

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

**#EA 2000-77**

<b>IN THE MATTER OF</b>	)	
<b>Hamilton Bank, N.A.</b>	)	<b>OCC-AA-EC-00-03</b>
<b>Miami, Florida</b>	)	

**STIPULATION AND CONSENT  
TO THE ISSUANCE OF A CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (Athe Comptroller@) has initiated a cease and desist proceeding against Hamilton Bank, N.A., Miami, Florida (Athe Bank@) pursuant to Title 12, United States Code, Section 1818(b) through the issuance of a Notice of Charges and an Amended Notice of Charges (Athe Notices@) for activities detailed in a Report of Examination (AROE@) dated August 23, 1999; and

WHEREAS, in the interest of compliance and cooperation, the Comptroller and the Bank have mutually agreed to enter into this Stipulation and Consent to the Issuance of a Consent Order (AStipulation and Consent@).

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and the Bank, through its duly elected and acting Board of Directors, that:

**ARTICLE I**

(1) The Bank is a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, Title 12, United States Code, Section 1 et seq.

(2) The Bank is an Ainsured depository institution@ as that term is defined in Title 12, United

States Code, Section 1813(c)(2).

(3) The Comptroller is the ~~A~~appropriate Federal banking agency~~@~~ with regard to the Bank pursuant to Title 12, United States Code, Section 1813(q). Accordingly, the Comptroller is authorized to maintain an enforcement proceeding against the Bank.

## **ARTICLE II**

(1) The Bank hereby consents and agrees to the issuance of a Consent Order dated September 8, 2000 (~~A~~the Consent Order~~@~~) by the Comptroller. The Bank further agrees that the Consent Order shall be deemed ~~A~~an order issued with the consent of the depository institution" under Title 12, United States Code, Section 1818(h)(2), and the Bank consents and agrees that the Consent Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of Title 12, United States Code, Section 1818.

(2) The Bank further agrees that the Consent Order constitutes a final order issued pursuant to Title 12, United States Code 1818(b).

## **ARTICLE III**

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
- (a) any and all procedural rights available in connection with the issuance of the Notices and the Consent Order;
  - (b) all rights to seek any type of administrative or judicial review of the Notices or the Consent Order;
  - (c) any and all rights to challenge or contest the validity of the Consent Order;

- (d) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to the Notices or the Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. ' 504 and 28 U.S.C. ' 2412.

#### **ARTICLE IV**

- (1) The Notices are hereby dismissed.
- (2) The Temporary Order issued by the Comptroller on April 25, 2000 is hereby terminated.

#### **ARTICLE V**

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

(2) The Bank agrees that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall Respondent contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, to bring other actions deemed appropriate.

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

/s/

September 8, 2000

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Ronald G. Schneck  
Director for Special Supervision/Fraud

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Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of

Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/ \_\_\_\_\_ September 5, 2000  
William Alexander Date

/s/ \_\_\_\_\_ September 5, 2000  
Juan Carlos Bernace Date

/s/ \_\_\_\_\_ September 5, 2000  
Ronald Frazier Date

/s/ \_\_\_\_\_ September 5, 2000  
Ronald Lacayo Date

/s/ \_\_\_\_\_ September 5, 2000  
George Lyall Date

/s/ \_\_\_\_\_ September 5, 2000  
Eduardo A. Masferrer Date

/s/ \_\_\_\_\_ September 7, 2000  
Ben Moyer Date

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

**IN THE MATTER OF** )  
**Hamilton Bank, N. A.,** )  
**Miami, Florida** )

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined Hamilton Bank, N. A., Miami, Florida (Bank), and his findings are contained in a Report of Examination dated August 23, 1999 (ROE).

The Bank, by and through its duly elected and acting Board of Directors (Board), has executed a "Stipulation and Consent to the Issuance of a Consent Order," dated September 8, 2000, which is accepted by the Comptroller (Stipulation and Consent). By the Stipulation and Consent, which is incorporated herein by reference the same as if fully set forth, the Bank has consented to the issuance of a Consent Order by the Comptroller.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, Title 12, United States Code, Section 1818 (as amended), the Comptroller hereby orders that:

ARTICLE I

## COMPLIANCE COMMITTEE

(1) Within 15 days, the Board shall appoint a Compliance Committee of at least 3 directors, none of whom shall be employees of the Bank or any of its affiliates (as the term "affiliate" is defined in 12 U.S.C. ' 371c(b)(1)), or a family member of any such person. Upon appointment, the names of the members of the Compliance Committee shall be submitted in writing to the Deputy Comptroller for Supervision Support (Deputy Comptroller). The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of this Order.

(2) The Compliance Committee shall meet at least monthly.

(3) Within thirty (30) days of the appointment of the Committee and every thirty (30) days thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken to comply with each Article of this Order;
- (b) the results of those actions;
- (c) projected time frames to achieve compliance with each Article; and
- (d) name(s) of the person(s) responsible for achieving compliance with each Article.

(4) Monthly, within 15 days of receipt from the Compliance Committee, the Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Deputy Comptroller.

## ARTICLE II

### CAPITAL PLAN AND HIGHER MINIMUMS

(1) The Bank shall achieve by September 30, 2000 and shall thereafter maintain the following capital levels (as defined in 12 C.F.R. Part 3):

- (a) Total capital at least equal to 12% of risk-weighted assets;
- (b) Tier 1 capital at least equal to 10% of risk-weighted assets; and
- (c) Tier 1 capital at least equal to 7% of adjusted total assets.

(2) The Board shall immediately direct management to, and management shall within sixty (60) days, revise the Bank's three-year capital program. The revised program shall include:

- (a) specific plans for the maintenance of adequate capital that may in no event be less than the requirements of paragraph (1);
- (b) projections for growth and capital requirements based upon a detailed analysis of the Bank's assets, liabilities, earnings, fixed assets, and off-balance sheet activities;
- (c) projections of the sources and timing of additional capital to meet the Bank's current and future needs;
- (d) the primary source(s) from which the Bank will strengthen its capital structure to meet the Bank's needs;
- (e) contingency plans that identify alternative methods should the primary source(s) under (d) above not be available; and
- (f) a dividend policy that permits the declaration of a dividend only:
  - (i) when the Bank is in compliance with its approved capital program;
  - (ii) when the Bank is in compliance with 12 U.S.C. ' ' 56



and 60; and

(iii) with the prior written approval of the Deputy Comptroller.

(3) Upon completion, the Bank's capital program shall be approved by the Board and shall be submitted to the Deputy Comptroller for approval. Upon approval by the Deputy Comptroller, the Bank shall implement and shall adhere to the capital program. The Board shall review and cause to be updated the Bank's capital program on an annual basis, or more frequently if necessary. Copies of the reviews and updates shall be submitted to the Deputy Comptroller.

(4) The Board shall ensure that the Bank implements and adheres to the approved capital program, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the program developed pursuant to this Article.

### ARTICLE III

#### STRATEGIC PLAN

(1) Within sixty (60) days, the Board shall review the Bank's strategic plan, and revise it as necessary, so that the plan contains objectives for the Bank's overall risk profile, earnings performance, growth, balance sheet mix, off-balance sheet activities, liability structure, capital adequacy, reduction in the volume of nonperforming assets, product line development and market segments that the Bank intends to promote or develop, together with strategies to achieve those objectives, and, at a minimum, includes:

(a) a mission statement that forms the framework for the establishment of strategic goals

and objectives;

- (b) an assessment of the Bank's present and future operating environment;
- (c) strategic goals and objectives to be accomplished over the short and long term;
- (d) an identification of the Bank's present and future product lines (assets and liabilities) that will be utilized to accomplish the strategic goals and objectives established in (1)(c) of this Article;
- (e) an evaluation of the Bank's internal operations, staffing requirements, board and management information systems and policies and procedures for their adequacy and contribution to the accomplishment of the goals and objectives developed under (1)(c) of this Article;
- (f) the identification of present and future management and staffing requirements of each area of the Bank, with particular emphasis given to the Lending, Investment, Loan Review, and the Problem Loan Workout area;
- (g) a management employment and succession program to promote the retention and continuity of capable management;
- (h) product line development and market segments that the Bank intends to promote or develop;
- (i) an action plan to accomplish identified strategic goals and objectives, including individual responsibilities, accountability and specific time frames;
- (j) a financial forecast to include projections for major balance sheet and income

statement accounts and desired financial ratios over the period covered by the strategic plan;

- (k) control systems to mitigate risks associated with planned new products, growth, or any proposed changes in the Bank's operating environment;
- (l) specific plans to establish responsibilities and accountability for the strategic planning process, new products, growth goals, or proposed changes in the Bank's operating environment; and
- (m) systems to monitor the Bank's progress in meeting the plan's goals and objectives.

(2) Upon approval by the Board, a copy of the plan shall be forwarded to the Deputy Comptroller.

(3) The Board shall ensure that the Bank implements and adheres to the approved strategic plan, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the plan developed pursuant to this Article.

#### ARTICLE IV

##### PURCHASES AND SALES OF LOANS AND INVESTMENT ASSETS

(1) The Bank shall not engage in any transactions where the Bank sells debt or equity obligations, securities, loans or investment assets (that is, assets which are in security form regardless of the legal authority used to acquire them) at a price above market value and simultaneously, or in close proximity to, purchases and books different debt or equity obligations, securities, loans or investment assets at a price greater than

their market value.

(2) The Bank shall adopt a delivery versus payment policy and the Bank shall not pay directly to the seller for any debt or equity obligations, securities, loans or investment assets in advance of the settlement or closing day.

(3) The Bank shall develop and implement written policies and procedures for the purchase and sale of debt or equity obligations, securities, loans or investments underwritten as loans. At a minimum, the Bank's policies and procedures must provide that the Bank maintains complete documentation as described in OCC Bulletin 98-20 on all purchases and sales of debt or equity obligations, securities, loans or investments underwritten as loans, including, but not limited to the following: internal and external communications generated or received in connection with purchases and sales; origination tickets; dealer confirmations; wire transfer records; and pre-purchase analyses. The Bank's policies and procedures shall also provide:

- (a) that all required analyses and approvals are performed or obtained and reviewed prior to the purchase or sale of any debt or equity obligations, securities, loans or investments underwritten as loans by the Bank, and that such analyses, approvals and reviews are signed and dated by the persons performing the analyses and approvals;
- (b) that, when purchasing debt or equity obligations, securities, loans or investments underwritten as loans, the Bank exercises appropriate due diligence efforts to pay fair and reasonable prices by obtaining and documenting offers from at least three independent dealers. If the Bank cannot find three independent dealers to offer a particular security the Bank wishes to purchase, the Bank must document that the price paid is reasonable by

comparing prices for other assets with similar characteristics (i.e., credit rating, coupon, maturity) offered by other dealers. When the amount purchased is one million dollars (\$1,000,000) or less, the Bank will not be required to obtain independent dealer offers;

- (c) that the Bank obtains, verifies and retains confirmations for the purchase of any debt or equity obligations, securities, loans or investment assets;
- (d) that before any purchases or sales of any debt or equity obligations, securities, loans or investments underwritten as loans are executed, they are reviewed by the Bank's credit administration department to ensure that all required approvals, analyses, and reviews have been performed or received; that the trades will be with approved dealers; and, that the trades conform to the policies and procedures adopted by the Board pursuant to this Article;
- (e) that all purchases and sales of debt or equity obligations, securities, loans or investments underwritten as loans at par or face value are reviewed by the Bank's internal auditors, or another independent department, prior to settlement;
- (f) that the settlement of all purchases and sales of debt or equity obligations, securities, loans or investments underwritten as loans are reviewed by the Bank's internal auditors, or another independent department; and
- (g) that the Bank's compliance with the policies, procedures and controls adopted pursuant to this Article are reviewed by the Bank's internal auditors and the Compliance Committee quarterly.

(4) The policies and procedures developed for this Article shall be approved by the Board and submitted to the Deputy Comptroller.

(5) The Board shall ensure that the Bank implements and adheres to the approved policies and procedures developed pursuant to this article, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the approved policies and procedures.

## ARTICLE V

### ACCOUNTING FOR INVESTMENT ASSETS

(1) Regardless of the legal authority (i.e. lending or investment) used to acquire investment assets, the Bank shall recognize and record all such assets as investments and shall follow GAAP and the Call Report Instructions with respect to all such investment assets.

(2) The Bank shall account for and report investment assets purchased at initial offerings or in the secondary market to reflect the economic substance of the transaction in accordance with GAAP, including but not limited to, the standards prescribed in Financial Accounting Standard 115.

(3) When purchasing investment assets, the Bank must pay for and record such assets at fair market value, regardless of the legal authority (i.e., loan or investment) used to acquire such assets. The Bank shall record loans or investment assets purchased at initial offerings or in the secondary market at fair market value as supported by three broker quotes.

(4) The Bank shall update its investment policies and practices to conform to the FFIEC Interagency Policy Statement on Investment Securities and Article IV herein.

(5) The policies and procedures developed for this Article shall be approved by the Board and submitted to the Deputy Comptroller.

## ARTICLE VI

### BOOKS AND RECORDS

(1) The Bank shall maintain its books, records and management information systems (MIS) in a complete and accurate condition, and the Bank's files shall contain all records and information necessary to allow the Comptroller to determine the details or purposes of each of the Bank's transactions. At a minimum:

- (a) when engaging in a sale and/or purchase of an asset, the Bank shall record the transaction in a manner consistent with generally accepted accounting principles (GAAP), that reflects the economic substance of the transaction when considered in the context of all contingent and/or related transactions, including but not limited to the recognition of gain or loss on asset sales;
- (b) any and all loans, purchased certificates of deposit, investments, accrued interest or other evidence of indebtedness shall not be recorded as Accounts Receivable, but shall be accounted for following GAAP; and
- (c) procedures and controls shall be adopted and implemented to control value-dating of entries by establishing time limits and requiring complete documentation to support and explain all value-dated entries which exceed those time limits.

(2) The policies and procedures developed for this Article shall be approved by the Board and submitted to the Deputy Comptroller.

## ARTICLE VII

### RETENTION OF RECORDS

(1) The Bank shall provide all federal financial regulatory agency personnel (agency personnel) with prompt and unrestricted access to the Bank's books, records and staff, and provide full and complete details or purposes of the Bank's transactions to agency personnel upon inquiry.

(2) The Bank shall develop and implement policies and procedures governing the retention of documents in the ordinary course of business that shall, at a minimum:

- (a) identify the types of documents or books and records to be retained in the ordinary course of business;
- (b) set forth a time table on which retained documents will be destroyed;
- (c) prohibit the destruction, alteration, or removal of documents or books and records

from the Bank's premises outside of the standards set forth in the policy.

(3) The policies and procedures developed for this Article shall be approved by the Board and submitted to the Deputy Comptroller for approval.

(4) Once approved by the Deputy Comptroller, the Bank shall retain documents, books and records unless the destruction, alteration or removal is completed pursuant to the policies, procedures



and schedule implemented pursuant to this Article.

(5) For the purposes of this Article, documents, books and records shall have the broadest meaning reasonably imaginable and shall include, without limitation, paper and electronic records of all kinds, notes, calendars, phone logs, financial instruments and tapes.

## ARTICLE VIII

### RISK MANAGEMENT

(1) The Board shall immediately direct management to, and management shall within ninety (90) days update the Bank's written risk management program so that it is consistent with the Bank Supervision Process booklet of the Comptroller Handbook, and to include, at a minimum, the following:

- (a) identification of existing credit, interest rate, liquidity, transaction, compliance, strategic, and reputation risks, and a written analysis of those risks;
- (b) action plans and time frames to reduce risks where exposure is high, particularly with regard to credit risk, which impacts directly on liquidity, compliance, strategic, and reputation risks;
- (c) policies, procedures or standards which limit the degree of risk the Board is willing to incur, consistent with the strategic plan and the Bank's financial condition. This includes analyzing and limiting the

risks associated with any new lines of business which the Bank undertakes. The procedures shall provide that strategic direction and risk tolerances are effectively communicated and followed throughout the Bank and shall describe the actions to be taken where noncompliance with risk policies is identified;

- (d) systems to measure and control risks within the Bank which provide for timely and accurate risk reports by customer, by department or division, and Bank wide as appropriate; and
- (e) training to provide Bank employees with the necessary skills to supervise effectively the current and the new business risks within the Bank, and procedures that describe the actions to be taken to address deficiencies, if any, in staff levels and skills.

(2) The Board shall approve the risk management program, and ensure that the Bank implements and adheres to the approved program, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the program developed pursuant to this Article.

## ARTICLE IX

### COUNTRY RISK MANAGEMENT

(1) The Board shall immediately direct management to, and management shall within sixty (60) days, review, revise where appropriate, and submit to the Board for its approval country risk management policies addressing, at a minimum, the following:

- (a) establishment, adherence and enforcement of prudent country risk limits. At a minimum, these limits shall not exceed 75% of capital (Tier 1 capital plus the ALLL) for any one country rated OTRP or worse or 150% of capital, in the aggregate, for all countries rated OTRP or worse. Aggregate exposures to all emerging markets shall not exceed 500% of capital. These computations shall exclude foreign owned multinational banks but shall include all foreign owned multinational corporations and sovereign risk exposure to the country. Exposure to a foreign owned multinational corporation can be excluded from the computation if it is guaranteed by a resident of a non-emerging market country and such guarantee meets FFIEC 009 instructions for reallocation of exposure;
- (b) The ALLL shall include a minimum 2% for OTRP countries and 1% for Weak countries;
- (c) establishment of sublimits within each country, where appropriate;
- (d) procedures addressing scenario analysis or stress test to identify potential risks. Stress testing should include an assessment of possible changes in important

underlying assumptions about the level of risk associated with any country where the Bank has a concentration of exposure;

(e) establishment of formal contingency plans and clear exit strategies for dealing with country risk problems;

(f) procedures to ensure the accuracy of internal management information systems; and

(g) country risk measurement in terms of earnings and capital at risk.

(2) Following approval by the Board a copy of the policies adopted in paragraph 1 shall be submitted to the Deputy Comptroller.

(3) The Board shall ensure that the Bank implements and adheres to the approved country risk management policies, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the policies developed pursuant to this Article.

## ARTICLE X

### CREDIT AND PERSONNEL POLICIES AND PROCEDURES

(1) The Board shall immediately direct management to, and management shall within sixty (60) days, review, revise and strengthen the Bank's credit administration policies and procedures, and submit them to the Board for approval. The revised policy shall include but not be limited to the following:

(a) the watch list shall incorporate all workout credits, even those being handled by in-Bank counsel;

- (b) watch list file documentation shall reflect all current developments, including collection efforts;
- (c) watch list comments shall be updated consistently by all officers on at least a monthly basis;
- (d) collateral valuations for watch list credits shall be supported by current appraisals, engineering reports, and/or attorney opinions on lien status, where applicable;
- (e) current memos regarding officer visits and items of importance shall be included in the credit files;
- (f) current fiscal information shall be maintained in all credit files;
- (g) credit analyses address repayment measures/ratios;
- (h) credit files disclose the true and specific purpose of the loan, including identifying when a loan is restructured or constitutes a Troubled Debt Restructuring;
- (i) loans purchased from other institutions shall receive timely in-house analyses; and
- (j) requiring more stringent terms and conditions, greater collateral requirements, and more detailed financial analysis and documentation on weaker or riskier credits before the credit is made.

(2) The Bank shall within one hundred and twenty (120) days institute a performance appraisal process, including performance appraisals, job descriptions, and incentive programs for loan officers, which adequately consider their performance relative to policy compliance, documentation standards, accuracy in internal credit grading, and other loan administration matters.

(3) The Board shall immediately direct management, and management shall within (90) days, develop

systems which provide for effective monitoring of:

- (a) early problem loan identification to ensure the timely identification and internal grading of loans and leases based on lending officer submissions;
  - (b) statistical records that will serve as a basis for identifying problem loans and leases by country, industry, size, collateral, division, group, and individual lending officer;
  - (c) previously charged-off assets and their recovery potential;
  - (d) compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function; and
  - (e) adequacy of credit and collateral documentation.
- (4) On a monthly basis, management will continue to provide the Board with written reports including,

at a minimum, the following information:

- (a) the identification, type, rating, and amount of problem loans and leases;
- (b) the identification and amount of delinquent loans and leases;
- (c) credit and collateral documentation exceptions;
- (d) the identification and status of credit related violations of law, rule or regulation;
- (e) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (a) through (d) of this Article and this Paragraph and the identity of the loan officer responsible for such loan

when it was first criticized;

- (f) an analysis of concentrations of credit, significant economic factors, and general conditions and their impact on the credit quality of the Bank's loan and lease portfolios;
- (g) the identification and amount of loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (h) the identification of loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing policies.

(5) The Board shall ensure that the Bank implements and adheres to the policies and procedures developed pursuant to this article, and has the processes, personnel, and control systems necessary for the implementation of and adherence to them.

## ARTICLE XI

### INTERNAL LOAN REVIEW

(1) The Board shall within sixty (60) days employ or designate a sufficiently experienced and qualified person(s) or firm to ensure the timely and independent identification of problem loans and leases.

(2) The Board shall immediately direct management, and management shall within ninety (90) days

review and revise where appropriate the Bank's on-going loan review system. The loan review system shall be independent, conducted at least quarterly, and provide for the timely identification and categorization of problem credits. The system shall provide for a written report to be filed with the Loan Review Committee of the Board after each review and shall use a loan and lease grading system consistent with the guidelines set forth in Section 215 of the Comptroller's Handbook for National Bank Examiners.

Such reports shall, at a minimum, include conclusions regarding:

- (a) the overall quality of the loan and lease portfolios;
- (b) the identification, type, rating, and amount of problem loans and leases;
- (c) the identification and amount of delinquent loans and leases;
- (d) credit and collateral documentation exceptions;
- (e) the identification and status of credit related violations of law, rule or regulation;
- (f) the identity of the loan officer who originated each loan reported in accordance with subparagraphs (b) through (e) of this Article, and the identity of the loan officer currently responsible for the loan;
- (g) concentrations of credit;
- (h) loans and leases to executive officers, directors, principal shareholders (and their related interests) of the Bank; and
- (i) loans and leases not in conformance with the Bank's lending and leasing policies, and exceptions to the Bank's lending and leasing



policies.

(3) Within one hundred twenty (120) days, the internal loan review program shall generate a quarterly report to the Loan Review Committee of the Board. At a minimum, the report shall include an independent assessment of the Bank's:

- (a) monitoring systems for early problem loan identification to ensure the timely identification and rating of loans and leases based on lending officer submissions, including appropriate write downs or charge-off of assets;
- (b) monitoring systems to ensure timely and appropriate allowance for loan and lease loss reserves and allocated transfer risk reserves;
- (c) statistical records that serve as a basis for identifying problem loans and leases by industry, size, collateral, division, group, indirect dealer, and individual lending officer;
- (d) system for monitoring previously charged-off assets and their recovery potential;
- (e) system for monitoring compliance with the Bank's lending policies and laws, rules, and regulations pertaining to the Bank's lending function; and
- (f) system for monitoring the adequacy of credit and collateral documentation.

(4) A written description of the program called for in this Article shall be forwarded to the Deputy Comptroller upon Board approval.

(5) The Board shall ensure that the Bank implements and adheres to the loan review system, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the system developed pursuant to this Article.

(6) The Board, or its designated committee, shall evaluate the internal loan and lease review report(s) and shall ensure that immediate, adequate, and continuing remedial action, if appropriate, is taken upon all findings noted in the report(s).

(7) A copy of the reports submitted to the Board, as well as documentation of the action taken by the Bank to collect or strengthen assets identified as problem credits, shall be preserved in the Bank with a copy forwarded to the Deputy Comptroller.

## ARTICLE XII

### ALLOWANCE AND RESERVES

(1) The Board shall review the adequacy of the Bank's Allowance for Loan and Lease Losses (ALLL) and shall revise, as necessary, its program for the maintenance of an adequate ALLL. This review and program shall be designed in light of the comments on maintaining a proper Allowance found in the Allowance for Loan and Lease Losses booklet of the Comptroller's Handbook, and shall focus particular attention on its international exposures and the following factors:

- (a) results of the Bank's internal loan review;
- (b) an estimate of inherent loss exposure on each significant credit;
- (c) an estimate of inherent loss exposure on each credit in excess of \$100M;
- (d) loan loss experience;

- (e) trends of delinquent and nonaccrual loans;
- (f) concentrations of credit in the Bank;
- (g) present and prospective social, political, economic, and transfer risk conditions in foreign markets in which the Bank does business;
- (h) domestic present and prospective economic conditions; and
- (i) specific criticisms and recommendations set forth in the ROE.

(2) The Board shall review the adequacy of the Bank's Allocated Transfer Risk Reserves (ATRRs) and shall require management to establish a program for the maintenance of adequate ATRRs in accordance with the International Country Exposure Review Committee (ICERC) guidance.

(3) The programs shall provide for a review of the ALLL and the ATRRs by the Board at least once each calendar quarter. Any deficiency in the ALLL or ATRRs shall be remedied in the quarter it is discovered, prior to the filing of the Consolidated Reports of Condition and Income, by additional provisions from earnings or directly from capital. Written documentation shall be maintained indicating the factors considered and conclusions reached by the Board in determining the adequacy of the ALLL and the ATRRs .

(4) A copy of the Bank's program shall be submitted to the Deputy Comptroller for review.

(5) The Board shall ensure that the Bank implements and adheres to the approved program developed pursuant to this article, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the program.

### ARTICLE XIII

## CALL REPORTS

(1) The Bank shall immediately adopt and implement policies and procedures, in accordance with the Call Report Instructions, to ensure that all official and regulatory reports filed by the Bank accurately reflect the Bank's condition as of the date that such reports are submitted. Thereafter, the Board shall ensure Bank adherence to the policies and procedures adopted pursuant to this Article.

(2) Upon adoption of the policies, a copy shall be submitted to the Deputy Comptroller.

## ARTICLE XIV

### NONACCRUAL LOANS

(1) The Board shall immediately direct management, and management shall within 30 days, review, revise, and submit to the Board for its approval policies and procedures governing the supervision and control of nonaccrual loans. Such policies and procedures shall:

- (a) be consistent with the accounting requirements contained in the Call Report Instructions;
- (b) address the circumstances under which accrued interest due on a loan may be added to the outstanding principal amount when the loan is renewed or restructured; and
- (c) require the monthly presentation to the Board of all loans meeting any of the nonaccrual criteria.

(2) The Board shall approve the policies and procedures and submit a copy to the Deputy Comptroller.

(3) The Board shall ensure that the Bank implements and adheres to the approved policies and procedures developed pursuant to this article, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the policies and procedures.

## ARTICLE XV

### CRITICIZED ASSETS

(1) The Bank shall take immediate and continuing action to protect its interest in those assets criticized in the ROE, in any subsequent Report of Examination, by internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination.

(2) The Board shall immediately direct management to, and management shall within sixty (60) days, adopt and implement a written program designed to eliminate the basis of criticism of assets criticized in the ROE, in any subsequent Report of Examination, or by any internal or external loan review, or in any list provided to management by the National Bank Examiners as a result of any examination as "doubtful," "substandard," or "special mention." This program shall include, at a minimum:

- (a) an identification of the expected sources of repayment;
  - (b) the appraised value of supporting collateral and the position of the Bank's lien on such collateral where applicable;
  - (c) an analysis of current and satisfactory credit information, including cash flow analysis where loans are to be repaid from operations;
- and

- (d) the proposed action to eliminate the basis of criticism and the time frame for its accomplishment.
- (3) Upon adoption and approval by the Board, a copy of the program for all criticized assets equal to or exceeding \$100M shall be forwarded to the Deputy Comptroller.
- (4) The Board shall ensure that the Bank implements and adheres to the approved program, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the program developed pursuant to this Article.
- (5) The Board, or a designated committee, shall conduct a review, on at least a monthly basis, to determine:
  - (a) the status of each criticized asset or criticized portion thereof that equals or exceeds \$100M;
  - (b) management's adherence to the program adopted pursuant to this Article;
  - (c) the status and effectiveness of the written program; and
  - (d) the need to revise the program or take alternative action.
- (6) A copy of each review shall be forwarded to the Deputy Comptroller on a monthly basis (in a format similar to Schedule A attached hereto).
- (7) The Bank may extend credit, directly or indirectly, including renewals, extensions or capitalization of accrued interest, to a borrower whose loans or other extensions of credit are criticized in the ROE, in any subsequent Report of Examination, in any internal or external loan review, or in any list provided to management by the National Bank Examiners during any examination and whose aggregate loans or other extensions exceed \$100M only if each of the following conditions is met:

- (a) the Board or designated committee finds that the extension of additional credit is necessary to promote the best interests of the Bank and that prior to renewing, extending or capitalizing any additional credit, a majority of the full Board (or designated committee) approves the credit extension and records, in writing, why such extension is necessary to promote the best interests of the Bank; and
- (b) a comparison to the written program adopted pursuant to this Article shows that the Board's formal plan to collect or strengthen the criticized asset will not be compromised.

(8) A copy of the approval of the Board or of the designated committee shall be maintained in the file of the affected borrower.

## ARTICLE XVI

### LOAN WORKOUT DEPARTMENT

(1) The Loan Workout Department shall take all steps necessary to improve the operation of the Bank's workout function including, but not limited to:

- (a) the establishment of policies and procedures to distinguish assets that should be managed by the Loan Workout Department from assets that should be managed by the originating unit;
- (b) the establishment of policies and procedures to require assets that remain with the originating unit are managed according to the

- standards of the Loan Workout Department;
- (c) the development and implementation of management information systems to track work loads and staffing requirements within the Loan Workout Department; and
  - (d) the development and implementation of management information systems to measure the success of workout activities.
- (2) The Board shall ensure that the Loan Workout Department receives staffing and funding support necessary to maintain its sound operation.

## ARTICLE XVII

### CONCENTRATIONS OF CREDIT

- (1) The Board shall immediately direct management, and management shall within sixty (60) days, adopt and implement a written asset diversification program consistent with OCC Banking Circular 255. The program shall include, but not necessarily be limited to, the following:
- (a) a review of the balance sheet to identify any concentrations of credit;
  - (b) a written analysis of any concentration of credit identified above in order to identify and assess the inherent credit, liquidity, and interest rate risk;
  - (c) policies and procedures to control and monitor concentrations of credit; and
  - (d) an action plan approved by the Board to reduce the risk of any



concentration deemed imprudent in the above analysis.

(2) For purposes of this Article, a concentration of credit is as defined in Section 216 of the Comptroller's Handbook for National Bank Examiners.

(3) The Board shall ensure that future concentrations of credit are subjected to the analysis required by subparagraph (b) above and that the analysis demonstrates that the concentration will not subject the Bank to undue credit, liquidity or interest rate risk.

(4) The Board shall forward a copy of any analysis performed on existing or potential concentrations of credit to the Deputy Comptroller immediately following the review.

(5) The Board shall approve the written asset diversification program, and ensure that the Bank implements and adheres to the approved program, and has the processes, personnel, and control systems necessary for the implementation of and adherence to the program.

## ARTICLE XVIII

### INTERNAL AUDIT

(1) Within forty-five (45) days, the Board shall expand the scope of the internal audit program, and thereafter ensure Bank adherence to an independent, internal audit program sufficient to:

- (a) detect irregularities in the Bank's operations regarding non accruing assets and assets that should be on nonaccrual status in accordance with regulatory report guidance, as well as irregularities in the purchase and sale of assets and debt obligations, particularly those that are booked in the loan portfolio;

- (b) evaluate the Bank's adherence to established policies and procedures;
- (c) provide adequate audit coverage in all areas; including country risk management and reporting; and
- (d) provide an annual audit plan using a risk based approach sufficient to achieve these objectives.

(2) The Board shall ensure that the audit program is independent. The persons responsible for implementing the internal audit program described above shall report directly to the Audit Committee of the Board, that shall have the sole power to direct their activities. All reports prepared by the audit staff shall be filed directly with the Audit Committee of the Board.

(3) All audit reports shall be in writing. The Board shall ensure that immediate actions are undertaken to remedy deficiencies cited in audit reports, and that auditors maintain a written record describing those actions.

(4) The Board shall forward a copy of the expanded internal audit program to the Deputy Comptroller and shall promptly submit to the Deputy Comptroller any changes to the internal audit program.

## ARTICLE XIX

### PRODUCTS AND SERVICES

(1) Prior to the Bank's involvement in any new products or services, or the significant expansion of any existing product or service, the Board shall direct management to prepare a written analysis of said product or service. The analysis shall, at a minimum, include the following:

- (a) an assessment of the risks and benefits of the product or service to the Bank;
  - (b) an explanation of how the product or service is consistent with the Bank's strategic plan;
  - (c) an evaluation of the adequacy of the Bank's organizational structure, staffing, MIS, internal controls and written policies and procedures to identify, measure, monitor, and control the risks associated with the product or service; and
  - (d) a profitability analysis, including growth projections and interest rate risk.
- (2) Prior to the Bank's involvement in a new product or service or the significant expansion of an existing product or service, the Board shall review management's written analysis and approve the new or expanded product or service, and submit a copy of the analysis to the Deputy Comptroller.
- (3) For purposes of this Article, Asignificant expansion@ shall be defined as growth in an existing product or service greater than 20% on an annual basis where that product or service accounts for greater than either 2% of total assets or 5% of annual income.

## ARTICLE XX

### CLOSING

- (1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or approval of the Deputy Comptroller for Supervision Support, the Board has the ultimate responsibility for the conduct of the Bank's affairs and the safe and sound operation of the Bank.
- (2) It is expressly and clearly understood that if, at any time, the Comptroller deems it

appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended by the Deputy Comptroller for Supervision Support for good cause upon written application by the Board.

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

IT IS SO ORDERED, this 8th day of September, 2000.

/s/

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Ronald G. Schneck  
Director for Special Supervision/Fraud

**Hamilton Bank, N.A., Miami, Florida,  
Schedule A**

CRITICIZED ASSET REPORT AS OF: \_\_\_\_\_

BORROWER(S):

ASSET BALANCE(S) AND OCC RATING (SM, SUBSTANDARD, DOUBTFUL OR LOSS):  
\$ \_\_\_\_\_ CRITICISM \_\_\_\_\_

AMOUNT CHARGED OFF TO DATE \_\_\_\_\_

FUTURE POTENTIAL CHARGE-OFF \_\_\_\_\_

PRESENT STATUS (Fully explain any increase in outstanding balance; include past due status, nonperforming, significant progress or deterioration, etc.):

FINANCIAL AND/OR COLLATERAL SUPPORT (include brief summary of most current financial information, appraised value of collateral and/or estimated value and date thereof, Bank's lien position and amount of available equity, if any, guarantor(s) info, etc.):

PROPOSED PLAN OF ACTION TO ELIMINATE ASSET CRITICISM(S) AND TIME FRAME FOR ITS ACCOMPLISHMENT:

IDENTIFIED SOURCE OF REPAYMENT AND DEFINED REPAYMENT PROGRAM (repayment program should coincide with source of repayment):

Use this form to report each criticized asset exceeding \$100M; retain the original in the credit file for review by the

examiners. Submit reports monthly until notified otherwise, in writing, by the Deputy Comptroller.