

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

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**In the Matter of:** )  
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John M.R. Jacobs, )  
former Senior Vice President ) AA-EC-02-22  
and Chief Financial Officer )  
 )  
Hamilton Bank, N.A., )  
Miami, Florida (closed) )  
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**STIPULATION AND CONSENT ORDER**

WHEREAS, on May 6, 2003, the Comptroller of the Currency of the United States of America (“Comptroller”) initiated these administrative proceedings seeking imposition of orders for removal and prohibition, cease and desist, and/or a civil money penalty against John M.R. Jacobs (“Respondent”) pursuant to 12 U.S.C. §§ 1818(b), (e), and (i) (as amended); 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) Respondent was a senior vice president and chief financial officer of 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, Respondent is subject to the authority of the Comptroller to initiate and maintain removal and prohibition, cease and desist, and civil money penalty proceedings against him pursuant to 12 U.S.C. §§ 1818(b), (e), and (i).

## Article II

### COMPTROLLER'S FINDINGS

The Comptroller finds, and Respondent neither admits nor denies, the following:

(1) During the period from September 1998 to October 1998, and September 1999 to October 1999, Respondent caused, brought about, participated in and/or aided or abetted adjusted price trading on behalf of the Bank.

(2) In an adjusted price trade, one party ("Party A") sells a security at a price above the prevailing market value to a counter-party ("Party B"), and Party B simultaneously sells to Party A another security or securities at a price greater than prevailing market value. The amount of the overpayments by each party is based on the depreciation of the securities to be sold by Party A, and is generally designed to enable Party A to avoid showing a loss on the sale of its securities. If a party to the transaction accounts for the sale and purchase at par, that party improperly defers the recognition of losses on the security sold and establishes an excessive reported value for the newly acquired security or securities. By engaging in such conduct, the parties may manipulate their financial statements and report falsely inflated earnings.

(3) On or about September 16, 1998, Respondent caused, brought about, participated in and/or aided or abetted the Bank's sale of a security to West Merchant Bank Limited, London ("WMB") at par value of \$6 million when the security had a fair market value of approximately \$900,000. Simultaneously, Respondent caused, aided or abetted the Bank's purchase of two securities from WMB, through a nominee, at par

value of \$15 million, when the fair market value of the securities totaled approximately \$8.9 million.

(4) On or about September 18, 1998, Respondent caused, brought about, participated in and/or aided or abetted the Bank's sale of a security to WMB at par value of \$5 million when the security had a fair market value of approximately \$500,000 to \$1 million. Simultaneously, Respondent caused, aided or abetted the Bank's purchase of four Latin American securities from WMB, through a nominee, at par value of \$19,049,000, when the fair market value of the securities totaled approximately \$13,617,240.

(5) On or about September 21, 1998, Respondent caused, brought about, participated in and/or aided or abetted the Bank's sale of a security to WMB at par value of \$1.5 million when the security had a fair market value of approximately \$390,000. Simultaneously, Respondent caused, aided or abetted the Bank's purchase of two Latin American securities from WMB, through a nominee, at par value of \$5 million when the fair market value of the securities was approximately \$3.875 million.

(6) On or about September 28, 1998, Respondent caused, brought about, participated in and/or aided or abetted the Bank's sale of a security to Standard Bank London, Limited ("Standard Bank") at par value of \$7.5 million when the security had a fair market value of approximately \$1.5 million. Simultaneously, Respondent caused, aided or abetted the Bank's purchase of eleven Latin American securities from Standard

Bank at par value of \$54,410,000 when the fair market value of the securities was approximately \$42,964,300.

(7) On or about September 10, 1999, Respondent caused, brought about, participated in and/or aided or abetted the Bank's sale of a security to Westdeutsche Landesbank Girozentrale ("WestLB") at par value of \$5 million when the security had a fair market value of approximately \$1.25. Simultaneously, Respondent caused, aided or abetted the Bank's purchase of six Latin American securities from WestLB at par value of \$30.25 million when the fair market value of the securities was approximately \$26,042,500.

(8) Respondent caused, brought about, participated in and/or aided or abetted the Bank to account for the sales and purchases described in paragraphs (3) – (7) above at par, thereby causing the Bank to improperly defer the recognition of losses on the sales of the securities, and causing the Bank to establish excessive reported values for the securities purchased. As a result, the Bank reported falsely inflated earnings on its call reports for the quarters ending September 30, 1998, December 31, 1998, March 31, 1999, June 30, 1999, and September 30, 1999, in violation of 12 U.S.C. § 161.

(9) By participating in adjusted price trading on behalf of the Bank, Respondent engaged in an unsafe and unsound banking practices, caused violations of 12 U.S.C. § 161, and breached his fiduciary duty to the Bank.

(10) By participating in adjusted price trading on behalf of the Bank, Respondent caused the Bank to sustain losses during the third quarter of 1998 and the third quarter of 1999, totaling more than \$7 million.

(11) In 1998, Respondent was eligible for a bonus paid under the Bank's incentive compensation plan that was based on the Bank's pretax earnings.

(12) In 1998, the Bank paid Respondent a bonus of approximately \$52,511 based on the Bank's falsely inflated pre-tax earnings resulting from Respondent's adjusted price trading on behalf of the Bank.

(13) Thus, Respondent received \$52,511 in personal gain as a result of his participation in the foregoing adjusted price trading.

(14) On October 12, 2005, Respondent pleaded guilty to charges stemming from the foregoing adjusted price trades in the U.S. District Court for the Southern District of Florida.

(15) On July 27, 2006, Respondent was sentenced to twenty-eight months incarceration in federal prison. On October 20, 2006, Respondent was sentenced to pay \$14,546,569.12 in criminal restitution, jointly and severally, with two co-defendants.

### Article III

#### PROHIBITION AND REMOVAL

(1) With respect to the institutions and agencies set forth in paragraph (2) of this Article, and without admitting or denying any wrongdoing, Respondent hereby agrees that he shall not:

- (a) participate in any manner in the conduct of their affairs;
- (b) solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent, or authorization with respect to any voting rights;
- (c) violate any voting agreement previously approved by the “appropriate Federal banking agency,” as defined in 12 U.S.C. § 1813(q) (as amended); or
- (d) vote for a director, or serve or act as an “institution-affiliated party,” as defined in 12 U.S.C. § 1813(u) (as amended).

(2) The prohibitions in paragraph (1) of this Article apply to the following institutions and agencies:

- (a) any insured depository institution, as defined in 12 U.S.C. § 1813(c);
- (b) any institution treated as an insured bank under 12 U.S.C. §§ 1818(b)(3), (b)(4), or as a savings association under 12 U.S.C. § 1818(b)(9) (as amended);
- (c) any insured credit union under the Federal Credit Union Act;
- (d) any institution chartered under the Farm Credit Act of 1971;
- (e) any appropriate Federal depository institution regulatory agency; and
- (f) the Federal Housing Finance Board and any Federal Home Loan Bank.

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

(4) 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(e), (i), (j), and (h) (as amended).

#### Article IV

#### WAIVERS

(1) By executing this Order, Respondent waives:

- (a) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. §§ 1818(b), (e), 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) 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 Respondent to agree to consent to the issuance of this Order and/or to execute this Order.

(3) It is hereby agreed that the provisions of this Order constitute a settlement of these proceedings initiated by the Comptroller’s May 6, 2003 Notice of Charges. The Comptroller agrees not to institute proceedings for the specific acts, omissions, or violations contained in the Notice of Charges, unless such acts, omissions, or violations reoccur.

(4) 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 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.

(5) 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 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/

1/19/07

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Ronald Schneck  
Director of Special Supervision

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Date

/s/

1/09/07

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John M.R. Jacobs

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Date