

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

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<b>In the Matter of:</b>		)	
		)	
J. Reid Bingham,		)	AA-EC-02-27
former General Counsel		)	
		)	
Hamilton Bank, N.A.		)	
Miami, Florida (closed)		)	
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**STIPULATION AND CONSENT ORDER**

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) has initiated cease and desist and civil money penalty proceedings against J. Reid Bingham (“Respondent”) pursuant to 12 U.S.C. §§ 1818(b) and (i) (as amended) through the issuance of a Notice of Charges for Restitution and Other Affirmative Relief, and a Notice of Assessment of Civil Money Penalties (hereinafter collectively referred to as the “Notices”); 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 Respondent desire to enter into this Stipulation and Consent Order (“Order”).

NOW, THEREFORE, in consideration of the above premises, it is stipulated by and between the Comptroller, through his duly authorized representative, and Respondent

that:

## Article I

### JURISDICTION

(1) Hamilton Bank, N.A., Miami, Florida (closed) (“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), at all times relevant to this Order.

(2) The Respondent was the general counsel to the Bank and is an “institution-affiliated party” of the Bank as that term is defined in 12 U.S.C. § 1813(u), 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) and 12 U.S.C. § 1818(i)(3), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding against institution-affiliated parties. Therefore, the Respondent is subject to the authority of the Comptroller to initiate and maintain cease and desist and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b) and (i).

## Article II

### PERSONAL CEASE AND DESIST ORDER

(1) The Respondent shall not provide legal services to, participate in the provision of legal services to, or serve as counsel for, any insured depository institution, as defined by 12 U.S.C. 1813(c)(2).

(2) The limitations in paragraph (1) of this Article shall cease to apply with respect to a particular insured depository institution if the Respondent obtains the prior written consent of both the Comptroller and the “appropriate Federal financial institutions regulatory agency,” as defined in 12 U.S.C. § 1818(e)(7)(D) (as amended).

(3) The Respondent shall, prior to accepting any position that would cause him to become an “institution-affiliated party” (as defined in 12 U.S.C. § 1813(u)) of any institution or agency specified in 12 U.S.C. § 1818(e)(7)(A), provide the chief executive officer and the board of directors of such institution or agency with a copy of this Order.

(4) The Respondent shall comply with all laws and regulations applicable to any insured depository institution or agency with which he is or may become affiliated.

(5) The Respondent shall not engage in any unsafe or unsound practices, as that term is used in Title 12 of the United States Code, in the conduct of the affairs of any insured depository institution or agency.

(6) The Respondent shall not breach his fiduciary duties of loyalty or care owed to any insured depository institution with which he is or may become affiliated.

### Article III

#### CEASE AND DESIST ORDER FOR RESTITUTION

(1) Without admitting or denying any wrongdoing, the Respondent hereby consents to the payment of restitution to the Bank in the amount of one hundred ninety-five thousand dollars (\$195,000), to be paid as follows:

- (a) Respondent shall make monthly payments, for a period of sixty (60) months, with the first payment being due and owing upon the execution of this Order, and each subsequent payment being due and owing on the thirtieth (30<sup>th</sup>) day of each month thereafter. The payments shall be in the amount of one thousand five hundred dollars (\$1,500) per month for the first eleven (11) months, and in the amount of three thousand six hundred fifty dollars (\$3,650) thereafter for forty-eight (48) months. Respondent shall make the sixtieth (60<sup>th</sup>) payment in the amount of three thousand three hundred dollars (\$3,300).
- (b) Each check shall be made payable to the Federal Deposit Insurance Corporation, as Receiver for Hamilton Bank, N.A., and shall be delivered to Robert J. DeHenzel, Jr., Counsel, Federal Deposit Insurance Corporation, 550 17<sup>th</sup> Street, N.W., H-11016, Washington, D.C. 20429. The docket number of this case should be entered on the check.
- (c) The Respondent shall deliver a copy of each check to the Director, Enforcement & Compliance, 250 E Street, S.W., Washington, D.C. 20219 (“Director”), with reference to the docket number of this case.

(2) In the event that Respondent fails to make any payment as provided in this Article, such failure shall constitute default under this Order and the OCC may declare the entire sum then unpaid immediately due and payable.

(3) 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), (h) or (i) (as amended).

#### Article IV

##### CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing, the Respondent hereby consents to the payment of a civil money penalty in the amount of twenty-five thousand dollars (\$25,000), which shall be paid solely from Respondent's personal funds, without contribution or reimbursement from any other source including insurance proceeds. The civil money penalty shall be paid in full over five (5) years, as follows:

- (a) The first payment, in the amount of five thousand dollars (\$5,000), shall be due upon execution of this Order.
- (b) The Respondent shall make all subsequent payments on the thirtieth (30<sup>th</sup>) day of each month thereafter, for fifty-nine months (59). For the first fifty-eight months thereafter, the monthly payments shall be in the amount of three hundred forty dollars (\$340) per month. In the fifty-ninth (59<sup>th</sup>) month, the payment shall be in the amount of two hundred eighty (\$280) dollars.

(c) The Respondent shall make each check payable to the Treasurer of the United States, and each check shall be delivered to: Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150. The docket number of this case should be entered on every check.

(d) The Respondent shall deliver a copy of each check to the Director, with reference to the docket number of this case.

(2) 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(h) and (i) (as amended).

#### Article V

#### ADDRESS NOTIFICATION

(1) The Respondent shall notify the Director of his current address on the form attached hereto as Appendix A, upon execution of this Order.

#### Article VI

#### BANKRUPTCY

(1) In any bankruptcy proceeding in which it is or may be contended that the Respondent's obligations to pay restitution and a civil money penalty pursuant to this Order are subject to discharge, the Respondent will in no manner contest the Comptroller's assertion, pursuant to 11 U.S.C. § 523(a)(11) or otherwise, that the restitution and civil money penalty obligations in the Order arise out of acts which result in claims not dischargeable in bankruptcy.

## Article VII

### WAIVERS

(1) By executing this Order, the Respondent waives:

- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b) and (i) and 12 C.F.R. Part 19;
- (b) all rights to seek judicial review of this Order;
- (c) all rights in any way to contest the validity of this 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 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
- (e) all rights to assert a “double jeopardy” claim in the event of a criminal prosecution brought by the Department of Justice for the acts which form the basis for issuance of this Order.

(2) The Respondent shall not cause, participate in or authorize the Bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of restitution and the civil money penalty under this Order, or any legal (or other professional) expense relative to the negotiation and issuance of this Order; and, in accordance with 12 C.F.R. § 7.2014, the Respondent shall not, directly or indirectly,

obtain or accept any indemnification (or other reimbursement) from the Bank (or any subsidiary or affiliate thereof) with respect to such amounts.

(3) The Respondent acknowledges that he has read and understands the premises and obligations of this Order and declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce the Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(4) It is hereby agreed that the provisions of this Order constitute a settlement of the cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations contained in the Notices, unless such acts, omissions, or violations reoccur.

(5) 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 Respondent 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.

(6) The Respondent 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 Respondent 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/

2/17/04

\_\_\_\_\_  
Ronald Schneck  
Director, Special Supervision

\_\_\_\_\_  
Date

2/5/04

/s/

\_\_\_\_\_  
J. Reid Bingham

\_\_\_\_\_  
Date