

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

In the Matter of:

LAURA AKAHOSHI,
Former Chief Compliance Officer

RABOBANK, N.A.
Roseville, California

Docket No.:
AA-EC-2018-20

**ORDER REGARDING RESPONDENT’S MOTION
TO PROHIBIT RELIANCE ON SECRET LAW**

On February 17, 2021, Laura Akahoshi (“Respondent”) filed a “Motion to Prohibit Reliance on Secret Law in the Proceeding” (“Motion”). On March 4, 2021, Enforcement Counsel for the Office of the Comptroller of the Currency (“OCC”) filed a “Response to Respondent’s Motion to Prohibit Reliance on Secret Law in the Proceeding” (“Response”).

Respondent moves the undersigned to “issue an order declining to consider, and prohibiting the parties from citing, any precedents that were not published in publicly available databases either (a) at the time this action commenced or (b) promptly after being issued.” Motion at 1. In support, Respondent cites to another motion, in another proceeding before the OCC¹—which the undersigned also happens to be presiding over—alleging that the OCC has “constructed a system of secret law.” Motion at 1. Respondent specifically states that it “incorporates by references, and relies upon” that other order. Motion at 4.

Enforcement Counsel asserts that it contacted Respondent to see if she would be willing to enter into a stipulation, similar to the stipulation entered into in *Usher*, and that Enforcement

¹ That other proceeding is *In the Matter of Richard Usher*, OCC Docket No. AA-EC-2017-3. The motion that Respondent relies upon was withdrawn based on a joint stipulation from the parties in *Usher*, filed on February 24, 2021.

Counsel offered to provide Respondent with all future Comptroller decisions within five days of the issuance of the decision. *See* Response at 3. In addition, with respect to *past* Comptroller decisions cited to by Enforcement Counsel that are not published, Enforcement Counsel commits to providing Respondent with a copy at the time of citation. *See* Response at 5.

The undersigned finds that it not appropriate for a party to incorporate by reference and rely upon another filing in another matter.² The parties are reminded that, under the “Initial Prehearing Orders,” issued on May 9, 2018 by Administrative Law Judge Christopher McNeil (“McNeil Order”), which the undersigned adopted on April 24, 2020 in the “Order Reviewing Prior Administrative Law Judges’ Prehearing Actions,”

Only the applicable regulatory agency may enter final decisions and establish precedential determinations in cases presented to adjudicators at the Office of Financial Institution Adjudication. As such, citations to authority using as precedent the orders and recommended decisions from OFIA Administrative Law Judges should be limited to those in which the agency has considered and approved the ALJ’s order or recommended decision. . . . the parties are directed to not cite as precedential authority a point of law found in an order or recommended decision issued in a case considered by an administrative law judge, unless that order or recommended decision also has been approved by the applicable regulatory agency.

McNeil Order at 2-3. There appears to be no dispute between the parties that ALJ orders and decisions are not precedential unless adopted by the agency itself. Therefore, the parties should abide by the above ground rules set forth for this proceeding. Likewise, just as non-precedential orders should not be cited to, motions and responses thereto that are filed in other matters should likewise not be cited or incorporated into the parties’ instant arguments.

As acknowledged by Respondent, the Office of Financial Institution Adjudication (“OFIA”) website specifically states that filings that are not online may be reviewed by submitting

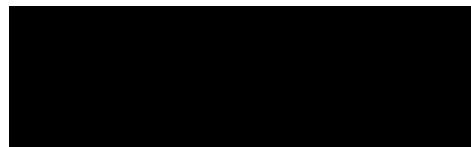
² The undersigned finds it curious that Respondent is incorporating another motion from another matter into her motion because doing such a request is rather contrary to her motion—namely, that the undersigned prevent the parties from citing to documents that are not available on publicly available databases.

a Freedom of Information Act (“FOIA”) request. Respondent may use this mechanism to request Comptroller decisions that are not available on publicly available databases. In addition, Enforcement Counsel has “offered to provide Respondent with all future Comptroller’s decisions within five days of the issuance of the decision” (Response at 3), and certain past decisions³ (Response at 6), which would certainly provide Respondent with such decisions more quickly than a FOIA request. Accordingly, the undersigned declines to grant Respondent’s motion, and the parties may cite to all appropriate authority within the bounds of the ground rules already set forth in this matter.

By the same token, the undersigned agrees with Respondent that orders issued by the Comptroller and the other constituent OFIA agencies in connection with OFIA adjudicatory proceedings are presumptively public and, by statute, must be made “available for public inspection in an electronic format.” 5 U.S.C. § 552(a)(2); *see* Motion at 1. The undersigned further recognizes that the lack of speedy publication of such orders places respondents at a disadvantage, for the reasons Respondent provides.⁴ The undersigned understands, however, that “Enforcement Counsel is not responsible for the publication of such decisions,” and she credits Enforcement Counsel’s representation that “going forward, the agency is working to improve its processes in this regard.” Response at 5.

SO ORDERED.

Issued: March 8, 2021



Jennifer Whang
Administrative Law Judge
Office of Financial Institution Adjudication

³ The undersigned finds it a best practice that any publication cited to by any party that is not readily available should be provided to the other party without delay.

⁴ *See* Motion at 5-6 (quoting *N.Y. Legal Assist. Grp. v. Bd. of Immigr. Appeals*, ___ F.3d ___, Civ. No. 19-3248, 2021 WL 401269, at *13 (2d Cir. Feb. 5, 2021)).

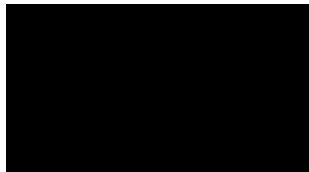
CERTIFICATE OF SERVICE

On March 8, 2021, I served a copy of the foregoing **Order** upon the following individuals via email:

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