

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

**IN THE MATTER OF )  
MASSIMILIANO LOCCI )  
FORMER EMPLOYEE )  
ISTITUTO BANCARIO SAN PAOLO DI TORINO )  
NEW YORK, NEW YORK )**

AA-EC-97-1

**ORDER**

This matter is before the Comptroller of the Currency (“Comptroller”) on the recommendation of the Administrative Law Judge (“ALJ”) for entry of default against Respondent Massimiliano Locci (“Respondent”), a former employee of the Federal branch (“the Branch”) of Istituto Bancario San Paolo di Torino, New York, New York (“the Bank”), in civil money penalty, cease and desist, and removal proceedings.<sup>1</sup> Upon consideration of the pleadings, the recommended decision of the ALJ, and the entire record, the Comptroller concludes that Respondent is in default. A final default judgment is not possible, however, until the Comptroller has before him sufficient information for determining the appropriate measure of restitution.

**I. FACTUAL SUMMARY AND PROCEDURAL HISTORY**

On April 21, 1997, the Office of the Comptroller of the Currency issued a Notice of Intention To Remove From Office and Prohibit Further Participation, Notice of Assessment of a Civil Money Penalty, and Notice of Charges (“Notice”) against Respondent. The Notice alleged

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<sup>1</sup> The prohibition action has been certified to the Board of Governors of the Federal Reserve System pursuant to 12 U.S.C. § 1818(e)(4); this decision does not apply to that action.

that Respondent, who traded foreign currency options for the Branch, engaged in unsafe and/or unsound practices, breaches of fiduciary duty, and violations of the law that consisted of providing false and inaccurate information to the Branch about currency spot exchange and volatility rates, thereby concealing the adverse affects of his inappropriate trading activities.

According to the Notice, Respondent's inaccurate information caused the Branch not to be fully informed of its exposure to risk or its actual losses during a period of time, from January 18 through March 24, 1995, when the currency market was unusually volatile. The Bank was allegedly unaware of its losses until they totaled \$10,700,000. During this period, Respondent engaged in options trading that violated the Branch's internal limits and, contrary to specific instructions, increased the Branch's open option position using a "short straddle" investment strategy that was inappropriate for the exceptionally unstable conditions in the currency market at that time.<sup>2</sup>

Respondent has failed either to request a hearing or to file an answer with respect to the matters alleged in the Notice. When, on June 11, 1997, the Office of the Comptroller of the Currency's Enforcement and Compliance Division ("Enforcement Counsel") moved for entry of default, Respondent filed no reply. On July 11, 1997, the ALJ ordered Respondent to show cause why the motion for default should not be granted. Respondent once again filed no reply. Accordingly, on August 15, 1997, the ALJ issued a decision and proposed orders recommending that Enforcement Counsel's motion be granted.

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<sup>2</sup> A "short straddle" strategy requires the trader to simultaneously sell a put and a call for the same amount, strike price, and maturity. While the trader earns extra fee income from selling the two options, a "short straddle" strategy does not make money for the bank unless markets remain stable.

## II. DISCUSSION

Entry of a default order is appropriate in this case because Respondent has failed to answer, request a hearing, or appeal. See 12 C.F.R. § 19.21. Respondent's failure to file an answer constitutes a waiver of Respondent's right to appear and contest the allegations contained in the Notice. 12 C.F.R. § 19.19(c)(1). Respondent's failure to appear is deemed consent to the issuance of a cease and desist order. 12 U.S.C. § 1818(b)(1). Respondent's failure to contest Enforcement Counsel's motion for entry of default is deemed consent to the entry of an order of default. 12 C.F.R. § 19.23(d)(2). Beyond this, the Comptroller concludes that entry of a default order is also appropriate because Respondent failed to respond to the ALJ's order to show cause why Enforcement Counsel's motion for entry of default judgment should not be granted.

The Comptroller, however, has an independent duty to assure himself that there is a reasonable basis for the amount of restitution specified in a default judgment. Klapprott v. United States, 335 U.S. 601, 611-12 (1948) (Black, J.); Pope v. United States, 323 U.S. 1, 12 (1944); Oberstar v. FDIC ("Oberstar"), 987 F.2d 494, 505 n.9 (8th Cir. 1993); e.g., Paul Lowder, OCC-AA-EC-93-73. Here, the Notice simply alleges, in summary fashion, that the Branch remained unaware of its losses until they totaled \$10,700,000, without explaining how this figure is supported. Under these circumstances, the Comptroller has no basis from which to evaluate the fairness or accuracy of the \$10,700,000 figure. Accordingly, the Comptroller has concluded that it would be helpful to have additional information.<sup>3</sup>

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<sup>3</sup> While a recent decision states that Enforcement Counsel must "prove" the amount of damages, Oberstar, supra, 987 F.2d at 505 n.9, documents and/or detailed affidavits are sufficient for this purpose. E.g., Fustok v. Commodity Serv., 873 F.2d 38, 40 (2nd Cir. 1989); Dundee Cement Co. v. Howard Pipe & Concrete Prod., 722 F.2d 1319, 1323 (7th Cir. 1983); see also Fed

In addition to restitution, the Notice imposes a civil money penalty of \$50,000, which the ALJ has also recommended and the record amply supports. In contrast to the amount of restitution, the amount of the civil money penalty is, therefore, not at issue. Under 12 C.F.R. 19.19(c)(2), failure to request a hearing means that "the notice of assessment constitutes a final and unappealable order." Id.

### III. ORDER

The Comptroller, based upon the entire record of this proceeding, finds that the Respondent is in default pursuant to 12 C.F.R. §§ 19.19(c)(1) and 19.23(d)(2).

The Comptroller hereby orders the parties to submit to the hearing clerk information relating to the appropriate measure of restitution as follows:

- (1) Enforcement Counsel shall file its submission within 14 days of the date of issuance of this order; and
- (2) Respondent shall file its submission and any response to Enforcement Counsel's submission within 14 days of the date upon which Enforcement Counsel's submission is served.

IT IS SO ORDERED, this 13<sup>th</sup> day of November, 1997.

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**EUGENE A. LUDWIG**  
Comptroller of the Currency

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R. Civ. P. 55(b)(1)(clerk may enter default judgment upon plaintiff's affidavit). Enforcement Counsel may submit such materials with a motion requesting entry of default judgment.