

*Quarterly
Journal*

**SPECIAL SUPERVISION AND
ENFORCEMENT ACTIVITIES**

SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

The Special Supervision Division of the Midsize/Community Bank Supervision Department supervises critical problem banks through rehabilitation or through other resolution processes such as orderly failure management or the sale, merger, or liquidation of such institutions. The Special Supervision Division monitors the supervision of delegated problem banks, coordinates safety and soundness examinations, provides training, analyzes and disseminates information, and supports OCC supervisory objectives as an advisor and liaison to OCC management and field staff on emerging problem bank-related issues.

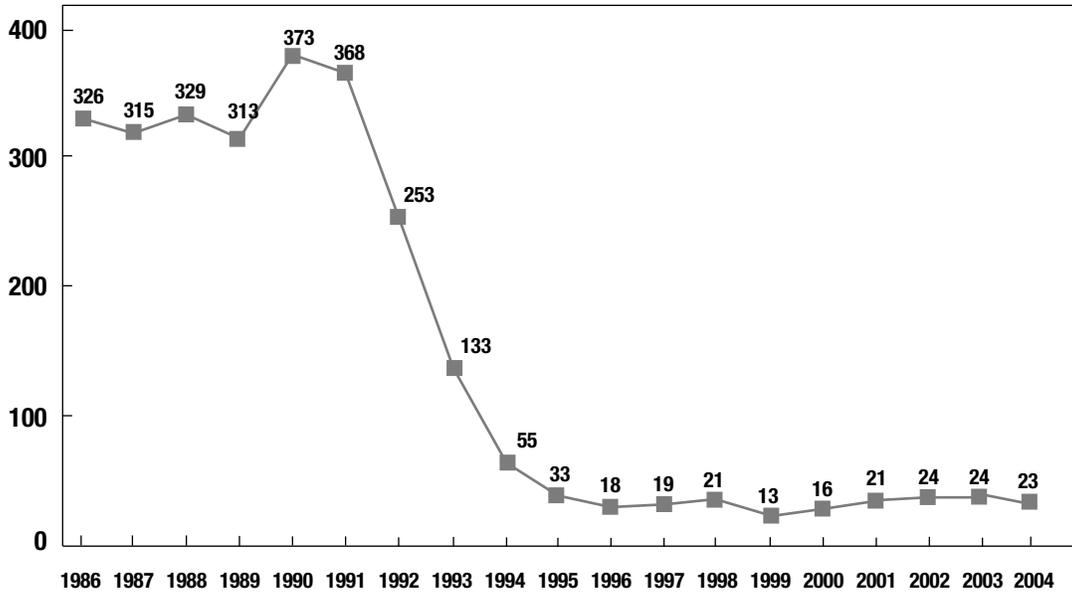
This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by OCC's Special Supervision Division and the FDIC's Department of Resolutions in Washington. Information on enforcement actions is provided by the Enforcement and Compliance Division (E&C) of the Law Department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

Problem National Banks and National Bank Failures

Problem banks represented approximately 1 percent of the national bank population as of December 31, 2004. The volume of problem banks, those with a CAMELS rating of 4 or 5, has been stable for several years. The CAMELS rating is the composite bank rating based on examiner assessment of capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The total number of problem banks is 23 at December 31, 2004, and is nearly the same as the number reported at December 31, 2003. This low volume of problem banks reflects the stable economy and generally favorable economic conditions enjoyed for the past several years. One national bank failure occurred during 2004 out of the four commercial bank/savings bank failures.

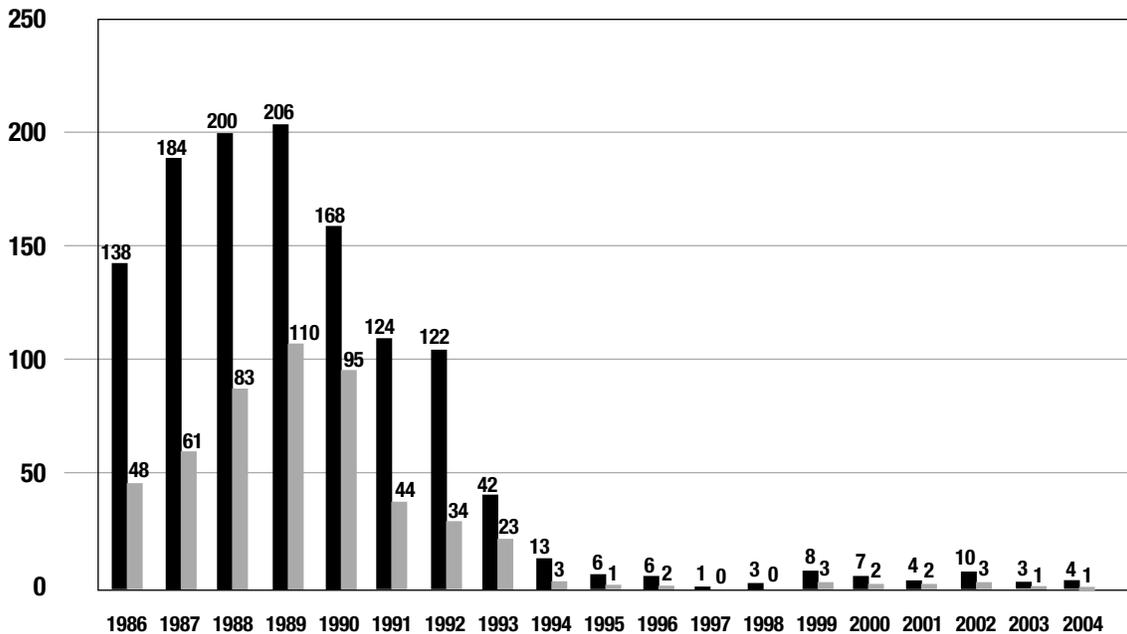
SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

Figure 1--Problem national bank historical trend line



Source: Special Supervision

Figure 2--Total Bank Failures Compared to OCC Failures



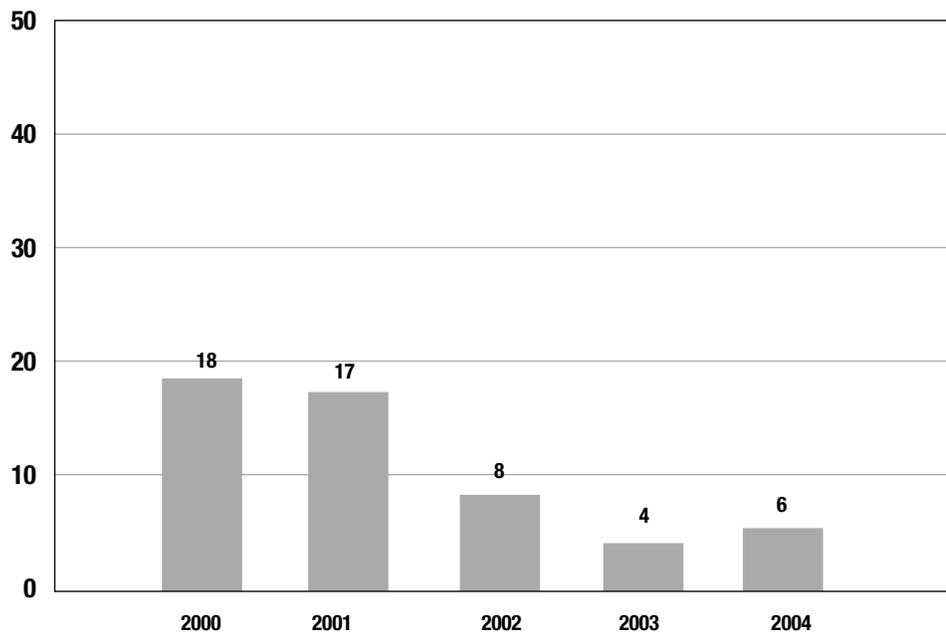
Source: Federal Deposit Insurance Corporation

Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety and soundness or compliance problems, these remedies range from advice and moral suasion to informal and formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

The OCC takes enforcement actions against national banks, parties affiliated with national banks, and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of understanding (MOUs). Informal enforcement actions are meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. Failure to honor informal enforcement actions will provide strong evidence of the need for the OCC to take formal enforcement action. The charts below show total numbers of the various types of informal enforcement actions completed by the OCC against banks in the last several years.

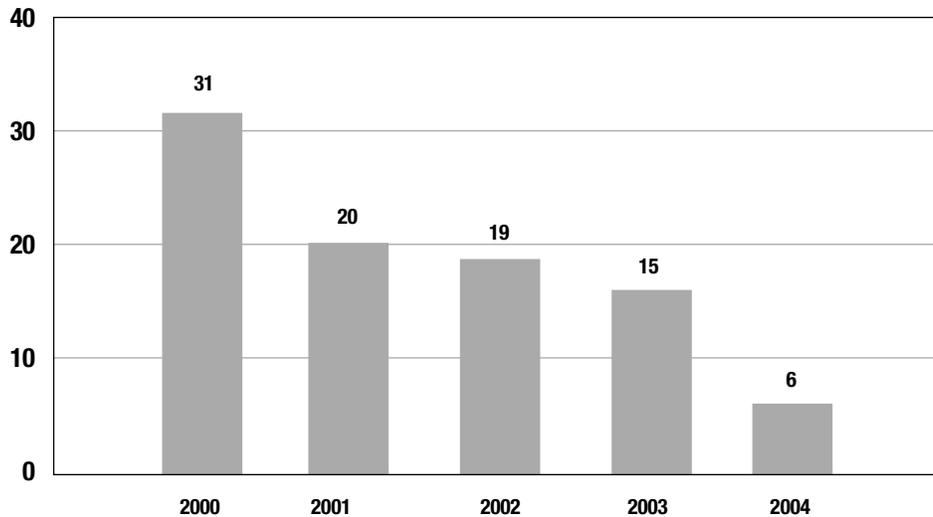
Figure 3--Commitment letters



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

Figure 4--Memorandums of understanding

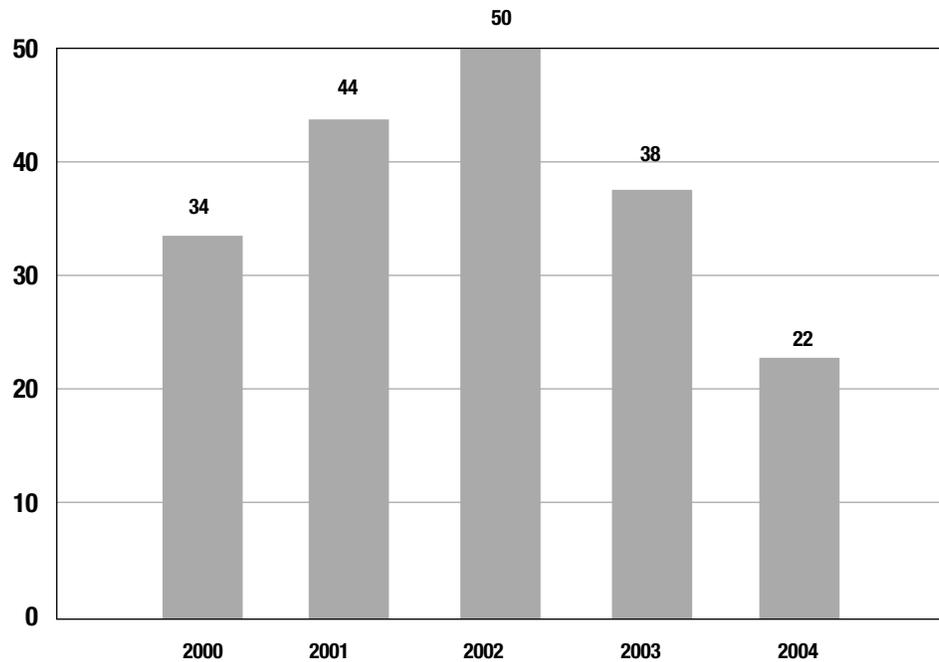


Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

The most common types of formal enforcement actions issued by the OCC against banks over the past several years have been formal agreements and cease-and-desist orders. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are enumerated as necessary to return the bank to a safe and sound condition. Cease-and-desist orders (C&Ds), sometimes issued as consent orders, are similar in content to formal agreements, but may be enforced either through assessment of civil money penalties (CMPs) or by an action for injunctive relief in federal district court. The OCC may also assess CMPs against banks, and in the first half of calendar year 2004, the OCC assessed CMPs against two banks.

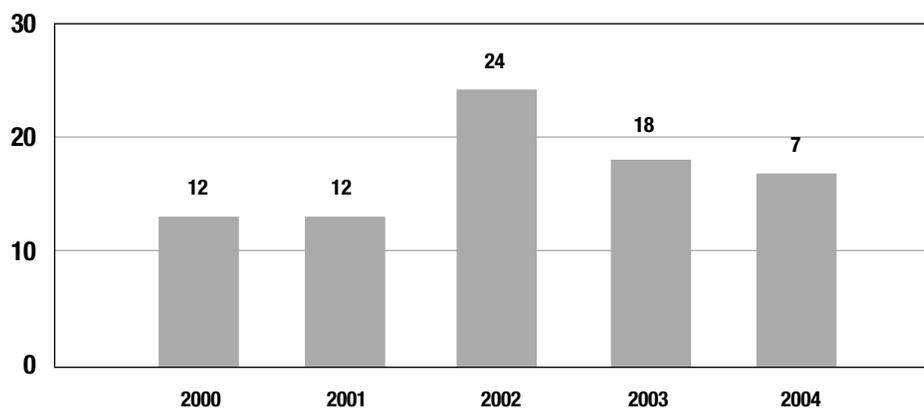
SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

Figure 5--Formal agreements



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 6--Cease-and-desist orders against banks

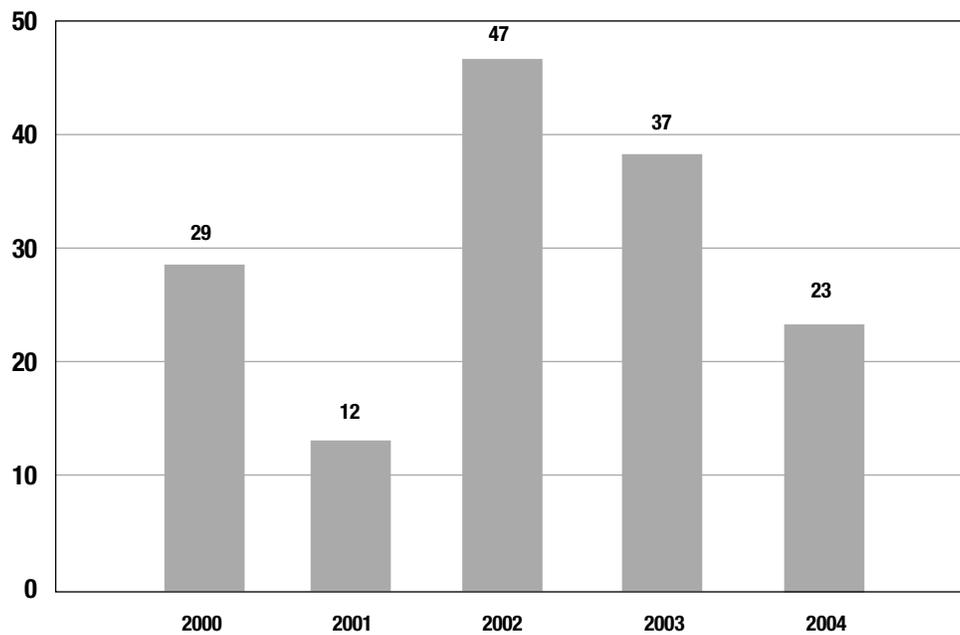


Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

The most common enforcement actions against individuals and other institution-affiliated parties are CMPs, personal C&Ds, and removal and prohibition orders. CMPs are authorized for violations of laws, rules, regulations, formal written agreements, final orders, conditions imposed in writing, unsafe or unsound banking practices, and breaches of fiduciary duty. Personal C&Ds may be used to restrict activities, order payment of restitution, or require institution-affiliated parties to take other affirmative action to correct the results of past conduct. Removal and prohibition actions, which are used in the most serious cases, result in lifetime bans from the banking industry.

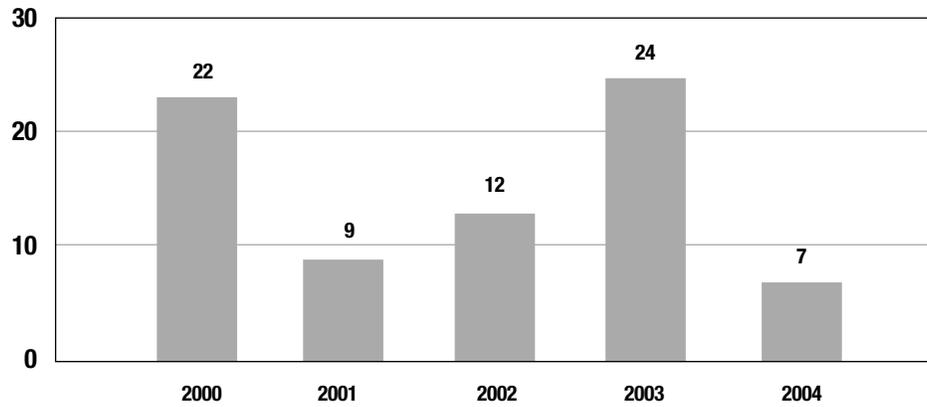
Figure 7--Civil money penalties against institution-affiliated parties



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

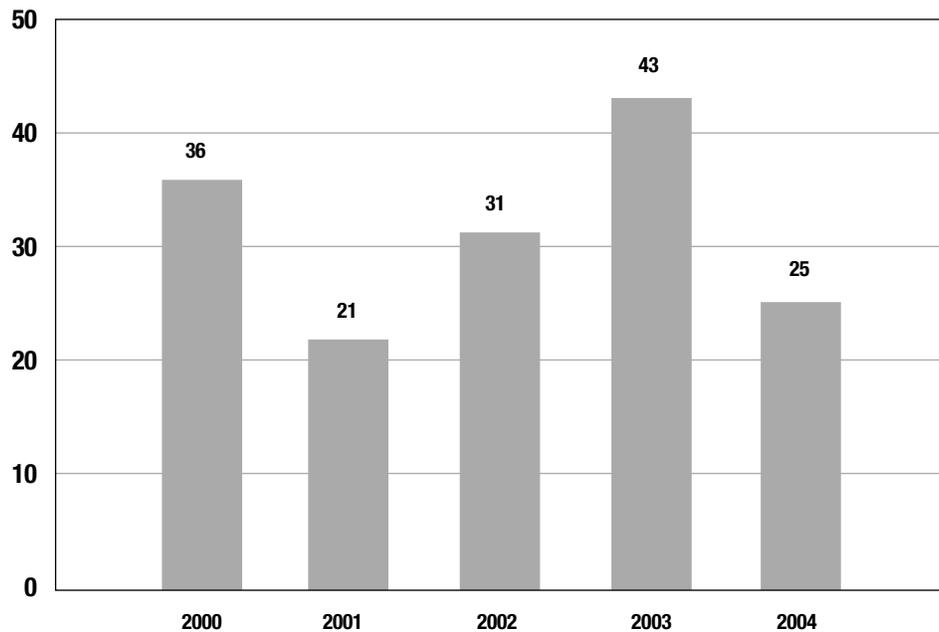
SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

Figure 8--Cease-and-desist orders against institution-affiliated parties



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 9--Removal and prohibition orders



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Recent Enforcement Cases

Below are summaries of the significant cases completed between January 1 and June 30, 2004:

A. General

Dismissal of action brought under intra-agency appeals statute upheld. The Fifth Circuit affirmed the order of the court below dismissing a national bank's complaint, brought under the independent intra-agency appeals statute (12 USC 4806), for lack of subject matter jurisdiction. The bank, which was engaged in payday lending, alleged that the OCC violated 12 USC 4806 and the bank's constitutional right to due process by not allowing the bank to appeal the CAMELS rating to the OCC Ombudsman. At the time the bank received its rating, the OCC had also advised the bank that it intended to initiate an enforcement action under 12 USC 1818 against the bank, primarily because of the bank's payday lending activities. The district court concluded that the bank was attempting to obtain district court review of the OCC's proposed enforcement action during the course of the administrative proceeding. The Fifth Circuit panel found it unnecessary to address this issue, holding instead that the dismissal was proper because there was no final agency action. *Peoples National Bank v. OCC*, 362 F.3d 333 (U.S. Court of Appeals for the 5th Circuit 2004).

B. Anti-Money Laundering/Bank Secrecy Act

Banks ordered to comply with Bank Secrecy Act/Anti-Money Laundering (BSA/AML) provisions. The OCC brought enforcement actions against banks for failing to maintain adequate BSA/AML compliance programs and ordered those banks to provide for internal controls, auditing, and employee training, and to designate a BSA compliance officer. *Formal Agreement: Town-Country National Bank, Camden, Ala.*, Enforcement Action No. 2004-4 (January 28, 2004); *In the Matter of New York National Bank, Bronx, New York*, Enforcement Action No. 2004-17 (February 18, 2004); *In the Matter of First Liberty National Bank, Washington, D.C.*, Enforcement Action No. 2004-32 (April 23, 2004); *In the Matter of Merchants Bank of California, N.A., Carson, California*, Enforcement Action No. 2004-64 (May 27, 2004); *In the Matter of Surety Bank, N.A., Fort Worth, Texas*, Enforcement Action No. 2004-65 (June 22, 2004).

Bank fined for BSA/AML violations. The OCC issued an order to cease and desist by consent requiring a bank to correct weaknesses in its audit and compliance procedures and assessed a \$25 million civil money penalty for numerous BSA/AML violations, due to the bank's failure to implement an effective anti-money laundering program. *In the Matter of Riggs Bank, N.A., McLean, Virginia*, Enforcement Actions Nos. 2004-43 (May 13, 2004), 2004-44 (May 13, 2004).

C. Consumer Protection

Bank ordered to pay restitution to consumers for unfair or deceptive practices. A credit card bank offered secured credit cards to individuals with impaired credit histories and encouraged them to

charge the required \$200 security deposit to the card. After various fees were also charged to the card, customers who received the bank's minimum credit line of \$260 had only \$2.50 in credit available for their use. Nearly half of the individuals who enrolled in the program defaulted, damaging their credit ratings. The bank consented to an enforcement action that prohibited the bank from charging customer security deposits to credit cards and from charging interest on those security deposits, and prohibited the bank from accepting deposits to fund its operations. The bank was also required to set aside \$10 million to pay restitution to affected customers. In the Matter of First National Bank of Marin, Las Vegas, Nevada, Enforcement Action No. 2004-45 (May 24, 2004).

D. Action Involving Uninsured Trust Bank

Formal agreement with an uninsured trust bank. The OCC brought an enforcement action against an uninsured trust bank that engaged in rent-a-charter activities (a practice in which a nonbank company will contract with a national bank, thereby enabling the nonbank company to conduct an aspect of its business through the national charter and prompting the company then to claim that its activities enjoy the benefits of a national bank charter) but failed to maintain proper internal controls and entered into agreements with participating companies that conceded rights to those companies without retaining similar rights for the trust bank, among other unsafe and unsound practices. The OCC and the trust bank entered into a formal agreement requiring the trust bank, inter alia, to restrict and review the bank's agreements with third parties, conduct an internal audit, develop a written risk management program, and adopt a written fiduciary compliance program. *Formal Agreement: National Independent Trust Company, Ruston, Louisiana*, Enforcement Action No. 2004-36 (May 3, 2004).

E. Early Intervention for Problem Banks

Enforcement action against bank for suspicious loan transaction. A national bank engaged in a questionable transaction with The Central Bank of the Gambia (CBG) involving a \$28 million short-term loan to CBG, the proceeds of which were immediately placed in a \$28 million CD for the benefit of The Gambia. The bank's president subsequently confirmed the existence of the CD—but allegedly withheld information about the offsetting loan—to The Gambia's auditor, KPMG, thereby facilitating a scheme whereby The Gambia fraudulently obtained funding from the International Monetary Fund. The bank consented to the OCC's cease-and-desist order directing the bank to correct its accounting for the CBG transaction, restricting the bank's lending practices, requiring enhanced audit and compliance procedures, and requiring the bank to ensure competent management at the president position. The bank's president subsequently resigned. *In the Matter of First Liberty National Bank, Washington, D.C.*, Enforcement Action No. 2004-32 (April 23, 2004).

Loan officer and bank president consent to prohibitions in connection with unsafe or unsound lending practices. A loan officer engaged in unsafe or unsound lending practices, including alleg-

edly manipulating loan payment data to hide the delinquent status of loans under his supervision. The bank president/loan committee chairman allegedly failed to give adequate supervision of the loan officer's activities, allegedly failed to take prompt remedial action after being put on notice of the loan officer's activities, and allegedly participated in the administration of loans (including a nominee loan) in which he had an interest, creating a conflict of interest. The loan officer and the president consented to the OCC's orders of prohibition and to civil money penalties of \$2500 and \$15,000, respectively. *In the Matter of Jeffrey Workman, Beatrice National Bank & Trust, Beatrice, Nebraska*, Enforcement Action No. 2004-48 (May 7, 2004); *In the Matter of William Cook III*, Enforcement Action No. 2004-47 (May 20, 2004).

Enforcement action against former CEO. The chief executive officer of a national bank who was also the controlling shareholder of the bank's holding company had, among other things, allegedly failed to ensure that the bank complied with BSA/AML requirements. The officer/shareholder consented to the OCC's order of prohibition, assessment of a \$10,000 civil money penalty, and personal cease-and-desist order to sell the bank or his shares in the bank's holding company within 8 months. *In the Matter of Jon R. Lindeman, Americana National Bank, Albert Lea, Minnesota*, Enforcement Action No. 2004-3 (February 1, 2004).

F. Actions Involving Closed Problem Banks

Enforcement actions against a merged bank's former officers and directors for unsafe or unsound lending practices, uncorrected violations of law, and breaches of fiduciary duty. A national bank that had been operating under a formal agreement since 2001, failed to correct deficiencies in lending practices, asset quality, and internal controls, and failed to correct violations of law, including violations of lending limits. Subsequent to the sale of the bank (which prevented the bank's failure), the OCC initiated enforcement actions against the bank's officers and directors, resulting in a prohibition and \$25,000 civil money penalty against an assistant vice president/lending officer. Actions against the former president and directors are proceeding. *In the Matter of Kathy Hughes, First National Bank, Lubbock, Texas*, Enforcement Action No. 2004-68 (May 20, 2004).

Enforcement actions against officers/directors of closed bank. The OCC continued to pursue enforcement actions against the directors and officers of a closed national bank who were involved in suspicious loan transactions and other activities that resulted in overstatement of the bank's earnings and concealment of losses. The bank's former counsel consented to a personal cease-and-desist order, a restitution order in the amount of \$195,000, and assessment of a \$25,000 civil money penalty. The bank's former executive vice president consented to a personal cease-and-desist order and a \$20,000 civil money penalty. *In the Matter of J. Reid Bingham, Hamilton Bank, N.A., Miami, Florida*, Enforcement Action No. 2004-2 (February 17, 2004); *In the Matter of Adolfo Martinez*, Enforcement Action No. 2004-18 (March 17, 2004).

Enforcement actions against former officers, directors, and employees of a failed bank. After a national bank was merged into another national bank to avoid bank failure, the OCC took enforcement actions against the former officers, directors, and employees for the bank's failure to comply with a formal agreement with the OCC and for allegedly engaging in activities that caused the increased risks and deteriorating financial condition that led to the closing of the bank. The OCC issued orders of prohibition by consent against a former officer/director and the former cashier. In addition, the OCC assessed civil money penalties against the former officer/director, the former cashier, a former employee, and three other directors. *In the Matter of Jon Hogg, First National Bank of O'Donnell, O'Donnell, Tex.*, Enforcement Action 2004-85 (June 24, 2004); *In the Matter of Roddy Doss*, Enforcement Action 2004-55 (May 12, 2004); *In the Matter of Matt Hogg*, Enforcement Action 2004-69 (June 7, 2004); *In the Matter of Cheryl Hogg*, Enforcement Action 2004-56 (May 12, 2004); *In the Matter of William Henderson*, Enforcement Action 2004-20 (March 25, 2004); *In the Matter of Mickey Hughes*, Enforcement Action 2004-21 (March 25, 2004).

G. Actions to Combat Bank Insider Abuse

Enforcement action against loan officer for fraudulent loan. The OCC issued a prohibition order by consent against a loan officer who allegedly obtained bank funds for his personal benefit through a fraudulent loan. *In the Matter of Ryan Rigg, The First National Bank of Sumner, Olney, Ill.*, Enforcement Action No. 2004-74 (May 19, 2004).

H. Fast Track Enforcement Cases

The OCC continued its Fast Track Enforcement program, initiated in 1996, which ensures that bank insiders who have engaged in criminal acts in banks, but who are not being criminally prosecuted, are prohibited from working in the banking industry. As part of the Fast Track Enforcement program, the OCC secured 13 consent prohibition orders against institution-affiliated parties between January 1 and June 30, 2004. Three of these orders incorporated restitution to the appropriate bank for losses incurred, and two of the orders incorporated civil money penalties. During the same period, the OCC sent out notifications to 188 former bank employees who were convicted of crimes of dishonesty, informing them that under federal law they are prohibited from working again in a federally insured depository institution.