

**#2004-140**

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

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**In the Matter of:**

Wolf Haldenstein Adler Freeman & Herz, LLP  
New York, NY

AA-EC-04-94

Former Counsel for  
Sinclair National Bank  
Gravette, Arkansas

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**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a cease and desist proceeding against Wolf Haldenstein Adler Freeman & Herz, LLP (“the Firm”) pursuant to 12 U.S.C. § 1818(b) (as amended); and

WHEREAS, the Comptroller has conducted an investigation of the Firm’s billing practices in conjunction with the Firm’s representation of Sinclair National Bank, Gravette, Arkansas (“Bank”); and

WHEREAS, the Comptroller and Helen Davis Chaitman, the former partner of the Firm principally handling the representation of the Bank, have entered into a Stipulation and Consent Order dated September 22, 2004, whereby such former partner was assessed a Civil Money Penalty with respect to such representation; and

WHEREAS, the Comptroller contends that the Firm failed to adequately supervise the former partner principally handling the representation, and improperly charged and received payment from the Bank for certain legal work conducted by the Firm for the benefit of clients other than the Bank; and

WHEREAS, the firm neither admits nor denies any wrongdoing; and

WHEREAS, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to the above matter, the Comptroller and the Firm desire to enter into this Stipulation and Consent Order (“Order”);

NOW, THEREFORE, in consideration of the above premises, pursuant to 12 U.S.C. § 1818(b), it is stipulated by and between the Comptroller, through her duly authorized representative, and the Firm that:

#### Article I

#### JURISDICTION

(1) The Bank was a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.* Accordingly, the Bank was an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) The Firm was an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u)(4), having served in such capacity within six (6) years from the date hereof (see 12 U.S.C. § 1818(i)(3)).

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, the Firm is subject to the authority of the Comptroller to initiate and maintain a cease and desist proceeding against it pursuant to 12 U.S.C. § 1818(b).

## Article II

### ORDER FOR RESTITUTION

(1) Without admitting or denying any wrongdoing, the Firm hereby consents to the payment of restitution to the Bank in the amount of ninety thousand dollars (\$90,000), which shall be paid upon execution of this Order.

- (a) The Firm shall make payment in full by check made payable to the Federal Deposit Insurance Corporation as receiver for Sinclair National Bank.
- (b) The Firm shall deliver a copy of the check to Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E St., SW, Washington, DC 20219.

## Article III

### REPRESENTATION OF INSURED DEPOSITORY INSTITUTIONS

(1) Prior to undertaking the legal representation of an Insured Depository Institution, as that term is defined in 12 U.S.C. § 1813(c)(2), the Firm shall ensure that:

- (a) The representation is confirmed in a writing that sets forth the identity of the client, the terms of the representation, and the nature and scope of the work to be performed;
- (b) A review is conducted to determine whether the representation presents a conflict of interest with other past or present clients at the Firm, and to obtain appropriate waivers in writing where such conflicts do exist; and

- (c) The Firm correctly bills the Insured Depository Institution only for professional time and expenses related to the representation of the institution in a particular matter; and
- (d) The Firm bills the Insured Depository Institution only for work that is specifically undertaken at the request of, and for the sole benefit of, the Insured Depository Institution.

(2) Paragraph (1) shall also apply in instances where the Firm undertakes the representation of individuals or other entities (including Institution-Affiliated Parties as that term is defined at 12 U.S.C. § 1813(u)) where the representation is being paid for (or indemnification is provided) by an Insured Depository Institution. In addition, prior to undertaking such representation, the Firm shall:

- (a) Ensure that the terms of the Firm's representation, including payment or indemnification by the Insured Depository Institution, has been approved in writing by the Board of Directors of the Insured Depository Institution; and
- (b) Obtain a copy of such written approval and maintain it in the Firm's files.

#### Article IV

##### WAIVERS

- (1) By executing this Order, the Firm waives:
  - (a) The right to the issuance of a Notice under 12 U.S.C. § 1818(b);
  - (b) All rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and 12 C.F.R. Part 19;
  - (c) All rights to seek judicial review of this Order;

- (d) All rights in any way to contest the validity of this Order;
- (e) Any and all claims for fees, costs or expenses against the Comptroller, or any of her agents or employees, related in any way to this enforcement matter or this 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; and
- (f) All rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts that form the basis for issuance of this Order.

(2) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist proceeding contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations, unless such acts, omissions, or violations reoccur. This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818 (b) and (h) (as amended).

(3) It is further agreed that the provisions of this Order shall not be construed as an adjudication on the merits and, except as set forth above, shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any action affecting the Firm if, at any time, she deems it appropriate to do so to fulfill the responsibilities placed upon her by the several laws of the United States of America.

(4) The Firm understands 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 the Firm contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

IN TESTIMONY WHEREOF, the undersigned have hereunto set their hands.

/s/ Ronald G. Schneck

11/30/04

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Ronald G. Schneck  
Director  
Special Supervision

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Date

/s/ Eric B. Levine as Partner for

November 24, 2004

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Wolf Haldenstein Adler Freeman & Herz, LLP

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Date