

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

IN THE MATTER OF: )  
)  
CARLOS LOUMIET, ESQ., )  
)  
FORMER COUNSEL TO )  
HAMILTON BANK, N.A. (CLOSED) )  
MIAMI, FLORIDA )

AA-EC-06-102

NOTICE OF CHARGES  
FOR ORDER TO CEASE AND DESIST  
AND NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY

TAKE NOTICE that on January 5, 2007, or such other date as determined by the Administrative Law Judge, a hearing concerning the following charges will commence at 10:00 a.m. in Miami, Florida, pursuant to 12 U.S.C. § 1818(b) and (i). The purpose of the hearing is to determine whether an Order should be issued against Carlos Loumiet, Esq. (“Respondent Loumiet”). Respondent Loumiet is former counsel to Hamilton Bank, N.A., Miami, Florida (“Bank”). The hearing shall be open to the public unless the agency, in its discretion, determines that holding an open hearing would be contrary to the public interest.

After examination and investigation into the affairs of the Bank, the Comptroller of the Currency of the United States of America (“Comptroller”) is of the opinion that:

- (a) Respondent Loumiet harmed the Bank by concealing the crimes of the Bank’s chairman and CEO, Eduardo Masferrer; its president, Juan Carlos Bernace; and its CFO, John M.R. Jacobs; whom Respondent Loumiet and his former law firm, Greenberg Traurig LLP (“Greenberg”), represented while they purported to represent the Bank. The officers orchestrated unlawful transactions in order to hide the Bank’s losses resulting from the Russian debt crisis of 1998.

The officers misled the Bank's external auditor, federal regulators and public investors in the Bank's holding company, Hamilton Bancorp Inc. ("holding company"). The officers have been sentenced to prison for perpetrating and later misrepresenting the unlawful transactions.

(b) In 2000, the Bank and the holding company retained Greenberg and Respondent Loumiet to investigate the unlawful transactions, and the credibility of the Bank's officers. In two reports co-authored by Respondent Loumiet and his partner at Greenberg, Robert Grossman, Respondent Loumiet protected the officers by making materially false and misleading assertions, and by suppressing material evidence. Following the reports, the officers steered additional business to Greenberg and Respondent Loumiet. Greenberg collected \$1.16 million of fees from the Bank and the holding company during 2001-02, and Respondent Loumiet received a share of these fees.

(c) The Comptroller closed the Bank in 2002, in order to stem losses to the federal deposit insurance fund. The Bank has cost the insurance fund approximately \$127 million, net of recoveries. Public shareholders lost their entire investment.

The Comptroller seeks a final Order barring Respondent Loumiet from providing or participating in the provision of legal or consulting services to any insured depository institution, or serving as counsel for such an institution. Respondent Loumiet would be required to disclose a copy of the Order to any institution-affiliated parties, *see* 12 U.S.C. § 1813(u), who retain him to provide legal or consulting services.

The Comptroller assesses a civil money penalty of \$250,000 against Respondent Loumiet. Pursuant to 12 U.S.C. § 1818(i)(2)(G), the Comptroller has accounted for Respondent Loumiet’s financial resources and absence of good faith, any history of previous violations, and such other matters as justice may require, and has fully considered Respondent Loumiet’s submissions concerning these matters. This penalty is payable to the Treasurer of the United States.

In support of this Notice of Charges for Order to Cease and Desist and Notice of Assessment of Civil Money Penalty (“Notice of Charges”), the Comptroller charges the following:

## **ARTICLE I**

### **JURISDICTION**

(1) At all relevant times, the Bank was a national banking association, chartered and examined by the Comptroller, pursuant to the National Bank Act of 1864, 12 U.S.C. § 1 *et seq.* The Comptroller closed the Bank on January 11, 2002.

(2) The Bank was an “insured depository institution,” pursuant to 12 U.S.C. §§ 1813(c)(2) and 1818(i)(2).

(3) The Office of the Comptroller of the Currency (“OCC”) is the “appropriate Federal banking agency” to initiate and maintain an enforcement proceeding against institution-affiliated parties of the Bank, pursuant to 12 U.S.C. §§ 1813(q)(1) and 1818. At all relevant times, and within the six-year period preceding this Notice of Charges, Respondent Loumiet was an institution-affiliated party of the Bank, pursuant to 12 U.S.C. § 1813(u).

## ARTICLE II

### **RESPONDENT LOUMIET**

(4) Respondent Loumiet is a partner in the law firm of Hunton & Williams LLP in Miami, Florida. Before joining Hunton & Williams LLP, at all relevant times Respondent Loumiet was a partner and principal shareholder in Greenberg, chaired Greenberg's banking and international law departments, practiced in Greenberg's headquarters in Miami, Florida, and acted within the scope of his duties at Greenberg.

## ARTICLE III

### **THE BANK'S UNLAWFUL ADJUSTED PRICE TRADES**

#### **A. The Bank's Unlawful Adjusted Price Trades In September 1998**

(5) An "adjusted price trade" is the sale of one security at a price above market value, and the compensating purchase of another security, often a low-grade issue or one trading at a substantial discount, at a price above market value. One unlawful purpose of an adjusted price trade is to conceal an imbedded loss by swapping an asset for other assets with imbedded losses.

(6) On or about June 29, 1998, the OCC began an examination of the Bank. During the examination, the OCC reviewed the Bank's Russian-based loans to, among others, the City of Moscow, Gazprombank, Vneshtorgbank, and Mezhsobbank. By late summer 1998, the Russian economy had declined dramatically, and Russian-based assets were trading substantially below their par values.

(7) In or about August 1998, senior officers of the Bank approached the Bank's external auditor, Deloitte Touche ("Deloitte"). The senior officers asked Deloitte whether the Bank would be required to report a loss if it sold distressed assets at par value, in exchange for purchasing other assets at par value, in excess of their market value. Deloitte's representative,

Joseph Echevarria, responded that the Bank must report a loss if it overpaid for assets in order to sell assets at par value, *i.e.*, engaged in an adjusted price trade.

(8) On or about September 9, 1998, the OCC directed the Bank to downgrade the City of Moscow, Gazprombank, and Vneshtorgbank loans to a “Substandard” classification, and establish reserves of 25 percent for these loans. Establishing the reserves would have resulted in a reported loss to the Bank of \$3,125,000. The OCC further directed the Bank to downgrade the Mezhcombank loan to “Special Mention.”

(9) On or about September 16, 1998, the Bank agreed to sell the City of Moscow loan at par value to West Merchant Bank, Ltd. (“WMB”), London. The par value of the City of Moscow loan was \$6 million, far in excess of its fair market value of approximately \$900,000. The Bank concurrently agreed to purchase long-term “perpetual” notes at par value from WMB, through an intermediary, Morgan, Grenfell & Co. (“Morgan Grenfell”). The total par value of the perpetual notes, issued by Standard Chartered PLC (“Standard Chartered”) and Hong Kong Shanghai Banking Corp. (“HSBC”), was \$15 million. The fair market value of the perpetual notes was approximately \$8.36 million. The par value of the perpetual notes exceeded their market value due to their low yield, and the length of the period until the principal might be repaid. The sale of the City of Moscow loan and the purchase of the perpetual notes closed on or about September 25, 1998.

(10) On or about September 18, 1998, the Bank agreed to sell the Gazprombank loan at par value to WMB. The par value of the Gazprombank loan was \$5 million, while its fair market value was between \$500,000 and \$1 million. The Bank concurrently agreed to purchase Latin American debt securities at par value from WMB, through Morgan Grenfell. The debt securities were issued by the Republic of Colombia, Financiera Energetica Nacional, and

Compania Energetica, Sao Paulo. Their total par value was \$19,049,000, while their fair market value was approximately \$13,441,692. The sale of the Gazprombank loan closed on or about September 29, 1998, while the purchase of the Latin American debt securities closed on or about October 1, 1998.

(11) On or about September 21, 1998, the Bank agreed to sell the Vneshtorgbank loan at par value to WMB. The par value of the Vneshtorgbank loan was \$1.5 million, while its fair market value was approximately \$390,000. The Bank concurrently agreed to purchase Latin American debt securities at par value from WMB, through Morgan Grenfell. The debt securities were issued by Proyectos de Energia and Comtel Brasileira, Ltda. Their total par value was \$5.5 million, while their fair market value was approximately \$3,900,900. The sale of the Vneshtorgbank loan closed on or about September 24, 1998, while the purchase of the Latin American debt securities closed on or about October 1, 1998.

(12) On or about September 28, 1998, the Bank agreed to sell the Mezhcombank loan at par value to Standard Bank London, Ltd. (“Standard”). The par value of the Mezhcombank loan was \$7.5 million, while its fair market value was approximately \$1.5 million. The Bank concurrently agreed to purchase Latin American debt securities at par value from Standard. The debt securities were issued by Banco Boavista, Sharp do Brasil, Petroleos Mexicanos (“Pemex”), the Republics of Colombia and Panama, Multicanal, Odebrecht Brazil, Unibanco Brazil, and Altos Hornos de Mexico, S.A. de C.V. (“AHMSA”). Their total par value was \$54,410,000, while their fair market value was approximately \$46,033,804. The sale of the Mezhcombank loan and the purchase of the Latin American debt securities closed on or about October 5, 1998.

(13) The Bank did not report a loss upon completing its transactions with WMB and Standard. Instead, the Bank recorded the perpetual notes and Latin American debt securities at their par values. The recorded par values exceeded the securities' fair market value.

(14) WMB and Standard acknowledged in internal memoranda that they had engaged or planned to engage in adjusted price trades with the Bank. Ken Bigelow of WMB reported that the total value of the amount over market value paid by WMB for the City of Moscow loan equaled the amount over market value paid by the Bank for the Standard Chartered/HSBC perpetual notes, thereby making both parties whole. Peter Kennedy of Standard identified its transaction with the Bank as the "Hamilton Russian/Latin American asset swap." Before the parties completed the adjusted price trade, Mr. Kennedy reported that if there was a shortfall between the discount on face value and the "adjusted" market value of the assets held by Standard, it would go into the market and buy deeply discounted Latin American bonds, on the Bank's behalf, to eliminate the shortfall.

**B. The OCC's Investigation And The Prosecution Of The Bank's Officers**

(15) In or about September 1999, the OCC discovered the September 1998 adjusted price trades during an examination of the Bank.

(16) On April 25, 2000, the OCC issued a Temporary Order to Cease and Desist against the Bank. The Temporary Order required the Bank to address the September 1998 adjusted price trades, among other issues. The OCC concurrently issued an amended notice of charges to the Bank concerning the adjusted price trades, among other matters, in which the OCC alleged that the Bank had engaged in unsafe and unsound practices.

(17) On September 8, 2000, the Bank entered into a Consent Order with the OCC. Without admitting or denying liability, the Bank agreed, among other things, to adopt controls

and practices in order to prevent adjusted price trades, and, instead, to purchase assets at the best available market price.

(18) In December 2000, as a result of the OCC's examination and investigation concerning the September 1998 adjusted price trades, the holding company restated its earnings and filed with the Securities & Exchange Commission ("SEC") an amended annual report on Form 10-K for the year ended December 31, 1998. The restatement of earnings for 1998 showed a pre-tax loss of more than \$22 million resulting from the adjusted price trades. The holding company attributed the restatement to an agreement with its regulators, without admitting that the Bank had engaged in the adjusted price trades.

(19) On January 11, 2002, after determining that the Bank had been operating and continued to operate in an unsafe and unsound manner, the OCC closed the Bank and appointed the Federal Deposit Insurance Corporation ("FDIC") as receiver.

(20) On October 31, 2003, former Bank president Bernace entered into a consent order with the OCC, which concerned the adjusted price trades. The consent order barred Mr. Bernace from participating in the affairs of any insured depository institution. Mr. Bernace did not admit or deny liability.

(21) On December 22, 2003, former Bank chairman and CEO Masferrer entered into a consent order with the OCC, which concerned the adjusted price trades. The consent order barred Mr. Masferrer from participating in the affairs of any insured depository institution. Mr. Masferrer did not admit or deny liability.

(22) On or about June 22, 2004, in *United States v. Masferrer*, No. 04-20404CR (S.D. Fla.), a grand jury returned an indictment concerning the September 1998 adjusted price trades, against Messrs. Masferrer, Bernace, and former Bank CFO Jacobs.



(23) On February 10, 2005, Mr. Bernace pled guilty to lesser charges concerning the adjusted price trades.

(24) On October 12, 2005, Mr. Jacobs pled guilty to lesser charges concerning the adjusted price trades. Mr. Jacobs agreed to be prohibited from participating in the affairs of any insured depository institution.

(25) On May 10, 2006, a jury in the United States District Court for the Southern District of Florida convicted Mr. Masferrer of 16 criminal counts relating to the September 1998 adjusted price trades and their concealment. The prosecution relied upon the testimony of Messrs. Bernace and Jacobs, among other witnesses.

(26) On July 26-27, 2006, the United States District Court sentenced Mr. Masferrer to 30 years in prison. Citing their remorse and cooperation, the court sentenced Messrs. Bernace and Jacobs to 28 months each.

(27) On October 20, 2006, the United States District Court ordered Mr. Masferrer to pay criminal restitution of \$17.2 million, and held Messrs. Masferrer, Bernace, and Jacobs jointly and severally liable to pay criminal restitution of \$14.5 million. The court found that the September 1998 adjusted price trades had caused the Bank to incur a loss of \$22.2 million on the assets it acquired. Principal reductions and increases in asset values eventually reduced the loss to approximately \$14.5 million.

#### **ARTICLE IV**

##### **RESPONDENT LOUMIET'S CONCEALMENT OF THE BANK'S UNLAWFUL ADJUSTED PRICE TRADES**

###### **A. The Investigation Of The Bank's Unlawful Adjusted Price Trades**

(28) In or about August 2000, following the OCC's challenge of the Bank's accounting for the unlawful adjusted price trades, the Audit Committees of the boards of

directors of the Bank and the holding company retained Greenberg and Respondent Loumiet to conduct an investigation of the adjusted price trades. Respondent Loumiet owed the Bank fiduciary duties of care, loyalty, and candor. These fiduciary duties required Respondent Loumiet to remain loyal to the Bank, conduct a thorough and impartial investigation, and provide the Bank with a complete and accurate account of the results of the investigation.

(29) Respondent Loumiet understood that the Audit Committees wanted Greenberg to investigate and report the facts relating to the adjusted price trades, including whether the trades exhibited certain elements of adjusted price trades identified by Deloitte. Respondent Loumiet further understood that the Audit Committees wanted Greenberg to determine whether the Bank's officers had made intentionally false or misleading representations to Deloitte concerning the adjusted price trades.

(30) Greenberg produced two reports concerning its investigation on behalf of the Bank, dated November 15, 2000 (copy attached as Exhibit A), and March 14, 2001 (copy attached as Exhibit B). Respondent Loumiet and Mr. Grossman oversaw the investigation on behalf of Greenberg, and were the principal authors of the reports. During the investigation, the Bank provided Greenberg with complete access to the Bank's records upon request, and made the Bank's officers, directors, and employees available for interviews.

(31) Respondent Loumiet concluded in the November 2000 report that there had been "no 'agreement,' certainly in any legal sense of the word, as to a swap or exchange of assets," Ex. A at 18, and that there was no "convincing evidence" showing that the Bank's officers had "intentionally misled" Deloitte or the Audit Committees. *Id.* at 23.

(32) On January 17, 2001, following the issuance of the November 2000 report, the OCC provided Respondent Loumiet with excerpts from the deposition testimony of Ian

Tweedley, a WMB employee who had participated in the adjusted price trades. Mr. Tweedley's testimony contradicted Respondent Loumiet's conclusion that there had been no agreement concerning the adjusted price trades. In the March 2001 report, Respondent Loumiet reviewed this testimony, Ex. B at 3-7, and six "red flags" identified by the OCC. *Id.* at 7-13. However, in the March 2001 report, Respondent Loumiet reiterated his conclusions in the November 2000 report. Ex. B at 14-15.

(33) On October 31, 2006, Greenberg entered into a settlement agreement and consent order with the OCC, which related to the investigation and the reports. The consent order required Greenberg to pay a civil money penalty of \$750,000. Greenberg did not admit or deny liability.

**B. Respondent Loumiet's Conflicts Of Interest**

(34) Contrary to Respondent Loumiet's obligation to remain loyal to the Bank, Respondent Loumiet had conflicts of interest that gave him an incentive (a) not to conclude that adjusted price trades had occurred or that the Bank's officers had lied to its auditor, (b) not to conduct a thorough and impartial investigation, and (c) not to provide the Bank with a complete and accurate account of the results of the investigation. Greenberg and Respondent Loumiet did not seek or obtain from the Bank a waiver of these conflicts of interest.

(35) During 1998-2000, before the investigation, Mr. Grossman counseled the holding company concerning its periodic SEC filings, which did not disclose the adjusted price trades, or the losses that the Bank's officers sought to conceal through the adjusted price trades. During the investigation, Respondent Loumiet had an incentive not to conclude that the Bank had engaged in adjusted price trades, which would expose the material inaccuracy of the SEC filings.

(36) During the investigation, Respondent Loumiet represented the Bank's directors in connection with the OCC's enforcement action concerning the adjusted price trades. Respondent Loumiet's representation of the directors, including Messrs. Masferrer and Bernace, gave him an incentive not to conclude that the Bank had engaged in adjusted price trades, and, in particular, an incentive not to conclude that Messrs. Masferrer and Bernace had lied to the Bank's auditor.

(37) During the investigation, Greenberg defended Messrs. Masferrer and Jacobs in a class-action lawsuit, *Indriksons v. Hamilton Bancorp Inc., et al.*, No. 01-0156 (S.D. Fla.) (Jan. 12, 2001), which resulted from the holding company's restatement of its earnings in December 2000. The complaint alleged the perpetration of the adjusted price trades that Greenberg was investigating on behalf of the Bank. Greenberg's defense of Messrs. Masferrer and Bernace in *Indriksons* gave Respondent Loumiet an incentive not to conclude in the March 2001 report that the Bank had engaged in adjusted price trades, and, in particular, an incentive not to conclude that Messrs. Masferrer and Bernace had lied to the Bank's auditor.

(38) Greenberg and Respondent Loumiet did not erect a "firewall" or other barrier to shield the firm's investigation of whether Messrs. Masferrer and Jacobs had lied to the Bank's auditor, which the firm undertook on behalf of the Bank, from the firm's defense of these officers in *Indriksons*.

**C. Respondent Loumiet's Materially False And Misleading Assertions, And Suppression Of Material Evidence**

(39) Respondent Loumiet based his conclusions in the November 2000 and March 2001 reports upon a series of materially false and misleading assertions in the reports. The false and misleading assertions concealed the adjusted price trades, and the Bank officers' lies to the Bank's auditor. Respondent Loumiet suppressed material evidence that would have exposed the false and misleading assertions.

**1. Respondent Loumiet's False And Misleading Assertion Concerning The Absence Of Evidence Showing Adjusted Price Trades**

(40) Referring to the adjusted price trades, Respondent Loumiet falsely asserted in the March 2001 report: “Noticeably, what we have not seen is any ‘evidence’ whatsoever from within Hamilton Bank showing any intention within that bank to engage in such a ‘swap’ or ‘exchange.’” Ex. B at 14 (emphasis in original). Respondent Loumiet further falsely asserted that no document suggesting an adjusted price trade was “exchanged between [WMB] and Hamilton Bank.” *Id.* at 8. Respondent Loumiet knew when Greenberg submitted the report that Greenberg possessed documentary and other evidence from within the Bank, showing its intent to engage in adjusted price trades, but Respondent Loumiet knowingly, or, at a minimum, recklessly, suppressed this evidence.

(41) When Greenberg submitted the March 2001 report, it possessed a complete copy of a telecopier transmission from the Bank confirming the adjusted price trade with WMB for the City of Moscow loan. J. Reid Bingham, the Bank’s general counsel, sent the transmission to Peter Batrouni of WMB on September 21, 1998. Mr. Bingham’s transmission responded to WMB’s offer of September 15, 1998 to engage in the adjusted price trade. Ex. A at Annex II. Mr. Bingham attached (a) a letter from Mr. Bernace to WMB stating that the Bank would sell the City of Moscow loan to WMB, but would not purchase from WMB the perpetual notes issued by Standard Chartered and HSBC (page 2 of the transmission); and (b) a letter from Mr. Jacobs to Morgan Grenfell confirming that the Bank would buy the perpetual notes (pages 3-4 of the transmission). By attaching both documents, Mr. Bingham confirmed that the Bank had accepted WMB’s offer, but would complete the adjusted price trade by purchasing the perpetual notes through an intermediary, Morgan Grenfell.

(42) Respondent Loumiet knowingly, or, at a minimum, recklessly, concealed Mr. Bingham’s telecopier transmission by omitting the cover page and splitting the remainder of the transmission into two documents – the letter from Mr. Bernace to WMB, Ex. A at Annex III, and the letter from Mr. Jacobs to Morgan Grenfell. *Id.* at Annex IV. Through this concealment, Respondent Loumiet sought to convince the Audit Committees that the sale of the City of Moscow loan to WMB (Annex III) and the purchase of the perpetual notes from Morgan Grenfell (Annex IV) were unrelated, independent transactions. In a meeting on November 28, 2000, before Greenberg submitted the March 2001 report, Deloitte notified Respondent Loumiet that it believed Annexes III and IV appeared to have formed part of a single transmission. However, Respondent Loumiet persisted in attempting to conceal the evidence showing that the sale of the City of Moscow loan and the purchase of the perpetual notes were parts of an interdependent adjusted price trade.

**2. Respondent Loumiet’s False And Misleading Assertion That The Bank Customarily Purchased And Sold Debt Assets At Par Value**

(43) Respondent Loumiet falsely asserted in the March 2001 report that, “[i]n September 1998, Hamilton Bank customarily purchased and sold debt assets, including assets similar to those at issue here, at face value [par value].” Ex. B at 8; *see also* Ex. A at 7, 17. This assertion was significant because, absent the asserted practice, only an adjusted price trade or an equivalent *quid pro quo* would explain why the Bank bought the perpetual notes and Latin American debt securities at par, when these assets were available for a lower price. Contrary to the assertion, Respondent Loumiet understood when Greenberg submitted the reports that banks and other firms customarily buy and sell assets at the best available price.

(44) When Greenberg submitted the reports, Respondent Loumiet either was aware of evidence in the Bank’s records contradicting his assertion that the Bank had customarily

purchased and sold debt assets at par value, and did not disclose this evidence; or did not disclose Greenberg's failure to investigate the Bank's records to determine whether the assertion was accurate. As of September 1998, the Bank's lending policy was to seek the highest yields available from its lending activities, consistent with market conditions. Similarly, the Bank's investment policy at that time was to seek the highest yields possible consistent with market conditions, while acknowledging that all investments are priced by their respective markets. Because buying debt assets at par value would depress their yield where par value exceeded the market price, the Bank's lending and investment policies contradicted the assertion in the reports.

(45) The Bank's investment practices further contradict Respondent Loumiet's assertion in the reports that the Bank customarily purchased and sold debt assets at par value. Both before and after September 1998, the Bank customarily purchased and sold debt assets, similar to the assets that were at issue in the investigation, at prices other than par value.

**3. Respondent Loumiet's False And Misleading Assertion That The Bank Historically Had Not Considered Current Market Pricing Or Valuation Of Loans**

(46) Respondent Loumiet falsely asserted in the November 2000 report that, "[i]n acquiring or disposing of loans Hamilton has not historically faced the necessity of dealing with current market pricing or valuation of loans . . . ." Ex. A at 4; *see id.* at 7. Respondent Loumiet knew when Greenberg submitted the November 2000 report that, as of 1998, the holding company determined the fair value of the Bank's investment securities and other financial instruments. Market value is the principal determinant of fair value. In addition, Respondent Loumiet knew when Greenberg submitted the report that, as of 1998, the holding company sought to control the market risk of the Bank's assets, including the risk of changes in the market

value of these assets, and the risk that the Bank might be unable to liquidate assets at market prices.

(47) When Greenberg submitted the reports, Respondent Loumiet either was aware of additional evidence in the Bank's records contradicting Respondent Loumiet's assertion that the Bank historically had not considered the current market pricing or valuation of its loans, and did not disclose this evidence; or did not disclose Greenberg's failure to investigate the Bank's records to determine whether the assertion was accurate. As of 1998, the Bank's primary objective in its investment strategy was to maintain the credit quality and marketability of its portfolio, including the ability to sell a security with reasonable promptness at a price reasonably corresponding to its fair value. Both before and after September 1998, the Bank determined market values for its investments in debt securities, and reported these values to its Asset-Liability ("ALCO") Committee. In addition, the Bank assessed market values in connection with its debt securities transactions.

**4. Respondent Loumiet's False And Misleading Assertion That The Bank Did Not Consider The Market Price Of The Assets Involved In The Adjusted Price Trades**

(48) Respondent Loumiet falsely asserted in the November 2000 report that, "we saw no evidence indicating that Hamilton inquired into or considered the market pricing of any of the assets involved [in the adjusted price trades]." Ex. A at 21. During the investigation, Greenberg reviewed evidence confirming that the Bank considered the market pricing of the perpetual notes that it purchased from WMB in September 1998, through Morgan Grenfell. Dwight McKey, assistant treasurer of the Bank, testified at the OCC's investigative deposition that the Bank's treasurer had asked him to obtain market quotes for the perpetual notes on or about the date when the Bank purchased them. The deposition exhibits included copies of the quotes. The



Bank sent Mr. Grossman a copy of Mr. McKey's deposition transcript on September 27, 2000, before Greenberg submitted the report.

(49) When Greenberg submitted the November 2000 report, Respondent Loumiet either was aware of additional evidence in the Bank's records contradicting his assertion that the Bank did not consider the market pricing of the assets involved in the adjusted price trades, and did not disclose this evidence; or did not disclose Greenberg's failure to investigate the Bank's records to determine whether the assertion was accurate. Following the adjusted price trades, the Bank classified the perpetual notes and the Republic of Colombia securities as investments to be held to maturity, and reported the market value of these assets to the ALCO Committee. In addition, the Bank maintained safekeeping reports listing the market values of a number of the Latin American debt securities that it acquired in the adjusted price trades.

**5. Respondent Loumiet's False And Misleading Assertion That The Bank Carried Loans On Its Books, For All Purposes, At Par Value**

(50) Respondent Loumiet falsely asserted in the November 2000 report that all loans purchased or eventually sold by the Bank "will be carried on Hamilton's books, for all purposes, at face value [par value]." Ex. A at 5. When Greenberg submitted the report, Respondent Loumiet knew there were circumstances where the Bank would carry loans and securities at less than face value. Both before and after September 1998, the Bank's policy required it to write down impaired loans to the present value of payments the Bank expected to receive, or observable market prices, where it was probable that the Bank would be unable to collect all amounts due. In addition, Respondent Loumiet knew that, to the extent the Bank did not adhere to its policy, the OCC could require the Bank to write down the value of its loans or securities, as the OCC required for the perpetual notes and Latin American debt securities upon its discovery of the adjusted price trades.

**D. The Harm To The Bank Resulting From The Investigation**

(51) The Bank's officers materially overstated the Bank's capital and income by not reporting the losses that the Bank incurred on the Russian-based loans, as realized in the adjusted price trades, until the OCC required the Bank to report the losses. The overstatement of the Bank's capital and income was an unsafe and unsound practice, which exposed the Bank, its depositors, and the federal deposit insurance fund to risk of loss. Through the investigation and reports, Respondent Loumiet participated in the unsafe and unsound practice by facilitating the continuation of the material overstatement of the Bank's capital and income.

(52) The Bank paid Greenberg approximately \$210,000 for the investigation and reports. Respondent Loumiet deprived the Bank of this value due to (a) compromising his loyalty to the Bank through conflicts of interest, (b) basing his conclusions in the reports upon a series of materially false and misleading assertions, (c) suppressing material evidence, and (d) participating in an unsafe and unsound practice.

**ARTICLE V**

**RESPONDENT LOUMIET'S STATUS AS AN INSTITUTION-AFFILIATED PARTY**

(53) This Article repeats and realleges all previous Articles in this Notice of Charges.

(54) At all relevant times, Respondent Loumiet was an independent contractor of the Bank in connection with the investigation of the adjusted price trades and Greenberg's submission of the November 2000 and March 2001 reports.

(55) Respondent Loumiet knowingly or, at a minimum, recklessly breached his fiduciary duties to the Bank of loyalty and candor due to Greenberg's representation of the holding company in connection with its SEC filings, Respondent Loumiet's defense of the Bank's directors in the OCC's investigation of the adjusted price trades, and Greenberg's defense

of Messrs. Masferrer and Jacobs in *Indriksons*. Respondent Loumiet was aware of these conflicts of interest during the investigation. At a minimum, Respondent Loumiet acted in disregard of, and exhibited a conscious indifference to, a known and obvious risk of the conflicts of interest.

(56) Respondent Loumiet knowingly or, at a minimum, recklessly, breached his fiduciary duties to the Bank of care and candor, and participated in an unsafe or unsound practice, by basing his conclusions in the November 2000 and March 2001 reports upon a series of materially false and misleading assertions, and suppressing material evidence. Respondent Loumiet knew the assertions were materially false or misleading when Greenberg submitted the reports to the Bank, and that he had suppressed material evidence. At a minimum, Respondent Loumiet acted in disregard of, and exhibited a conscious indifference to, a known and obvious risk that the assertions were materially false or misleading, and that he had suppressed material evidence.

(57) Respondent Loumiet's breaches of fiduciary duty, and his participation in an unsafe or unsound practice, caused, or were likely to cause, more than a minimal financial loss to the Bank, or a significant adverse effect on the Bank. This harm includes, without limitation, (a) the continuation of the material overstatement of the Bank's capital and income, and (b) the Bank's not receiving the services for which it contracted, when it paid Greenberg approximately \$210,000 to remain loyal to the Bank, conduct a thorough and impartial investigation, and provide the Bank with a complete and accurate account of the results of the investigation.

## **ARTICLE VI**

### **GROUND FOR AN ORDER TO CEASE AND DESIST**

(58) This Article repeats and realleges all previous Articles in this Notice of Charges.

(59) Respondent Loumiet engaged in an unsafe or unsound practice in conducting the business of the Bank, and breached his fiduciary duties to the Bank of care, loyalty and candor, through his conflicts of interest, his basing his conclusions in the November 2000 and March 2001 reports upon a series of materially false and misleading assertions, and his suppression of material evidence.

(60) Respondent Loumiet violated a law, rule, or regulation in connection with the investigation and reports concerning the adjusted price trades. These violations include, without limitation, Respondent Loumiet's violation of Rules 4-1.7 and 4-1.10 of the Florida Rules of Professional Conduct, which proscribed Respondent Loumiet's conflicts of interest in his representation of the Bank.

## **ARTICLE VII**

### **GROUND FOR AN ORDER REQUIRING PAYMENT OF A CIVIL MONEY PENALTY**

(61) This Article repeats and realleges all previous Articles in this Notice of Charges.

(62) Respondent Loumiet knowingly, or, at a minimum, recklessly, breached his fiduciary duties to the Bank of care, loyalty, and candor.

(63) Respondent Loumiet engaged in an unsafe or unsound practice in conducting the business of the Bank, and breached his fiduciary duties to the Bank of care, loyalty and candor, through his conflicts of interest, his basing his conclusions in the November 2000 and March 2001 reports upon a series of materially false and misleading assertions, and his suppression of material evidence.

(64) Respondent Loumiet's breach of his fiduciary duties and unsafe or unsound practice were parts of a pattern of misconduct, including, without limitation, the reiteration in the March 2001 report of materially false and misleading assertions in the November 2000 report,

and the repetition in the March 2001 report of the suppression of material evidence in the November 2000 report.

(65) Respondent Loumiet's breach of his fiduciary duties and unsafe or unsound practice caused, or was likely to cause, more than a minimal loss to the Bank. This harm includes, without limitation, the Bank's incurring a cost of approximately \$210,000 for the investigation and reports concerning the adjusted price trades.

(66) Respondent Loumiet's breach of his fiduciary duties and unsafe or unsound practice resulted in pecuniary gain or other benefit to Respondent Loumiet. This benefit included, without limitation, the Bank's payment for the investigation and reports, Greenberg's collection of approximately \$1.16 million of fees from the Bank and the holding company during 2001-02, and Respondent Loumiet's receiving a share of these fees.

(67) Respondent Loumiet's breach of his fiduciary duties and unsafe and unsound practice continued from November 15, 2000, the date of the first report, through the closing of the Bank on January 11, 2002.

(68) After considering Respondent Loumiet's financial resources, whether he acted in good faith, the history of any previous violations, and such other matters as justice may require, and after soliciting and giving full consideration to his views with respect to these issues, the Comptroller assesses against Respondent Loumiet a penalty of \$250,000. This penalty is payable to the Treasurer of the United States at Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri, 63197-9000.

**WHEREFORE**, the Comptroller, through the authorized representative whose name appears below, assesses the civil money penalty described above, effective immediately.

## OPPORTUNITY FOR HEARING

Respondent Loumiet is directed to file a written answer to this Notice of Charges within twenty (20) days from the date of service of this Notice of Charges, pursuant to 12 C.F.R. § 19.19(a) and (b). The answer shall be filed with the Office of Financial Institution Adjudication (“OFIA”), 1700 G Street, N.W., Washington, D.C. 20552, and electronically at ofiacook@ots.treas.gov. A copy of any answer shall also be served upon the Hearing Clerk, Office of the Chief Counsel (“Hearing Clerk”), Office of the Comptroller of the Currency, Washington, D.C., 20219, and with the OCC attorney whose name appears on the accompanying certificate of service. **Failure to answer within this period shall constitute a waiver of the right to appear and contest the allegations contained in this Notice of Charges, and shall, upon the OCC’s motion, cause the Administrative Law Judge or the Comptroller to find the facts in this Notice of Charges to be as alleged, upon which an appropriate Order may be issued.**

Respondent Loumiet is further directed to file, with the answer, a request for a hearing before the Comptroller concerning the assessment of civil money penalties, within twenty (20) days from the date of service of this Notice of Charges, pursuant to 12 U.S.C. § 1818(i) and 12 C.F.R. § 1919(a) and (b). Any request accompanying the answer shall be filed with the Office of Financial Institution Adjudication (“OFIA”), 1700 G Street, N.W., Washington, D.C. 20552, and electronically at ofiacook@ots.treas.gov. A copy of any request accompanying the answer shall also be served upon the Hearing Clerk, and with the OCC attorney whose name appears on the accompanying certificate of service. **Failure to request a hearing within this period shall cause this assessment to constitute a final and unappealable order for civil money penalties against Respondents, pursuant to 12 U.S.C. § 1818(i).**

**PRAYER FOR RELIEF**

**WHEREFORE**, the Comptroller prays for relief in the form and content of the issuance of the attached Proposed Order.

Witness, my hand on behalf of the Office of the Comptroller of the Currency, given at Washington, D.C., this 6th day of November, 2006.

/s/ John W. Quill  
John W. Quill  
Deputy Comptroller  
Special Supervision Division