

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

IN THE MATTER OF:)

ROBERT L. GROSSMAN)

AA-EC-06-103

STIPULATION AND CONSENT ORDER

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) has informed Robert L. Grossman (“Grossman”) that it intends to pursue enforcement action against him, pursuant to the OCC’s authority under 12 U.S.C. § 1818; and

WHEREAS, the OCC has reached an agreement with Grossman dated November 7, 2006 (the “Agreement”), which the parties hereto incorporate into this Stipulation and Consent Order; and

WHEREAS, notwithstanding anything to the contrary herein, without admitting or denying any liability, wrongdoing or other improper conduct, but, in the interest of cooperation and to avoid the costs associated with future administrative and judicial proceedings with respect to this matter, and pursuant to Rule 408 of the Federal Rules of Evidence, Grossman consents to issuance of an order assessing a Civil Money Penalty pursuant to 12 U.S.C. § 1818(i);

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

ARTICLE I

JURISDICTION

(1) Hamilton Bank, N.A. of Miami, Florida (“Hamilton”), 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.*, until closed by the Comptroller on January 11, 2002. Accordingly, Hamilton was an Insured Depository Institution.

(2) Grossman served as special outside counsel for Hamilton within six (6) years from the date hereof.

(3) Pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding, if necessary, relating to Hamilton. Therefore, Grossman hereby consents to the jurisdiction of the Comptroller under 12 U.S.C. § 1818 with respect to the matters subject to this Stipulation and Consent Order, and, solely for the purposes of assuring the Comptroller’s authority to enforce this Stipulation and Consent Order, Grossman expressly agrees not to contest the authority or jurisdiction of the Comptroller to enforce this Stipulation and Consent Order.

ARTICLE II

CIVIL MONEY PENALTY

(1) Grossman hereby consents to the payment of a civil money penalty in the amount of one-hundred-seventy-five-thousand dollars (\$175,000), which shall be paid upon execution of this Stipulation and Consent Order in full by cashier’s check or certified check made payable to the Treasurer of the United States and shall deliver the payment to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000. The docket number of this case should be

entered on the payment. A copy of the cashier's check or certified check shall be sent to the attention of the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency.

(2) This Stipulation and Consent 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) or (i) (as amended).

ARTICLE III

WAIVERS

- (1) By executing this Stipulation and Consent Order, Grossman waives:
- (a) the right to the issuance of Notice pursuant to 12 U.S.C. § 1818(i), and instead recognizes the letter issued to Grossman by Office of the Comptroller of the Currency Director of Special Supervision, Ronald G. Schneck, dated July 21, 2005 (the "Letter"), to constitute a valid substitute Notice of Assessment;
 - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. Part 19;
 - (c) all rights to seek judicial review of this Stipulation and Consent Order;
 - (d) all rights in any way to contest the validity of this Stipulation and Consent Order;
 - (e) 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 Stipulation and 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; 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 which form the basis for issuance of this Stipulation and Consent Order.

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

(3) Grossman understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Stipulation and Consent Order, and that nothing herein constitutes, nor shall Grossman 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.

ARTICLE IV

OTHER PROVISIONS

(1) This Stipulation and Consent Order shall take effect upon its issuance, and shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and become final pursuant to 12 U.S.C. § 1818. This Stipulation and Consent Order shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Stipulation and Consent Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller.

(2) This Stipulation and Consent Order is “issued with the consent of . . . the institution-affiliated party concerned,” pursuant to 12 U.S.C. § 1818(h)(2).

(3) Other than the Agreement referenced above, no separate promise or inducement of any kind has been made by the Comptroller, or his officers or employees, to cause or induce Grossman to consent to this Stipulation and Consent Order.

(4) Any failure by Grossman to comply with this Stipulation and Consent Order shall be subject to enforcement for the longer of

- (a) the period allowed by the applicable statute of limitations, or
- (b) five (5) years following the failure to comply.

IN TESTIMONY WHEREOF, the undersigned has hereunto set his hand.

/s/ Robert L. Grossman
Robert L. Grossman

11/7/06
Date

IT IS SO ORDERED.

/s/ John W. Quill
On behalf of the Office of the Comptroller of the
Currency:
John W. Quill
Deputy Comptroller for Special Supervision

11/7/06
Date

**AGREEMENT BETWEEN
ROBERT L. GROSSMAN
AND
THE OFFICE OF THE COMPTROLLER OF THE CURRENCY**

WHEREAS, the Office of the Comptroller of the Currency of the United States of America (“Comptroller” or “OCC”) wishes to protect the interests of the United States banking system and, toward that end, wishes to encourage insured depository institutions to operate safely and soundly and in accordance with all applicable laws, rules and regulations; and

WHEREAS, Robert L. Grossman (“Grossman”) supports the OCC’s objectives, and wishes to memorialize that he supports these objectives by signing this Agreement (the “Agreement”); and

WHEREAS, for purposes of this Agreement and any proceeding concerning this Agreement, Grossman acknowledges and stipulates that: (a) Hamilton Bank, N.A. of Miami, Florida (“Hamilton”), 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.*, until closed by the Comptroller on January 11, 2002, and, accordingly, Hamilton was an Insured Depository Institution, (b) Grossman served as special outside counsel for Hamilton within six (6) years from the date hereof, and (c) pursuant to 12 U.S.C. § 1813(q), the Comptroller is the “appropriate Federal banking agency” to maintain an enforcement proceeding, if necessary, relating to Hamilton.

THEREFORE, the OCC and Grossman hereby memorialize their joint support for these shared objectives by executing this Agreement.

ARTICLE I

DEFINITIONS

- (1) For purposes of this Agreement, the following definitions shall apply:
- (a) “Federal Banking Agency” shall mean the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and the National Credit Union Administration.
 - (b) “Federal Banking Laws” shall be defined to include, without limitation, the statutes contained in Title 12 of the United States Code and all regulations and regulatory interpretations promulgated by the Federal Banking Agencies.
 - (c) “Greenberg Traurig” shall mean Greenberg Traurig LLP and all predecessor and successor organizations.
 - (d) “Insured Depository Institution” shall have the meaning provided in 12 U.S.C. § 1813(c)(2) (“Insured depository institutions”), and shall also include credit unions as defined in 12 U.S.C. § 1752(1), entities identified in 12 U.S.C. § 1813(c)(3), and any subsidiaries of such institutions or entities; and shall also include any bank holding company as defined in 12 U.S.C. § 1841(a) and any savings and loan holding company as defined in 12 U.S.C. §§ 1467a(a)(D)-(F).
 - (e) “Regulatory Responsibility” shall mean the representation of an Insured Depository Institution in connection with an application, examination, or proceeding before a Federal Banking Agency; advising an Insured Depository Institution concerning its compliance with Federal Banking Laws; participating in

the preparation or compilation of an investigatory report for or on behalf of an Insured Depository Institution; or designation as general counsel by an Insured Depository Institution. For purposes of this Agreement, Regulatory Responsibility shall be limited to the foregoing types of engagements and shall not be deemed to include the following services:

- (i) Litigation engagements that do not involve the application or interpretation of Federal Banking Laws;
 - (ii) Engagements for the preparation, review, or negotiation of contracts or offering circulars that do not involve the application or interpretation of Federal Banking Laws; and
 - (iii) Real estate, employment, intellectual property, corporate, commercial, and securities representation, so long as none of these types of representation involves the application or interpretation of Federal Banking Laws.
- (f) “Knowledge” shall mean the actual knowledge of Grossman or reckless disregard by Grossman of the facts.
- (g) “Knowingly” shall mean that Grossman has acted voluntarily and intentionally to violate the terms of this Agreement and not because of inadvertence, ignorance, mistake, or accident.
- (h) “Recklessly” shall mean that Grossman has acted in disregard of, and evidencing conscious indifference to, a known or obvious risk.

ARTICLE II

JURISDICTION

(1) Without admitting or denying any liability, wrongdoing or other improper conduct, Grossman hereby consents to the jurisdiction of the Comptroller under 12 U.S.C. § 1818 with respect to the matters subject to this Agreement, and, solely for the purposes of assuring the Comptroller's authority to enforce this Agreement, Grossman expressly agrees not to contest the authority or jurisdiction of the Comptroller to enforce this Agreement.

ARTICLE III

REPRESENTATION OF INSURED DEPOSITORY INSTITUTION CLIENTS

(1) Grossman shall not undertake or participate in any Regulatory Responsibility for any Insured Depository Institution. In the event Grossman leaves Greenberg Traurig, he shall promptly notify the Federal Deposit Insurance Corporation ("FDIC") and the OCC in writing of his departure and the name of his present or future employer.

(2) Grossman shall not knowingly or recklessly make, bring about, participate in, or aid or abet the making of any materially inaccurate factual statement to any Insured Depository Institution or to any Federal Banking Agency (including by failing, where required by the applicable standard of care owed to an Insured Depository Institution or a Federal Banking Agency, to corroborate, or expressly note the absence of available corroboration, for all material factual statements made by any officers or employees of an Insured Depository Institution and upon which Grossman relies in making factual representations on behalf of such institution to any Federal Banking Agency).

(3) Grossman shall correct any document that he has prepared after the date that this Agreement is executed by representatives of the OCC and Grossman and that Grossman knows or should know will be relied upon by, or submitted to, a Federal Banking Agency or any Insured Depository Institution if to the subsequent knowledge of Grossman such document

contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements made in the document, in light of the circumstances under which they were made, not misleading. Grossman shall promptly submit such correction to the Insured Depository Institution and, if the uncorrected document has been submitted to, or relied upon by, a Federal Banking Agency, Grossman shall advise the Insured Depository Institution to promptly submit the corrected document to such Federal Banking Agency.

(4) Subject to the limitations set forth in this paragraph Grossman shall promptly respond to any request from the OCC for Grossman's documents that the OCC reasonably requires to determine compliance with this Agreement. Nothing contained herein shall require Grossman to provide the OCC with information protected by an attorney-client or work product privilege unless waived in writing by the holder of the privilege. Grossman shall not be obligated to provide such documents except pursuant to a subpoena, the validity of which Grossman or any other interested party may challenge, to the extent permitted by law or regulation. In the event that Grossman seeks to withhold documents from the OCC under a claim of privilege, Grossman shall provide the OCC with a privilege log containing a description of each document withheld and listing the document's date, its author, the names and positions of persons to whom the document was or has been provided, the applicable privilege asserted, and such other non-privileged information as may reasonably be requested by the OCC for the purpose of determining the validity of the claim of privilege. Nothing contained herein shall be construed as restricting or otherwise limiting in any way the OCC's access under its examination authority, 12 U.S.C. § 481, to the books, records, or information of an institution under its supervision.

ARTICLE IV

MISCELLANEOUS

- (1) This Agreement shall become effective when signed by the Comptroller's designee ("Effective Date").
- (2) This Agreement shall terminate five (5) years from the date it is executed by duly authorized representatives of both parties.
- (3) Any items that this Agreement directs Grossman to provide to the OCC shall be sent to the Director, Enforcement and Compliance Division, Office of the Comptroller of the Currency, 250 E St. NW, Washington, DC 20219. Any items that this Agreement directs Grossman to provide to the FDIC shall be sent to FDIC General Counsel, 550 17th Street, N.W., Washington, D.C. 20429.
- (4) Grossman acknowledges that he has read this Agreement through his representatives and understands the premises and obligations of this Agreement. Furthermore, other than the Stipulation and Consent Order executed between the OCC and Grossman on November 7, 2006, Grossman declares that no separate promise or inducement of any kind has been made by the Comptroller, his agents or employees to cause or induce Grossman to agree to consent to and/or execute this Agreement.
- (5) This Agreement constitutes a settlement of any and all administrative actions against Grossman contemplated by the Comptroller with respect to Hamilton. The Comptroller agrees not to institute proceedings or assert any claims against Grossman for any acts, omissions, failures to act, or violations relating, either directly or indirectly, to Hamilton. This settlement

shall be effective upon the Effective Date and shall continue throughout the term of this Agreement and following its termination.

(6) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency,” as contemplated by 12 U.S.C. § 1818(b)(1), and is further intended by the parties to be binding and enforceable with respect to Grossman and the OCC. This Agreement expressly does not form, and may not be construed to form, a contract that could give rise to a claim for damages against the OCC, other Federal Banking Agencies or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by Grossman under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. Grossman also expressly acknowledges that no OCC officer or employee has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other Federal Banking Agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities. The preceding shall not, however, be construed to alter or modify the terms of Article IV paragraph (5) above.

(7) Grossman, by signing this Agreement, hereby waives:

- (a) the issuance of any notice pursuant to 12 U.S.C. § 1818(b);
- (b) any and all procedural rights available in connection with the issuance of this Agreement;
- (c) all rights to seek any type of administrative or judicial review of this Agreement; and any and all rights to challenge or contest the validity of the Agreement.

(8) Grossman understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Agreement, and that nothing herein constitutes, nor shall Grossman 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 lawful actions deemed appropriate. Grossman acknowledges that this Agreement may be used in any proceeding brought by the Comptroller to enforce this Agreement.

(9) The terms of this Agreement and the accompanying Stipulation and Consent Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or arrangements, or negotiations between the parties, whether oral or written.

(10) Nothing contained herein shall be construed to require or permit Grossman to violate applicable rules of professional responsibility nor any Federal Banking Laws.

(11) Pursuant to Rule 408 of the Federal Rules of Evidence, the parties stipulate that this Agreement shall be inadmissible as evidence in any judicial or administrative proceeding, provided, that such stipulation shall not apply to any proceeding by the Comptroller to enforce this Agreement.

(12) Any failure by Grossman to comply with this Agreement shall be subject to enforcement for the longer of:

- (a) the period allowed by the applicable statute of limitations, or
- (b) five (5) years following the failure to comply.

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

/s/ John W. Quill
On behalf of the Office of the Comptroller of the
Currency:
John W. Quill
Deputy Comptroller for Special Supervision

11/7/06
Date

/s/ Robert L. Grossman
Robert L. Grossman

11/7/06
Date