the Board must show harm to the institution or the public in order to remove an individual under section 8(g). Section 8(g) actually places the burden on respondents to disprove harm. The Board must initially determine that an individual's continued service as an institution-affiliated party would cause harm before issuing a prohibition notice, but to challenge this notice, the respondent must "show that the continued service to or participation in the conduct of the affairs of the depository institution by such party does not, or is not likely to, pose a threat to

as the FDI Act indicates, that before initiating an action under section 8(g) to deprive an individual of his or her position without a prior hearing, the banking agencies must have a strong interest in proceeding, based on the potential for harm to the public interest. This heightened harm requirement acts as a check on an agency's ability to remove individuals without a prior hearing except where the public interest is at its highest. In contrast, a cease-and-desist order under section 8(b) serves occasions where the agency determines it is unnecessary to act against an individual immediately and chooses to provide pre-deprivation procedures instead. This may be because the agency sees less immediate harm, such as when, as here, the institution-affiliated party has already taken a leave of absence from his banking positions. Rather than rendering section 8(g) superfluous, the provisions of section 8(b) simply provide a different tool for agencies to use under certain circumstances where the agency decides it is more appropriate. The fact that Enforcement Counsel availed itself of one enforcement tool over another is not impermissible.

Moreover, the Board's decision to use the pre-deprivation hearing procedures of section 8(b), which unlike section 8(g) does not contain an explicit harm standard, does not negate the strong public interest in requiring agency review before an individual with a history of crimes involving dishonesty or breach of trust is permitted to continue as an institution-affiliated party. Congress, by prohibiting such involvement absent agency approval, has already determined that individuals whose conduct is among the offenses listed in section 19 cause continuing harm to the public confidence in financial institutions. Because under section 8(b) the individual has an opportunity to challenge the basis for a cease-and-desist order before it is issued, the agency need not make a special showing of harm beyond the fact that the

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the interests of the bank's depositors or threaten to impair public confidence in the depository institution." 12 U.S.C. § 1818(g)(1)(A), (3).

requirements of section 19 have been met. As *Feinberg* noted, "[t]he fundamental requisite of due process of law is the opportunity to be heard." 420 F.Supp. at 119 (quoting *Grannis v. Ordean*, 234 U.S. 385, 394 (1914)). In reviewing section 8(b) and the Board's regulations, and how they were applied in these proceedings, the Board sees no reason to find Respondent has been denied his constitutional right to be heard.[10]

B. The Withdrawal Agreement as executed is an agreement "to enter into a pretrial diversion or similar program."

Respondent asserts that the ALJ erred in finding that Respondent "agreed to enter into a pretrial diversion or similar program" within the meaning of section 19 when he signed the Withdrawal Agreement. See 12 U.S.C. § 1829. Section 19 does not define "pretrial diversion or similar program." Respondent contends that state law should govern this question, and that under the law of Pennsylvania the Withdrawal Agreement does not constitute a pretrial diversion program.

Respondent argues in this regard that the Board must follow the interpretation in the FDIC Statement of Policy for section 19 of the FDI Act ("FDIC Policy Statement"). See http://www.fdic.gov/regulations/laws/rules/5000-1300.html. That Policy Statement provides in part that "[w]hether a program constitutes a pretrial diversion is determined by relevant federal, state, or local law, and will be considered by the FDIC on a case-by-case basis." The FDIC Policy Statement is, however, just that – a statement of policy of the FDIC. It is not legally binding on any party (save, perhaps, for the FDIC itself), see *Ctr. for Auto Safety v. NHTSA*, 452 F.3d 798, 807 (D.C. Cir. 2006) (general statements of policy "neither determine

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[10] As a related matter, the Board also affirms the ALJ's Order Granting Motion to Strike Production of Documents. Respondent had sought discovery related to the harm to the institution posed by his remaining as a director. For the reasons discussed above, the ALJ was correct in ruling such discovery was not relevant to this matter.

rights or obligations nor occasion legal consequences"). In any case, the FDIC Policy Statement is certainly not binding on the Board, which has sole interpretive and policy authority over section 19 with respect to bank holding companies.[11] The Board has never formally adopted the FDIC Policy Statement or any other policy interpreting "pretrial diversion or similar program" in section 19. Therefore, the Board is not bound by the FDIC Policy Statement and may exercise its own authority to interpret the term.

Though not authoritative for the Board, the FDIC Policy Statement contains a useful description of features that are generally part of a pretrial diversion or similar program.[12] The Board takes a similar view and will look for two characteristics in determining whether an agreement to enter a pretrial diversion or similar program exists: the agreement provides for (1) a suspension or eventual dismissal of charges or criminal prosecution, and (2) a voluntary agreement by the accused to treatment, rehabilitation, restitution or other noncriminal or nonpunitive alternatives. This is in line with the "ordinary" meanings of the term discussed in the Recommended Decision.

In making this determination, the Board is not bound, as Respondent has asserted, to follow state or local law definitions of "pretrial diversion." See *Taylor v. United States*, 495 U.S. 447, 451 (1990) (absent a plain indication to the contrary, federal laws are not construed so that their application depends on state law) (citing *Dickerson v. New Banner*

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[11] See *Collins v. NTSB*, 351 F.3d 1246, 1254 (D.C. Cir. 2003) (where expert enforcement agencies have mutually exclusive authority over separate sets of regulated persons, each expert agency is entitled to deference in its interpretation of the statute). Section 19 is such a statute, with the FDIC having exclusive authority over participation in insured depository institutions, and the Board having exclusive authority over participation in bank holding companies and savings and loan holding companies.

[12] The FDIC Policy Statement states that a pretrial diversion or similar program "is characterized by a suspension or eventual dismissal of charges or criminal prosecution upon agreement by the accused to treatment, rehabilitation, restitution, or other noncriminal or nonpunitive alternatives." 63 Federal Register 66184-85.

Institute, Inc., 460 U.S. 103, 119-120 (1983); *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 43 (1989). The phrase "pretrial diversion or similar program" is found in a federal statute setting standards to be applied by federal banking agencies regarding parties who may be associated with federally-regulated depository institutions and holding companies. By requiring prior consent, section 19 ensures that the Board, as the federal regulator of bank holding companies, has an opportunity to scrutinize individuals when certain conduct – including the individual agreeing to enter into a pretrial diversion or similar program – has occurred, and make a judgment as to the benefits and risks of their continued involvement in banking. State law definitions of "pretrial diversion" are not meant to address this concern. Thus, the phrase must be interpreted as a matter of federal law.

However, state or local law may be relevant in some circumstances. For example, a program referred to by state authorities as a "pretrial diversion" program would likely meet the characteristics of a pretrial diversion or similar program under section 19. Nonetheless, the terminology used by a state – or the parties to an agreement – is not dispositive of whether a program is a "pretrial diversion or similar program" as that phrase is used in section 19. Accordingly, Respondent's contention that only state law definitions should govern the Board's interpretation of section 19 is rejected.

Similarly, Respondent's contention that the parties' subjective intent governs is also rejected. Under federal common law of contracts, although the parties' intent is the "paramount goal" in construing a contract, "[c]ourts are to consider 'not the inner, subjective intent of the parties, but rather the intent a reasonable person would apprehend in considering the parties' behavior.'" *Baldwin v. Univ. of Pittsburgh Med. Ctr.*, 636 F.3d 69, 75 (3d Cir. 2011) (quoting *Am. Eagle Outfitters v. Lyle & Scott Ltd.*, 584 F.3d 575, 582 (3d Cir. 2009)). The words of a

contract "clearly manifest the parties' intent if they are capable of only one objectively reasonable interpretation." *Baldwin*, 636 F.3d at 76. Moreover, the results would not differ under Pennsylvania law. See *Mellon Bank, N.A. v. Aetna Business Credit, Inc.*, 619 F2.d 1001, 1009-10 (3d Cir. 1980) (quoting *Best v. Realty Management Corp.*, 101 A.2d 438, 440 (Pa. Super. 1953)) (finding that Pennsylvania courts do not psychically delve into the minds of the parties; rather, "[w]hen a written contract is clear and unequivocal, its meaning must be determined by its contents alone.").

In this case, the Withdrawal Agreement unequivocally states that the District Attorney would withdraw charges against Respondent but retained the right to reinstate charges upon material breach of any term of the Withdrawal Agreement by Respondent. See Answer ¶ 9-10, Resp. SOF ¶ 11. In exchange, Respondent was required to transfer his ownership interest in his casino to his daughter, transfer any profits that accrued from the casino to his daughter's trust, provide quarterly reports to the District Attorney regarding his compliance with the Withdrawal Agreement, and pay the cost of the prosecution of the case. See Resp. SOF ¶ 13. Thus, the Withdrawal Agreement on its face contains the characteristics of an agreement to enter a pretrial diversion or similar program: the District Attorney withdrew criminal perjury charges against Respondent conditioned on Respondent agreeing to certain noncriminal alternatives. Notwithstanding any subjective intent the signatories may have had (or have now) to avoid implication of section 19, the terms of the Withdrawal Agreement constitute an agreement to enter a pretrial diversion or similar program.

As an additional matter, Respondent has excepted to the ALJ's denial of his First Notice of Supplemental Authority, which proffered evidence meant to show the Respondent did not admit guilt to the charges underlying the Withdrawal Agreement and that the claims lacked

prosecutorial merit.[13] The Board agrees with the ALJ that this evidence would not aid in the determination of whether the Withdrawal Agreement constitutes an agreement to enter a pretrial diversion or similar program. Contrary to Respondent's assertions, an admission of guilt is not a standard prerequisite for all pretrial diversion programs. See National Association of Pretrial Services Agencies, *Performance Standards and Goals for Pretrial Diversion/Intervention*, Standard Commentary to Standard 4.4, p. 13 (Nov. 2008) (hereinafter "NAPSA Standards") ("Those potential participants who maintain their innocence should not be denied enrollment [in a pretrial diversion] if, after an opportunity to consult with counsel, they make an informed decision to take the diversion option."). Thus, evidence that Respondent did not admit guilt would not raise a dispute as to whether the Withdrawal Agreement was an agreement to enter into a pretrial diversion or similar program.

Respondent's argument that the Withdrawal Agreement could not be a pretrial diversion or similar program because cases that lack prosecutorial merit cannot be funneled into pretrial diversion or similar programs is also rejected. See Respondent DeNaples' Notice of Supplemental Authority in Support of His Cross-Motions for Summary Judgment at 4-5; see also NAPSA Standards, Standard 1.4 ("All cases considered for pretrial diversion/intervention should have prosecutorial merit."). The Withdrawal Agreement on its face indicates that the District Attorney agreed to withdraw charges based upon Respondent's

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[13] The evidence submitted with the First Notice of Supplemental Authority consists of filings in the matter of *United States v. D'Elia* before the United States District Court for the Middle District of Pennsylvania. Respondent was not a party to this matter, which concerned whether Mr. D'Elia could receive a reduction of his current sentence based on information he provided regarding the criminal charges against Respondent that are the basis for the section 19 violation. In his First Notice of Supplemental Authority, Respondent cites language in an order by the district court which states in a summary of facts that the criminal charges against Respondent were withdrawn with no admission of guilt. Respondent also refers to language in the government's motion for reduction of sentence that he argues indicates the prosecutor withdrew the case against him because it was non-meritorious.

agreeing to the terms therein and with the explicit understanding that the District Attorney could refile charges if Respondent materially breached the Withdrawal Agreement. This alone suggests that the District Attorney did not consider the case to lack prosecutorial merit. *Cf.* NAPSA Standards, Commentary to Standard 1.4 ("One of the underpinnings of diversion is that if defendant fails to comply with the program, he or she will be returned to the court for prosecution."). While Respondent's evidence may be relevant in evaluating a request for consent filed with the Board under section 19, should Respondent choose to submit one, it is not relevant in determining whether the Withdrawal Agreement is an agreement to enter into a pretrial diversion or similar program and whether Respondent is therefore required by section 19 to file such a request before continuing as an institution-affiliated party of a bank holding company, which is the subject of this proceeding.[14] Accordingly, the ALJ did not err in excluding Respondent's evidence.

For the reasons discussed above, the Board finds that by entering the Withdrawal Agreement, Respondent "agreed to enter into a pretrial diversion or similar program" within the meaning of section 19.[15]

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[14] Moreover, contrary to Respondent's assertions, the evidence he presented to the ALJ does not indicate that the District Attorney's case lacked prosecutorial merit. See First Notice of Supplemental Authority, Ex. B. The evidence is equivocal at best. It consists of a motion for sentence reduction filed in a matter to which neither the Respondent nor the District Attorney was a party. Moreover, although the motion states at one point that the "District Attorney decided the case could not be successfully prosecuted," the basic purpose of the motion is to argue that a different defendant's sentence should be reduced because information that the defendant provided was instrumental in helping the District Attorney secure the Withdrawal Agreement against Respondent.

[15] For the reasons discussed above, the Board also rejects Respondent's claim that he was inappropriately denied oral argument and an evidentiary hearing before the ALJ. Because Respondent did not deny the existence or validity of the relevant terms of the Withdrawal Agreement, the ALJ correctly determined that additional evidence or a hearing were not necessary to decide whether the Withdrawal Agreement was an agreement to enter into pretrial

C. Respondent's Post-Record Notices of Supplemental Authority and Motions for Immediate Dismissal

After the Board notified parties that the record of these proceedings was complete, Respondent made two filings seeking to reopen the record to include additional affidavits and other materials: the Second and Third Notices of Supplemental Authority. He subsequently submitted two separate Motions for Immediate Dismissal, to which Enforcement Counsel responded. The Board has considered these filings and for the reasons discussed below rejects Respondent's submissions of additional material for the record, and denies his motions for immediate dismissal.

First, Respondent has not adequately explained why he did not raise the issues presented in these supplemental filings in the proceedings below. Respondent contends that "he repeatedly pressed for a hearing and the opportunity to present the affiants' live testimony" and only "learned that he would not receive the hearing to which he was entitled" when the ALJ issued his Recommended Decision. Third Notice of Supplemental Authority at 3. However, Respondent does not explain why the affidavits and other materials were not presented in support of his Cross-Motion for Summary Disposition and Opposition to the FRB's Motion for Summary Disposition. Under the Board's rules, motions and oppositions for summary disposition "must be supported by documentary evidence, which may take the form of . . . affidavits and any other evidentiary materials that the moving party contends support his or her position." 12 CFR 263.29. Respondent cannot now complain that he did not have an opportunity to present these materials merely because he did not receive a hearing.[16]

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diversion or similar program. For the same reasons, the Board denies Respondent's request for oral argument at this stage of the proceedings.

[16] The Board observes that the affidavits contained in the First and Second Notice of Supplemental Authority were only obtained after the ALJ issued his Recommended Decision. The affidavits relate primarily to the negotiation and signing of the Withdrawal Agreement

More importantly, none of the materials provided with the Second and Third Notice of Supplemental Authority are relevant to these proceedings. The exhibits to the Second Notice of Supplemental Authority and Exhibits A and C to the Third Notice of Supplemental Authority aim at establishing the subjective intent of the parties to the Withdrawal Agreement.[17] However, as explained above, the parties' subjective intent is not relevant to interpreting an unequivocal agreement.

In Respondent's Third Notice of Supplemental Authority, he further argues that the proffered Superseding Addendum to Agreement for Withdrawal of Charges ("Superseding Addendum") is dispositive evidence because it ostensibly makes its provisions retroactive to the effective date of the Withdrawal Agreement and states "[t]here are no prohibitions or restrictions placed on Mr. DeNaples, nor is any action by him required." The Board notes, however, that the Superseding Addendum does not directly rescind or modify the original Withdrawal Agreement or any of its provisions. Because where specific contract provisions conflict with more general ones, the specific provisions control, see *Southwestern Elec. Coop., Inc. v. FERC*, 347 F.3d 975,

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that occurred in 2008 and 2009, however, and there is no reason given for Respondent failing to obtain these affidavits earlier during the proceedings below if he considered them to be relevant.

[17] Exhibit A of Respondent's Second Notice of Supplemental Authority and Exhibit C of Respondent's Third Notice of Supplemental Authority are both affidavits by the District Attorney in which he states he has no interest in Respondent entering into a pretrial diversion or similar program. Exhibits B and C of Respondent's Second Notice of Supplemental Authority are affidavits from Respondent's defense attorneys explaining that Respondent did not intend to enter into a pretrial diversion or similar program and that the defense counsel's investigation for the criminal case revealed no wrongdoing by Respondent. Exhibit A in Respondent's Third Notice of Supplemental Authority is the Superseding Addendum to Agreement for Withdrawal of Charges, discussed below. Exhibits B and D in the Third Notice of Supplemental Authority do not relate to the issues of this case. Exhibit C is a Pennsylvania Supreme Court opinion concerning grand jury secrecy violations which mentions in passing that the District Attorney had entered a *nolle prosequi* in connection with the perjury charges against Respondent. Exhibit D in Respondent's Third Notice of Supplemental Authority is a report by a special prosecutor which described flaws the grand jury proceedings but ultimately recommended investigation of the grand jury proceedings be abandoned.

982 (D.C. Cir. 2003), the Board interprets the quoted sentence as simply stating that on the date the Superseding Addendum was executed, no prohibitions or restrictions remained on Respondent.[18] See also *Lesko v. Frankford Hospital*, 11 A.3d 917, 923 (Pa. 2011). Thus, the Superseding Addendum is irrelevant to the issue of whether Respondent agreed to enter into a pretrial diversion or similar program.

The Board also denies Respondent's motions for immediate dismissal. These motions, filed after the Board notified parties that the record of these proceedings was complete, related to a state court order expunging the criminal records pertaining to the withdrawn criminal charges against Respondent. The Board has considered these motions and denies them for the reasons discussed below.

Respondent's motions are based on orders he obtained from the Court of Common Pleas of Dauphin County, Pennsylvania. As noted above, on May 18, 2011 that court issued an Expungement Order expunging the criminal records pertaining to the withdrawn criminal charges against Respondent. That order was clarified on September 14, 2011, in the Clarification Order, which explained that pursuant to the Expungement Order, Respondent's arrest record had been expunged "such that no one, including law enforcement, state licensing authorities, or other governmental officials, is permitted access to the record even by court order under Pennsylvania law." The Clarification Order stated any information nonetheless maintained pursuant to Pennsylvania law should be considered residual in nature and not as a

[18] Even if Respondent had presented a document purporting, in 2011, to rescind the Withdrawal Agreement executed in 2009, the Board does not believe such a document would affect the outcome here. At the time Board Enforcement Counsel initiated this action and the ALJ issued his recommended decision, Respondent was in violation of section 19 because he had entered into pretrial diversion or similar program and did not have the Board's authorization to remain as an institution-affiliated party of First National or Urban Financial. A later rescission of the pretrial diversion agreement would not change that history.

record of the proceeding. Finally, the Clarification Order asserted that "encompassed within the Expungement Order was the Agreement for Withdrawal of Charges ('Withdrawal Agreement') . . . . Since it has been completely expunged, the Withdrawal Agreement is of no force or effect."

Respondent contends that because of the Expungement Order, as explained by the Clarification Order, the Board may no longer enforce section 19 against him. In support, he cites language in the FDIC Policy Statement which states a section 19 application for consent is not required for an individual who has had a *criminal conviction* expunged. FDIC Policy Statement, section B(2) ("A conviction which has been completely expunged is not considered a conviction of record and will not require an application [under section 19].").

The Board rejects this argument. In the first place, as noted above, the Board is not bound by the FDIC Policy Statement. Under section 19, the Board, not the FDIC, must consent to an individual continuing as an institution-affiliated party of a bank holding company. 12 U.S.C. § 1829(d). The Board has not adopted the FDIC Policy Statement, and the Board's lack of a formal policy of its own does not entitle Respondent to rely instead on the FDIC Policy Statement.[19]

In the second place, the FDIC Policy Statement itself does not address the question presented here, which is whether an individual's agreement to enter into a pretrial diversion or similar program is negated, for purposes of section 19, by the later expungement of the

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[19] Even if the FDIC's legal interpretation of section 19 could have some preclusive effect on the Board, the section of the Policy Statement that relates to expungement is not a legal interpretation, since the statutory provision never uses the term "expungement" or refers to the concept. The FDIC's position in this regard is therefore purely one of its own policy, which the Board need not follow. The parties have also disputed whether or not Respondent's expungement is "complete" as used in the recent amendments to the FDIC Policy Statement. See 76 Federal Register 28033. Because the Board is not following the FDIC Policy Statement, the Board need not resolve this issue.

underlying criminal charge. The FDIC Policy Statement, like section 19 itself, treats convictions and pretrial diversions separately. See 12 U.S.C. § 1829(a)(1)(A) (requiring prior agency approval for "any person who has been convicted of any criminal offense involving dishonesty . . . *or* has agreed to enter into a pretrial diversion or similar program . . . " (emphasis added); FDIC Policy Statement at B(1) (discussing, in connection with whether an application under section 19 is required, convictions and the effect of complete expungement thereof), B(2) (discussing pretrial diversion programs without mention of expungement). Thus, nothing in the FDIC Policy Statement suggests that an application under section 19 would not be required by the FDIC if an individual who had agreed to enter into a pretrial diversion or similar program had later had his or her underlying criminal charge expunged.

The plain language of section 19 provides that prior Board approval is required of "any person who has . . . agreed to enter into a pretrial diversion or similar program." As the Supreme Court determined in a similar context in holding that an expunged state criminal conviction could continue to be a predicate offense for federal firearms prohibitions, "So far as the face of the [federal] statute is concerned, . . . expunction under state law does not alter the historical fact of the conviction . . . ." *Dickerson v. New Banner Institute, Inc.*, 460 U.S. 103, 115 (1983).[20] Likewise, a subsequent expungement of a criminal charge does not alter the historical fact that Respondent agreed to the Withdrawal Agreement, *i.e.* that Respondent "*has agreed* to enter into a pretrial diversion or similar program." See 12 U.S.C. § 1829(a)(1)(A) (emphasis added).

There are important reasons why expungement of a criminal charge should not affect the consequences of a respondent's agreement to enter into a pretrial diversion or

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[20] Subsequent Congressional action to overturn this ruling and provide that expunged convictions should generally not be considered in connection with firearms limitations, see Pub. L. 99-408, § 101(5), 100 Stat. 449, only underscores the fact that Congress knows how to address the issue of expungement if it so chooses. It has not done so in section 19.

similar program. Pretrial diversion is a method to avoid a full criminal prosecution by agreeing to explicit conditions; in many states, expungement of the criminal record is the automatic or at least the expected conclusion of this process once the program's conditions have been fulfilled. See Pretrial Justice Institute, *Pretrial Diversion and the Law: A Sampling of Four Decades of Appellate Court Rulings*, V-2-6 (2006) *available at* http://www.napsa.org/publications/ptdivcaselaw.pdf. Respondent's interpretation would mean that at the point where the individual's involvement in the pretrial diversion program concludes, its existence would in effect be nullified for purposes of section 19; it would be as though the individual had never "agree[d] to enter into" the program at all. This appears inconsistent with the clearly-expressed intent of Congress, which was to require the FDIC or the Board, as appropriate, to pass on the fitness of any individual who has agreed to enter into such a program to participate in the affairs of federally-regulated financial institutions. While the existence of an expungement order may be relevant in evaluating an individual when that individual applies for consent under section 19, it does not, as Respondent argues, eliminate the prior approval requirement clearly stated in that section. In addition, some states do not permit expungement even upon successful conclusion of a pretrial diversion program. *Id.* It would be anomalous for a federal agency to require a prior application from an individual who had entered into a pretrial diversion program in a non-expungement state, but to permit, without review, the involvement in banking of an individual whose state permits expungement.

Section 19 grants the Board the right, and the obligation, to scrutinize individuals who have entered into a pretrial diversion or similar program before permitting their continued involvement in banking. Absent clear statutory language indicating otherwise, the Board does not believe Congress intended to make this right dependent on a given state's policy

regarding expungement and will not interpret section 19 to apply in such a non-uniform manner. See *Holyfield*, 490 U.S. at 43 ("federal statutes are generally intended to have uniform nationwide application"). Thus, despite the recent Expungement Order and Clarification Order, Respondent remains in violation of section 19 for the simple reason that in April 2009 he signed the Withdrawal Agreement, thereby entering into a pretrial diversion or similar program as those terms are defined in section 19, and he has not sought or obtained Board approval for his continued activities as an institution-affiliated party of First National or Urban Financial.

CONCLUSION

For these reasons, the Board orders the issuance of the attached Order to Cease and Desist.

By Order of the Board of Governors, this 10th day of April, 2012.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC

In the Matter of	)	
Louis A. DeNaples,	)	
An Institution-Affiliated Party of	)	FRB Docket No. 09-191-B-I
First National Community Bancorp,	)	
Dunmore, Pennsylvania,	)	
and Urban Financial Group, Inc.,	)	
Bridgeport, Connecticut	)	

ORDER
TO CEASE AND DESIST

WHEREAS, pursuant to section 8(b) of the Federal Deposit Insurance Act, as amended, (the "FDI Act") (12 U.S.C. § 1818(b)), the Board of Governors of the Federal Reserve System (the "Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that a final Order to Cease and Desist should issue against Louis A. DeNaples ("DeNaples"), an institution-affiliated party, as defined in section 3(u) of the FDI Act (12 U.S.C. § 1813(u)), of First National Community Bancorp, Dunmore, Pennsylvania, a registered bank holding company ("First National"), and Urban Financial Group, Inc., Bridgeport, Connecticut, a registered bank holding company ("Urban Financial").

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to section 8(b) of the FDI Act, 12 U.S.C. § 1818(b), that:

1. DeNaples shall not violate section 19 of the FDI Act, 12 U.S.C. § 1829.

2. Upon the effective date of this Order, DeNaples shall unconditionally resign as a director of First National.

3. Within 30 days of the effective date of this Order, DeNaples shall submit an acceptable written plan to divest his controlling interests in First National and Urban Financial. An acceptable divestiture plan shall, at a minimum, including the following:

a. Statements setting forth the number of voting shares and any other equity interests of:

i. First National; and

ii. Urban Financial,

that are owned or controlled by DeNaples, as of the date of this Order;

b. Statements setting forth the number of voting shares and any other equity interests of:

i. First National; and

ii. Urban Financial,

that are owned or controlled by any person acting in concert with DeNaples, within the meaning of 12 C.F.R. 225.41(a)(2) of the Board's Regulation Y, as of the date of this Order.

c. Statements disclosing the number of voting shares and any other equity interests of:

i. First National; and

ii. Urban Financial,

that are owned or controlled by any member of DeNaples' immediate family, within the meaning of 12 C.F.R. 225.41(a)(3) of the Board's Regulation Y, as of the date of this Order.

d. A schedule for the divestiture of First National voting shares owned or controlled by DeNaples such that after the divestiture DeNaples would not own or control personally or acting in concert with other persons shares that would require prior notice under 12 C.F.R. 225.41(c), as if the shares owned or controlled personally or acting in concert with other persons had been acquired after the divestiture.

e. A schedule for the divestiture of Urban Financial voting shares owned or controlled by DeNaples such that after the divestiture DeNaples would not own or control personally, or acting in concert with other persons, shares that would require prior notice under 12 C.F.R. 225.41(c), as if the shares owned or controlled personally or acting in concert with other persons had been acquired after the divestiture.

f. The plan shall include a schedule such that the divestitures shall be completed within 180 days after the effective date of the Order.

g. The plan shall provide that the divestiture of the shares shall be:

    i. to third parties unrelated to DeNaples in arms-length transactions; or

    ii. if to any person who has previously acted in concert with DeNaples with respect to First National or Urban Financial, or would be considered to be acting in concert with DeNaples at the time of the divestiture (including persons presumed to be acting in concert with DeNaples as set forth in 12 C.F.R. 225.41(d)), the plan shall include adequate assurances (through a trust or otherwise) such that DeNaples would not have the ability to act in concert with, or exercise any

control or controlling influence over the shares of First National or Urban Financial, respectively. The mechanism and the individuals or entities who control the shares in any manner through a trust or otherwise shall be subject to the approval of the Board.

h. The plan shall further provide for disclosure of any financial or personal relationships between DeNaples, and his related interests (as defined in 12 C.F.R. 215.3(n), on the one hand, and each acquirer and his or her related interests, on the other hand, of any shares of First National or Urban Financial divested pursuant to the plan.

4. Respondent shall fully comply with all of the terms of any acceptable divestiture plan submitted.

5. Respondent shall submit his written divestiture plan and other correspondence with respect to this Order to:

a. Richard M. Ashton
Deputy General Counsel
Board of Governors of the Federal Reserve System
20th & C Sts., NW
Washington, DC 20551

b. Thomas Baxter
General Counsel
Federal Reserve Bank of New York
33 Liberty Street
New York, New York 10045
(with respect to Urban Financial)

c. Jeanne Rentezelas
Federal Reserve Bank of Philadelphia
10 Independence Mall
Philadelphia, PA 19106-1574
(with respect to First National)

6. Any violation of this Order shall subject Respondent to appropriate penalties under 12 U.S.C. § 1818(i).

7. The Board delegates to the Board's General Counsel (or his delegee), with the concurrence of the Director of the Division of Banking Supervision and Regulation (or his delegee), the authority to determine the acceptability of any divestiture plan submitted by Respondent pursuant to this Order, to accept modifications to any previously accepted divestiture plan, and to grant extensions of time.

8. This Order, and each and every provision hereof, is and shall remain fully effective and enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

This Order is effective 30 days after service on the Respondent.

By Order of the Board of Governors, this 10th day of April, 2012.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

(signed)

Jennifer J. Johnson
Secretary of the Board