STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS

IN RE:

APPLICATION TO MERGE
Community Bank & Company,
Lakewood Ranch, Florida, and
First Community Bank of America,
Pinellas Park, Florida; Resulting
Institution: Community Bank & Company

Admin. File No. ____________

______________________________________/

**PETITION FOR PUBLIC HEARING, MOTION FOR DESIGNATION AS PARTY, STATEMENT IN OPPOSITION, AND NOTICE OF INTENTION TO APPEAR**

1. Neil J. Gillespie hereby petitions the Florida Office of Financial Regulation (OFR) pursuant to Fla. Admin. Code r. 69U-105.104(1) for a public hearing on the APPLICATION TO MERGE ("application") of Community Bank & Company Lakewood Ranch, Florida, and First Community Bank of America, Pinellas Park, Florida; Resulting Institution: Community Bank & Company. A copy of the application accompanies this Petition as Exhibit 1.

2. The Petitioner, pro se, is Neil J. Gillespie, 8092 SW 115th Loop, Ocala, Florida, 34481, telephone number (352) 854-7807.

3. A copy of the application was belatedly provided to Petitioner by OFR Chief Counsel Josephine Schultz. The application (Exhibit 1) is missing all the financial data; the data fields are blank. The following public financial data is missing:

Schedule II, Pro Forma Combined Balance Sheet

Schedule III, Earnings History and Capital Accounts Changes

Schedule IV, Financial Institution Offices and Fixed Asset Investment

The application is also missing Exhibit A, Agreement of Merger, which is public information. Ms. Schultz failed to respond to Petitioner's request for complete records.

4. Pursuant to Fla. Admin. Code r. 69U-105.104(1) Petitioner combines his petition for public hearing with a notice of intention to appear.

5. Pursuant to Fla. Admin. Code r. 69U-105.104(1)(d) Petitioner has an interest in, and objects to, the application as a resident of the State of Florida, a Florida homeowner, a former client of Community Bank & Company (formerly known as Community Bank of Manatee), and as an advocate, educator and journalist through his Justice Network at http://YouSue.org/, and as further set forth in this Petition. Furthermore, Petitioner has a "collective responsibility" as defined in the Conclusions of the Financial Crisis Inquiry Commission, a responsibility to learn, investigate and fix the dramatic breakdowns of corporate governance, profound lapses in regulatory oversight, and near fatal flaws in our financial system.

6. Pursuant to Fla. Admin. Code r. 69U-105.106(3) Petitioner's substantial interests will be affected. Petitioner moves to become a party to the proceeding. Petitioner gives notice of intention to appear as a party. Petitioner incorporates paragraphs 1 through 5 in this paragraph.

7. Pursuant to Fla. Admin. Code r. 69U-105.106(3)(b) a full and clear statement of the grounds upon which Petitioner bases the claim that his substantial interest will be affected by decision on the application is included in this Petition. Petitioner incorporates paragraphs 1 through 6 in this paragraph.

8. Pursuant to Fla. Admin. Code r. 69U-105.103 (1) OFR was required to publish notice of receipt of the application in the Florida Administrative Weekly within twenty-one (21) days of its receipt. A publication was made, Notice No. 9714858. The receipt date published in the

notice is February 15, 2010. (Exhibit 2). OFR received the application February 15, 2011. The receipt date is incorrect. OFR failed to meet the requirements of F.A.C. Rule 69U-105.103 (1).

**STATEMENT IN OPPOSITION**

9. Petitioner opposes the application on the following grounds:

a. Community Bank & Company (formerly known as Community Bank of Manatee) is in substantial violation of its November 25, 2009 Consent Order with the FDIC (FDIC-09-569b) and OFR (OFR 0692-FI-10/09). (Exhibit 3). The FDIC and OFR Ordered, among other things, in section 2(a) Management, that (a) Within 60 days from the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following: (i) a chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices. As of today, well over a year after the FDIC and OFR Ordered the bank to “have and retain qualified management”, William H. Sedgeman, Jr. is still the bank’s CEO, even though he mismanaged the bank and lost $9.3 million in 2009 and $1.4 million in 2010. Mr. Sedgeman is not competent to serve as Chief Executive Officer. Petitioner observed Mr. Sedgeman November 1, 2010 while closing his account at the Tampa branch. Mr. Sedgeman, 70 years-old, appears frail, and shuffles about, an early sign of dementia. Evidence in the Petition will show that Mr. Sedgeman is manipulated by others, including Martha J. Cook, his wife and the bank’s former registered agent and unofficial counsel.

b. Community Bank & Company is still loosing money. The bank lost $9.3 million in 2009. The bank lost $1.4 million in 2010. Merging one money-loosing bank with another money-loosing bank is folly given the deteriorating economic conditions in the bank's market. In addition, a number of the bank's Board of Directors are gone, contrary to earlier statements to OFR that the Board and management would not change.

c. There are substantial unanswered questions surrounding Mr. Lima, Chairman of the bank's holding company, CBM Florida Holding Company, and his June 6, 2009 Application For Certificate of Approval to Purchase or Acquire A Controlling Interest in a State Bank or Trust Company. OFR failed to conduct a sufficient background check on Mr. Lima that would have shown massive criminal acts during his tenure at ABN AMRO Bank that resulted in the forfeiture $500 Million in Connection with Conspiracy to Defraud the United States and with Violation of the Bank Secrecy Act. In addition, the application for controlling interest shows financial irregularities which Petitioner recently brought to the attention of John G. Alcorn, OFR's Bureau Chief. In one case a shareholder inexplicably lost $4,114.80 August 19, 2008. Unable to answer, Mr. Alcorn referred the matter to Josephine Schultz, Chief Counsel. Ms. Schultz has obstructed efforts to get information in an apparent effort to prevent further analysis.

d. The application provided to Petitioner by OFR Chief Counsel Josephine Schultz is missing all the financial data; the data fields are blank. (Exhibit 1). The following public financial data is missing:

Schedule II, Pro Forma Combined Balance Sheet

Schedule III, Earnings History and Capital Accounts Changes

Schedule IV, Financial Institution Offices and Fixed Asset Investment

The application is also missing Exhibit A, Agreement of Merger, which is public information. Ms. Schultz failed to respond to Petitioner's request for complete records.

e. While Petitioner was a bank customer of Community Bank of Manatee (n.k.a. Community Bank & Company), Petitioner was subject to discriminatory treatment.

## INTRODUCTION

10. On September 21, 2010 OFR Commissioner J. Thomas Cardwell testified before the Financial Crisis Inquiry Commission. (Exhibit 4). The Commissioner testified that "[M]y name is Tom Cardwell and I am the Commissioner of the Office of Financial Regulation for the State of Florida a position in which I have served for one year. Prior to assuming this position I was a lawyer in private practice with Akerman Senterfitt a 500 attorney firm based in Florida where I served as Chairman & CEO and headed the Financial Institutions Practice Group."

11. The Commissioner testified "Relative to this appearance I served on the Florida Supreme Court Mortgage Foreclosure Task Force which made recommendations to deal with the crisis in the courts regarding residential mortgage foreclosures." The Commissioner also testified "The Office of Financial Regulation has jurisdiction over the state chartered banking industry, the securities industry, mortgage brokers, money transmitters, payday lenders, check cashers and automobile lenders among others. We have 453 employees and a budget of 43 million dollars with which to carry out our responsibilities for licensing, examination and enforcement in all of these areas."

12. In the December 31, 2010 OFR Quarterly Report to the Financial Services Commission, Commissioner Cardwell's comments show the many challenges facing Florida's economy and as a result, Florida's financial industries continue to face significant stress. (Exhibit 5). He wrote "Since January 2009, 44 financial institutions have failed: 14 in 2009, 29 in 2010 and one

already in 2011. Florida is in the top five states nationally in the number of mortgage foreclosures. Home sales remain sluggish and prices for existing homes are flat. Like many families and businesses in Florida, OFR was significantly impacted by the real estate market."

13. Commissioner Cardwell also wrote "We have now found that actual revenues are even less than we had projected due to the difficult business conditions our industries are facing. Specifically, the number of persons seeking to be licensed in the mortgage industry has decreased significantly. In June 2007, OFR had more than 80,000 individual mortgage brokers licensed. By October 2010, the number had decreased by about half. We just concluded our current registration cycle on December 31st, and had slightly fewer than 15,000 individual applicants. We knew there would be a drop off, but the depth of the problems in the Florida housing market were greater than anticipated, even by noted economists." (Exhibit 5)

14. As for banking, Commissioner Cardwell wrote "In the area of Banking, the total assets held in state-chartered banks have declined. In 2009, total deposits in state-chartered banks were $60 billion. According to the latest figures (September 2010), the number has dropped to $50 billion." Commissioner Cardwell expressed some optimism: "I think we are at the bottom of this economic cycle. Some of our businesses have remained stable. The businesses that were negatively impacted will come back over time. Banking should be back to where it was in the next year or two. Mortgage brokerage will never return to its frothy heights." (Exhibit 5)

15. Commissioner Cardwell wrote "No Florida banking customers have lost a single dollar of insured deposits." (Exhibit 5). While that may be technically true, Florida homeowners, investors and others have been decimated financially and emotionally by the fallout of the financial crisis.

16. According to a report by Condo Vultures bank failures in Florida have cost the Federal Deposit Insurance Corp. the most money of any state in 2010. Florida's bank failures have cost

about $2.1 billion in losses to the FDIC's deposit insurance fund, or about 10% of the $22.2 billion in losses in 2010.

17. The Financial Crisis Inquiry Commission determined that the 2008 financial crisis was an “avoidable” disaster caused by widespread failures in government regulation, corporate mismanagement and heedless risk-taking by Wall Street, according to a story in the New York Times January 25, 2011 ‘Financial Crisis Was Avoidable, Inquiry Finds’. (Exhibit 6). The Times wrote “[T]he report is harsh on regulators. It finds that the Securities and Exchange Commission failed to require big banks to hold more capital to cushion potential losses and halt risky practices, and that the Fed “neglected its mission.”

18. Lax government oversight allowed Bernie Madoff to operate a ponzi scheme for years, even when whistleblower Harry Markopoulos repeatedly alerted authorities. SEC regulators spent many hours watching pornography in their offices during the 2008 financial crisis. A summary requested by Senator Grassley of pornography-related investigations conducted by the SEC Inspector General shows senior level regulators and lawyers were involved. (Exhibit 7)

19. Conclusions of the Financial Crisis Inquiry Commission state “As this report goes to print, there are more than 26 million Americans who are out of work, cannot find full-time work, or have given up looking for work. About four million families have lost their homes to foreclosure and another four and a half million have slipped into the foreclosure process or are seriously behind on their mortgage payments. Nearly $11 trillion in household wealth has vanished, with retirement accounts and life savings swept away.” (Exhibit 8)

19. The Conclusions also state “There is much anger about what has transpired, and justifiably so. Many people who abided by all the rules now find themselves out of work and

uncertain about their future prospects. The collateral damage of this crisis has been real people and real communities. The impacts of this crisis are likely to be felt for a generation." (Exhibit 8)

20. The Conclusions closes with "In our inquiry, we found dramatic breakdowns of corporate governance, profound lapses in regulatory oversight, and near fatal flaws in our financial system....This report should not be viewed as the end of the nation's examination of this crisis. There is still much to learn, much to investigate, and much to fix. This is our collective responsibility. It falls to us to make different choices if we want different results." (Exhibit 8)

21. Despite all the above, OFR continues to have profound lapses in regulatory oversight. Therefore as designated by the Financial Crisis Inquiry Commission it is the "collective responsibility" of citizens to demand changes and improvement from our government regulators.

## PETITIONER'S SUBSTANTIAL INTERESTS

22. As a Florida homeowner (through a family trust) Petitioner watched his home in Ocala, Florida drop in value, from $168,000 in 2006 to a current market value of $91,057 today. Petitioner suffered a substantial loss of $76,943. Petitioner's home is "underwater", a term meaning the current mortgage balance of $104,211 exceeds the current market value of the home. Petitioner has an interest, indeed a duty and a "collective responsibility" as defined in the Conclusions of the Financial Crisis Inquiry Commission, a responsibility to learn, investigate and fix the dramatic breakdowns of corporate governance, profound lapses in regulatory oversight, and near fatal flaws in our financial system.

## COMMUNITY BANK & COMPANY

23. Community Bank of Manatee is now known as Community Bank & Company ("bank") as a result of a name change earlier this year. The bank was founded in 1995 by William H. Sedgeman, Jr., the current Chairman & Chief Executive Officer. The bank is an insured state

nonmember bank. The bank's website claims it is privately owned by about 350 shareholders and the founding board of directors has remained with the bank from inception.

24. A 2001 Form 6 Public Disclosure of Financial Interest (Exhibit 9) filed by Martha Jean Cook, Florida Bar ID No. 242640, shows she was Registered Agent for the bank and had a beneficial interest more than 5% in the bank. Ms. Cook was required to file the Form 6 as a candidate for Circuit Court Judge for the Thirteenth Judicial Circuit. Ms. Cook's sole income is listed as $52,824 derived from Martha J. Cook, PA, an arbitration/mediation firm where she was president. The 2001 Form 6 shows Ms. Cook had substantial relative debts, with a net worth of $151,487. About half her net worth was derived from household goods listed at $72,500. Ms. Cook valued her arbitration/mediation firm at $30,199.

25. Martha J. Cook was at all times relative to this Petition married to William H. Sedgeman, Jr. In Florida the relationship to a party or attorney is computed by using the common law rule rather than the civil law rule. In computing affinity husband and wife are considered as one person and the relatives of one spouse by consanguinity are related to the other by affinity in the same degree. State v. Wall, 41 Fla. 463. This created a conflict of interest since Ms. Cook was Registered Agent for the bank and had a beneficial interest more than 5% while married to William H. Sedgeman, Jr., the bank's Chairman & Chief Executive Officer. During this time the bank does not appear to have had counsel other than Ms. Cook; she was the bank's de facto general counsel. Ms. Cook won the Judicial election and currently serves as Circuit Court Judge for the Thirteenth Judicial Circuit. Judge Cook provides legal and other advice to her husband on bank matters, either officially or unofficially. To believe otherwise strains credulity.

26. For a time Petitioner had civil litigation pending before Judge Cook, Gillespie v Barker, Rodems & Cook, PA, Case No. 05-CA-007205, Circuit Civil Division, Hillsborough County.

The lawsuit is against Petitioner's former lawyers who defrauded him in prior litigation. The prior litigation was related to Neil Gillespie v. ACE Cash Express, Inc., Hillsborough Circuit Civil, Consolidated Case No. 99-9730, Division J (originally case no. 8:00-CV-723-T-23B, in United States District Court, Middle District of Florida, Tampa Division). On December 30, 2002, ACE Cash Express entered an agreement with the Florida State Department of Banking (DBF) and the Attorney General. ACE paid a total of $500,000 in settlement and for issuance by the Florida Department of Banking and Finance, Division of Securities and Finance ("DBF") of authorizations, licenses, or other approvals necessary for ACE to continue in business in Florida, and for releases and other stipulations. ACE paid $250,000 to the DBF Regulatory Trust Fund in full satisfaction of all attorney's fees, costs, and other expenses incurred by the DBF in connection with this matter. ACE made a contribution of $250,000 to the Florida State University College of Law in full satisfaction of all attorney's fees, costs and other expenses incurred by the Attorney General in connection with this matter. A copy of the agreement is attached. (Exhibit 10). Petitioner's lawsuit appears on page 8.

27. On November 10, 2010 Petitioner moved to disqualify Judge Cook from his case for bias and matters related to the bank, see Plaintiff's 4th Motion to Disqualify Judge Martha J. Cook. (Exhibit 11). Among other things, the motion showed Judge Cook was insolvent and related to recapitalization efforts with the bank. The motion showed how the bank discriminated against Petitioner while he was a customer. The motion also showed Judge Cook's conflict presiding over cases involving financial institutions. Judge Cook refused to disqualify herself. November 18, 2010 Petitioner filed a Writ of Prohibition against Judge Cook in the Second District Court of Appeals, Case No. 2D10-5529; she disqualified herself the same day.

28. Petitioner appreciates the personal hardship faced by Mr. Sedgeman and Judge Cook, two senior citizens facing an insolvent and bankrupt future. However this is mitigated by the facts. While Mr. Sedgeman and Judge Cook enjoyed every advantage of life, from a great education (Mr. Sedgeman is a graduate of Harvard), to high-paying, prestigious careers, they threw it all away through mismanagement and personal failure. During the time Judge Cook presided over Petitioner's lawsuit, he observed her working part-time hours while collecting a full-time circuit court judge salary of $145,000, at a time when Florida's courts are in crisis over mortgage foreclosures. Petitioner found Judge Cook to be profoundly dishonest and manipulative. It appears she would do anything to advance her interests without regard for the rule of law.

**Mr. Marcelo Faria de Lima**

29. From the bank's website: "Mr. Lima is Chairman of the Bank's holding company, CBM Florida Holding Company. Mr. Lima is an international investor with interests in companies located in the United States, Brazil, Mexico, Turkey, Denmark and Russia employing over 6,000 people and generating sales of over $1 Billion. Mr. Lima started his career as a commercial banker working for ABN Amro Bank in Brazil and Chicago before working as an investment banker for Donaldson, Lubkin and Jenrette, Credit Suisse, and Garantia. He graduated from Ponteficia Universidade Catolica do Rio de Jeanerio in 1985. Mr. Lima has served as a director since the change of control transaction was completed on December 3, 2009."

**ABN AMRO Bank**

30. Mr. Lima worked for ABN AMRO Bank from 1989 through 1996 in Brazil and Chicago. Mr. Lima's tenure in Chicago coincides with accusations of significant criminal activity by ABN AMRO Bank. On December 19, 2005 a Cease and Desist Order (FRB Dkt. No. 05-035-B-FB) was issued against ABN AMRO Bank, including the Chicago Branch where Mr. Lima worked.

(Exhibit 12). ABN AMRO Bank agreed to stop its unlawful money laundering operations which date to 1995 during Mr. Lima's tenure at the bank. An Assessment of Civil Money Penalty was also issued December 19, 2005. (Exhibit 13). The Federal Reserve Board (Exhibit 14) and The Illinois Department of Financial and Professional Regulation, Division of Banking (Exhibit 15) issued news releases about the matter December 19, 2005. The matter was widely reported in the press, including the Wall Street Journal December 20, 2005 "ABN Amro to Pay $80 Million Fine Over Iran, Libya" (Exhibit 16), The White Collar Crime Prof Blog, December 20, 2005 (Exhibit 17) and elsewhere. ABN AMRO Bank paid $80 million in penalties to U.S. federal and state regulators. This was big news worldwide. But Mr. Lima claim he never knew and failed to disclose the information as required to the OFR under Florida law.

31. ABN AMRO Bank made news again May 10, 2010. A Department of Justice Press Release announced "Former ABN AMRO Bank N.V. Agrees to Forfeit $500 Million in Connection with Conspiracy to Defraud the United States and with Violation of the Bank Secrecy Act" (Exhibit 18). An Information (Exhibit 19) and Deferred Prosecution Agreement were filed May 10, 2010. (Exhibit 20). The Information shows that from in or about June 1995 through in or about December 2005, Defendant ABN facilitated unlawful United States Dollar transactions for a number of co-conspirators, both known and unknown to the United States. For the most part, these co-conspirators consisted primarily of banks from Iran, Libya, the Sudan, and Cuba. Count I, Conspiracy to violate the International Emergency Economic Powers Act (IEEPA) and the Trading With the Enemy Act (TWEA) and to defraud the United States from in or about May 1995 and continuing until in or about December 2007. Count II, Failure to Maintain an Adequate Money Laundering Program.

**Wymoo International, LLC, unlicensed Private Investigation Agency**

**Mr. Lima's September 5, 2008 Wymoo Confidential International Investigation**

32. On September 5, 2008 Wymoo International, LLC provided Joseph Matthews a background check of Mr. Lima for a fee of $630. Oddly the Confidential International Investigation shows Joseph Matthews as the client, not OFR. (Exhibit 21). Wymoo failed to report the ABN AMRO Bank problems to OFR.

33. Wymoo International, LLC, 4320 Deerwood Lake Pkwy., Suite 514 Jacksonville, FL 32216, is a Private Investigation Agency as defined under Chapter 493, Florida Statutes, but Wymoo is not licensed with The Department of Agriculture and Consumer Services (FDACS) as required by Florida law. According FDACS, private investigators and private investigative agencies serve in positions of trust. Untrained and unlicensed persons or businesses, or persons not of good moral character, are a threat to the public safety and welfare. FDACS is responsible for enforcing the provisions of Chapter 493, F.S. and initiating administrative action when violations occur. Petitioner emailed FDACS/Lisa Trimble March 23, 2011 about this matter but she has not responded. (Exhibit 22). Petitioner also emailed OFR Chief Counsel Josephine Schultz about Wymoo and she has not responded. (Exhibit 23). Apart from the licensing issue, Wymoo does not appear completely legitimate. (Exhibit 24).

**Mr. Lima's September 16, 2008 Owens OnLine**

**International Employment Screening Report**

34. Owens OnLine did an International Employment Screening Report September 16, 2008. (Exhibit 25). Owens OnLine is a Private Investigation Agency as defined under Chapter 493, Florida Statutes, and is licensed with The Department of Agriculture and Consumer Services (FDACS). According to the report, Owens was unable to confirm the subject's residency at the address provided but an unconfirmed address was found for the subject. A notation under

Employment History states "No information was provided on your order for verification." A notation under Educational History states "No information was provided on your order for verification." Owens failed to report the ABN AMRO Bank problems to OFR. (Exhibit 25).

**Mr. Lima's June 15, 2009 Interagency Biographical and Financial Report**

35. Mr. Lima failed to disclose his employment with ABN AMRO Bank to questions 4(b), 5(b), 5(e)(1-4), 5(f) or the legal problems with ABN AMRO Bank on his Interagency Biographical and Financial Report. (Exhibit 26). The report provided to Petitioner does not provide any financial data, no Financial Report, no Contingent Liabilities, no Supporting Schedules, no Cash Flow Statement, no Certification or signature page.

**Mr. Lima's June 6, 2009 Application For Certificate of Approval to Purchase or Acquire A Controlling Interest in a State Bank or Trust Company**

36. Mr. Lima's June 4, 2009 Application For Certificate of Approval to Purchase or Acquire A Controlling Interest in a State Bank or Trust Company misstates the Capital Account. Page 5, Status of Capital Account, Present Capital Structure March 31, 2009. The application shows common stock of 2,094,762 shares @ $2 par that was reported as $4,194,000. The correct amount is $4,189,524, a difference of $4,476.

37. Stock price irregularities. On 08/19/08 2,540 shares of stock sold $4.75 a share. The same day another block of shares sold but for $6.37 a share. Someone lost $4,114.80 that day. Unable to account for the difference, Mr. Alcorn referred the matter to Josephine Schultz, Chief Counsel. Ms. Schultz has obstructed efforts to get information in an effort to prevent further analysis.

**July 22, 2009 Report of Public Hearing**

38. The purpose of the public hearing was to review, in accordance with .Florida law, the pending Application by Trevor R. Burgess and Marcelo Lima for Authority to Acquire a Controlling Interest in Community Bank of Manatee. (1) The requirement under Section 120.80(3)(a)4., Florida Statutes, that any foreign national person seeking to acquire a controlling interest in a state bank appear personally at such a public hearing; and (2) The criteria established by Section 658.28(1), Florida Statutes, on the basis of which the OFR is required to base its determination whether or not the Application should be approved. As reflected in his biographical report which accompanied the Application, Mr. Lima is a citizen of the Federative Republic of Brazil. Consequently, the OFR was required by Section 20.80(3)(a)4., Florida Statutes, to request that the Hearing be conducted. A Joint Prehearing Stipulation was made July 7, 2009. (Exhibit 28). A Report of Public Hearing was made July 22, 2009. (Exhibit 29)

39. Under Findings of Fact, the report found (15) Mr. Marcelo Lima attended the Pontificia Universidade Catolica in Rio de Janeiro, where he earned a degree in economics. He holds a professional enrollment in the Regional Council of Economists in Sao Paul. He is principally engaged in the active oversight of a wide variety of investments, primarily through his service as a director of several investment companies and other holding companies.

40. Most of Mr. Lima's investments are made through Turquois Capital, C.V., which is his principal holding company. In addition to brokerage and deposit accounts in a number of banking institutions, it has significant interests in several industrial firms, including both public and privately held companies, involved in such disparate lines of business as commercial, refrigeration, fertilizer and, retail. As a result of his investments, Mr. Lima is actively involved in 17 different companies and has served as an executive officer of at least 7 of those companies,

and as a director of four of them, including service as Chairman of the Board of two of those companies.

41. With regard to direct bank experience, from 1989 to 1996 Mr. Lima worked for ABN Amro Bank both in Brazil and in Chicago, serving initially as a fund manager in Brazil and, subsequently, as chief economist of ABN Amro in Brazil advising the bank's Asset-Liability Committee. He then served in the corporate banking area, mainly in commercial relations with some significant clients in Brazil, such as Panasonic, Volkswagen and General Motors. He also served as regional manager for the bank in Campinas, Brazil, where he was responsible for, among other things, commercial banking, retail banking and trade-related and financing activities. During this period he also chaired the bank's regional Credit Committee.

42. During his tenure in Chicago, Mr. Lima was primarily engaged in project finance banking and was responsible for analyzing new projects and reviewing credit related matters of several ongoing projects related to power generation in states such as New Hampshire, Pennsylvania, Hawaii and Connecticut, sponsored by companies such as Tractebel AES and Intergen. From 1996 to 1998, he worked for Banco Garantia in Brazil, serving in the capital markets and M&A areas, advising customers such as Florida Power and Light, Pacific Corp. and National Power of U.K. From 1998 to 2000, he worked for the investment bank, Donaldson, Lufkin & Jenrette in Brazil, serving mainly in the corporate finance and-mergers and acquisitions areas.

43. “Mr. Lima testified that, with the exception of ordinary course disputes, claims, and lawsuit in Brazil involving his various business interests in Brazil, including matters related to employment, tax, environmental, and other business disputes, neither he nor, to his knowledge, any of the companies in which he has been involved, has ever been the subject of any

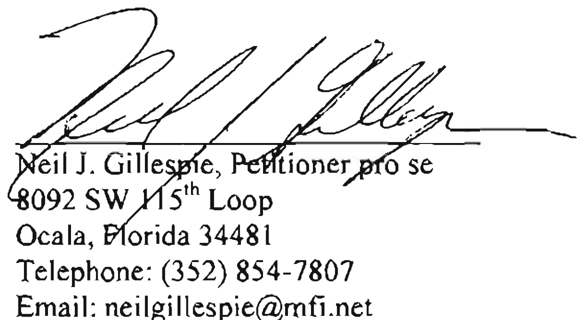
investigation, civil charges, or penalties imposed by any governmental or administrative agency, made a filing in any bankruptcy or similar proceeding, failed to pay any judgment or other debt which he or they were lawfully obligated to pay, or been convicted of, or pled guilty or no contest to, any charge of fraud, money laundering or other financial crime. Additionally, he testified that he has not been named personally in any such actions involving companies in which he is involved and that no such actions have been brought before any courts or governmental entities in the United States of America."

44. Mr. Lima failed to disclose ABN AMRO Bank's legal problems to OFR. A Final Order of Approval was issued July 24, 2010. (Exhibit 32).

45. Petitioner notified OFR of this lapse November 18, 2010. Mr. Alcorn contacted Mr. Lima by letter December 3, 2010 asking about his failure to disclose legal problems with ABN AMRO Bank to OFR. (Exhibit 30). Mr. Lima responded December 21, 2010 denying culpability. (Exhibit 31). OFR accepted Mr. Lima's response at face value and closed the inquiry.

WHEREFORE, the undersigned petitions the FLORIDA OFFICE OF FINANCIAL REGULATION for a PUBLIC HEARING on the APPLICATION TO MERGE Community Bank & Company and First Community Bank of America, and Designation as Party. The undersigned moves to include his Statement of Opposition in the record.

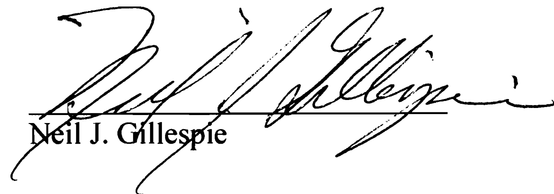
RESPECTFULLY SUBMITTED this 25th day of March, 2011.



Neil J. Gillespie, Petitioner pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807
Email: neilgillespie@mfi.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the PETITION was served March 25, 2011 by U.S. mail and fax to Agency Clerk, Office of Financial Regulation, P.O. Box 8050, Tallahassee, Florida 32314-8050, Phone (850) 410-9800, Fax: (850) 410-9548. Pursuant to Fla. Admin. Code r. 69U-105.109(3) Service shall be deemed complete when a true copy of the document is delivered or, if mailed, when properly addressed, stamped, and deposited in the U.S. mail. The postmark date shall be the date of service if served by mail and the date of an appropriate certificate of service shall be the date if served by delivery. A PDF copy of the PETITON was served March 25, 2011 by electronic mail to OFR Chief Counsel Josephine Schultz. A copy of the PETITION was served March 25, 2011 by U.S. mail to Trevor R. Burgess, Director, Community Bank & Company, 2025 Lakewood Ranch Blvd., Lakewood Ranch, FL 34211.



Neil J. Gillespie

APPLICATION FOR APPROVAL TO
MERGE OR CONSOLIDATE A BANK, TRUST COMPANY, OR ASSOCIATION

Community Bank & Company — Lakewood Ranch
(Exact Title of Resulting Financial Institution) — (City)

Manatee — 34211 — Florida 1028
(County) — (Zip Code) — (Charter Number)

First Community Bank of America — Pinellas Park
(Exact Title of Other Constituent Financial Institutions) — (City)

Pinellas — 33782 — OTS 7782
(County) — (Zip Code) — (Charter Number)

UNDER THE CHARTER OF: Community Bank & Company

AND WITH THE TITLE: Community Bank & Company

The location of the main office of the resulting financial institution, if changed from:

2025 Lakewood Ranch Blvd. Lakewood Ranch, FL 34211

(Street Address, City, County, Zip Code)

to: N/A

(Street Address, City, County, Zip Code)

( X ) Which is the current main office of

Community Bank & Company
(Constituent Financial Institution)

( ) Which is the current branch ______________________________
(Constituent Financial Institution)

Please note appropriate designation if the resulting financial institution will be a state-chartered bank: (X) State nonmember Bank ( ) State Member Bank

All questions should be answered completely. If an answer is no or none, this should be indicated. Please note that many of the questions will require responses on a separate insert page to be identified as a numbered attachment. (Attachment #_____)

Application fee of $7,500 payable to the Office of Financial Regulation is attached for deposit to the Financial Institutions' Regulatory Trust Fund.

Additionally, a Successor Institution Application fee, if applicable, of $2,500 payable to the Office of Financial Regulation is attached for deposit to the Financial Institutions' Regulatory Trust Fund.

Org: 43843000000
Flair Object Code: 001061
EO: V1
Revenue Source Code: 218

Note: If 3 or more financial institutions are involved in the application, the fee shall be $3,500 for each financial institution involved.



EXHIBIT
1

ATTACHMENTS

The attached schedules and exhibits are an integral part of this application:

PUBLIC SECTION

SCHEDULE I - GENERAL INFORMATION

SCHEDULE II - PRO FORMA COMBINED BALANCE SHEET

SCHEDULE III- EARNINGS HISTORY AND CAPITAL ACCOUNTS CHANGES

SCHEDULE IV- FINANCIAL INSTITUTION OFFICES AND FIXED ASSET INVESTMENT

SCHEDULE V - TRUST OPERATIONS

EXHIBIT A- AGREEMENT OF MERGER

CONFIDENTIAL SECTION

SCHEDULE VI - NONCONFORMING ASSETS

Note: Supplemental schedules and exhibits may be added by the applicants.

ATTESTATION

The applicants hereby represent that the information contained in this application and said attachments is true and complete to the best of their knowledge and belief.

(Resulting Financial Institution) By William H. Sedgeman Jr.
(Authorized Officer)

Chairman & CEO
(Title)

(Constituent Financial Institution) By Kenneth P. Chervon
(Authorized Officer)

~~Chairman &~~ CEO
(Title)

______________________ By ______________________
(Constituent Financial Institution) (Authorized Officer)

______________________
(Title)

PUBLIC SECTION

SCHEDULE I

1. (a) Attach a certified excerpt from the meetings of the Board of Directors of each constituent financial institution setting forth the resolution adopting the proposed transaction. (Attachment Number 1)

(b) Attach a certified copy of the resolution of the Board of Directors of each constituent national or federal financial institution which authorizes the Office of Financial Regulation to review its records or to examine its condition. (Attachment Number 2)

2. Describe any contemplated management changes as a result of the merger: (Attachment Number 3)

3. In connection with this proposal, the financial institutions have consulted with, relied on, or retained the following legal counsel:

Bowman Brown - Shutts & Bowen (Name of Counsel) — Partner (Title)

201 South Biscayne Boulevard Miami Florida 33131 (Mailing Address) — [redacted] (Phone Number)

4. Requests for additional information or other communications concerning this proposal shall be directed to:

Trevor R. Burgess (Name) — Director Community Bank & Company (Title)

2025 Lakewood Ranch Blvd. Lakewood Ranch, FL 34211 (Mailing Address) — [redacted] (Phone Number)

5. Indicate the desired effective date of the transaction: 4 / 2 / 11

6. Submit the biographical portion of the Interagency Biographical Report and Financial Report for each proposed executive officer, director, or major shareholder (10% or more) not currently associated with the resulting financial institution. (Attachment Number 4)

SCHEDULE II

PRO FORMA COMBINED BALANCE SHEET (as of the end of the quarter prior to the date of application) Date: 12 / 31 / 2010

This schedule is designed to reflect the pro forma combined balance sheet after adjustments. All entries in the adjustment column must be footnoted with a complete explanation of the adjustment.

(ATTACHMENT Number 5)

| Assets | Constituent Institutions | | + or - | Combined Institutions |
|---|---|---|---|---|
| Cash and due from Banks | $ | $ | $ | $ |
| U. S. Government & Agencies | | | | |
| State/Municipal Obligations | | | | |
| Other Securities | | | | |

| | | | | |
|---|---|---|---|---|
| Federal Funds sold and securities purchased under agreement to resell | | | | |
| Loans (net of valuation reserve & unearned income) | | | | |
| Lease financing receivable | | | | |
| Premises and equipment | | | | |
| Real Estate owned other than financial institution premises | | | | |
| Other Assets | | | | |
| Total Assets | $ | $ | $ | $ |
| Liabilities | | | | |
| Demand Deposits | | | | |
| Time Deposits | | | | |
| Total Deposits | $ | $ | $ | $ |
| Federal funds purchased and securities sold under agreements to repurchase | | | | |
| Interest-bearing demand notes issued to the U. S. Treasury & other liabilities for borrowed money | | | | |
| Mortgage indebtedness and liabilities for capitalized leases | | | | |
| Other liabilities | | | | |
| Total Liabilities | $ | $ | $ | $ |
| CAPITAL | | | | |
| Subordinated notes and debentures | $ | $ | $ | $ |
| Stockholders equity: | | | | |
| Preferred Stock | | | | |
| Common Stock | | | | |
| Surplus | | | | |
| Undivided Profits | | | | |
| Other capital and contingency reserves | | | | |
| Total Equity Capital | $ | $ | $ | $ |
| Total capital to total assets ratio | % | % | % | % |

* NOTE: Information should be provided in separate columns for each constituent financial institution participating in the merger.

** NOTE: Explain in separate attachments the basis for the adjustments.

1. If any constituent financial institution has outstanding subordinated notes or debentures, attach a detailed summary of the debt and a copy of the note and debenture. (Attachment Number 6)

2. Describe any plans for capital infusions from other than retained earnings: CBM Florida Holding Company intends to capitalize Community Bank & Company with $30 million to consummation the transaction.

3. Does any constituent financial institution have a stock option plan? Yes ( X ) No ( ) If yes, provide a copy of the plan and state whether or not it is to be continued after consummation of the merger. (Attachment Number 7)

## SCHEDULE III

EARNINGS HISTORY - DATE 12 / 31 / 2010

This schedule is designed to summarize the financial institution's earnings history. Information from the latest Consolidated Report of Income filed with the Regulatory Agency should be used as the source document for the preparation of this schedule. (Attachment Number 8)

| | Constituent Institutions | | + or - | Combined Institutions |
|---|---|---|---|---|
| Total Operating Income | $ | $ | $ | $ |
| Total Operating Expense | | | | |
| Income before income taxes and securities gains or losses | | | | |
| Applicable income taxes | | | | |
| Income before securities gains and losses | | | | |
| Securities gains and losses | | | | |
| Net Income | $ | $ | $ | $ |

*NOTE: Information should be provided in separate columns for each of the constituent financial institutions participating in the merger.*

### CAPITAL ACCOUNTS CHANGES

Estimate of Total Assets and Capital Accounts for the three years following the proposed merger, for the resulting financial institution. (Attachment Number 9)

| | Year 1 | Year 2 | Year 3 |
|---|---|---|---|
| Total Assets | $ | $ | $ |
| Total Capital Accounts (Unimpaired Capital Stock, Surplus, and Undivided Profits) | | | |
| Total Capital/Total Asset Ratio | % | % | % |

## SCHEDULE IV

FINANCIAL INSTITUTION OFFICES AND FIXED ASSET INVESTMENT

1. Financial Institution Offices: Upon consummation of the merger, the Certificate of Authority issued to each constituent state-chartered financial institution (other than the resulting financial institution) for the operation of its main office will be cancelled.

Attach a listing of all existing and approved but unopened offices for each constituent financial institution involved in the proposed merger. This information should include the complete address of each office, when opened (date approved, if unopened, along with copy of approval order), whether it will remain open after the merger, and the future name of each office remaining open. (Attachment Number 10)

2. Fixed Asset Investment:

(a) This schedule is designed to reflect the pro forma combined investment in fixed assets for the resulting financial institution. Material or substantial changes in these figures are discouraged while the application is being processed: (Attachment Number 11)

| | Constituent Institutions | | Resulting Institution |
|---|---|---|---|
| Land | $ | $ | $ |
| Building | | | |
| Leasehold Improvements | | | |
| Total | | | |

(b) Provide the total sum for proposed additional investments in fixed assets of the resulting financial institution by reason of approved but unopened branches:

| | Constituent Institutions | | Resulting Institution |
|---|---|---|---|
| Land | $ | $ | $ |
| Building | | | |
| Leasehold Improvements | | | |
| Total | | | |

(c) Does any constituent financial institution have an investment in a corporation which owns the land and building within which the business of the financial institution is or will be transacted? Yes ( ) No (X) If yes, provide details of the amount of investment and which offices are involved.

NOTE: Information should be provided in separate columns for each of the constituent financial institutions participating in the merger.

## SCHEDULE V

## TRUST OPERATIONS (NOT APPLICABLE)

1. Trust Department:

(a) Is the resulting financial institution authorized to exercise trust powers? Yes ( ) No ( ) If yes, will trust services be continued as presently offered? Yes ( ) No ( ) If no, the merger agreement must describe changes.

(b) Does any constituent financial institution (other than the resulting financial institution) exercise trust powers? Yes ( ) No ( ) If yes, please provide the following:

| Constituent Financial Institutions | Location of Trust Department | Date Established | Number of Accounts | Dollar Volume of Assets under Administration |
|---|---|---|---|---|

(c) Does the resulting financial institution desire to carry over the trust powers of the constituent financial institution? Yes ( ) No ( ) If yes, the merger agreement must sc indicate and the Articles of Incorporation of the resulting financial institution must reflect the change.

2. Trust Service Offices:

(a) Has any constituent financial institution (other than the resulting financial institution) established a TSO at a host bank, association or credit union? Yes ( ) No ( ) If yes, attach a complete list of all existing and proposed trust service offices, including the name of the host bank, association or credit union, complete address, date opened (date approved, if unopened, and a copy of approval order), and whether the TSO will remain open after the merger.

(b) Is any constituent financial institution (other than the resulting financial institution) a host financial institution to a trust service office? Yes ( ) No ( ) If so, provide the name and complete address of the financial institution that established the TSO, date established, and whether TSO will continue to operate after the merger.

Miscellaneous

**DEPARTMENT OF FINANCIAL SERVICES**
**FSC - Financial Institution Regulation**

**Financial Institutions**

NOTICE OF FILINGS
Financial Services Commission
Office of Financial Regulation

Notice is hereby given that the Office of Financial Regulation, Division of Financial Institutions, has received the following application. Comments may be submitted to the Division Director, 200 East Gaines Street, Tallahassee, Florida 32399-0371, for inclusion in the official record without requesting a hearing. However, pursuant to provisions specified in Chapter 69U-105, Florida Administrative Code, any person may request a public hearing by filing a petition with the Agency Clerk as follows:

| By Mail or Facsimile | OR | By Hand Delivery |
|---|---|---|
| Agency Clerk | | Agency Clerk |
| Office of Financial Regulation | | Office of Financial Regulation |
| P.O. Box 8050 | | General Counsel's Office |
| Tallahassee, Florida 32314-8050 | | The Fletcher Building, Suite 118 |
| Phone (850)410-9800 | | 101 East Gaines Street, |
| Fax: (850)410-9548 | | Tallahassee, Florida 32399-0379 |
| | | Phone: (850)410-9896 |

The Petition must be received by the Clerk within twenty-one (21) days of publication of this notice (by 5:00 p.m., March 25, 2011):

APPLICATION TO MERGE

Constituent Institutions: Community Bank & Company, Lakewood Ranch, Florida, and First Community Bank of America, Pinellas Park, Florida
Resulting Institution: Community Bank & Company
Received: February 15, 2010

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
TALLAHASSEE, FLORIDA

| | | |
|---|---|---|
| In the Matter of | ) | |
| COMMUNITY BANK OF MANATEE<br>LAKEWOOD RANCH, FLORIDA | ) | CONSENT ORDER |
| | ) | FDIC-09-569b<br>OFR 0692-FI-10/09 |
| (INSURED STATE NONMEMBER BANK | ) | |

The Federal Deposit Insurance Corporation ("FDIC") is the appropriate Federal banking agency for COMMUNITY BANK OF MANATEE, LAKEWOOD RANCH, FLORIDA ("Bank"), under 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a "STIPULATION TO THE ISSUANCE OF A CONSENT ORDER ("STIPULATION"), dated November 25, 2009 that is accepted by the FDIC and the Florida Office of Financial Regulation ("OFR"). With the STIPULATION, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to weaknesses in the Bank's capital adequacy, asset quality, management effectiveness, earnings, liquidity and sensitivity to market risk, to the issuance of this Consent Order ("ORDER") by the FDIC and the OFR.

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and Chapter 120 and Section 655.033, Florida Statutes, have been satisfied, the FDIC and the OFR hereby order that:

**1. BOARD OF DIRECTORS**

(a) Beginning on the effective date of this ORDER, the Board of Directors ("Board") shall increase its participation in the affairs of the Bank, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committees. Nothing in this paragraph shall preclude the Board from considering matters other than those contained in the agenda. This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; new, overdue, renewal, charged-off, and recovered loans; investment activity; operating policies; and individual committee actions. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

(b) Within 30 days from the effective date of this ORDER, the Board shall establish a Board committee ("Directors' Committee"), consisting of at least four members, to oversee the Bank's compliance with the ORDER. Three members of the Directors' Committee shall not be officers of the Bank. The Directors' Committee shall receive from Bank management monthly reports detailing the

Bank's actions with respect to compliance with the ORDER. The Directors' Committee shall present a report detailing the Bank's adherence to the ORDER to the Board at each regularly scheduled Board meeting. Such report shall be recorded in the appropriate minutes of the Board's meeting and shall be retained in the Bank's records. Establishment of this committee does not in any way diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

**2. MANAGEMENT**

(a) Within 60 days from the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

(i) a chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices;

(ii) a senior lending officer with a significant amount of appropriate lending, collection, and loan supervision experience, and experience in upgrading a low quality loan portfolio;

(iii) a chief operating officer with a significant amount of appropriate experience in managing the operations of a bank of similar size and complexity in accordance with sound banking practices; and

(iv) a chief credit officer with significant experience to independently analyze loans and advise the Board regarding credit quality and compliance with proper underwriting standards and processes.

(b) The qualifications of management shall be assessed on its ability to:

(i) comply with the requirements of this ORDER;

(ii) operate the Bank in a safe and sound manner;

(iii) comply with applicable laws and regulations; and

(iv) restore all aspects of the Bank to a safe and sound condition, including, but not limited to, asset quality, capital adequacy, earnings, management effectiveness, risk management, liquidity and sensitivity to market risk.

(c) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the OFR (collectively, "Supervisory Authorities"), in writing, of the resignation or termination of any of the Bank's directors or senior executive officers within fifteen (15) days of any such resignation or termination. The Bank shall also provide notification to the Supervisory Authorities prior to the addition of any individual to the Bank's Board or employment of any individual as a senior executive officer as that term is defined in Part 303 of the FDIC Rules and Regulations, 12 C.F.R. § 303.101, or executive officer as that term is defined and applied in Section 655.005(1)(f), Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code. The notification to the Supervisory Authorities shall comply with the requirements set forth in 12 C.F.R. Part 303, Subpart F, and

Rule 69U-100.03852, Florida Administrative Code. The notification should include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 60 days before such addition or employment is intended to become effective. If the Regional Director or OFR issues a notice of disapproval pursuant to section 32 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831i, or Section 655.0385(2) or (3), Florida Statutes, with respect to any proposed individual, then such individual may not be added or employed by the Bank.

(d) Within 60 days from the effective date of this ORDER, the Bank shall develop and approve a written analysis and assessment of the Bank's management and staffing needs ("Management Plan") for the purpose of providing qualified management for the Bank. The Management Plan shall include, at a minimum:

(i) identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Bank;

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;

(iii) annual written evaluations of all Bank officers and, in particular, the chief executive officer, senior lending officer, and the chief operating officer to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including, but not limited to, adherence to the Bank's established policies and practices, and restoration and maintenance of the Bank in a safe and sound condition;

(iv) a plan to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications to fill those officer positions consistent with the needs identified in the Management Plan; and

(v) an organizational chart.

(e) The Management Plan and its implementation shall be satisfactory to the Supervisory Authorities. Within 60 days of the date of this ORDER, the Bank shall submit the proposed Management Plan to the Supervisory Authorities for review and comment. Within 10 days of receipt of comments from the Supervisory Authorities, the Bank shall incorporate those comments, if any, and shall approve and adopt the Management Plan as revised.

**3. CAPITAL**

(a) Within 60 days from the effective date of this ORDER, the Bank shall have Tier 1 Capital in such amount as to equal or exceed seven percent (7%) of the Bank's total assets and Total Risk-Based Capital in such an amount as to equal or exceed twelve percent (12%) of the Bank's total risk-weighted assets. Thereafter, during the life of this Order, the Bank shall maintain Tier 1 Capital and Total Risk-Based Capital ratios equal to or exceeding seven percent (7%) and twelve percent (12%), respectively, as those capital ratios are described in the FDIC Statement of Policy on Risk-Based Capital and contained in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, Appendix A.

(b) The level of Tier 1 Capital to be maintained during the life of this ORDER pursuant to this paragraph shall be in addition to a fully funded allowance for loan

and lease losses ("ALLL"), the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) Any increase in Tier 1 Capital necessary to meet the requirements of this paragraph may be accomplished by the following:

(i) sale of common stock; or

(ii) sale of noncumulative perpetual preferred stock; or

(iii) direct contribution of cash by the Board, shareholders, and/or parent holding company; or

(iv) any other means acceptable to the Supervisory Authorities; or

(v) any combination of the above means.

Any increase in Tier 1 Capital necessary to meet the requirements of this paragraph may not be accomplished through a deduction from the Bank's ALLL.

(d) If all or part of any increase in Tier 1 Capital required by this paragraph is accomplished by the sale of new securities, the Board shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal

securities laws. Prior to the implementation of the plan and, in any event, not less than fifteen (15) days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted for review to the FDIC, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429 and to the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0371. Any changes requested to be made in the plan or materials by the FDIC or the OFR shall be made prior to their dissemination. If the increase in Tier 1 Capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Supervisory Authorities for prior approval.

(e) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of the Bank’s securities, a written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within ten (10) days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(f) For the purposes of this ORDER, “Tier 1 Capital,” “Total Risk-Based Capital,” “total assets,” and “total risk-weighted assets” shall have the meanings

ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325.

**4. CHARGE-OFF**

(a) Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" in the FDIC Report of Examination dated June 16, 2009 (the "ROE") that have not been previously collected or charged-off. Elimination of any of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.

(b) Additionally, while this ORDER remains in effect, the Bank shall, within 30 days from the receipt of any official Report of Examination of the Bank from the FDIC or the OFR, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any asset classified "Loss" unless otherwise approved in writing by the Supervisory Authorities.

**5. REDUCTION OF ADVERSELY CLASSIFIED ASSETS**

(a) Within 90 days from the effective date of this ORDER, the Bank shall formulate and submit to the Supervisory Authorities, for review and comment, a written plan to reduce the Bank's risk position in each asset or relationship which is in excess of $1,000,000 and which is classified "Substandard" in the ROE. For purposes of this provision, "reduce" means to collect, charge off, or improve the quality of an asset so as to warrant its removal from adverse classification by the Supervisory Authorities. In developing the plan mandated by this paragraph, the Bank shall, at a minimum, and with respect to each adversely classified loan or

lease, review, analyze and document the financial position of the borrower, including source of repayment, repayment ability, and alternative repayment sources, as well as the value of and accessibility of any pledged or assigned collateral, and any possible actions to improve the Bank's collateral position. Within 10 days from the receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of a Board meeting. Thereafter, the Bank shall implement and follow this plan. The plan shall be monitored and progress reports thereon shall be submitted to the Supervisory Authorities at 90 day intervals concurrent with the other reporting requirements set forth in this ORDER.

(b) The plan mandated by this paragraph shall include, but not be limited to, the following:

(i) the dollar levels to which risk in each classified asset will be reduced;

(ii) a description of the risk reduction methodology to be followed;

(iii) provisions for the submission of monthly written progress reports to the Board;

(iv) provisions mandating board review of said progress reports; and

(v) provisions for the mandated review to be recorded by notation in the minutes of the Board meetings.

(c) The written plan mandated by this paragraph shall further require a reduction in the aggregate balance of assets classified "Substandard" in the ROE

in accordance with the following schedule. For purposes of this paragraph, "number of days" means number of days from the effective date of this ORDER. The reduction schedule is:

(i) within 90 days, the aggregate balance of assets classified "Substandard" shall not exceed one hundred sixty percent (160%) of the sum of Tier 1 Capital and ALLL;

(ii) within 180 days, the aggregate balance of assets classified "Substandard" shall not exceed one hundred twenty-five percent (125%) of the sum of Tier 1 Capital and ALLL;

(iii) within 360 days, the aggregate balance of assets classified "Substandard" shall not exceed one hundred percent (100%) of the sum of Tier 1 Capital and ALLL;

(iv) within 540 days, the aggregate balance of assets classified "Substandard" shall not exceed seventy-five percent (75%) of the sum of Tier 1 Capital and ALLL; and

(v) within 720 days, the aggregate balance of assets classified "Substandard" shall not exceed fifty percent (50%) of the sum of Tier 1 Capital and ALLL

(d) The requirements of this paragraph are not to be construed as standards for future operations of the Bank. Following compliance with the above reduction schedule, the Bank shall continue to reduce the total volume of adversely classified assets.

**6. ADDITIONAL CREDIT TO ADVERSELY CLASSIFIED BORROWERS**

(a) As of the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" or “Doubtful” and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

(b) Additionally, as of the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been classified, in whole or part, "Substandard" or “Special Mention” and is uncollected.

(c) Paragraph (b) of this paragraph shall not apply if the Bank’s failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank. Prior to the extending of any additional credit pursuant to this paragraph, either in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by a majority of the Board or a designated committee thereof, who shall certify in writing as follows:

(i) why the failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;

(ii) that the Bank’s position would be improved thereby; and

(iii) how the Bank’s position would be improved.

The signed certification shall be made a part of the minutes of the Board or its designated committee and a copy of the signed certification shall be retained in the borrower's credit file.

**7. WRITTEN STRATEGIC/BUSINESS PLAN**

(a) Within 90 days from the effective date of this ORDER, the Bank shall prepare and submit to the Supervisory Authorities for review and comment a written business/strategic plan covering the overall operation of the Bank. At a minimum the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

(i) goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;

(ii) goals for the composition of the deposit base including strategies to reduce reliance on volatile and costly deposits; and

(iii) plans for effective risk management and collection practices.

(b) Within 10 days from the receipt of any comments from the Supervisory Authorities, and after due consideration of any recommended changes, the Board shall approve the business/strategic plan, which approval shall be recorded in the minutes of the appropriate Board meeting.

**8. INTERNAL LOAN REVIEW**

Within 90 days from the effective date of this ORDER, the Bank shall adopt an effective internal loan review and grading system to provide for the periodic review of the Bank's loan portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality. Such system and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations.

**9. LENDING AND COLLECTION POLICIES**

Within 90 days from the effective date of this ORDER, the Bank shall revise, adopt and implement its written lending and collection policy to provide effective guidance and control over the Bank's lending function. That implementation shall include the resolution of those exceptions, problems and deficiencies described in the ROE, including those described on pages 11-13 thereof. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities.

**10. CONCENTRATIONS OF CREDIT**

Within 45 days from the effective date of this ORDER, the Bank shall perform a risk segmentation analysis with respect to the Concentrations of Credit listed on page 37 of the ROE. Concentrations should be identified by product type, geographic distribution, underlying collateral or other asset groups, which are considered economically related and in the aggregate represent a large portion of the Bank’s Tier 1 Capital. A copy of this analysis shall be provided to the Supervisory Authorities and the Board shall develop a

plan to reduce any segment of the portfolio which the Supervisory Authorities deem to be an undue concentration of credit in relation to the Bank's Tier 1 Capital. The plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities.

**11. ALLOWANCE FOR LOAN AND LEASE LOSSES**

Within 30 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and, within 90 days from the effective date of this ORDER, the Board shall establish a comprehensive policy for determining the adequacy of the ALLL. For the purpose of this determination, the adequacy of the ALLL shall be determined after the charge-off of all loans or other items classified "Loss." The policy shall provide for a review of the ALLL at least once each calendar quarter. Said review shall be completed in time to properly report the ALLL in the quarterly Reports of Condition and Income. The review shall focus on the results of the Bank's internal loan review, loan and lease loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure on significant credits, concentrations of credit, and present and prospective economic conditions. A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Reports of Condition and Income, by a charge to current operating earnings. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the ALLL and its implementation shall be satisfactory to the Supervisory Authorities.

**12. BUDGET**

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate and fully implement a written plan and a comprehensive budget for all

categories of income and expense for the calendar year ending December 31, 2010. The plan and budget required by this paragraph shall include formal goals and strategies, consistent with sound banking practices and taking into account the Bank's other written policies, to improve the Bank's net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings of the Bank. The plan shall include a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components. Thereafter, the Bank shall formulate such a plan and budget by November 30 of each subsequent year and submit the plan and budget to the Supervisory Authorities for review and comment by December 15 of each subsequent year.

(b) The plans and budgets required by this paragraph shall be acceptable to the Supervisory Authorities.

(c) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plans and budgets required by this paragraph and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting at which such evaluation is undertaken.

## 13. LIQUIDITY CONTINGENCY PLAN

(a) Within 90 days from the effective date of this Order, the Bank shall revise its Liquidity Contingency Plan to ensure the Bank has sufficient access to alternative funding sources. The Liquidity Contingency Plan should include

actions management will employ to improve liquidity levels and should address the items described on pages 13 and 14 of the ROE.

(b) The plan shall incorporate the guidance contained in Financial Bank Letter (FIL) 84-2008, dated August 26, 2008, entitled *Liquidity Risk Management*.

(c) A copy of the plan shall be submitted to the Supervisory Authorities upon its completion for review and comment. Within 10 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. Thereafter, the Bank shall implement and follow the plan, and implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

**14. INTEREST RATE RISK MANAGEMENT**

Within 90 days from the effective date of this ORDER, the Bank shall develop and implement a written policy for managing interest rate risk in a manner that is appropriate to the size of the Bank and the complexity of its assets. The policy shall comply with the Joint Agency Policy Statement on Interest Rate Risk, 61 Fed. Reg. 33169 (June 26, 1996), shall be consistent with the comments and recommendations detailed in the ROE, and shall include, at a minimum, the means by which the interest rate risk position will be monitored, the establishment of risk parameters, and provision for periodic reporting to management and the Board regarding interest rate risk with adequate information provided to assess the level of risk. Such policy and its implementation shall be satisfactory to the Supervisory Authorities.

**15. POLICY FOR INTERNAL ROUTINE AND CONTROL**

Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a policy for the operation of the Bank in such a manner as to provide adequate internal routine and controls within the Bank consistent with safe and sound banking practices. Such policy and its implementation shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies as more fully set forth on pages 14 and 15 of the ROE and shall be satisfactory to the Supervisory Authorities.

**16. AUDITS**

Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a comprehensive written audit program which shall be satisfactory to the Supervisory Authorities. A copy of the audit program shall be submitted to the Supervisory Authorities upon its completion for review and comment. Within 10 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. The Bank shall thereafter implement and enforce an effective system of internal and external audits. The internal auditor shall make written monthly reports of audit findings directly to the Board. The minutes of the meetings of the Board shall reflect consideration of these reports and describe any action taken as a result thereof.

**17. VIOLATIONS OF LAW, REGULATION AND POLICY**

Within 30 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulation, and all contraventions of statements of policy, which are more fully set out on pages 16-19 of the ROE. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws, regulations, and applicable statements of policy.

**18. CALL REPORTS**

Within 30 days after eliminating from its books any asset in compliance with the "Charge-Off" paragraph of this ORDER and establishing an adequate ALLL in compliance with the Allowance For Loan and Lease Losses paragraph of this ORDER, the Bank shall file with the FDIC amended Reports of Condition and Income which shall accurately reflect the financial condition of the Bank as of June 30, 2009. Thereafter, during the life of this ORDER, the Bank shall file with the FDIC Reports of Condition and Income which accurately reflect the financial condition of the Bank as of the end of the period for which the Reports are filed, including any adjustment in the Bank's books made necessary or appropriate as a consequence of any official Report of Examination of the Bank from the FDIC or the OFR during that reporting period.

**19. CASH DIVIDENDS**

The Bank shall not pay cash dividends without the prior written consent of the Supervisory Authorities.

**20. BROKERED DEPOSITS**

Throughout the effective life of this ORDER, the Bank shall not accept, renew, rollover any brokered deposit, as defined by 12 C.F.R. § 337.6(a)(2), unless it is in compliance with the requirements of 12 C.F.R. § 337.6(b), governing solicitation and acceptance of brokered deposits by insured depository institutions. In addition, the Bank shall comply with the restrictions on the effective yields on deposits as described in 12 C.F.R. § 337.6.

**21. NO MATERIAL GROWTH WITHOUT PRIOR NOTICE**

While this ORDER is in effect, the Bank must notify the Supervisory Authorities at least 60 days prior to undertaking asset growth of 10% or more per annum or initiating

material changes in asset or liability composition. In no event shall asset growth result in non-compliance with the capital maintenance provisions of this ORDER unless the Bank receives prior written approval from the Supervisory Authorities.

**22. PROGRESS REPORTS**

Within 30 days from the end of the first quarter following the effective date of this ORDER, and within 30 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Reports of Condition and Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the appropriate Board meeting.

**23. DISCLOSURE**

Following the effective date of this ORDER, the Bank shall send or otherwise furnish to its shareholders a description of this ORDER in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429 and to the Director of DFI of the OFR, 200 East Gaines Street, Tallahassee, FL 32399-0371 at least

fifteen (15) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the OFR shall be made prior to dissemination of the description, communication, notice, or statement.

The provisions of this ORDER shall not bar, estop, or otherwise prevent the FDIC, the OFR or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties, as such term is defined in 12 U.S.C. §1813(u) and Section 655.005(1)(i), Florida Statutes.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the Supervisory Authorities.

Issued Pursuant to Delegated Authority

Dated this 25th day of November, 2009

/s/

________________________________

Doreen R. Eberley
Acting Regional Director
Division of Supervision and Consumer Protection
Atlanta Region
Federal Deposit Insurance Corporation

The Commissioner of the Florida Office of Financial Regulation, having duly approved the foregoing ORDER, and the Bank, through its Board, having agreed that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and legal effect that such ORDER would be binding upon the Bank if the OFR had issued a separate order that included and incorporated all of the provisions of the foregoing ORDER pursuant to Chapters 120, 655, and 658, Florida Statutes, including specifically Sections 655.033 and 655.041, Florida Statutes (2009).

Dated this 25th day of November, 2009.

/s/

Linda B. Charity
Director
Division of Financial Institutions
Office of Financial Regulation
By Delegated Authority for the Commissioner,
Office of Financial Regulation

Remarks to the Financial Crisis Inquiry Commission
September 21, 2010
J. Thomas Cardwell
Commissioner
Florida Office of Financial Regulation

Senator Graham, Chairman Angelides, members of the Commission: my name is Tom Cardwell and I am the Commissioner of the Office of Financial Regulation for the State of Florida a position in which I have served for one year. Prior to assuming this position I was a lawyer in private practice with Akerman Senterfitt a 500 attorney firm based in Florida where I served as Chairman & CEO and headed the Financial Institutions Practice Group.

Relative to this appearance I served on the Florida Supreme Court Mortgage Foreclosure Task Force which made recommendations to deal with the crisis in the courts regarding residential mortgage foreclosures.

The Office of Financial Regulation has jurisdiction over the state chartered banking industry, the securities industry, mortgage brokers, money transmitters, payday lenders, check cashers and automobile lenders among others. We have 453 employees and a budget of 43 million dollars with which to carry out our responsibilities for licensing, examination and enforcement in all of these areas.

The real estate mania or bubble that overtook much of the nation certainly manifested itself in Florida. As in almost every bubble there are opportunities for fraud and those who will avail themselves of that opportunity. The mortgage industry was no exception.

The events that led up to the mortgage foreclosure crisis in Florida revealed weaknesses in the statutory schemes and the regulatory execution of that scheme.

There have been significant improvements since that time.

Among the statutory weaknesses were that many persons engaged in originating loans were not required to be licensed, and for those who were required to be licensed background checks were required only at the time of initial licensing, not on the renewal of licenses.

On the regulatory side regulators were slow to implement federal criminal background checks and regulators were not as responsive to complaints as they could have been.

Florida has taken a number of steps to address these weaknesses.

As you may know, on July 30, 2008 the President signed the Secure and Fair Enforcement for Mortgage Licensing Act the acronym for which is the S.A.F.E. Act.

Florida is in compliance with the Act and in fact has gone beyond its requirements.

Florida now requires that all persons engaged in the mortgage origination process be licensed unless exempt. The principal exemption is for persons employed by regulated institutions, primarily banks.

This addresses the issue of unlicensed persons dealing with the public.

Next, each licensee will have to meet a strict new standard to include: (1) passing a detailed criminal and credit history background check, (2) demonstrating professional competency by successfully passing, rigorous national and state examinations and (3) having background checks repeated every year as a part of the licensing renewal process.

Further, the background checking process has been enhanced. One of the complaints about the mortgage origination business was that people of unsavory character were allowed to participate.

Under new Florida law all the participants are required to have yearly background checks for both criminal records and for credit histories.

The Florida background checks are more extensive than those required in the S.A.F.E. Act. We look not only at the national criminal history database but also dig deeper into the records of local courts.

Individuals with certain criminal histories are now barred from the mortgage industry. Florida's licensure requirements have been set higher than that required under the S.A.F.E. Act. For example, any crime of moral turpitude can be a bar, not just financially related crimes. In addition, Florida imposes these same background checks that S.A.F.E. imposes on individuals, on the officers and directors and on the businesses for whom they work.

I believe the changes in the law in Florida and nationally will make fundamental changes in the mortgage origination business. It will become much more professionalized and educated, allowing increased consumer confidence. There will be much stronger gate keeping with respect to those with criminal backgrounds.

These changes in law will, I believe, go a long way to addressing fraud in the origination process.

**Regulation**

On the regulatory side we have developed rules to implement the restrictions on those with criminal records from entering the business.

We have tightened our procedures to make sure that applications are processed timely and completely.

We have revamped the complaint process to make sure that they are promptly addressed.

We have developed and implemented a state-of-the-art software system for regulating mortgage brokers that helps us process our work promptly, efficiently, with less cost and with less chance that matters will fall through the cracks. It also allows us to integrate all the records related to licensing, examination and enforcement into one database. This system will give us a complete picture of an applicant's records far more easily than was previously the case.

**Enforcement**

Our agency does not have criminal prosecutorial authority, however when a complaint or examination leads to the discovery of fraud we partner with an agency that does.

We work with the U.S. Attorney, the Statewide Prosecutor, local district attorneys, and the Florida Attorney General among others. In particular we have had a long and productive relationship with the federal-state mortgage fraud strike force here in Dade County.

Because of our experience with the mortgage industry we are in a unique position to provide expert testimony, document analysis and witness interviewing in mortgage fraud prosecutions.

We are a major resource to and an integral part of many mortgage fraud prosecutions in Florida.

**The Role of Regulation Going Forward**

I would like to speak for a moment about the role of mortgage regulation in the future.

The financial crisis has framed the question to the regulatory community "What could we have done better?"

One of the challenges for all regulators, from the SEC to the FDIC to the Federal Reserve to the Florida OFR is to get ahead of the curve. How do regulators – as the hockey great, Wayne Gretzky so often did – skate to where the puck is going to be, not to where the puck is.

Seeing the future is not easy. When you are in the middle of events there is much less clarity than in retrospect.

Nevertheless the regulatory system needs to keep looking for where the puck is going to be.

For example we at OFR saw that when the mortgage origination business died and the foreclosure crisis began, some who had been engaged in originating the mortgages that were now failing were getting into the loan modification business.

We were seeing abusive activities. Families desperate to avoid foreclosure and stay in their homes were easy prey. Loan modification businesses were taking upfront fees then providing little or no services leaving vulnerable families broke and out on the streets.

Late last year we put together an internal task force to target and shutdown loan modification businesses taking up-front fees. We developed a comprehensive approach with several elements. One is to issue cease and desist orders to persons we find in violation of law. A second is to publicize our enforcement actions. A third is to work with other agencies such as those who have testified here today.

The resulting media coverage in both English and Spanish has been effective in raising public awareness of the risk of fraud and in deterring potential violators.

The term being used among regulators is “forward looking regulation” it is difficult to implement but I believe imperative. It is often resisted and unpopular because it will conflict with the status quo. But failing to look forward puts the regulator in the role of cleaning out the barn after the horses have gone.

**Conclusion**

There is no silver bullet that will stop mortgage fraud. Law enforcement has a role. Regulators have a role. Media has a role. Industry has a role. Consumers have a role.

But the most important factor is the economic conditions that make such fraud attractive and possible. A bubble is an incubator of fraud. The housing bubble created huge opportunities for fraud.

The amount of money poured into the housing market by banks and investors, the lax lending standards, greed, the lack of accountability, economic illiteracy all contributed to create a condition in which fraud flourished.

Regulation and law enforcement can and should play a role in controlling mortgage fraud, but they are not in and of themselves the answer. The most important step is to curb the conditions which allow such fraud to flourish.

I appreciate the opportunity to express my views and stand ready to respond to your questions.

FLORIDA OFFICE OF FINANCIAL REGULATION
PROTECT | REGULATE | INVESTIGATE | ENFORCE

**J. THOMAS CARDWELL**
COMMISSIONER

# OFR Quarterly Report to the Financial Services Commission

December 31, 2010

**J. Thomas Cardwell**
**Commissioner**

**www.flofr.com**


**FINANCIAL SERVICES COMMISSION**

**RICK SCOTT** GOVERNOR | **PAM BONDI** ATTORNEY GENERAL | **JEFF ATWATER** CHIEF FINANCIAL OFFICER | **ADAM PUTNAM** COMMISSIONER OF AGRICULTURE

Our mission is to protect the citizens of Florida by carrying out the banking, securities and financial laws of the state efficiently and effectively and to provide regulation of business that promotes the sound growth and development of Florida's economy.


EXHIBIT
5

## Commissioner Cardwell's Comments

Florida's economy continues to face many challenges and, as a result, Florida's financial industries continue to face significant stress. Since January 2009, 44 financial institutions have failed: 14 in 2009, 29 in 2010 and one already in 2011. Florida is in the top five states nationally in the number of mortgage foreclosures. Home sales remain sluggish and prices for existing homes are flat. Like many families and businesses in Florida, OFR was significantly impacted by the real estate market. Just as our industries are struggling to adapt to the changing economic landscape, we are making efforts to adapt as well.

As required by the Legislature, OFR submitted a 15% reduction plan for next year as part of the Legislative Budget Request (LBR) in October. Our submission at that point was based on the best information available at that time. We have now found that actual revenues are even less than we had projected due to the difficult business conditions our industries are facing.

Specifically, the number of persons seeking to be licensed in the mortgage industry has decreased significantly. In June 2007, OFR had more than 80,000 individual mortgage brokers licensed. By October 2010, the number had decreased by about half. We just concluded our current registration cycle on December 31st, and had slightly fewer than 15,000 individual applicants. We knew there would be a drop off, but the depth of the problems in the Florida housing market were greater than anticipated, even by noted economists.

We expect that as the housing market does come back, the mortgage broker business will come back as well; however, the return will not be v-shaped and it will not return to its former level.

In the area of Banking, the total assets held in state-chartered banks have declined. In 2009, total deposits in state-chartered banks were $60 billion. According to the latest figures (September 2010), the number has dropped to $50 billion. This has not been caused so much by a decrease in total bank deposits in the state, but rather by the fact that some of the larger state-chartered banks that were closed were acquired by federally chartered institutions.

We knew that agency revenues would be challenged. We now have a much clearer idea how much. I think we are at the bottom of this economic cycle. Some of our businesses have remained stable. The businesses that were negatively impacted will come back over time. Banking should be back to where it was in the next year or two. Mortgage brokerage will never return to its frothy heights.

Since we have a better view of our position than we did in October, we are promptly responding to what we now know. We will be filing an amended LBR which will involve shrinking the size of the agency and will take a significant step to matching our revenues to our expenses. We are developing a realistic business plan to deal with the

situation we face. It will have painful aspects but we will work within our resources to continue to provide service to the citizens of Florida and the industries we regulate.

I would like to point out there are positive indicators as well. No Florida banking customers have lost a single dollar of insured deposits. Florida remains a good banking market as evidenced by the continued interest in acquisition of our closed institutions.

Revenue for the Division of Securities is stable. The Division has been successful in levying and collecting several large fines, as well as securing money for Florida consumers and the Florida State Board of Administration (SBA).

- In November, **UBS Securities, LLC** and **UBS Financial Services, Inc.,** paid fines totaling $6,581,232 and were required to offer to repurchase auction rate securities from eligible customers. The firms failed to reasonably supervise their agents and engaged in dishonest and unethical practices. As a result of OFR's involvement with the North American Securities Administrators Association (NASAA) Auction Rate Securities Task Force over the last two years, fines in excess of $35.5 million have been assessed and collected against firms which engaged in related unlawful sales activity.

- In December, **JP Morgan Securities, LLC** paid OFR $2 million in fines and costs of investigation, and paid the SBA $23 million to settle claims related to its sale of unregistered securities to the Local Government Investment Pool (LGIP). LGIP was not qualified to purchase the securities, in violation of Florida and federal securities laws.

The Division of Finance has continued to resolve examinations as a result of the Loan Modification Sweep which began in January 2010. Since that time, we opened 840 examinations. Of the 742 examinations we have completed, 123 or 17% have been referred to our Legal Services Office for enforcement action. We have filed 88 legal actions and made nine referrals to the Florida Bar Association. At this time, we have followed up approximatley one-third of the legal actions filed. The follow up demonstrates that 19 firms are now compliant, while only six remain out of compliance.

The US Treasury Department is launching the Small Business Lending Fund Program. The $30 billion fund encourages lending to small businesses by providing equity capital to qualified community banks. Through the fund, Main Street banks and small businesses can work together to help create jobs and promote economic growth in local communities. A total of $98 million in funding has been allocated to Florida financial institutions, with an expected increase of $977 million in new lending to small businesses in Florida. The Division of Financial Institutions is working closely with the Federal Deposit Insurance Corporation and the Federal Reserve Bank of Atlanta to implement the lending program.

While these economic times cause stress for Floridians – individuals, families, businesses and State leaders – OFR continues to strive to meet our two-pronged

mission to **protect the citizens** of the of Florida by providing effective regulation that **promotes sound growth and development of Florida's economy**.

The New York Times • Reprints

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers here or use the "Reprints" tool that appears next to any article. Visit www.nytreprints.com for samples and additional information. Order a reprint of this article now.

January 25, 2011

# Financial Crisis Was Avoidable, Inquiry Finds

By SEWELL CHAN

WASHINGTON — The 2008 financial crisis was an "avoidable" disaster caused by widespread failures in government regulation, corporate mismanagement and heedless risk-taking by Wall Street, according to the conclusions of a federal inquiry.

The commission that investigated the crisis casts a wide net of blame, faulting two administrations, the Federal Reserve and other regulators for permitting a calamitous concoction: shoddy mortgage lending, the excessive packaging and sale of loans to investors and risky bets on securities backed by the loans.

"The greatest tragedy would be to accept the refrain that no one could have seen this coming and thus nothing could have been done," the panel wrote in the report's conclusions, which were read by The New York Times. "If we accept this notion, it will happen again."

While the panel, the Financial Crisis Inquiry Commission, accuses several financial institutions of greed, ineptitude or both, some of its gravest conclusions concern government failings, with embarrassing implications for both parties. But the panel was itself divided along partisan lines, which could blunt the impact of its findings.

Many of the conclusions have been widely described, but the synthesis of interviews, documents and testimony, along with its government imprimatur, give the report — to be released on Thursday as a 576-page book — a conclusive sweep and authority.

The commission held 19 days of hearings and interviews with more than 700 witnesses; it has

pledged to release a trove of transcripts and other raw material online.

Of the 10 commission members, the six appointed by Democrats endorsed the final report. Three Republican members have prepared a dissent focusing on a narrower set of causes; a fourth Republican, Peter J. Wallison, has his own dissent, calling policies to promote homeownership the major culprit. The panel was hobbled repeatedly by internal divisions and staff turnover.

The majority report finds fault with two Fed chairmen: Alan Greenspan, who led the central bank as the housing bubble expanded, and his successor, Ben S. Bernanke, who did not foresee the crisis but played a crucial role in the response. It criticizes Mr. Greenspan for advocating deregulation and cites a "pivotal failure to stem the flow of toxic mortgages" under his leadership as a "prime example" of negligence.

It also criticizes the Bush administration's "inconsistent response" to the crisis — allowing Lehman Brothers to collapse in September 2008 after earlier bailing out another bank, Bear Stearns, with Fed help — as having "added to the uncertainty and panic in the financial markets."

Like Mr. Bernanke, Mr. Bush's Treasury secretary, Henry M. Paulson Jr., predicted in 2007 — wrongly, it turned out — that the subprime collapse would be contained, the report notes.

Democrats also come under fire. The decision in 2000 to shield the exotic financial instruments known as over-the-counter derivatives from regulation, made during the last year of President Bill Clinton's term, is called "a key turning point in the march toward the financial crisis."

Timothy F. Geithner, who was president of the Federal Reserve Bank of New York during the crisis and is now the Treasury secretary, was not unscathed; the report finds that the New York Fed missed signs of trouble at Citigroup and Lehman, though it did not have the main responsibility for overseeing them.

Former and current officials named in the report, as well as financial institutions, declined Tuesday to comment before the report was released.

The report could reignite debate over the influence of Wall Street; it says regulators "lacked the

political will" to scrutinize and hold accountable the institutions they were supposed to oversee. The financial industry spent $2.7 billion on lobbying from 1999 to 2008, while individuals and committees affiliated with it made more than $1 billion in campaign contributions.

The report does knock down — at least partly — several early theories for the financial crisis. It says the low interest rates brought about by the Fed after the 2001 recession; Fannie Mae and Freddie Mac, the mortgage finance giants; and the "aggressive homeownership goals" set by the government as part of a "philosophy of opportunity" were not major culprits.

On the other hand, the report is harsh on regulators. It finds that the Securities and Exchange Commission failed to require big banks to hold more capital to cushion potential losses and halt risky practices, and that the Fed "neglected its mission."

It says the Office of the Comptroller of the Currency, which regulates some banks, and the Office of Thrift Supervision, which oversees savings and loans, blocked states from curbing abuses because they were "caught up in turf wars."

"The crisis was the result of human action and inaction, not of Mother Nature or computer models gone haywire," the report states. "The captains of finance and the public stewards of our financial system ignored warnings and failed to question, understand and manage evolving risks within a system essential to the well-being of the American public. Theirs was a big miss, not a stumble."

The report's implications may be felt more in the political realm than in public policy. The Dodd-Frank law overhauling the regulation of Wall Street, signed in July, took as its premise the same regulatory deficiencies cited by the commission. But the report is sure to be a factor in the debate over the future of Fannie and Freddie, which have been run by the government since 2008.

Though the report documents questionable practices by mortgage lenders and careless betting by banks, one striking finding is its portrayal of incompetence.

It quotes Citigroup executives conceding that they paid little attention to mortgage-related risks. Executives at the American International Group were found to have been blind to its $79

billion exposure to credit-default swaps, a kind of insurance that was sold to investors seeking protection against a drop in the value of securities backed by home loans. At Merrill Lynch, managers were surprised when seemingly secure mortgage investments suddenly suffered huge losses.

By one measure, for about every $40 in assets, the nation's five largest investment banks had only $1 in capital to cover losses, meaning that a 3 percent drop in asset values could have wiped out the firm. The banks hid their excessive leverage using derivatives, off-balance-sheet entities and other devices, the report found. The speculative binge was abetted by a giant "shadow banking system" in which the banks relied heavily on short-term debt.

"When the housing and mortgage markets cratered, the lack of transparency, the extraordinary debt loads, the short-term loans and the risky assets all came home to roost," the report found. "What resulted was panic. We had reaped what we had sown."

The report, which was heavily shaped by the commission's chairman, Phil Angelides, is dotted with literary flourishes. It calls credit-rating agencies "cogs in the wheel of financial destruction." Paraphrasing Shakespeare's "Julius Caesar," it states, "The fault lies not in the stars, but in us."

Of the banks that bought, created, packaged and sold trillions of dollars in mortgage-related securities, it says: "Like Icarus, they never feared flying ever closer to the sun."

# SUMMARY OF PORNOGRAPHY-RELATED INVESTIGATIONS CONDUCTED BY THE SECURITIES AND EXCHANGE COMMISSION OFFICE OF INSPECTOR GENERAL

At the request of Senator Charles E. Grassley (R-Iowa), the following is a summary of the investigative reports and memoranda issued by the Securities and Exchange Commission (SEC) Office of Inspector General (OIG) regarding SEC employees and contractors misusing government computer resources to view pornographic images during the past five years. The most recent memorandum reports were issued on March 8, 2010.

During the past five years, the SEC OIG substantiated that 33 SEC employees and or contractors violated Commission rules and policies, as well as the Government-wide Standards of Ethical Conduct, by viewing pornographic, sexually explicit or sexually suggestive images using government computer resources and official time. Of the 33 investigations or inquiries conducted, 31 took place in approximately the past two-and-a-half years. Many of the employees who engaged in such conduct were at a senior level and earned substantial salaries through their government employment. The employees found to have engaged in this inappropriate conduct included 17 employees at a level of grade SK-14 and above (which can range from $99,356 through $222,418.) In many of the investigative matters, the OIG obtained key admissions from the employees under investigation in sworn, on-the-record testimony. The following is a breakdown by year of the cases reported to management during the past five years: three in 2010, ten in 2009, 16 in 2008, two in 2007, one in 2006, and one in 2005.

Below are some specific examples of the evidence uncovered by the OIG in our reports on the misuse of resources and official time to view pornography:

- A Regional Office Supervisory Staff Accountant admitted that he frequently viewed pornography at work on his SEC computer for about a year and that he accessed pornography on his SEC-issued laptop computer while on official government travel. The OIG also found numerous pornographic images stored on the hard drive of his government computer.

- Another Regional Office Supervisory Staff Accountant admitted that he used his SEC-assigned computer to access and attempt to access Internet web sites containing pornography and other sexually explicit material during work hours fairly frequently, sometimes up to twice a day. He further admitted this activity had probably occurred for a long time. This senior staff member also admitted saving numerous pornographic images to the hard drive of his SEC computer and viewing them from time to time during work hours.

EXHIBIT

7

- A Regional Office Staff Accountant received nearly 1,800 access denials for pornographic websites using her SEC laptop in only a two-week period, and had nearly 600 pornographic images saved on her laptop hard drive.

- A Division of Enforcement Senior Counsel used his SEC-assigned laptop computer on numerous occasions to access Internet pornography, and his computer hard drive contained 775 pornographic or inappropriate images.

- A Regional Office Senior Enforcement Attorney accessed pornographic images from his SEC laptop during work hours and saved sexually explicit images to his computer hard drive. The OIG also found a thumb drive connected to his SEC laptop that contained five distinct videos depicting hard core pornography.

- A Headquarters Senior Attorney admitted accessing Internet pornography and downloading pornographic images to his SEC computer during work hours so frequently that, on some days, he spent eight hours accessing Internet pornography. In fact, this attorney downloaded so much pornography to his government computer that he exhausted the available space on the computer hard drive and downloaded pornography to CDs or DVDs that he accumulated in boxes in his office.

- An Attorney Advisor for the Division of Corporation Finance admitted viewing pornography and sexually explicit images from his government computer during work hours for one or two years, and that he did so approximately twice per week.

- A Regional Office Examiner began using his SEC-assigned laptop two weeks after he began employment at the SEC to access Internet pornography and used a flash drive to bypass the Commission's Internet filter and successfully access a significant number of pornographic images.

- A Regional Office Staff Accountant received over 16,000 access denials for Internet websites classified by the Commission's Internet filter as either "Sex" or "Pornography" in a one-month period. In addition, the hard drive of this employee's SEC laptop contained numerous sexually suggestive and inappropriate images.

- A Division of Corporation Finance Staff Accountant admitted that he accessed Internet pornography on a repeated basis during and after work hours and, on certain SEC workdays, he spent up to five hours accessing Internet pornography. This employee also admitted opening accounts with Internet pornography websites using his SEC computer, that he bookmarked sites containing sexually explicit videos or images as his website favorites, and that he had uploaded a sexually explicit video file from his SEC computer onto one of the websites he had joined.

# CONCLUSIONS OF THE FINANCIAL CRISIS INQUIRY COMMISSION

The Financial Crisis Inquiry Commission has been called upon to examine the financial and economic crisis that has gripped our country and explain its causes to the American people. We are keenly aware of the significance of our charge, given the economic damage that America has suffered in the wake of the greatest financial crisis since the Great Depression.

Our task was first to determine what happened and how it happened so that we could understand why it happened. Here we present our conclusions. We encourage the American people to join us in making their own assessments based on the evidence gathered in our inquiry. If we do not learn from history, we are unlikely to fully recover from it. Some on Wall Street and in Washington with a stake in the status quo may be tempted to wipe from memory the events of this crisis, or to suggest that no one could have foreseen or prevented them. This report endeavors to expose the facts, identify responsibility, unravel myths, and help us understand how the crisis could have been avoided. It is an attempt to record history, not to rewrite it, nor allow it to be rewritten.

To help our fellow citizens better understand this crisis and its causes, we also present specific conclusions at the end of chapters in Parts III, IV, and V of this report.

The subject of this report is of no small consequence to this nation. The profound events of 2007 and 2008 were neither bumps in the road nor an accentuated dip in the financial and business cycles we have come to expect in a free market economic system. This was a fundamental disruption—a financial upheaval, if you will—that wreaked havoc in communities and neighborhoods across this country.

As this report goes to print, there are more than 26 million Americans who are out of work, cannot find full-time work, or have given up looking for work. About four million families have lost their homes to foreclosure and another four and a half million have slipped into the foreclosure process or are seriously behind on their mortgage payments. Nearly $11 trillion in household wealth has vanished, with retirement accounts and life savings swept away. Businesses, large and small, have felt



EXHIBIT 8

the sting of a deep recession. There is much anger about what has transpired, and justifiably so. Many people who abided by all the rules now find themselves out of work and uncertain about their future prospects. The collateral damage of this crisis has been real people and real communities. The impacts of this crisis are likely to be felt for a generation. And the nation faces no easy path to renewed economic strength.

Like so many Americans, we began our exploration with our own views and some preliminary knowledge about how the world's strongest financial system came to the brink of collapse. Even at the time of our appointment to this independent panel, much had already been written and said about the crisis. Yet all of us have been deeply affected by what we have learned in the course of our inquiry. We have been at various times fascinated, surprised, and even shocked by what we saw, heard, and read. Ours has been a journey of revelation.

Much attention over the past two years has been focused on the decisions by the federal government to provide massive financial assistance to stabilize the financial system and rescue large financial institutions that were deemed too systemically important to fail. Those decisions—and the deep emotions surrounding them—will be debated long into the future. But our mission was to ask and answer this central question: *how did it come to pass that in 2008 our nation was forced to choose between two stark and painful alternatives*—either risk the total collapse of our financial system and economy or inject trillions of taxpayer dollars into the financial system and an array of companies, as millions of Americans still lost their jobs, their savings, and their homes?

In this report, we detail the events of the crisis. But a simple summary, as we see it, is useful at the outset. While the vulnerabilities that created the potential for crisis were years in the making, it was the collapse of the housing bubble—fueled by low interest rates, easy and available credit, scant regulation, and toxic mortgages—that was the spark that ignited a string of events, which led to a full-blown crisis in the fall of 2008. Trillions of dollars in risky mortgages had become embedded throughout the financial system, as mortgage-related securities were packaged, repackaged, and sold to investors around the world. When the bubble burst, hundreds of billions of dollars in losses in mortgages and mortgage-related securities shook markets as well as financial institutions that had significant exposures to those mortgages and had borrowed heavily against them. This happened not just in the United States but around the world. The losses were magnified by derivatives such as synthetic securities.

The crisis reached seismic proportions in September 2008 with the failure of Lehman Brothers and the impending collapse of the insurance giant American International Group (AIG). Panic fanned by a lack of transparency of the balance sheets of major financial institutions, coupled with a tangle of interconnections among institutions perceived to be "too big to fail," caused the credit markets to seize up. Trading ground to a halt. The stock market plummeted. The economy plunged into a deep recession.

The financial system we examined bears little resemblance to that of our parents' generation. The changes in the past three decades alone have been remarkable. The

financial markets have become increasingly globalized. Technology has transformed the efficiency, speed, and complexity of financial instruments and transactions. There is broader access to and lower costs of financing than ever before. And the financial sector itself has become a much more dominant force in our economy.

From 1978 to 2007, the amount of debt held by the financial sector soared from $3 trillion to $36 trillion, more than doubling as a share of gross domestic product. The very nature of many Wall Street firms changed—from relatively staid private partnerships to publicly traded corporations taking greater and more diverse kinds of risks. By 2005, the 10 largest U.S. commercial banks held 55% of the industry's assets, more than double the level held in 1990. On the eve of the crisis in 2006, financial sector profits constituted 27% of all corporate profits in the United States, up from 15% in 1980. Understanding this transformation has been critical to the Commission's analysis.

Now to our major findings and conclusions, which are based on the facts contained in this report: they are offered with the hope that lessons may be learned to help avoid future catastrophe.

- **We conclude this financial crisis was avoidable.** The crisis was the result of human action and inaction, not of Mother Nature or computer models gone haywire. The captains of finance and the public stewards of our financial system ignored warnings and failed to question, understand, and manage evolving risks within a system essential to the well-being of the American public. Theirs was a big miss, not a stumble. While the business cycle cannot be repealed, a crisis of this magnitude need not have occurred. To paraphrase Shakespeare, the fault lies not in the stars, but in us.

Despite the expressed view of many on Wall Street and in Washington that the crisis could not have been foreseen or avoided, there were warning signs. The tragedy was that they were ignored or discounted. There was an explosion in risky subprime lending and securitization, an unsustainable rise in housing prices, widespread reports of egregious and predatory lending practices, dramatic increases in household mortgage debt, and exponential growth in financial firms' trading activities, unregulated derivatives, and short-term "repo" lending markets, among many other red flags. Yet there was pervasive permissiveness; little meaningful action was taken to quell the threats in a timely manner.

The prime example is the Federal Reserve's pivotal failure to stem the flow of toxic mortgages, which it could have done by setting prudent mortgage-lending standards. The Federal Reserve was the one entity empowered to do so and it did not. The record of our examination is replete with evidence of other failures: financial institutions made, bought, and sold mortgage securities they never examined, did not care to examine, or knew to be defective; firms depended on tens of billions of dollars of borrowing that had to be renewed each and every night, secured by subprime mortgage securities; and major firms and investors blindly relied on credit rating agencies as their arbiters of risk. What else could one expect on a highway where there were neither speed limits nor neatly painted lines?

• **We conclude widespread failures in financial regulation and supervision proved devastating to the stability of the nation's financial markets.** The sentries were not at their posts, in no small part due to the widely accepted faith in the self-correcting nature of the markets and the ability of financial institutions to effectively police themselves. More than 30 years of deregulation and reliance on self-regulation by financial institutions, championed by former Federal Reserve chairman Alan Greenspan and others, supported by successive administrations and Congresses, and actively pushed by the powerful financial industry at every turn, had stripped away key safeguards, which could have helped avoid catastrophe. This approach had opened up gaps in oversight of critical areas with trillions of dollars at risk, such as the shadow banking system and over-the-counter derivatives markets. In addition, the government permitted financial firms to pick their preferred regulators in what became a race to the weakest supervisor.

Yet we do not accept the view that regulators lacked the power to protect the financial system. They had ample power in many arenas and they chose not to use it. To give just three examples: the Securities and Exchange Commission could have required more capital and halted risky practices at the big investment banks. It did not. The Federal Reserve Bank of New York and other regulators could have clamped down on Citigroup's excesses in the run-up to the crisis. They did not. Policy makers and regulators could have stopped the runaway mortgage securitization train. They did not. In case after case after case, regulators continued to rate the institutions they oversaw as safe and sound even in the face of mounting troubles, often downgrading them just before their collapse. And where regulators lacked authority, they could have sought it. Too often, they lacked the political will—in a political and ideological environment that constrained it—as well as the fortitude to critically challenge the institutions and the entire system they were entrusted to oversee.

Changes in the regulatory system occurred in many instances as financial markets evolved. But as the report will show, the financial industry itself played a key role in weakening regulatory constraints on institutions, markets, and products. It did not surprise the Commission that an industry of such wealth and power would exert pressure on policy makers and regulators. From 1999 to 2008, the financial sector expended $2.7 billion in reported federal lobbying expenses; individuals and political action committees in the sector made more than $1 billion in campaign contributions. What troubled us was the extent to which the nation was deprived of the necessary strength and independence of the oversight necessary to safeguard financial stability.

• **We conclude dramatic failures of corporate governance and risk management at many systemically important financial institutions were a key cause of this crisis.** There was a view that instincts for self-preservation inside major financial firms would shield them from fatal risk-taking without the need for a steady regulatory hand, which, the firms argued, would stifle innovation. Too many of these institutions acted recklessly, taking on too much risk, with too little capital, and with too much dependence on short-term funding. In many respects, this reflected a funda-

mental change in these institutions, particularly the large investment banks and bank holding companies, which focused their activities increasingly on risky trading activities that produced hefty profits. They took on enormous exposures in acquiring and supporting subprime lenders and creating, packaging, repackaging, and selling trillions of dollars in mortgage-related securities, including synthetic financial products. Like Icarus, they never feared flying ever closer to the sun.

Many of these institutions grew aggressively through poorly executed acquisition and integration strategies that made effective management more challenging. The CEO of Citigroup told the Commission that a $40 billion position in highly rated mortgage securities would "not in any way have excited my attention," and the co-head of Citigroup's investment bank said he spent "a small fraction of 1%" of his time on those securities. In this instance, too big to fail meant too big to manage.

Financial institutions and credit rating agencies embraced mathematical models as reliable predictors of risks, replacing judgment in too many instances. Too often, risk management became risk justification.

Compensation systems—designed in an environment of cheap money, intense competition, and light regulation—too often rewarded the quick deal, the short-term gain—without proper consideration of long-term consequences. Often, those systems encouraged the big bet—where the payoff on the upside could be huge and the downside limited. This was the case up and down the line—from the corporate boardroom to the mortgage broker on the street.

Our examination revealed stunning instances of governance breakdowns and irresponsibility. You will read, among other things, about AIG senior management's ignorance of the terms and risks of the company's $79 billion derivatives exposure to mortgage-related securities; Fannie Mae's quest for bigger market share, profits, and bonuses, which led it to ramp up its exposure to risky loans and securities as the housing market was peaking; and the costly surprise when Merrill Lynch's top management realized that the company held $55 billion in "super-senior" and supposedly "super-safe" mortgage-related securities that resulted in billions of dollars in losses.

- **We conclude a combination of excessive borrowing, risky investments, and lack of transparency put the financial system on a collision course with crisis.** Clearly, this vulnerability was related to failures of corporate governance and regulation, but it is significant enough by itself to warrant our attention here.

In the years leading up to the crisis, too many financial institutions, as well as too many households, borrowed to the hilt, leaving them vulnerable to financial distress or ruin if the value of their investments declined even modestly. For example, as of 2007, the five major investment banks—Bear Stearns, Goldman Sachs, Lehman Brothers, Merrill Lynch, and Morgan Stanley—were operating with extraordinarily thin capital. By one measure, their leverage ratios were as high as 40 to 1, meaning for every $40 in assets, there was only $1 in capital to cover losses. Less than a 3% drop in asset values could wipe out a firm. To make matters worse, much of their borrowing was short-term, in the overnight market—meaning the borrowing had to be renewed each and every day. For example, at the end of 2007, Bear Stearns had $11.8 billion in

equity and $383.6 billion in liabilities and was borrowing as much as $70 billion in the overnight market. It was the equivalent of a small business with $50,000 in equity borrowing $1.6 million, with $296,750 of that due each and every day. One can't really ask "What were they thinking?" when it seems that too many of them were thinking alike.

And the leverage was often hidden—in derivatives positions, in off-balance-sheet entities, and through "window dressing" of financial reports available to the investing public.

The kings of leverage were Fannie Mae and Freddie Mac, the two behemoth government-sponsored enterprises (GSEs). For example, by the end of 2007, Fannie's and Freddie's combined leverage ratio, including loans they owned and guaranteed, stood at 75 to 1.

But financial firms were not alone in the borrowing spree: from 2001 to 2007, national mortgage debt almost doubled, and the amount of mortgage debt per household rose more than 63% from $91,500 to $149,500, even while wages were essentially stagnant. When the housing downturn hit, heavily indebted financial firms and families alike were walloped.

The heavy debt taken on by some financial institutions was exacerbated by the risky assets they were acquiring with that debt. As the mortgage and real estate markets churned out riskier and riskier loans and securities, many financial institutions loaded up on them. By the end of 2007, Lehman had amassed $111 billion in commercial and residential real estate holdings and securities, which was almost twice what it held just two years before, and more than four times its total equity. And again, the risk wasn't being taken on just by the big financial firms, but by families, too. Nearly one in 10 mortgage borrowers in 2005 and 2006 took out "option ARM" loans, which meant they could choose to make payments so low that their mortgage balances rose every month.

Within the financial system, the dangers of this debt were magnified because transparency was not required or desired. Massive, short-term borrowing, combined with obligations unseen by others in the market, heightened the chances the system could rapidly unravel. In the early part of the 20th century, we erected a series of protections—the Federal Reserve as a lender of last resort, federal deposit insurance, ample regulations—to provide a bulwark against the panics that had regularly plagued America's banking system in the 19th century. Yet, over the past 30-plus years, we permitted the growth of a shadow banking system—opaque and laden with short-term debt—that rivaled the size of the traditional banking system. Key components of the market—for example, the multitrillion-dollar repo lending market, off-balance-sheet entities, and the use of over-the-counter derivatives—were hidden from view, without the protections we had constructed to prevent financial meltdowns. We had a 21st-century financial system with 19th-century safeguards.

When the housing and mortgage markets cratered, the lack of transparency, the extraordinary debt loads, the short-term loans, and the risky assets all came home to roost. What resulted was panic. We had reaped what we had sown.

- **We conclude the government was ill prepared for the crisis, and its inconsistent response added to the uncertainty and panic in the financial markets.** As part of our charge, it was appropriate to review government actions taken in response to the developing crisis, not just those policies or actions that preceded it, to determine if any of those responses contributed to or exacerbated the crisis.

As our report shows, key policy makers—the Treasury Department, the Federal Reserve Board, and the Federal Reserve Bank of New York—who were best positioned to watch over our markets were ill prepared for the events of 2007 and 2008. Other agencies were also behind the curve. They were hampered because they did not have a clear grasp of the financial system they were charged with overseeing, particularly as it had evolved in the years leading up to the crisis. This was in no small measure due to the lack of transparency in key markets. They thought risk had been diversified when, in fact, it had been concentrated. Time and again, from the spring of 2007 on, policy makers and regulators were caught off guard as the contagion spread, responding on an ad hoc basis with specific programs to put fingers in the dike. There was no comprehensive and strategic plan for containment, because they lacked a full understanding of the risks and interconnections in the financial markets. Some regulators have conceded this error. We had allowed the system to race ahead of our ability to protect it.

While there was some awareness of, or at least a debate about, the housing bubble, the record reflects that senior public officials did not recognize that a bursting of the bubble could threaten the entire financial system. Throughout the summer of 2007, both Federal Reserve Chairman Ben Bernanke and Treasury Secretary Henry Paulson offered public assurances that the turmoil in the subprime mortgage markets would be contained. When Bear Stearns's hedge funds, which were heavily invested in mortgage-related securities, imploded in June 2007, the Federal Reserve discussed the implications of the collapse. Despite the fact that so many other funds were exposed to the same risks as those hedge funds, the Bear Stearns funds were thought to be "relatively unique." Days before the collapse of Bear Stearns in March 2008, SEC Chairman Christopher Cox expressed "comfort about the capital cushions" at the big investment banks. It was not until August 2008, just weeks before the government takeover of Fannie Mae and Freddie Mac, that the Treasury Department understood the full measure of the dire financial conditions of those two institutions. And just a month before Lehman's collapse, the Federal Reserve Bank of New York was still seeking information on the exposures created by Lehman's more than 900,000 derivatives contracts.

In addition, the government's inconsistent handling of major financial institutions during the crisis—the decision to rescue Bear Stearns and then to place Fannie Mae and Freddie Mac into conservatorship, followed by its decision not to save Lehman Brothers and then to save AIG—increased uncertainty and panic in the market.

In making these observations, we deeply respect and appreciate the efforts made by Secretary Paulson, Chairman Bernanke, and Timothy Geithner, formerly president of the Federal Reserve Bank of New York and now treasury secretary, and so

many others who labored to stabilize our financial system and our economy in the most chaotic and challenging of circumstances.

- **We conclude there was a systemic breakdown in accountability and ethics.** The integrity of our financial markets and the public's trust in those markets are essential to the economic well-being of our nation. The soundness and the sustained prosperity of the financial system and our economy rely on the notions of fair dealing, responsibility, and transparency. In our economy, we expect businesses and individuals to pursue profits, at the same time that they produce products and services of quality and conduct themselves well.

Unfortunately—as has been the case in past speculative booms and busts—we witnessed an erosion of standards of responsibility and ethics that exacerbated the financial crisis. This was not universal, but these breaches stretched from the ground level to the corporate suites. They resulted not only in significant financial consequences but also in damage to the trust of investors, businesses, and the public in the financial system.

For example, our examination found, according to one measure, that the percentage of borrowers who defaulted on their mortgages within just a matter of months after taking a loan nearly doubled from the summer of 2006 to late 2007. This data indicates they likely took out mortgages that they never had the capacity or intention to pay. You will read about mortgage brokers who were paid "yield spread premiums" by lenders to put borrowers into higher-cost loans so they would get bigger fees, often never disclosed to borrowers. The report catalogues the rising incidence of mortgage fraud, which flourished in an environment of collapsing lending standards and lax regulation. The number of suspicious activity reports—reports of possible financial crimes filed by depository banks and their affiliates—related to mortgage fraud grew 20-fold between 1996 and 2005 and then more than doubled again between 2005 and 2009. One study places the losses resulting from fraud on mortgage loans made between 2005 and 2007 at $112 billion.

Lenders made loans that they knew borrowers could not afford and that could cause massive losses to investors in mortgage securities. As early as September 2004, Countrywide executives recognized that many of the loans they were originating could result in "catastrophic consequences." Less than a year later, they noted that certain high-risk loans they were making could result not only in foreclosures but also in "financial and reputational catastrophe" for the firm. But they did not stop.

And the report documents that major financial institutions ineffectively sampled loans they were purchasing to package and sell to investors. They knew a significant percentage of the sampled loans did not meet their own underwriting standards or those of the originators. Nonetheless, they sold those securities to investors. The Commission's review of many prospectuses provided to investors found that this critical information was not disclosed.

THESE CONCLUSIONS must be viewed in the context of human nature and individual and societal responsibility. First, to pin this crisis on mortal flaws like greed and

hubris would be simplistic. It was the failure to account for human weakness that is relevant to this crisis.

Second, we clearly believe the crisis was a result of human mistakes, misjudgments, and misdeeds that resulted in systemic failures for which our nation has paid dearly. As you read this report, you will see that specific firms and individuals acted irresponsibly. Yet a crisis of this magnitude cannot be the work of a few bad actors, and such was not the case here. At the same time, the breadth of this crisis does not mean that "everyone is at fault"; many firms and individuals did not participate in the excesses that spawned disaster.

We do place special responsibility with the public leaders charged with protecting our financial system, those entrusted to run our regulatory agencies, and the chief executives of companies whose failures drove us to crisis. These individuals sought and accepted positions of significant responsibility and obligation. Tone at the top does matter and, in this instance, we were let down. No one said "no."

But as a nation, we must also accept responsibility for what we permitted to occur. Collectively, but certainly not unanimously, we acquiesced to or embraced a system, a set of policies and actions, that gave rise to our present predicament.

* * *

THIS REPORT DESCRIBES THE EVENTS and the system that propelled our nation toward crisis. The complex machinery of our financial markets has many essential gears—some of which played a critical role as the crisis developed and deepened. Here we render our conclusions about specific components of the system that we believe contributed significantly to the financial meltdown.

- **We conclude collapsing mortgage-lending standards and the mortgage securitization pipeline lit and spread the flame of contagion and crisis.** When housing prices fell and mortgage borrowers defaulted, the lights began to dim on Wall Street. This report catalogues the corrosion of mortgage-lending standards and the securitization pipeline that transported toxic mortgages from neighborhoods across America to investors around the globe.

Many mortgage lenders set the bar so low that lenders simply took eager borrowers' qualifications on faith, often with a willful disregard for a borrower's ability to pay. Nearly one-quarter of all mortgages made in the first half of 2005 were interest-only loans. During the same year, 68% of "option ARM" loans originated by Countrywide and Washington Mutual had low- or no-documentation requirements.

These trends were not secret. As irresponsible lending, including predatory and fraudulent practices, became more prevalent, the Federal Reserve and other regulators and authorities heard warnings from many quarters. Yet the Federal Reserve neglected its mission "to ensure the safety and soundness of the nation's banking and financial system and to protect the credit rights of consumers." It failed to build the retaining wall before it was too late. And the Office of the Comptroller of the Currency and the Office of Thrift Supervision, caught up in turf wars, preempted state regulators from reining in abuses.

While many of these mortgages were kept on banks' books, the bigger money came from global investors who clamored to put their cash into newly created mortgage-related securities. It appeared to financial institutions, investors, and regulators alike that risk had been conquered: the investors held highly rated securities they thought were sure to perform; the banks thought they had taken the riskiest loans off their books; and regulators saw firms making profits and borrowing costs reduced. But each step in the mortgage securitization pipeline depended on the next step to keep demand going. From the speculators who flipped houses to the mortgage brokers who scouted the loans, to the lenders who issued the mortgages, to the financial firms that created the mortgage-backed securities, collateralized debt obligations (CDOs), CDOs squared, and synthetic CDOs: no one in this pipeline of toxic mortgages had enough skin in the game. They all believed they could off-load their risks on a moment's notice to the next person in line. They were wrong. When borrowers stopped making mortgage payments, the losses—amplified by derivatives—rushed through the pipeline. As it turned out, these losses were concentrated in a set of systemically important financial institutions.

In the end, the system that created millions of mortgages so efficiently has proven to be difficult to unwind. Its complexity has erected barriers to modifying mortgages so families can stay in their homes and has created further uncertainty about the health of the housing market and financial institutions.

- **We conclude over-the-counter derivatives contributed significantly to this crisis.** The enactment of legislation in 2000 to ban the regulation by both the federal and state governments of over-the-counter (OTC) derivatives was a key turning point in the march toward the financial crisis.

From financial firms to corporations, to farmers, and to investors, derivatives have been used to hedge against, or speculate on, changes in prices, rates, or indices or even on events such as the potential defaults on debts. Yet, without any oversight, OTC derivatives rapidly spiraled out of control and out of sight, growing to $673 trillion in notional amount. This report explains the uncontrolled leverage; lack of transparency, capital, and collateral requirements; speculation; interconnections among firms; and concentrations of risk in this market.

OTC derivatives contributed to the crisis in three significant ways. First, one type of derivative—credit default swaps (CDS)—fueled the mortgage securitization pipeline. CDS were sold to investors to protect against the default or decline in value of mortgage-related securities backed by risky loans. Companies sold protection—to the tune of $79 billion, in AIG's case—to investors in these newfangled mortgage securities, helping to launch and expand the market and, in turn, to further fuel the housing bubble.

Second, CDS were essential to the creation of synthetic CDOs. These synthetic CDOs were merely bets on the performance of real mortgage-related securities. They amplified the losses from the collapse of the housing bubble by allowing multiple bets on the same securities and helped spread them throughout the financial system. Goldman Sachs alone packaged and sold $73 billion in synthetic CDOs from July 1,

2004, to May 31, 2007. Synthetic CDOs created by Goldman referenced more than 3,400 mortgage securities, and 610 of them were referenced at least twice. This is apart from how many times these securities may have been referenced in synthetic CDOs created by other firms.

Finally, when the housing bubble popped and crisis followed, derivatives were in the center of the storm. AIG, which had not been required to put aside capital reserves as a cushion for the protection it was selling, was bailed out when it could not meet its obligations. The government ultimately committed more than $180 billion because of concerns that AIG's collapse would trigger cascading losses throughout the global financial system. In addition, the existence of millions of derivatives contracts of all types between systemically important financial institutions—unseen and unknown in this unregulated market—added to uncertainty and escalated panic, helping to precipitate government assistance to those institutions.

- **We conclude the failures of credit rating agencies were essential cogs in the wheel of financial destruction.** The three credit rating agencies were key enablers of the financial meltdown. The mortgage-related securities at the heart of the crisis could not have been marketed and sold without their seal of approval. Investors relied on them, often blindly. In some cases, they were obligated to use them, or regulatory capital standards were hinged on them. This crisis could not have happened without the rating agencies. Their ratings helped the market soar and their downgrades through 2007 and 2008 wreaked havoc across markets and firms.

In our report, you will read about the breakdowns at Moody's, examined by the Commission as a case study. From 2000 to 2007, Moody's rated nearly 45,000 mortgage-related securities as triple-A. This compares with six private-sector companies in the United States that carried this coveted rating in early 2010. In 2006 alone, Moody's put its triple-A stamp of approval on 30 mortgage-related securities every working day. The results were disastrous: 83% of the mortgage securities rated triple-A that year ultimately were downgraded.

You will also read about the forces at work behind the breakdowns at Moody's, including the flawed computer models, the pressure from financial firms that paid for the ratings, the relentless drive for market share, the lack of resources to do the job despite record profits, and the absence of meaningful public oversight. And you will see that without the active participation of the rating agencies, the market for mortgage-related securities could not have been what it became.

* * *

THERE ARE MANY COMPETING VIEWS as to the causes of this crisis. In this regard, the Commission has endeavored to address key questions posed to us. Here we discuss three: capital availability and excess liquidity, the role of Fannie Mae and Freddie Mac (the GSEs), and government housing policy.

First, as to the matter of excess liquidity: in our report, we outline monetary policies and capital flows during the years leading up to the crisis. Low interest rates, widely available capital, and international investors seeking to put their money in real

estate assets in the United States were prerequisites for the creation of a credit bubble. Those conditions created increased risks, which should have been recognized by market participants, policy makers, and regulators. However, it is the Commission's conclusion that excess liquidity did not need to cause a crisis. It was the failures outlined above—including the failure to effectively rein in excesses in the mortgage and financial markets—that were the principal causes of this crisis. Indeed, the availability of well-priced capital—both foreign and domestic—is an opportunity for economic expansion and growth if encouraged to flow in productive directions.

Second, we examined the role of the GSEs, with Fannie Mae serving as the Commission's case study in this area. These government-sponsored enterprises had a deeply flawed business model as publicly traded corporations with the implicit backing of and subsidies from the federal government and with a public mission. Their $5 trillion mortgage exposure and market position were significant. In 2005 and 2006, they decided to ramp up their purchase and guarantee of risky mortgages, just as the housing market was peaking. They used their political power for decades to ward off effective regulation and oversight—spending $164 million on lobbying from 1999 to 2008. They suffered from many of the same failures of corporate governance and risk management as the Commission discovered in other financial firms. Through the third quarter of 2010, the Treasury Department had provided $151 billion in financial support to keep them afloat.

We conclude that these two entities contributed to the crisis, but were not a primary cause. Importantly, GSE mortgage securities essentially maintained their value throughout the crisis and did not contribute to the significant financial firm losses that were central to the financial crisis.

The GSEs participated in the expansion of subprime and other risky mortgages, but they followed rather than led Wall Street and other lenders in the rush for fool's gold. They purchased the highest rated non-GSE mortgage-backed securities and their participation in this market added helium to the housing balloon, but their purchases never represented a majority of the market. Those purchases represented 10.5% of non-GSE subprime mortgage-backed securities in 2001, with the share rising to 40% in 2004, and falling back to 28% by 2008. They relaxed their underwriting standards to purchase or guarantee riskier loans and related securities in order to meet stock market analysts' and investors' expectations for growth, to regain market share, and to ensure generous compensation for their executives and employees—justifying their activities on the broad and sustained public policy support for homeownership.

The Commission also probed the performance of the loans purchased or guaranteed by Fannie and Freddie. While they generated substantial losses, delinquency rates for GSE loans were substantially lower than loans securitized by other financial firms. For example, data compiled by the Commission for a subset of borrowers with similar credit scores—scores below 660—show that by the end of 2008, GSE mortgages were far less likely to be seriously delinquent than were non-GSE securitized mortgages: 6.2% versus 28.3%.

We also studied at length how the Department of Housing and Urban Development's (HUD's) affordable housing goals for the GSEs affected their investment in

risky mortgages. Based on the evidence and interviews with dozens of individuals involved in this subject area, we determined these goals only contributed marginally to Fannie's and Freddie's participation in those mortgages.

Finally, as to the matter of whether government housing policies were a primary cause of the crisis: for decades, government policy has encouraged homeownership through a set of incentives, assistance programs, and mandates. These policies were put in place and promoted by several administrations and Congresses—indeed, both Presidents Bill Clinton and George W. Bush set aggressive goals to increase homeownership.

In conducting our inquiry, we took a careful look at HUD's affordable housing goals, as noted above, and the Community Reinvestment Act (CRA). The CRA was enacted in 1977 to combat "redlining" by banks—the practice of denying credit to individuals and businesses in certain neighborhoods without regard to their creditworthiness. The CRA requires banks and savings and loans to lend, invest, and provide services to the communities from which they take deposits, consistent with bank safety and soundness.

The Commission concludes the CRA was not a significant factor in subprime lending or the crisis. Many subprime lenders were not subject to the CRA. Research indicates only 6% of high-cost loans—a proxy for subprime loans—had any connection to the law. Loans made by CRA-regulated lenders in the neighborhoods in which they were required to lend were half as likely to default as similar loans made in the same neighborhoods by independent mortgage originators not subject to the law.

Nonetheless, we make the following observation about government housing policies—they failed in this respect: As a nation, we set aggressive homeownership goals with the desire to extend credit to families previously denied access to the financial markets. Yet the government failed to ensure that the philosophy of opportunity was being matched by the practical realities on the ground. Witness again the failure of the Federal Reserve and other regulators to rein in irresponsible lending. Homeownership peaked in the spring of 2004 and then began to decline. From that point on, the talk of opportunity was tragically at odds with the reality of a financial disaster in the making.

* * *

When this Commission began its work 18 months ago, some imagined that the events of 2008 and their consequences would be well behind us by the time we issued this report. Yet more than two years after the federal government intervened in an unprecedented manner in our financial markets, our country finds itself still grappling with the aftereffects of the calamity. Our financial system is, in many respects, still unchanged from what existed on the eve of the crisis. Indeed, in the wake of the crisis, the U.S. financial sector is now more concentrated than ever in the hands of a few large, systemically significant institutions.

While we have not been charged with making policy recommendations, the very purpose of our report has been to take stock of what happened so we can plot a new course. In our inquiry, we found dramatic breakdowns of corporate governance,

profound lapses in regulatory oversight, and near fatal flaws in our financial system. We also found that a series of choices and actions led us toward a catastrophe for which we were ill prepared. These are serious matters that must be addressed and resolved to restore faith in our financial markets, to avoid the next crisis, and to rebuild a system of capital that provides the foundation for a new era of broadly shared prosperity.

The greatest tragedy would be to accept the refrain that no one could have seen this coming and thus nothing could have been done. If we accept this notion, it will happen again.

This report should not be viewed as the end of the nation's examination of this crisis. There is still much to learn, much to investigate, and much to fix.

This is our collective responsibility. It falls to us to make different choices if we want different results.

# FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS 2001

Please print or type your name, mailing address, agency name, and position below :

LAST NAME — FIRST NAME — MIDDLE NAME:
COOK, MARTHA JEAN

MAILING ADDRESS:
P.O. BOX 1827

TAMPA, FL 33601-1827 HILLSBOROUGH
CITY : ZIP : COUNTY :

JUDICIAL, THIRTEENTH JUDICIAL CIRCUIT
NAME OF AGENCY :

CIRCUIT COURT JUDGE
NAME OF OFFICE OR POSITION HELD OR SOUGHT :

CHECK IF THIS IS A FILING BY A CANDIDATE ☒

FOR OFFICE USE ONLY:

ID Code

ID No.

Conf. Code

P. Req. Code

## PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2001, or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of DECEMBER 31, 20 01 was $ # 151, 487.00 .

## PART B -- ASSETS

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $ 72,500

**ASSETS INDIVIDUALLY VALUED AT OVER $1,000:**

| DESCRIPTION OF ASSET | VALUE OF ASSET |
|---|---|
| 190 SHARES AOL-TIME WARNER, INC. COMMON STOCK | 6,099 |
| 373 SHARES DUPONT COMMON STOCK | 15,856 |
| HOME - 3404 SHADOWOOD DR., VALRICO, FL 33594 | 190,000 |
| MARTHA J. COOK, P.A. | 30,199 |
| MONEY MARKET ACCT. BANK OF TAMPA TAMPA, FL 33601 | 7,600 |

FILED
02 MAY 14 AM 8:
SECRETARY OF STATE

## PART C -- LIABILITIES

**LIABILITIES IN EXCESS OF $1,000:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| BANK OF AMERICA P.O. BOX 9000 GETZVILLE, NY 14068 | 135,700 |
| FIRST UNION P.O. BOX 563966, CHARLOTTE, NC 28256 | 15,000 |
| USAA 9800 FREDERICKSBURG RD. SAN ANTONIO, TX 78288 | 20,067 |
| BANK OF TAMPA PO BOX ONE, TAMPA, FL 33601 | 13,653 |

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| | |
| | |
| | |

EXHIBIT 9


(Continued on reverse side)

## PART D – INCOME

You may *EITHER* (1) file a complete copy of your 2001 federal income tax return, including all attachments, *OR* (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000, including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my 2001 federal income tax return. [If you check this box and attach a copy of your 2001 tax return, you need not complete the remainder of Part D.]

**PRIMARY SOURCES OF INCOME:**

| NAME OF SOURCE OF INCOME EXCEEDING $1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|---|---|---|
| MARTHA J. COOK, P.A. | 100 N. TAMPA ST. #2100 | 52,824 |
| | TAMPA, FL 33602 | |
| | | |
| | | |
| | | |

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person--see instructions]:

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

## PART E -- INTERESTS IN SPECIFIED BUSINESSES

| | BUSINESS ENTITY # 1 | BUSINESS ENTITY # 2 | BUSINESS ENTITY # 3 |
|---|---|---|---|
| NAME OF BUSINESS ENTITY | MARTHA J. COOK PA. | COMMUNITY BK. | |
| ADDRESS OF BUSINESS ENTITY | 100 N. TAMPA #2100 TAMPA, FL | 6000 SR 70E BRADENTON, FL | |
| PRINCIPAL BUSINESS ACTIVITY | ARBITRATION/MEDIATION | COMMERCIAL BK. | |
| POSITION HELD WITH ENTITY | President | REGISTERED AGENT | |
| I OWN MORE THAN A 5% INTEREST IN THE BUSINESS | YES | YES | |
| NATURE OF MY OWNERSHIP INTEREST | 100% SHAREHOLDER | BENEFICIAL | |

**IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE** ☐

# OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

Martha J. Cook

**SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE**

Shena M. Violette
MY COMMISSION # CC769073 EXPIRES
August 20, 2002
BONDED THRU TROY FAIN INSURANCE, INC.

**STATE OF FLORIDA**
**COUNTY OF** Hillsborough

Sworn to (or affirmed) and subscribed before me this 13th day of May, 20 02 by Martha J. Cook.

Shena M. Violette
(Signature of Notary Public--State of Florida)

Shena M. Violette
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X *OR* Produced Identification ________

Type of Identification Produced ________

**FILING INSTRUCTIONS for when and where to file this form are located at the top of page 3.**
**INSTRUCTIONS on who must file this form and how to fill it out begin on page 3.**
**OTHER FORMS you may need to file are described on page 6.**

**STATE OF FLORIDA**
**DEPARTMENT OF BANKING AND FINANCE**
**AND**
**OFFICE OF THE ATTORNEY GENERAL**

**IN RE:**
**ACE CASH EXPRESS, INC. d/b/a**
**ACE AMERICA'S CASH EXPRESS,** **DBF CASE NO.: 9177-F-9/02**

______________________________/

**SETTLEMENT AGREEMENT**

The Florida Department of Banking and Finance, Division of Securities and Finance ("DBF"), the Office of the Attorney General ("Attorney General") and ACE Cash Express, Inc. d/b/a ACE America's Cash Express ("Respondent" or "ACE") agree as follows:

1. **JURISDICTION**. DBF is charged with the administration of Chapter 516, 560, and 687, Florida Statutes, and the Attorney General is charged with the administration of Chapters 501, 559, 687, 895, and 896, Florida Statutes. This agreement applies to Florida transactions only.

2. **BACKGROUND**.

**Attorney General**

a. The Attorney General moved to intervene as plaintiff in two civil cases that were pending against ACE, contending that ACE had violated Chapters 501, 516, 559, 560, 687, 895, and 896, Florida Statutes, in connection with deferred deposit check cashing services provided by ACE in Florida prior to April 2000. Those cases are: *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown*



EXHIBIT
10

*entities and individuals, Consolidated Case No. 99 09730*, in the Circuit Court for the Thirteenth Judicial District of Florida (the "**Clement**" case); and *Betts v. Ace Cash Express*, 927 So.2d 294 (Fla. 5th DCA 2002), (the "**Betts**" case). DBF was not a named party in either case.

b. ACE and the other defendants disagreed with the claims made by the Plaintiffs and the Attorney General in each of those cases.

c. The Attorney General's motion to intervene in the Betts case was denied.

d. In the Clement case, the individual Plaintiffs' claims were dismissed with prejudice, leaving the Attorney General as the sole Plaintiff. The Attorney General's RICO claims were dismissed with prejudice and are subject of a pending appeal before the Second District Court of Appeal of Florida styled *State of Florida, Office of the Attorney General v. Zilliox*, Case No. 2002-2340 (consolidated with Case No. 2002-3113). All of the claims asserted by the Attorney General in the Clement case are to be settled pursuant to this Agreement, with the Attorney General voluntarily dismissing their claims.

e. ACE and the individual defendants have denied and continue to deny that they engaged in any wrongdoing, and this Agreement shall not constitute any admission of any wrongdoing or liability on the part of ACE or any of the individual defendants.

f. The Attorney General and ACE wish to avoid the time and expense involved in further litigation.

**Department of Banking and Finance**

g. Goleta National Bank, a national bank located in Goleta, California ("Goleta"), has offered loans to residents of Florida since April 2000. ACE has provided agency services to Goleta related to those loans in Florida. On October 25 and 28, 2002, ACE and Goleta entered into separate consent orders with the Office of the Comptroller of the Currency of the United States ("OCC"), pursuant to which Goleta agreed, among other things, to generally cease the origination, renewal and rollover of its loans in Florida and ACE agreed, among other things, to generally cease providing services to Goleta related to the origination, renewal and rollover of such Goleta loans, both by no later than December 31, 2002. Goleta, ACE and the OCC agreed that the loans provided by Goleta and serviced by ACE were made pursuant to 12 U.S.C. §85 and that the interest rate charged by Goleta was permissible under the laws of the United States for national banks located in the State of California. DBF was not a party to the agreement between Goleta, ACE, and the OCC.

h. ACE also offers a bill paying service through which it offers to accept or receive voluntary utility payments from its Florida customers and, for a fee, electronically transmit the payment to the utility. The DBF has informed ACE that to offer this service, ACE should be licensed as a Funds Transmitter under Part II, Chapter 560, Florida Statutes. ACE disagrees with the position taken by the DBF, but, to avoid the expense and uncertainty of litigation, ACE agreed to file, and has pending with DBF, an application to act as a Funds Transmitter

under Part II, Chapter 560, Florida Statutes. The DBF will issue that license, as well as the license authorizing ACE to act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes, on or before the effective date of this Agreement. Ace agrees that future transactions involving the transmission of funds will be governed by the provisions of Part II, Chapter 560, Florida Statutes, and ACE will comply with those provisions in all future transactions.

i. ACE is licensed with DBF as a Check Casher under Part III, Chapter 560, Florida Statutes.

**Purpose and Intent**

j. The parties wish to resolve and to release any claims that were asserted, or could have been asserted, or could be asserted, because of or arising from the investigation, litigation, or regulatory review conducted by the DBF or the Attorney General.

k. The DBF agrees that ACE has fully cooperated with it in this matter.

l. It is the intent of the parties that this agreement be implemented promptly, and without injury or inconvenience to ACE customers.

m. It is the intent of the parties that DBF issue or renew any authorization or license necessary for ACE to continue to offer services in Florida, including deferred presentment transactions, check cashing, bill paying, debit card transactions, money orders, wire transfers and other products that are authorized under Florida law.

n. It is the intent of the parties that this agreement be implemented without causing competitive disadvantage to ACE.

3. **CONSIDERATION.** ACE, the DBF, and the Attorney General agree as follows:

a. ACE will cease providing agent services to Goleta in connection with the origination, renewal, or rollover of any Goleta loans in the State of Florida by December 31, 2002. ACE may, however, continue to provide services to Goleta related to the servicing and collection of Goleta loans originated, renewed, or rolled over in the State of Florida before January 1, 2003, subject to paragraph 3(g) below.

b. ACE has applied for, and DBF agrees to issue upon the issuance of the final order contemplated by this agreement, a license with an effective date of December 30, 2002, authorizing ACE to act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes. ACE agrees not to enter into any deferred presentment transactions in Florida unless such deferred presentment transactions are completed in accordance with Part IV, Chapter 560, Florida Statutes. DBF agrees that ACE may act as a Deferred Presentment Provider under Part IV, Chapter 560, Florida Statutes, and as a Funds Transmitter under Part II, Chapter 560, Florida Statutes, between December 30, 2002 and the issuance of the final order, provided that all such funds transmission and deferred presentment transactions engaged in during this time period are otherwise completed in accordance with Part II, Chapter 560, Florida Statutes, and Part IV, Chapter 560, Florida Statutes. DBF agrees that this is consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895 and 896, Florida Statutes, or an Rules related to those statutes.

c. ACE represents and warrants that it has obtained the consent of Goleta so that no Goleta loans entered into before the effective date of this Agreement will be extended (except for the customers' five-day extension options that are part of the terms of outstanding loans) or converted, without full payment by the Goleta loan customers, to any other type of transaction. Where applicable, ACE agrees that it will not offer deferred presentment services to a Goleta loan customer unless that customer's Goleta loan is repaid or cancelled in accordance with paragraph 3(g)-below. DBF agrees that the continued services provided under the Goleta loan program authorized by this subparagraph and by paragraph 3(a) above are consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895 and 896, Florida Statutes, or any Rules related to those statutes.

d. DBF agrees to issue to ACE licenses pursuant to Part II, Chapter 560, Florida Statutes, and Part IV, Chapter 560, Florida Statutes, with an effective date of December 30, 2002 upon the issuance of the final order contemplated in this Agreement. ACE and the DBF agree that, until the issuance of the final order contemplated in this agreement, ACE will continue to offer its bill paying service in order to avoid injury to those customers who rely on that service. DBF and the Attorney General agree that continuing to offer that service is consistent with the public interest and will not constitute a violation of this Agreement or any applicable law, including but not limited to, Chapters 501, 516, 559, 560, 687, 895, and 896, Florida Statutes, or any Rules related to those statutes.

e. DBF acknowledges that no additional information is needed from ACE for it to issue the licenses contemplated by this Agreement.

f. ACE agrees to pay a total of $500,000 in settlement and for issuance by DBF of authorizations, licenses, or other approvals necessary for ACE to continue in business in Florida, and for the releases in paragraphs 7 and 8 below. Of the $500,000 total settlement, ACE has agreed to pay $250,000 to the DBF Regulatory Trust Fund in full satisfaction of all attorney's fees, costs, and other expenses incurred by the DBF in connection with this matter and, ACE has agreed to deliver to the Attorney General, a contribution of $250,000 to the Florida State University College of Law in full satisfaction of all attorney's fees, costs and other expenses incurred by the Attorney General in connection with this matter. These amounts will be paid by check, and will be delivered to the DBF or the Attorney General upon entry of the Final Order as provided for herein.

g. ACE represents and warrants that it has obtained the consent of Goleta so that loans that are delinquent as of October 1, 2002, and remain unpaid as of the effective date of this agreement, from customers who engaged in Goleta loan transactions commenced or originated before October 1, 2002 in Florida (collectively, the "Goleta Loan Customers") need not be repaid, and the debt owed to Goleta from Goleta Loan Customers will be cancelled.

h. If Goleta, either directly or through ACE, its agent, has notified a credit-reporting agency of a Goleta Loan Customer's delinquent debt to Goleta, then ACE represents and warrants that it has obtained the consent of Goleta for ACE to notify the credit agency that the delinquent amount has been cancelled.

i. In addition to the amount specified in paragraph 3(f) above, ACE will pay up to $15,000 for an independent audit of the loan cancellations provided in paragraph 3(g) above, the credit reporting notifications provided in paragraph 3 (h) above, and verification of compliance with the transition from the Goleta loan product to the state licensed product contemplated in paragraph 3(b) and 3(c) above. DBF will select the independent auditor, after consultation with ACE. The independent auditor selected will be required to report to the DBF within 90 days of the selection.

j. The entry of a Final Order by DBF in the form of the Attachment to this agreement.

k. Within 10 days after the entry of the final order contemplated herein, the Attorney General will dismiss with prejudice its lawsuit, *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown entities and individuals, Consolidated Case No. 99 09730*, in the Circuit Court for the Thirteenth Judicial District of Florida, as to all defendants.

l. Within 10 days after the entry of the final order contemplated in 3(j) above, the Attorney General will dismiss with prejudice its appeal of any orders in the Clement case litigation, including *State of Florida, Office of the Attorney General v. Zilliox*, Case No. 2002-2240 and *State of Florida, Office of the Attorney General v. Alternative Financial, Inc.*, Case No. 2002-3113.

4. **CONSENT**. Without admitting or denying any wrongdoing, Respondent consents to the issuance by the DBF of a Final Order, in substantially the form of the attached Final Order, which incorporates the terms of this Agreement.

5. **FINAL ORDER**. The Final Order incorporating this Agreement is issued pursuant to Subsection 120.57(4), Florida Statutes, and upon its issuance shall be a final administrative order.

6. **WAIVERS**. Respondent knowingly and voluntarily waives:

a. its right to an administrative hearing provided for by Chapter 120, Florida Statutes, to contest the specific agreements included in this Agreement;

b. any requirement that the Final Order incorporating this Agreement contain separately stated Findings of Fact and Conclusions of Law or Notice of Rights;

c. its right to the issuance of a Recommended Order by an administrative law judge from the Division of Administrative Hearings or from the DBF;

d. any and all rights to object to or challenge in any judicial proceeding, including but not limited to, an appeal pursuant to Section 120.68, Florida Statutes, any aspect, provision or requirement concerning the content, issuance, procedure or timeliness of the Final Order incorporating this Agreement; and

e. any causes of action in law or in equity, which Respondent may have arising out of the specific matters addressed in this agreement. DBF for itself and the DBF Released Parties, accepts this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist, and DBF, for itself and the DBF Released Parties, expressly denies that any such right or cause of action does in fact exist.

7. **ATTORNEY GENERAL RELEASE.** The Attorney General, for himself and his predecessors, successors and assigns, hereby waives, releases and forever discharges ACE, its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns, and Goleta, and its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns (collectively, the "ACE Released Parties"), from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, fees, penalties, damages, judgments, liabilities and obligations, both contingent and fixed, known and unknown, foreseen and unforeseen, anticipated and unanticipated, expected and unexpected, related to or arising out of Goleta's or ACE's operations in Florida prior to the effective date of this agreement. This release includes, but is not limited to, any claims related to any loans made, renewed, or rolled over by Goleta in Florida and any services provided by ACE or its franchisees related thereto, any claims related to any violation of Chapters 501, 516, 559, 560,687, 772, 895 and 896, *Florida Statutes*, any claims related to check cashing services provided prior to the effective date of Part IV, Chapter 560, *Florida Statutes*, and any claims related to any licensing requirements for the services provided by ACE to its customers in Florida prior to the effective date of this agreement. Without limiting the generality of the foregoing, this release also includes all claims asserted or that could have been or could be asserted against the parties named as defendants or that could have been named as defendants in *Eugene R. Clement and Neil Gillespie and State of Florida, Office of the Attorney General, Department of Legal Affairs vs. ACE Cash Express, Inc., Alternative Financial, Inc., JS of the Treasure Coast, Inc., Raymond C. Hemmig, Donald H. Neustadt, Kay D. Zilliox, Ronald J. Schmitt, and unknown entities and individuals, Consolidated Case No. 99 09730*. ACE, for itself

and on behalf of the ACE Released Parties, accepts this release and waiver by the Attorney General without in any way acknowledging or admitting that any such cause of action does or may exist, and ACE, for itself and on behalf of the ACE Released Parties, expressly denies that any such right or cause of action does in fact exist. Respondent hereby waives, releases and forever discharges the Attorney General and his respective employees, agents, and representatives (collectively, the "Attorney General Released Parties") from any causes of action in law or in equity, which Respondent may have arising out of the specific matters addressed in this agreement. The Attorney General, for themselves and the Attorney General Released Parties, accept this release and waiver by Respondent without in any way acknowledging or admitting that any such cause of action does or may exist, the Attorney General, for himself and the Attorney General Released Parties, expressly deny that any such right or cause of action does in fact exist.

8. **DEPARTMENT OF BANKING AND FINANCE RELEASE**. The DBF, for itself and its predecessors, successors and assigns, hereby waives, releases and forever discharges ACE and its predecessors, successors, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns, and Goleta, and its predecessors, successors, affiliates, subsidiaries and parent corporations, shareholders, directors, officers, attorneys, employees, agents, franchisees and assigns (collectively, the "ACE Released Parties"), from any and all claims, demands, causes of action, suits, debts, dues, duties, sums of money, accounts, fees, penalties, damages, judgments, liabilities and obligations, both contingent and fixed, known and unknown, foreseen and unforeseen, anticipated and unanticipated, expected and unexpected, related to or arising out of the conduct of ACE and/or Goleta in connection with the offering of deferred presentment

services or loans in Florida, where such conduct occurred prior to the effective date of this Agreement.. This release includes, but is not limited to, any claims related to any loans made, renewed, or rolled over by Goleta in Florida and any services provided by ACE or its franchisees related thereto, any claims related to any violation of Chapters 501, 516, 559, 560,687, 772, 895 and 896, *Florida Statutes*, any claims related to check cashing services provided prior to the effective date of Part IV, Chapter 560, *Florida Statutes*, and any claims related to any licensing requirements for the services provided by ACE to its customers in Florida prior to the effective date of this Agreement. ACE, for itself and on behalf of the ACE Released Parties, accept this release and waiver by the Attorney General and the DBF without in any way acknowledging or admitting that any such cause of action does or may exist, and ACE, for itself and on behalf of the ACE Released Parties, expressly denies that any such right or cause of action does in fact exist.

9. **EXCLUSION**. This release does not include any claims under Chapter 560, Florida Statutes, against franchisees of ACE related to deferred presentment transactions engaged in after the effective date of Part IV, Chapter 560, Florida Statutes, unless such transactions were under the Goleta loan program.

10. **ATTORNEYS' FEES**. Each party to this Agreement shall be solely responsible for its separate costs and attorneys' fees incurred in the prosecution, defense or negotiation in this matter up to entry of the Final Order incorporating this Agreement and the dismissals by the Attorney General provided for in 3 (k) and 3 (l) above.

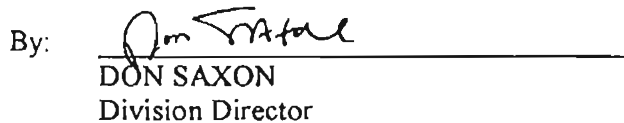
11. **EFFECTIVE DATE**. The effective date of this agreement is December 30, 2002.

12. **FAILURE TO COMPLY**. Nothing in this Agreement limits Respondent's right to contest any finding or determination made by DBF or the Attorney General concerning

Respondent's alleged failure to comply with any of the terms and provisions of this Agreement or of the Final Order incorporating this Agreement.

**WHEREFORE**, in consideration of the foregoing, DBF, the Attorney General, and ACE execute this Agreement on the dates indicated below.

**DEPARTMENT OF BANKING AND FINANCE**

By:  Date: 12/30/02

DON SAXON
Division Director

**OFFICE OF THE ATTORNEY GENERAL**

By: Date: 12/30/02

RICHARD DORAN, Attorney General

**ACE CASH EXPRESS, INC., d/b/a**
**ACE AMERICA'S CASH EXPRESS**

By: ______________________ Date: ______________

ERIC C. NORRINGTON
Vice President

STATE OF FLORIDA
COUNTY OF __________

**BEFORE ME**, the undersigned authority, personally appeared ____________________, as ______________________ of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS, who is personally known to me or who has produced ___________________________ as identification, and who, after being duly sworn, states that he has read and understands the contents of this Agreement and voluntarily executed the same on behalf of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS.

Respondent's alleged failure to comply with any of the terms and provisions of this Agreement or of the Final Order incorporating this Agreement.

**WHEREFORE,** in consideration of the foregoing, DBF, the Attorney General, and ACE execute this Agreement on the dates indicated below.

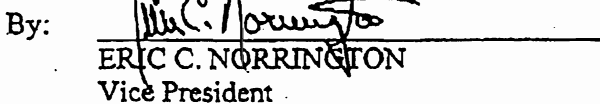
**DEPARTMENT OF BANKING AND FINANCE**

By: ______________________________ Date: ____________________
DON SAXON
Division Director

**OFFICE OF THE ATTORNEY GENERAL**

By: ______________________________ Date: 12/30/02
RICHARD DORAN, Attorney General

**ACE CASH EXPRESS, INC., d/b/a**
**ACE AMERICA'S CASH EXPRESS'**



By: ______________________________ Date: 12/30/02
ERIC C. NORRINGTON
Vice President

STATE OF FLORIDA
COUNTY OF _________

**BEFORE ME**, the undersigned authority, personally appeared ____________________, as ____________________ of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS, who is personally known to me or who has produced ________________________ as identification, and who, after being duly sworn, states that he has read and understands the contents of this Agreement and voluntarily executed the same on behalf of ACE CASH EXPRESS, INC., d/b/a ACE AMERICA'S CASH EXPRESS.

**SWORN AND SUBSCRIBED** before me this _____ day of _______, 2002.

NOTARY PUBLIC
State of Florida
Print Name:
My Commission No.:
My Commission Expires:
(SEAL)

**ACE Cash Express, Inc.**
*1231 Greenway Drive #600*
*Irving, Texas 75038*
*(972) 550-5000*

| INVOICE NUMBER | INVOICE DATE | COMMENT | GROSS | DEDUCTION | AMOUNT PAID |
|---|---|---|---|---|---|
| 12/23/02 | 12/23/02 | Settlement | 250,000.00 | | 250,000.00 |

**PAYMENT ADVICE**

WELLS FARGO BANK

**ACE Cash Express, Inc.**
*1231 Greenway Drive #600*
*Irving, Texas 75038*
*(972) 550-5000*

CHECK NUMBER 005132

| DATE | AMOUNT |
|---|---|
| 12/19/02 | $*************250,000.00 |

PAY Two Hundred Fifty Thousand 00/100 dollars*****************************************************************************************

TO THE ORDER OF
Flordia State University College of Law
425 West Jefferson Street
Tallahassee, FL 32306

*Two Signatures Required Over $5,000.00*

MP

MP

VOID AFTER 120 DAYS

⑈005132⑈ ⑆113017870⑆4759 630098⑈

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
GENERAL CIVIL DIVISION

NEIL J. GILLESPIE,

Plaintiff, CASE NO.: 05-CA-7205

vs.

BARKER, RODEMS & COOK, P.A., a Florida corporation; WILLIAM J. COOK, DIVISION: G

Defendants.
_______________________________/

RECEIVED
NOV 1 0 2010
CLERK OF CIRCUIT COURT
HILLSBOROUGH COUNTY, FL

**PLAINTIFF'S 4TH MOTION TO DISQUALIFY JUDGE MARTHA J. COOK**

1. Plaintiff pro se Gillespie moves to disqualify Circuit Court Judge Martha J. Cook as trial judge in this action pursuant to chapter 38 Florida Statutes, Rule 2.330, Florida Rules of Judicial Administration, and the Code of Judicial Conduct.

2. This motion is timely and made within ten days of the date Gillespie discovered the grounds for disqualification pursuant to Rule 2.330(e), Fla.R.Jud.Admin.

Disclosure under Rule 2.330(c)(4), Fla.R.Jud.Admin

3. Pursuant to Rule 2.330(c)(4), a motion to disqualify shall include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions. This information is attached. (Exhibit 1)

Disqualification Mandated by Code of Judicial Conduct, Canon 3E(1)

4. Canon 3E(1) provides that a judge has an affirmative duty to enter an order of disqualification in any proceeding "in which the judge's impartiality might reasonably be questioned." The object of this provision of the Code is to ensure the right to fair trials

EXHIBIT
11

and hearings, and to promote confidence in a fair and independent judiciary by avoiding even the appearance of partiality.

## Introduction

5. On Monday November 1, 2010 Gillespie attempted to close his checking account at the Community Bank of Manatee in Tampa and learned his account had been flagged. William H. Sedgeman, Jr. Chairman & CEO of the bank was present and removed the hold so the account could be closed. Mr. Sedgeman is the husband of Judge Cook. Since the bank apparently had Gillespie under special surveillance he investigated further. On November 4, 2010 the Division of Elections provided Gillespie Judge Cook's Form 6 public disclosure of financial interests for the year 2007 that showed the Judge owned a beneficial interest in Community Bank of Manatee, information the Judge failed to disclose September 28, 2010 when Gillespie moved to disqualify based on a financial relationship with her husband. On November 5, 2010 Gillespie obtained a copy of the bank's Consent Order with the FDIC and OFR. The bank lost millions of dollars and almost failed in 2009. On Monday November 8, 2010 the Florida Commission on Ethics provided Gillespie Judge Cook's Form 6 for the years 2008 and 2009. Since 2007 Judge Cook's net worth has declined by almost half and she is essentially insolvent. In addition the bank has not fully complied with the Consent Order. The bank also sold a majority interest to a foreign entity. All this and more shows Judge Cook must be disqualified for bias and conflict under Canon 3E(1) which provides that a judge has an affirmative duty to enter an order of disqualification in any proceeding "in which the judge's impartiality might reasonably be questioned." Finally, the events described in this motion call into question Judge Cook's fitness to serve as a judge in the State of Florida.

6. The forgoing information in paragraph 5 shows the following facts sufficient to produce a reasonable fear that Gillespie cannot obtain a fair trial or hearing before Judge Cook because the Judge's impartiality might reasonably be questioned:

a. Gillespie was under special surveillance by Judge Cook's bank and husband.

b. Judge Cook failed to disclose a conflict with Gillespie September 28, 2010.

c. Judge Cook's personal and business financial affairs violate the Code of Judicial Conduct for the State of Florida.

d. Judge Cook has a conflict of interest presiding over matters involving financial institutions and related transactions.

Gillespie's Financial Relationship With Community Bank of Manatee

7. Gillespie banked at the Tampa branch of Community Bank of Manatee located in his old neighborhood. Stephanie Zambrana at the Tampa branch referred Gillespie to the bank's mortgage specialist Christine Palese since Gillespie's family home is facing foreclosure on a reverse mortgage due to the death of his mother last year.

8. Gillespie called Ms. Palese August 20, 2010 but did not qualify for a conventional mortgage. Ms. Palese advised Gillespie about his current situation and they decided his best bet was to enforce the terms of the current reverse mortgage. Ms. Palese also said Gillespie could make a complaint against the bank involved to the Office of the Comptroller of the Currency (OCC). US Senator Bill Nelson previously contacted the OCC on his behalf and Gillespie's discussed the response of the OCC with Ms. Palese.

9. August 23, 2010 Gillespie wrote Ms. Palese and thanked her for speaking with him and provided copies of the reverse mortgage documents. Gillespie asked Ms. Palese if he should appeal to the OCC or make an online complaint.

10. August 31, 2010 Gillespie called Ms. Palese to discuss his letter of August 23rd but she was busy and he unilaterally made an appeal to the OCC.

11. Gillespie had a financial relationship with Community Bank of Manatee and it owed him a fiduciary duty.

Gillespie Under Special Surveillance by Judge Cook's Bank and Husband

12. On Monday November 1, 2010 Gillespie attempted to close his checking account at the Tampa branch of Community Bank of Manatee and learned his account was flagged. Other than his initial $50 cash deposit to open the checking account there were no other transactions on the account.

13. Bank teller Jennifer informed Gillespie that when she accessed his account on the bank's computer she was puzzled by a note on the account to contact Maria Luna at the bank's headquarters in Lakewood Ranch, Florida. Jennifer telephoned Ms. Luna but was unable to reach her. Meanwhile Gillespie was unable to close his account. Jennifer then left the teller window to speak with William H. Sedgeman, Jr. Chairman & CEO of the bank. Mr. Sedgeman personally authorized Jennifer to close Gillespie's account.

14. After obtaining special authorization to access Gillespie's account Jennifer completed a "closing account worksheet" that Gillespie signed. Jennifer then provided Gillespie the $50 closing balance in cash. Gillespie thanked Jennifer and left the bank.

15. The next day Gillespie telephoned Ms. Luna to learn why his account was flagged. He spoke with Mary Beth who said Ms. Luna was unavailable. Mary Beth was also puzzled by the note on the account to contact Maria Luna. Mary Beth told Gillespie she "doesn't see what would have triggered that" and would have Ms. Luna call him.

16. Ms. Luna telephoned Gillespie at 3.05 PM November 2, 2010. Ms. Luna said Gillespie's account had a "new account banner" that required a "manager" be contacted prior to closing to check for any "customer service" issues. This explanation conflicted with the statements of both Jennifer and Mary Beth who did not mention a new account banner but a note on the account to contact Maria Luna personally, not a "manager". When pressed on this point Ms. Luna became defensive and said the Tampa branch did not have a manager. Several days later Gillespie learned that Laura Schaefer manages both the Tampa and Riverview office and is the branch contact for consumer issues. Gillespie concluded Ms. Luna was not truthful as to the reason his account was flagged.

17. November 6, 2010 Gillespie consulted an independent banker who reviewed the forgoing and opined that the teller could not complete a transaction on Gillespie's account because it was flagged. The note on Gillespie's account instructed the teller to call Maria Luna before doing something on the account. There was a hold on Gillespie's account, his account was frozen, and the account needed an override for access.

18. Gillespie believes Judge Cook alerted her husband William H. Sedgeman, Jr. Chairman & CEO of the bank about Gillespie's account which resulted in the forgoing. Gillespie believes Judge Cook became aware of Gillespie's financial relationship with her husband during a hearing September 28, 2010 before Judge Cook for Final Summary Judgment when Gillespie made a speaking motion to disqualify Judge Cook. Page 4 of the transcript of the hearing September 28, 2010 shows this exchange:

```
1 MR. GILLESPIE: I move to disqualify you
2 on the basis that I have a financial
3 relationship with your husband.
```

4 THE COURT: All right. Your motion to

5 disqualify me on that basis is denied.

Judge Cook made no inquiry into the nature of the financial relationship between Gillespie and her husband before denying his spoken motion to disqualify.

Judge Cook's Relationship With Community Bank of Manatee

19. William H. Sedgeman, Jr. is the Chairman & CEO of Community Bank of Manatee. Mr. Sedgeman is the husband of Judge Martha J. Cook.

20. In Florida the relationship to a party or attorney is computed by using the common law rule rather than the civil law rule. In computing affinity husband and wife are considered as one person and the relatives of one spouse by consanguinity are related to the other by affinity in the same degree. State v. Wall, 41 Fla. 463.

21. On November 4, 2010 the Division of Elections provided Gillespie Judge Cook's Form 6 public disclosure of financial interests for the year 2007 (Exhibit 2) that showed the Judge owned a beneficial interest in Community Bank of Manatee, information the Judge failed to disclose September 28, 2010 when Gillespie moved to disqualify based on a financial relationship with her husband. A judge has a duty to disclose information that the litigants or their counsel might consider pertinent to the issue of disqualification. A judge's obligation to disclose relevant information is broader than the duty to disqualify. Stevens v. Americana Healthcare Corp. of Naples, 919 So.2d 713, Fla. App. 2 Dist., 2006. Recusal is appropriate where one of the parties or their counsel had dealings with a relative of the court. McQueen v. Roye, 785 So.2d 512, Fla. App. 3 Dist., 2000.

22. On Monday November 8, 2010 the Florida Commission on Ethics provided Gillespie Judge Cook's Form 6 for the year 2001 that shows Judge Cook served as a

registered agent for Community Bank of Manatee and she owned more than a 5% beneficial interest in the bank. (Exhibit 3).

23. On Monday November 8, 2010 the Florida Commission on Ethics provided Gillespie Judge Cook's Form 6 for the years 2008 and 2009. (Exhibits 4, 5). Since 2007 Judge Cook's net worth has declined by almost half and she is now likely insolvent.

Judge Martha J. Cook's Insolvency

24. Insolvency. The condition of a person or business that is insolvent; inability or lack of means to pay debts. Such a relative condition of a person's or entity's assets and liabilities that the former, if made immediately available, would not be sufficient to discharge the latter. Financial condition such that businesses' or person's debts are greater than the aggregate of such debtor's property at fair valuation. American Nat. Bank & Trust Co. of Chicago, Ill. v. Bone. C.A.Mo., 333 F.2d 984, 987. (Black's Law Dictionary, Sixth Edition)

25. A spreadsheet prepared by Gillespie using information from Judge Cook's Form 6 for the years 2007-2009 shows her reported net worth declined from $181,588 in 2007 to $94,987 in 2009. (Exhibit 6). This is a decline of $86,601 or 47.69%.

26. A closer look at Judge Cook's self-valuation of her two largest assets casts doubt on the accuracy of amounts reported. Judge Cook reported the value of her home in 2009 at $300,000. In 2001 she reported the value of the same home at $190,000. Given the sharp decline in Florida real estate, the $300,000 value appears inflated. A comparable sale near Judge Cook's home sold February 2010 for $270,000. From that amount brokerage ($16,200 @ 6%) and other sale costs must be deducted.

Judge Cook's next largest asset is household goods and personal effects for which she listed at an aggregate value of $75,000. Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1.000. This category includes any of the following if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing other household item; and vehicles for personal use. In 2001 Judge Cook reported the aggregate value of household goods and personal effects at $72,500. For the years 2007-2009 she reported the aggregate value of household goods and personal effects at $75,000 each year with no change. Judge Cook did not separately list any vehicles for personal use so it is assumed her personal vehicle is included in the aggregate value of household goods and personal effects. Personal vehicles are a depreciating assets but Judge Cook's reported amount does not reflect any depreciation. This is evidence of possible wrongdoing but not conclusive proof that Judge Cook misrepresented the value of her assets to avoid showing insolvency.

Community Bank of Manatee Under Consent Order

27. The Federal Deposit Insurance Corporation (FDIC) reported that Community Bank of Manatee lost $9.3 million dollars in 2009. This was reported in the press, by John Hielscher, Senior Reporter for the Herald-Tribune and others, and by the FDIC in a "call report". The bank lost another $1.4 million in 2010 as reported by John Hielscher May 4, 2010 in a story "Millions More Lost By Bank".

28. The bank was on the verge of collapse in 2009. When a bank fails it is known in the industry as "Friday Night Lights Out". After 6 p.m. on Fridays is when officials from the FDIC accompanied by other federal or state regulators walk into an ailing bank and

pull the plug. When this happens the bank's shareholders are wiped out and management is immediately terminated and escorted off the premises. The FDIC then conducts an audit of the failed bank and makes arrangement for an orderly transfer of accounts, often to healthy bank that assumes the failed bank's assets and obligations.

29. Community Bank of Manatee narrowly escaped collapse when a foreign investor agreed to save the bank. Marcelo Faria de Lima, a citizen of Brazil, formed CBM Florida Holdings with Trevor Burgess of Artesia Capital Management USA to invest $11.5 million for a controlling interest in Community Bank of Manatee. Mr. Lima is Chairman the bank's holding company, CBM Florida Holding Company. Mr. Lima is an international investor with interests in companies located in the United States, Brazil, Mexico, Turkey, Denmark and Russia employing over 6,000 people with sales over $1 billion. Mr. Lima has served as a director of Community Bank of Manatee since the change of control transaction was completed on December 3, 2009.

30. On November 25, 2009 Community Bank of Manatee signed a consent order with the FDIC and the Florida Office of Financial Regulation (OFR) agreeing to boost capital and improve banking practices. The Consent Order, FDIC-09-569b and OFR 0692-FI-10/09 is attached as Exhibit 7. The Consent Order was executed by the bank's board of directors who consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to weaknesses in the bank's capital adequacy, asset quality, management effectiveness, earnings, liquidity and sensitivity to market risk.

31. The FDIC and OFR Ordered, among other things, in 2(a) Management, that

(a) Within 60 days from the effective date of this ORDER, the Bank shall

have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

(i) a chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices;

As of today, almost a year after the FDIC and OFR Ordered the bank to “have and retain qualified management” William H. Sedgeman, Jr. is still the bank’s CEO, even though he was at the wheel and drove the bank into the ditch, lost $9.3 million in 2009, and $1.4 million in 2010. In addition, Gillespie observed Mr. Sedgeman November 1, 2010 while closing his account at the Tampa branch. Mr. Sedgeman, purportedly 70 years-old, appears older, frail, and shuffles about, and probably is not competent to run a bank.

Judge Cook A Current Or Former Institution-Related Party

32. The provisions of the Consent Order shall not bar, estop, or otherwise prevent the FDIC, the OFR or any other federal or state agency or department from taking any other action against the Bank or any of the Bank’s current or former institution-affiliated parties, as such term is defined in 12 U.S.C. §1813(u) and Section 655.005(1)(i), Florida Statutes. (page 21, ¶2) Upon information and belief, Judge Cook is a current or former institution-affiliated party.

33. The bank announced it made a $105,000 profit in the quarter ended September

30, 2010. In June it announced a $489,000 profit for the quarter ended June 30, 2010. But figures provided by the Investigative Reporting Workshop of the American University School of Communication (Exhibit 8) for the period June 30, 2009 to June 30, 2010 show a decline or worsening of the following key indictors:

Assets fell by $3,669,000

Deposits fell by $12,218,000

Loans fell by $9,072,000

Other real estate owned increased by $8,911,000

Total troubled assets increased by $10,014,000

The loan loss provision dropped from $6.9 million to $899,000

Attorney Matt Weidner Predicts Collapse of Florida Real Estate Market

34. The bank's future is tied to an improving economy, which in Florida depends on a recovery in the real estate market. St. Petersburg foreclosure attorney Matthew Weidner predicts a collapse of the market. His arguments on YouTube sound plausible. http://www.youtube.com/watch?v=dB7ghUzp4As.

Bauer Rates Community Bank of Manatee at Two Stars - Problematic

35. Florida banking consultant Ken Thomas now estimates 30 Florida banks will go down in 2010, up from his prediction of 20 at the start of the year, reported by John Hielscher, Senior Reporter for the Herald-Tribune, Monday September 20, 2010 in "Are we at the end of local bank failures?" (Exhibit 9)

> "Problem banks are all over Florida, although a few regions like yours with many new banks have a disproportionate amount," Thomas said. "Florida is for sure the leader in bank failures this year, but I did not anticipate that literally 10 percent of

our banking industry would disappear this year, but we are on the way to that happening," he said. So far, 23 Florida banks have failed this year, nine more than in all of 2009 and nearly 20 percent of the U.S. total. Some 286 banks and thrifts were in business at the start of 2010. Horizon Bank of Bradenton was the latest failure, on Sept. 10. It became the fourth Manatee County bank to fall during the recession.... Locally, Bauer rated Community Bank of Manatee, Englewood Bank and Sabal Palm Bank at two stars, or problematic.

The nation's 7,830 banks earned a combined $21.6 billion in the second quarter, up from a year-ago loss of $4.4 billion and the best profit in nearly three years. Florida banks, however, lost $263 million in the recent quarter, a tad higher than the $257 million loss last year. The FDIC's confidential list of problem U.S. institutions is up to 829, a 17-year high. "Every third bank in Florida is a problem bank, which means there is a big pipeline of potential failures," Thomas said. "Not all problem banks, however, will fail, and many will be recapitalized by investors or others, and some of the troubled banks may be merged into other banks."...Thomas still expects 200 U.S. banks will fall in 2010, and "well over" 100 will go down in 2011. "It took many years to get into this mess, and it will take many years to get out of it," he said.

Judge Cook's Financial Affairs Compromised Her Judicial Independence

36. Judge Cook's poor state of financial affairs suggests why Court Counsel David A. Rowland has been so active in Gillespie's lawsuit since the case was reassigned to Judge Cook May 24, 2010 after Judge Barton was disqualified when it was learned that opposing counsel paid thousands of dollars to the Judge's wife's business.

37. On July 9, 2010 Mr. Rowland seized control of Gillespie's ADA accommodation request from Gonzalo B. Casares, the Court's ADA Coordinator, and issued his own letter denying the request. Likewise there is evidence that Mr. Rowland is controlling Judge Cook in this case from behind the scene.

38. On July 22, 2010 at 12:24 PM Gillespie spoke by phone with Mr. Rowland about his letter of July 9, 2010 denying Gillespie's ADA request. Gillespie and Mr. Rowland discussed the notice of claim made under section 768.28(6)(a) Florida Statutes. They also discussed Mr. Rodems' representation of his firm and Gillespie's emergency motion to disqualify Rodems pending before Judge Cook. Mr. Rowland expresses surprise when Gillespie informed him that the motion, filed July 9th, was still pending. Later that day Judge Cook denied the motion without a hearing. Judge Cook's Order was filed with the Clerk July 22, 2010 at 3.17 PM according to the Clerk's time stamp on the Order.

39. Gillespie believes the timing of events is not circumstantial, and that following the aforementioned phone call Mr. Rowland instructed Judge Cook to deny Gillespie's emergency motion to disqualify Rodems pending before her. The Order itself is unlawful, *see* Affidavit of Neil J. Gillespie, October 28, 2010, *Judge Martha J. Cook falsified an official court record, and unlawfully denied Gillespie due process on the disqualification of Ryan Christopher Rodems as counsel*, filed November 1, 2010.

40. As Court Counsel Mr. Rowland was preemptively defending the Thirteenth Judicial Circuit against Gillespie's lawsuit formally announced July 12, 2010 in the notice of claim made under section 768.28(6)(a) Florida Statutes, but first raised in Gillespie's letter to Rowland of January 4, 2010 requesting information about section 768.28(6)(a) Florida Statutes. (Exhibit 10).

Judge Cook's Financial Affairs And The Code of Judicial Conduct - Canons 2, 3, 5 and 6

41. The Florida Code of Judicial Conduct Canon 6 states "Fiscal Matters of a Judge Shall be Conducted in a Manner That Does Not Give the Appearance of Influence or Impropriety; a Judge Shall Regularly File Public Reports as Required by Article II, Section 8, of the Constitution of Florida, and Shall Publicly Report Gifts; Additional Financial Information Shall be Filed With the Judicial Qualifications Commission to Ensure Full Financial Disclosure" Section D requires disclosure of a judge's income, debts, investments or other assets to the extent provided in Canon 6 and in Sections 3E and 3F or as otherwise required by law. Commentary, Canon 6D, Section 3E requires a judge to disqualify himself or herself in any proceeding in which the judge has an economic interest[1]. Section 5D requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial[2] performance of judicial duties; Section 6B requires a judge to report all compensation the judge received for activities outside judicial office. A judge has the rights of any other citizen, including the right to privacy of the judge's financial affairs, except to the extent that limitations established by law are required to safeguard the proper performance of the judge's duties.

42. Judge Cook has an "economic interest" in Community Bank of Manatee shown on disclosure documents filed with The Florida Commission on Ethics. Judge Cook formerly served as registered agent for the bank. Judge Cook is married to William H. Sedgeman, Jr. the bank's Chairman & CEO. In Florida the relationship to a party or attorney is computed by using the common law rule rather than the civil law rule. In

---

[1] "Economic interest" denotes ownership of a more than de minimis legal or equitable interest, or a relationship as officer, director, advisor, or other active participant in the affairs of a party.

computing affinity husband and wife are considered as one person and the relatives of one spouse by consanguinity are related to the other by affinity in the same degree. State v. Wall, 41 Fla. 463. Judge Cook's insolvency is likely related to recapitalization efforts with the bank, which lost $9.3 million in 2009 and $1.4 million in 2010. The bank almost failed in 2009 which, had that occurred, would have wiped out the investors. The bank is currently under a Consent Order by the FDIC and OFR. One of the conditions of the Order is retaining qualified management, including a CEO. That condition remains unfilled as long as the current CEO Mr. Sedgeman remains at the helm long past his time. Judge Cook is a current or former institution-affiliated party as defined in 12 U.S.C. §1813(u) and Section 655.005(1)(i), Florida Statutes. A reasonable person would conclude that Judge Cook is up to her neck in the interest and survival of Community Bank of Manatee which in turn is dependent on a recovery in the Florida real estate market. Judge Cook provides legal and other advice to her husband on bank matters, including the Consent Order and his resignation, if not in the boardroom, then unofficially at home. To believe otherwise strains credulity.

43. As defined by the Code of Judicial Conduct "impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge. Given Judge Cook's "economic interest" in Community Bank of Manatee, no reasonable person could believe Judge Cook is impartial in matters of banks or financial institutions, or matters involving the real estate market, such as mortgage foreclosure.

---

[2] "Impartiality" or "impartial" denotes absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintaining an open mind in considering issues that may come before the judge.

Judge Cook is biased in favor of banks and financial institutions and prejudice against parties suing banks and financial institutions. Judge Cook is also biased in matters involving the real estate market, such as mortgage foreclosure, favoring banks and financial institutions and prejudice against people in foreclosure. It is only natural for Judge Cook to be prejudiced against those in foreclosure. Had clients of Community Bank of Manatee not defaulted on their mortgages the bank would not have lost millions of dollars, risk failure, currently operate under a Consent Order, and put Judge Cook in a position of insolvency.

44. Canon 5, A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict With Judicial Duties. 5A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra-judicial activities so that they do not:

(1) cast reasonable doubt on the judge’s capacity to act impartially as a judge;

(2) undermine the judge’s independence, integrity, or impartiality;

(3) demean the judicial office;

45. Because of the foregoing Judge Cook violates Canon 5A(1), (2) and (3). Judge Cook’s extrajudicial activities with the Community Bank of Manatee (1) cast reasonable doubt on the judge’s capacity to act impartially as a judge; (2) undermine the judge’s independence, integrity, or impartiality; (3) demean the judicial office;

46. Canon 3, A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently. Given Judge Cook’s "economic interest" in Community Bank of Manatee, no reasonable person could believe Judge Cook is impartial in matters of banks or financial institutions, or matters involving the real estate market, such as mortgage foreclosure. Judge Cook is biased in favor of banks and financial institutions and prejudice against

parties suing banks and financial institutions. Judge Cook is also biased in matters involving the real estate market, such as mortgage foreclosure, favoring banks and financial institutions and prejudice against people in foreclosure. Canon 3E(1) states that a judge shall disqualify herself in any proceeding "in which the judge's impartiality might reasonably be questioned..." This includes any case in which the judge "has a personal bias or prejudice concerning a party or a party's lawyer..." Canon 3E(1)(a).

47. Canon 2 states “A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities”. A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Commentary, Canon 2A. Irresponsible or improper conduct by judges erodes public confidence in the judiciary. A judge must avoid all impropriety and appearance of impropriety. A judge must expect to be the subject of constant public scrutiny. A judge must therefore accept restrictions on the judge's conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. The test for appearance of impropriety is whether the conduct would create in reasonable minds, with knowledge of all the relevant circumstances that a reasonable inquiry would disclose, a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality, and competence is impaired. (relevant portion, underline added for emphasis). Given Judge Cook’s "economic interest" in Community Bank of Manatee, no reasonable person could believe Judge Cook is impartial in matters of banks or financial institutions, or matters involving the real estate market, such as mortgage foreclosure. Judge Cook is biased in favor of banks and financial institutions and prejudice against parties suing banks and financial institutions.

Judge Cook is also biased in matters involving the real estate market, such as mortgage foreclosure, favoring banks and financial institutions and prejudice against people in foreclosure.

48. Gillespie's lawsuit before Judge Cook is a dispute with his former lawyers over the settlement of an earlier lawsuit against Amscot Corporation for predatory lending under the guise of check cashing, a.k.a. "payday loans". It was a class action lawsuit that settled for business reasons on appeal. Amscot Corporation is a financial institution and Judge Cook is biased in favor of banks and financial institutions and prejudiced against people who sue them. In addition, Judge Cook appears to be making rulings along a theory of Economic Advantage, favoring the wealthier party instead of relying on the facts and the law. Judge Cook is also prejudiced against Gillespie because of his foreclosure status. It is only natural for Judge Cook to be prejudiced against those in foreclosure. Had clients of Community Bank of Manatee not defaulted on their mortgages the bank would not have lost millions of dollars, risk failure, currently operate under a Consent Order, and put Judge Cook in a position of insolvency.

49. A letter from Dr. Huffer shows that Gillespie has been routinely denied participatory and testimonial access to the court. (Exhibit 11). Dr. Huffer wrote:

> "As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving

his wheelchair behind. This is precedent setting in my experience. I intend to ask for DOJ guidance on this matter." (Dr. Huffer, October 28, 2010, paragraph 2)

50. Because Judge Cook is not impartial as set forth herein she must be disqualified because Gillespie fears he cannot have a fair hearing.

Judge Cook's Financial Affairs And The Code of Judicial Conduct - Canon 1

51. The Florida Code of Judicial Conduct Canon 1 states "A Judge Shall Uphold the Integrity and Independence of the Judiciary". An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary may be preserved ... The Commentary states deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges...judges should be independent, they must comply with the law, including the provisions of this Code. Public confidence in the impartiality of the judiciary is maintained by the adherence of each judge to this responsibility. Conversely, violation of this Code diminishes public confidence in the judiciary and thereby does injury to the system of government under law.

52. Public confidence in the impartiality of the judiciary and the courts has been injured due to the mortgage foreclosure crisis. New words such as "robo signer" and "rocket docket" and "foreclosure mills" pejoratively describe the public's lack of confidence in the impartiality of the judiciary and courts.

53. The Attorney General of Florida has active investigations into foreclosure mills for fabricating and/or presenting false and misleading documents in foreclosure cases. These documents have been presented in court before judges as actual assignments of

mortgages and have later been shown to be legally inadequate and/or insufficient. Judges have been negligent in accepting these bad document.

54. Judge Cook is operating her court against the interest of Gillespie and for the benefit of the Defendants, lawyers who made campaign contributions to Judge Cook. Final Summary Judgment was entered September 28, 2010 which ended the case. The Clerk of the Circuit Court closed the file. Judge Cook reopened the case to proceed as a kleptocracy for the purpose of assessing and collecting excessive fines and sanctions from Gillespie to give to the Defendants and incarcerating Gillespie. This is not a lawful or appropriate function of the court and is a violation of the Florida Constitution, Article 1, Section 9 Due Process, Section 11 Imprisonment for Debt, Section 17 Excessive Fines, and Section 21 Access to Courts, as well as the claims in Gillespie v. Thirteenth Judicial Circuit, Florida, et al., Case No. 5:10-cv-00503, US District Court, Middle District of Florida, Ocala Division.

55. As described in paragraphs 42 and 43, given Judge Cook's "economic interest" in Community Bank of Manatee, no reasonable person could believe Judge Cook is impartial in matters of banks or financial institutions, or matters involving the real estate market such as mortgage foreclosure. Judge Cook is biased in favor of banks and financial institutions and prejudice against parties suing banks and financial institutions. Judge Cook is also biased in matters involving the real estate market, such as mortgage foreclosure, favoring banks and financial institutions and prejudice against people in foreclosure. For this reason Judge Cook must be disqualified in these cases because a reasonable person would not believe she was impartial and therefore would fear

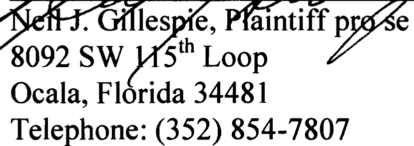
they could not have a fair hearing before Judge Cook. This calls into question Judge Cook's fitness to be a judge in the State of Florida.

Successor Judge

56. Because there is a federal lawsuit against the 13th Judicial Circuit, and not just an individual judge(s), the 13th Judicial Circuit cannot hear this case. A final judgment was rendered September 28, 2010 so this case is over and the file must be closed.

WHEREFORE, the undersigned movant certifies that the motion and the movant's statements are made in good faith.

Submitted and Sworn to November 10, 2010.

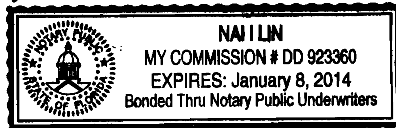


Neil J. Gillespie, Plaintiff pro se
8092 SW 115th Loop
Ocala, Florida 34481
Telephone: (352) 854-7807

STATE OF FLORIDA
COUNTY OF MARION

BEFORE ME, the undersigned authority authorized to take oaths and acknowledgments in the State of Florida, appeared NEIL J. GILLESPIE, personally known to me, or produced identification, who, after having first been duly sworn, deposes and says that the above matters contained in this Affidavit are true and correct to the best of his knowledge and belief.

WITNESS my hand and official seal this 10th day of November 2010.



Notary Public, State of Florida

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing was mailed November 10, 2010 to Ryan Christopher Rodems, Barker, Rodems & Cook, PA, 400 North Ashley Drive, Suite 2100, Tampa, Florida 33602.

Neil J. Gillespie

Disclosure under Rule 2.330(c)(4), Fla.R.Jud.Admin

Pursuant to Rule 2.330(c)(4), a motion to disqualify shall include the dates of all previously granted motions to disqualify filed under this rule in the case and the dates of the orders granting those motions. In this case two judges previously recused themselves and one judge was disqualified. Gillespie moved to disqualify Judge Cook thrice, and she denied each time.

a. Plaintiff's Motion To Disqualify Circuit Judge Martha J. Cook, filed June 14, 2010; denied by Judge Cook June 16, 2010.

b. Plaintiff's Motion To Disqualify Judge Martha J. Cook, filed July 23, 2010; denied by Judge Cook July 27, 2010.

c. Plaintiff's Emergency Motion To Disqualify Judge Martha J. Cook, filed November 1, 2010; denied by Judge Cook November 2, 2010.

Circuit Judge Richard A. Nielsen Recused

1. Plaintiff's motion to disqualify Judge Nielsen was filed November 3, 2006. Judge Nielsen denied the motion November 20, 2006 as legally insufficient because it was not filed in a timely manner. Judge Nielsen recused himself two days later sua sponte stating that it is in the best interest of all parties that this case be assigned to another division.

2. Misconduct by Defendants' counsel Ryan Christopher Rodems is responsible for the recusal of Judge Nielsen. On March 6, 2006 Mr. Rodems made a verified pleading that falsely named Judge Nielsen in an "exact quote" attributed to Plaintiff, putting the trial judge into the controversy. The Tampa Police Department recently determined that the sworn affidavit submitted by Mr. Rodems to the court about an "exact quote" attributed to Plaintiff was not right and not accurate.

3 Initially Plaintiff had a good working relationship with Judge Nielsen and his judicial assistant Myra Gomez. Plaintiff attended the first hearing telephonically September 26, 2005 and prevailed on Defendants' Motion to Dismiss and Strike. After Rodems' strategic disruptive maneuver Judge Nielsen did not manage the case lawfully, favored Defendants in rulings, and responded to Plaintiff sarcastically from the bench.

Circuit Judge Claudia Rickert Isom Recused

4. This lawsuit was reassigned to Judge Isom effective November 22, 2006. A notice on Judge Isom's official judicial web page advised that the judge had a number of relatives practicing law in the Tampa Bar area and "If you feel there might be a conflict in your case based on the above information, please raise the issue so it can be resolved prior to me presiding over any matters concerning your case". One of the relatives listed was husband Mr. A Woodson "Woody" Isom, Jr.

5. Plaintiff found a number of campaign contributions between Defendant Cook and witness Jonathan Alpert to both Judge Isom and Woody Isom. This lawsuit is about a fee dispute. The only signed fee contract is between Plaintiff and the law firm of Alpert, Barker, Rodems, Ferrentino & Cook, P.A. Plaintiff's Motion To Disclose Conflict was submitted December 15, 2006 and heard February 1, 2007. Judge Isom failed to disclose that husband Woody Isom is a former law partner of Jonathan Alpert. Mr. Rodems represented Defendants at the hearing and also failed to disclose the relationship. Plaintiff only recently learned (March 2010) of the relationship in the course of researching accusations contained an offensive letter from Rodems to the Plaintiff.

6. Subsequently Judge Isom did not manage the case lawfully and ignored her own law review on case management and discovery, Professionalism and Litigation Ethics, 28 STETSON L. REV. 323, 324 (1998). Judge Isom's law review shows how she coddles lawyers but slams ordinary people with extreme sanctions. It explains why Judge Isom favored the Defendants in rulings, and was prejudiced against the Plaintiff. A motion to disqualify Judge Isom was submitted February 13, 2007. Judge Isom denied the motion as legally insufficient but recused herself sua sponte.

Circuit Judge James M. Barton, II Disqualified

7. This case was reassigned to Judge Barton February 14, 2007. Plaintiff retained attorney Robert W. Bauer of Gainesville to represent him. Plaintiff could not find an attorney in the Tampa Bay area to litigate against Barker, Rodems & Cook, PA because of their aggressive reputation and the general professional courtesy not to sue another lawyer. Judge Barton was pleased with Mr. Bauer, and stated so on the record:

> THE COURT: It is a good thing for Mr. Gillespie that he has retained counsel. The way in which Mr. Gillespie's side has been presented today with - with a high degree of professionalism and confidence reflects the wisdom of that decision. (Transcript, hearing July 3, 2007, p. 21, line 6)

8. Nonetheless, Judge Barton made disparaging comments on the record about the Plaintiff, did not manage the case lawfully, and was prejudiced against the Plaintiff. Judge Barton provided copious hearing time to Defendants to obtain sanctions for a discovery error and a misplaced defense to a counterclaim under §57.105 Florida Statutes. The counterclaim for libel against Plaintiff was an Abuse of Process, a willful and intentional misuse of process

for the collateral purpose of making Plaintiff drop his claims against Defendants and settle this lawsuit on terms dictated by them. Defendants perverted the process of law for a purpose for which it is not by law intended. Defendants used their counterclaim as a form of extortion, as described in Plaintiff's First Amended Complaint. On September 28, 2010 Mr. Rodems filed Defendants' Notice of Voluntary Dismissal of Counterclaims.

9. Judge Barton sanctioned Plaintiff the extreme amount of $11,550 and allowed Defendants to garnish Plaintiff's bank account and client trust fund with Mr. Bauer.

10. Attorney Bauer complained about Mr. Rodems on the record: "…Mr. Rodems has, you know, decided to take a full nuclear blast approach instead of us trying to work this out in a professional manner. It is my mistake for sitting back and giving him the opportunity to take this full blast attack." (transcript, August 14, 2008, emergency hearing, the Honorable Marva Crenshaw, p. 16, line 24).

11. Mr. Bauer moved to withdrawal October 13, 2008. Judge Barton took no action and allowed the case to languish with no activity for almost one year. Judge Barton failed to fulfill his case management duties imposed by Rule 2.545, Fla.R.Jud.Admin. Plaintiff also notes that Mr. Rodems failed to take any action during that one year time period, undercutting his claim that Defendants' are prejudiced by the length of this lawsuit.

12. One year after Mr. Bauer moved to withdrawal, Judge Barton released him from the case upon Plaintiff's request October 1, 2009. Plaintiff moved to disqualify Judge Barton October 5, 2009, because he feared that he will not receive a fair trial because of specifically described prejudice or bias of the judge. Judge Barton denied Plaintiff's motion for disqualification as legally insufficient by order October 9, 2009.

13. In May 2010 Plaintiff found that the Defendants had paid thousands of dollars to Ms. Chere J. Barton, President of Regency Reporting Service, Inc. of Tampa for her services. Chere Barton is the wife of and married to Judge Barton. Plaintiff's Motion to Disqualify Judge Barton was found lawfully sufficient and Judge Barton entered an Order of disqualification May 24, 2010.

# FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS 2007

FILED

08 APR 24 PM 3:04

SECRETARY OF STATE

LAST NAME — FIRST NAME — MIDDLE NAME:
Cook - Martha - Jean

MAILING ADDRESS:
Post Office Box 1175

CITY: Brandon, Florida
ZIP: 33509
COUNTY: Hillsborough

NAME OF AGENCY:
State of Florida - Thirteenth Judicial Circuit

NAME OF OFFICE OR POSITION HELD OR SOUGHT:
Circuit Court Judge, Group 30, Thirteenth Judicial Circuit, State of Florida

CHECK IF THIS IS A FILING BY A CANDIDATE ☒

FOR OFFICE USE ONLY:

ID Code

ID No.

Conf. Code

P. Req. Code

45855

## PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2007, or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of December 31, 20 07 was $ 181,588.

## PART B -- ASSETS

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $ 75,000

**ASSETS INDIVIDUALLY VALUED AT OVER $1,000:**

| DESCRIPTION OF ASSET (specific description is required - see instructions p.4) | VALUE OF ASSET |
|---|---|
| Money Market IRA | 3,041 |
| 373 Common Shares Dupont | 16,446 |
| Home - Valrico, FL (Address confidential) | 350,000 |
| Checking Account Bank of Tampa | 8,836 |
| Community Bank of Manatee Shares (694) IRA | 9,369 |

## PART C -- LIABILITIES

**LIABILITIES IN EXCESS OF $1,000:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| Chase Home Finance, P. O. Box 24696, Columbus, OH 43224-0696 | 146,466 |
| Wachovia Bank, P. O. Box 563966, Charlotte, NC 28256-3966 | 85,230 |
| Bank of Tampa, P. O. Box 1, Tampa, FL 33601-0001 | 20,879 |
| Honda Financial, P. O. Box 1027, Alpharetta, GA 30009-1027 | 28, 529 |

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| | |
| | |
| | |



(Continued on reverse side)

EXHIBIT 2

## PART D -- INCOME

You may *EITHER* (1) file a complete copy of your 2007 federal income tax return, including all attachments, *OR* (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000, including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my 2007 federal income tax return. [If you check this box and attach a copy of your 2007 tax return, you need not complete the remainder of Part D.]

**PRIMARY SOURCES OF INCOME:**

| NAME OF SOURCE OF INCOME EXCEEDING $1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|---|---|---|
| State of Florida - W-2 (Circuit Judge's salary) | Tallahassee, Florida | 145,159 |
| | | |
| | | |
| | | |
| | | |

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person--see instructions]:

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

## PART E -- INTERESTS IN SPECIFIED BUSINESSES

| | BUSINESS ENTITY # 1 | BUSINESS ENTITY # 2 | BUSINESS ENTITY # 3 |
|---|---|---|---|
| NAME OF BUSINESS ENTITY | Community Bank of Manatee | | |
| ADDRESS OF BUSINESS ENTITY | 6000 SR 70 E., Bradenton, FL | | |
| PRINCIPAL BUSINESS ACTIVITY | Commercial Banking | | |
| POSITION HELD WITH ENTITY | None | | |
| I OWN MORE THAN A 5% INTEREST IN THE BUSINESS | Yes | | |
| NATURE OF MY OWNERSHIP INTEREST | Beneficial | | |

**IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE** ☐

## OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

*Martha J. Cook*

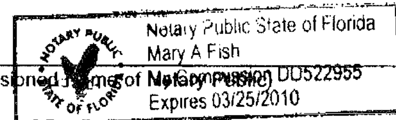
SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

STATE OF FLORIDA
COUNTY OF *Hillsborough*

Sworn to (or affirmed) and subscribed before me this *22nd* day of *April*, 20*08* by *Martha J. Cook*

*Mary A. Fish*

(Signature of Notary Public--State of Florida)




(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ OR Produced Identification ______

Type of Identification Produced ______

**FILING INSTRUCTIONS for when and where to file this form are located at the top of page 3.**
**INSTRUCTIONS on who must file this form and how to fill it out begin on page 3.**
**OTHER FORMS you may need to file are described on page 6.**

# FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS 2001

Please print or type your name, mailing address, agency name, and position below :

LAST NAME — FIRST NAME — MIDDLE NAME:
COOK, MARTHA JEAN

MAILING ADDRESS:
P.O. BOX 1827

TAMPA, FL 33601-1827 HILLSBOROUGH
CITY : ZIP : COUNTY :

JUDICIAL, THIRTEENTH JUDICIAL CIRCUIT
NAME OF AGENCY :

CIRCUIT COURT JUDGE
NAME OF OFFICE OR POSITION HELD OR SOUGHT :

**CHECK** IF THIS IS A FILING BY A CANDIDATE ☒

**FOR OFFICE USE ONLY:**

ID Code

ID No.

Conf. Code

P. Req. Code

## PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2001, or a more current date. [Note: Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3.]

My net worth as of DECEMBER 31, 20 01 was $ #151,487.00.

## PART B -- ASSETS

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects; household equipment and furnishings; clothing; other household items; and vehicles for personal use.

The aggregate value of my household goods and personal effects (described above) is $ 72,500

**ASSETS INDIVIDUALLY VALUED AT OVER $1,000:**

| DESCRIPTION OF ASSET | VALUE OF ASSET |
|---|---|
| 190 SHARES AOL-TIME WARNER, INC. COMMON STOCK | 6,099 |
| 373 SHARES DUPONT COMMON STOCK | 15,856 |
| HOME - 3404 SHADOWOOD DR, VALRICO, FL 33594 | 190,000 |
| MARTHA J. COOK, P.A. | 30,199 |
| MONEY MARKET ACCT. BANK OF TAMPA TAMPA, FL 33601 | 7,600 |

FILED 02 MAY 14 AM 10:09 SECRETARY OF STATE

## PART C -- LIABILITIES

**LIABILITIES IN EXCESS OF $1,000:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| BANK OF AMERICA P.O. BOX 9000 GETZVILLE, NY 14068 | 135,700 |
| FIRST UNION P.O. BOX 563966, CHARLOTTE, NC 28256 | 15,000 |
| USAA 9800 FREDERICKSBURG RD. SAN ANTONIO, TX 78288 | 20,067 |
| BANK OF TAMPA PO BOX ONE, TAMPA, FL 33601 | 13,653 |

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| | |
| | |
| | |

EXHIBIT 3



(Continued on reverse side)

## PART D – INCOME

You may *EITHER* (1) file a complete copy of your 2001 federal income tax return, including all attachments, *OR* (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000, including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my 2001 federal income tax return. [If you check this box and attach a copy of your 2001 tax return, you need not complete the remainder of Part D.]

**PRIMARY SOURCES OF INCOME:**

| NAME OF SOURCE OF INCOME EXCEEDING $1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|---|---|---|
| MARTHA J. COOK, P.A. | 100 N. TAMPA ST. #2100 | 52,824 |
| | TAMPA, FL 33602 | |
| | | |
| | | |
| | | |

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person--see instructions]:

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

## PART E -- INTERESTS IN SPECIFIED BUSINESSES

| | BUSINESS ENTITY # 1 | BUSINESS ENTITY # 2 | BUSINESS ENTITY # 3 |
|---|---|---|---|
| NAME OF BUSINESS ENTITY | MARTHA J. COOK PA. | COMMUNITY BK. | |
| ADDRESS OF BUSINESS ENTITY | 100 N. TAMPA #2100 TAMPA, FL | 6000 SR 70E BRADENTON, FL | |
| PRINCIPAL BUSINESS ACTIVITY | ARBITRATION/MEDIATION | COMMERCIAL BK. | |
| POSITION HELD WITH ENTITY | PRESIDENT | REGISTERED AGENT | |
| I OWN MORE THAN A 5% INTEREST IN THE BUSINESS | YES | YES | |
| NATURE OF MY OWNERSHIP INTEREST | 100% SHAREHOLDER | BENEFICIAL | |

**IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE ☐**

# OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

Shena M. Violette
MY COMMISSION # CC769073 EXPIRES
August 20, 2002
BONDED THRU TROY FAIN INSURANCE, INC.

Martha J. Cook
SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE

STATE OF FLORIDA
COUNTY OF Hillsborough

Sworn to (or affirmed) and subscribed before me this 13th day of May, 2002 by Martha J. Cook

Shena M. Violette
(Signature of Notary Public--State of Florida)

Shena M. Violette
(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known X OR Produced Identification ____________

Type of Identification Produced ____________

**FILING INSTRUCTIONS for when and where to file this form are located at the top of page 3.**
**INSTRUCTIONS on who must file this form and how to fill it out begin on page 3.**
**OTHER FORMS you may need to file are described on page 6.**

# FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTEREST 2008

Please print or type your name, mailing address, agency name, and position below :

LAST NAME — FIRST NAME — MIDDLE NAME
Cook, Martha Jean

MAILING ADDRESS
800 East. Twiggs St., Suite 511

Tampa, Florida 33602-3500

CITY ZIP COUNTY
Circuit Judge - Thirteenth Judicial Circuit

NAME OF AGENCY
Elected Constitutional Officer

NAME OF OFFICE OR POSITION HELD OR SOUGHT
Circuit Judge

PROCESSED

**CHECK** IF THIS IS A FILING BY A CANDIDATE ☐

FOR OFFICE USE ONLY:

COMMISSION ON ETHICS
DATE RECEIVED
JUN 22 2009

ID Code

ID No 69487

Conf Code

P Req Code

## PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2008, or a more current date [Note Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3 ]

My net worth as of Dec. 31, 20 08 was $ 102,402.

## PART B -- ASSETS

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000 This category includes any of the following, if not held for investment purposes jewelry, collections of stamps, guns, and numismatic items, art objects, household equipment and furnishings, clothing; other household items, and vehicles for personal use

The aggregate value of my household goods and personal effects (described above) is $ 75,000

**ASSETS INDIVIDUALLY VALUED AT OVER $1,000:**

| DESCRIPTION OF ASSET (specific description is required - see instructions p.4) | VALUE OF ASSET |
|---|---|
| Money Market Acct. | 3,005 |
| Dupont Shares (373) | 9,437 |
| Home [redacted] confidential address | 300,000 |
| Checking acct. - Bank of Tampa | 11,001 |
| Community Bank stock IRA | 3,817 |

## PART C -- LIABILITIES

**LIABILITIES IN EXCESS OF $1,000:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| Chase Home Finance PO Box 24696, Columbus, OH 43224-0696 | 135,794 |
| Wachovia Bank PO Box 563966, Charlotte, NC 28256-3966 | 123,290 |
| Bank of Tampa PO Box 1, Tampa, FL 33601-0001 | 19,350 |
| Honda Financial PO Box 1027, Alpharetta, GA 30009-1027 | 21,424 |

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| | |
| | |
| | |


(Continued on reverse side)
EXHIBIT 4

## PART D -- INCOME

You may *EITHER* (1) file a complete copy of your 2008 federal income tax return, including all attachments, *OR* (2) file a sworn statement identifying each separate source and amount of income which exceeds $1,000, including secondary sources of income, by completing the remainder of Part D, below

☐ I elect to file a copy of my 2008 federal income tax return [If you check this box and attach a copy of your 2008 tax return, you need not complete the remainder of Part D ]

**PRIMARY SOURCES OF INCOME:**

| NAME OF SOURCE OF INCOME EXCEEDING $1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|---|---|---|
| State of Florida W-2 (circuit judge's salary) | Tallahassee, FL | 144,159 |
| | | |
| | | |
| | | |
| | | |

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc , of businesses owned by reporting person--see instructions]

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

## PART E -- INTERESTS IN SPECIFIED BUSINESSES

| | BUSINESS ENTITY # 1 | BUSINESS ENTITY # 2 | BUSINESS ENTITY # 3 |
|---|---|---|---|
| NAME OF BUSINESS ENTITY | Community Bank of Manatee | | |
| ADDRESS OF BUSINESS ENTITY | 6000 SR 70 East Bradenton, FL | | |
| PRINCIPAL BUSINESS ACTIVITY | Commercial Banking | | |
| POSITION HELD WITH ENTITY | None | | |
| I OWN MORE THAN A 5% INTEREST IN THE BUSINESS | Yes | | |
| NATURE OF MY OWNERSHIP INTEREST | Beneficial | | |

**IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE** ☐

## OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete

Martha J. Cook

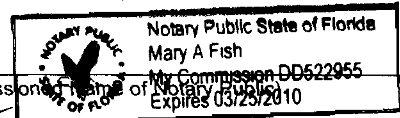
**SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE**

**STATE OF FLORIDA**
**COUNTY OF** Hillsborough

Sworn to (or affirmed) and subscribed before me this 17 day of June, 2009 by Martha J. Cook

Mary A. Fish

(Signature of Notary Public--State of Florida)




(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ *OR* Produced Identification ______

Type of Identification Produced ______

**FILING INSTRUCTIONS for when and where to file this form are located at the top of page 3.**
**INSTRUCTIONS on who must file this form and how to fill it out begin on page 3.**
**OTHER FORMS you may need to file are described on page 6.**

# FORM 6 FULL AND PUBLIC DISCLOSURE OF FINANCIAL INTERESTS 2009

COMMISSION ON ETHICS
DATE RECEIVED
JUN 29 2010

FOR OFFICE USE ONLY:

II
Hon Martha Jean Cook **CONFIDENTIAL**
Circuit Judge
Judicial Circuit (13Th)
Elected Constitutional Officer **PROCESSED**
800 E TWIGGS ST 511 EDGECOMB
TAMPA, FL 33602

ID Code

ID No. 69487

Conf. Code C

P. Req. Code *****

Cook , Martha Jean

**CHECK** IF THIS IS A FILING BY A CANDIDATE ☐

## PART A -- NET WORTH

Please enter the value of your net worth as of December 31, 2009, or a more current date. [Note Net worth is not calculated by subtracting your *reported* liabilities from your *reported* assets, so please see the instructions on page 3 ]

My net worth as of Dec. 31, 2009 was $ 94,987.

## PART B -- ASSETS

**HOUSEHOLD GOODS AND PERSONAL EFFECTS:**

Household goods and personal effects may be reported in a lump sum if their aggregate value exceeds $1,000. This category includes any of the following, if not held for investment purposes: jewelry; collections of stamps, guns, and numismatic items; art objects, household equipment and furnishings; clothing; other household items. and vehicles for personal use

The aggregate value of my household goods and personal effects (described above) is $ 75,000

**ASSETS INDIVIDUALLY VALUED AT OVER $1,000:**

| DESCRIPTION OF ASSET (specific description is required - see instructions p.4) | VALUE OF ASSET |
|---|---|
| Dupont Common stock (373 Shares) | 12,558 |
| Home - [redacted] | 300,000 |
| CHECKING ACCT - BANK OF TAMPA | 3,000 |
| | |
| | |

## PART C -- LIABILITIES

**LIABILITIES IN EXCESS OF $1,000:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| CHASE HOME FINANCE, PO BOX 24696, COLUMBUS, OH 43224 | 124,534 |
| WACHOVIA BANK, BOX 563966, CHARLOTTE, NC 28256-3966 | 123,213 |
| BANK OF TAMPA, PO BOX 1, TAMPA, FL 33601-0001 | 34,500 |
| HONDA FINANCIAL, PO BOX 1021, ALPHARETTA, GA 3009-1027 | 13,324 |

**JOINT AND SEVERAL LIABILITIES NOT REPORTED ABOVE:**

| NAME AND ADDRESS OF CREDITOR | AMOUNT OF LIABILITY |
|---|---|
| | |
| | |
| | |

EXHIBIT 5

## PART D -- INCOME

You may *EITHER* (1) file a complete copy of your 2009 federal income tax return, including all attachments, *OR* (2) file a sworn statement identifying each *separate* source and amount of income which exceeds $1,000, including secondary sources of income, by completing the remainder of Part D, below.

☐ I elect to file a copy of my 2009 federal income tax return [If you check this box and attach a copy of your 2009 tax return, you need not complete the remainder of Part D.]

**PRIMARY SOURCES OF INCOME:**

| NAME OF SOURCE OF INCOME EXCEEDING $1,000 | ADDRESS OF SOURCE OF INCOME | AMOUNT |
|---|---|---|
| STATE OF FLORIDA (Circuit Judge) | TALLAHASSEE, FL | 138,348 |
| | | |
| | | |
| | | |
| | | |

**SECONDARY SOURCES OF INCOME** [Major customers, clients, etc., of businesses owned by reporting person--see instructions]:

| NAME OF BUSINESS ENTITY | NAME OF MAJOR SOURCES OF BUSINESS' INCOME | ADDRESS OF SOURCE | PRINCIPAL BUSINESS ACTIVITY OF SOURCE |
|---|---|---|---|
| | | | |
| | | | |
| | | | |
| | | | |

## PART E -- INTERESTS IN SPECIFIED BUSINESSES

| | BUSINESS ENTITY # 1 | BUSINESS ENTITY # 2 | BUSINESS ENTITY # 3 |
|---|---|---|---|
| NAME OF BUSINESS ENTITY | Community Bank of Manatee | | |
| ADDRESS OF BUSINESS ENTITY | 6000 SR 70 East Bradenton, FL 34203 | | |
| PRINCIPAL BUSINESS ACTIVITY | Commercial Banking | | |
| POSITION HELD WITH ENTITY | None | | |
| I OWN MORE THAN A 5% INTEREST IN THE BUSINESS | No | | |
| NATURE OF MY OWNERSHIP INTEREST | Beneficial | | |

**IF ANY OF PARTS A THROUGH E ARE CONTINUED ON A SEPARATE SHEET, PLEASE CHECK HERE** ☐

## OATH

I, the person whose name appears at the beginning of this form, do depose on oath or affirmation and say that the information disclosed on this form and any attachments hereto is true, accurate, and complete.

Martha J. Cook

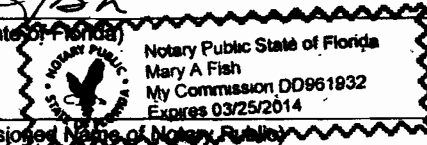
**SIGNATURE OF REPORTING OFFICIAL OR CANDIDATE**

STATE OF FLORIDA
COUNTY OF Hillsborough

Sworn to (or affirmed) and subscribed before me this 28 day of June, 20 10 by Martha J. Cook.

Mary A. Fish

(Signature of Notary Public--State of Florida)




(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known ✓ *OR* Produced Identification ______

Type of Identification Produced ______

**FILING INSTRUCTIONS for when and where to file this form are located at the top of page 3.**
**INSTRUCTIONS on who must file this form and how to fill it out begin on page 3.**
**OTHER FORMS you may need to file are described on page 6.**

Judge Martha J. Cook

Financial information obtained from Judge Cook's Form 6, Full and Public Disclosure of Financial Interests

| 2009 | 2008 | 2007 | |
|---|---|---|---|
| $ 94,987.00 | $ 102,402.00 | $ 181,588.00 | Self-Reported Net Worth, December 31 |
| | | | Assets |
| $75,000 | $75,000 | $75,000 | Household goods and personal effects |
| $ - | $ 3,005.00 | $ 3,041.00 | Money Market IRA |
| $ 12,558.00 | $ 9,437.00 | $ 16,446.00 | 373 Common Shares Dupont |
| $ 300,000.00 | $ 300,000.00 | $ 350,000.00 | Home (Address confidential) |
| $ 3,000.00 | $ 11,001.00 | $ 8,836.00 | Checking Account Bank of Tampa |
| $ - | $ 3,817.00 | $ 9,369.00 | Community Bank of Manatee Shares (694) IRA |
| $390,558 | $402,260 | $462,692 | |
| | | | Liabilities |
| $ 124,534.00 | $ 135,794.00 | $ 146,466.00 | Chase Home Finance, P. O. Box 24696, Columbus. OH 43224-0696 |
| $ 123,213.00 | $ 123,290.00 | $ 85,230.00 | Wachovia Bank, P. O. Box 563966, Char1otte, NC 28256-3966 |
| $ 34,500.00 | $ 19,350.00 | $ 20,879.00 | Bank of Tampa, P. O. Box 1, Tampa, FL 33601-0001 |
| $ 13,324.00 | $ 21,424.00 | $ 28,529.00 | Honda Financial, P, O. Box 1027, Alpharetta, GA 30009-1027 |
| $ 295,571.00 | $ 299,858.00 | $ 281,104.00 | |
| | | | Income |
| $ 138,348.00 | $ 144,159.00 | $ 145,159.00 | State of Florida -W-2 (circuit judge salary) |
| | | | Part E - Interest in Specified Business (Form 6) |
| yes | yes | yes | Community Bank of Manatee, Lakewood Ranch, Florida |
| no | yes | yes | ownes more than 5% interest in the business |
| yes | yes | yes | ownes a benfical interest |

EXHIBIT 6

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C.

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
TALLAHASSEE, FLORIDA

| | | |
|---|---|---|
| In the Matter of | ) | |
| COMMUNITY BANK OF MANATEE<br>LAKEWOOD RANCH, FLORIDA | ) | CONSENT ORDER |
| | ) | FDIC-09-569b<br>OFR 0692-FI-10/09 |
| (INSURED STATE NONMEMBER BANK | ) | |

The Federal Deposit Insurance Corporation ("FDIC") is the appropriate Federal banking agency for COMMUNITY BANK OF MANATEE, LAKEWOOD RANCH, FLORIDA ("Bank"), under 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors ("Board"), has executed a "STIPULATION TO THE ISSUANCE OF A CONSENT ORDER ("STIPULATION"), dated November 25, 2009 that is accepted by the FDIC and the Florida Office of Financial Regulation ("OFR"). With the STIPULATION, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation relating to weaknesses in the Bank's capital adequacy, asset quality, management effectiveness, earnings, liquidity and sensitivity to market risk, to the issuance of this Consent Order ("ORDER") by the FDIC and the OFR.

EXHIBIT 7

Having determined that the requirements for issuance of an order under 12 U.S.C. § 1818(b) and Chapter 120 and Section 655.033, Florida Statutes, have been satisfied, the FDIC and the OFR hereby order that:

## 1. BOARD OF DIRECTORS

(a) Beginning on the effective date of this ORDER, the Board of Directors ("Board") shall increase its participation in the affairs of the Bank, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. The Board shall prepare in advance and follow a detailed written agenda for each meeting, including consideration of the actions of any committees. Nothing in this paragraph shall preclude the Board from considering matters other than those contained in the agenda. This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; new, overdue, renewal, charged-off, and recovered loans; investment activity; operating policies; and individual committee actions. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

(b) Within 30 days from the effective date of this ORDER, the Board shall establish a Board committee ("Directors' Committee"), consisting of at least four members, to oversee the Bank's compliance with the ORDER. Three members of the Directors' Committee shall not be officers of the Bank. The Directors' Committee shall receive from Bank management monthly reports detailing the

Bank's actions with respect to compliance with the ORDER. The Directors' Committee shall present a report detailing the Bank's adherence to the ORDER to the Board at each regularly scheduled Board meeting. Such report shall be recorded in the appropriate minutes of the Board's meeting and shall be retained in the Bank's records. Establishment of this committee does not in any way diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

**2. MANAGEMENT**

(a) Within 60 days from the effective date of this ORDER, the Bank shall have and retain qualified management with the qualifications and experience commensurate with assigned duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board to implement the provisions of this ORDER. At a minimum, management shall include the following:

(i) a chief executive officer with proven ability in managing a bank of comparable size and in effectively implementing lending, investment and operating policies in accordance with sound banking practices;

(ii) a senior lending officer with a significant amount of appropriate lending, collection, and loan supervision experience, and experience in upgrading a low quality loan portfolio;

(iii) a chief operating officer with a significant amount of appropriate experience in managing the operations of a bank of similar size and complexity in accordance with sound banking practices; and

(iv) a chief credit officer with significant experience to independently analyze loans and advise the Board regarding credit quality and compliance with proper underwriting standards and processes.

(b) The qualifications of management shall be assessed on its ability to:

(i) comply with the requirements of this ORDER;

(ii) operate the Bank in a safe and sound manner;

(iii) comply with applicable laws and regulations; and

(iv) restore all aspects of the Bank to a safe and sound condition, including, but not limited to, asset quality, capital adequacy, earnings, management effectiveness, risk management, liquidity and sensitivity to market risk.

(c) During the life of this ORDER, the Bank shall notify the Regional Director of the FDIC's Atlanta Regional Office ("Regional Director") and the OFR (collectively, "Supervisory Authorities"), in writing, of the resignation or termination of any of the Bank's directors or senior executive officers within fifteen (15) days of any such resignation or termination. The Bank shall also provide notification to the Supervisory Authorities prior to the addition of any individual to the Bank's Board or employment of any individual as a senior executive officer as that term is defined in Part 303 of the FDIC Rules and Regulations, 12 C.F.R. § 303.101, or executive officer as that term is defined and applied in Section 655.005(1)(f), Florida Statutes, and Rule 69U-100.03852, Florida Administrative Code. The notification to the Supervisory Authorities shall comply with the requirements set forth in 12 C.F.R. Part 303, Subpart F, and

Rule 69U-100.03852, Florida Administrative Code. The notification should include a description of the background and experience of the individual or individuals to be added or employed and must be received at least 60 days before such addition or employment is intended to become effective. If the Regional Director or OFR issues a notice of disapproval pursuant to section 32 of the Federal Deposit Insurance Act, 12 U.S.C. § 1831i, or Section 655.0385(2) or (3), Florida Statutes, with respect to any proposed individual, then such individual may not be added or employed by the Bank.

(d) Within 60 days from the effective date of this ORDER, the Bank shall develop and approve a written analysis and assessment of the Bank's management and staffing needs ("Management Plan") for the purpose of providing qualified management for the Bank. The Management Plan shall include, at a minimum:

(i) identification of both the type and number of officer positions needed to properly manage and supervise the affairs of the Bank;

(ii) identification and establishment of such Bank committees as are needed to provide guidance and oversight to active management;

(iii) annual written evaluations of all Bank officers and, in particular, the chief executive officer, senior lending officer, and the chief operating officer to determine whether these individuals possess the ability, experience and other qualifications required to perform present and anticipated duties, including, but not limited to, adherence to the Bank's established policies and practices, and restoration and maintenance of the Bank in a safe and sound condition;

(iv) a plan to recruit and hire any additional or replacement personnel with the requisite ability, experience and other qualifications to fill those officer positions consistent with the needs identified in the Management Plan; and

(v) an organizational chart.

(e) The Management Plan and its implementation shall be satisfactory to the Supervisory Authorities. Within 60 days of the date of this ORDER, the Bank shall submit the proposed Management Plan to the Supervisory Authorities for review and comment. Within 10 days of receipt of comments from the Supervisory Authorities, the Bank shall incorporate those comments, if any, and shall approve and adopt the Management Plan as revised.

**3. CAPITAL**

(a) Within 60 days from the effective date of this ORDER, the Bank shall have Tier 1 Capital in such amount as to equal or exceed seven percent (7%) of the Bank's total assets and Total Risk-Based Capital in such an amount as to equal or exceed twelve percent (12%) of the Bank's total risk-weighted assets. Thereafter, during the life of this Order, the Bank shall maintain Tier 1 Capital and Total Risk-Based Capital ratios equal to or exceeding seven percent (7%) and twelve percent (12%), respectively, as those capital ratios are described in the FDIC Statement of Policy on Risk-Based Capital and contained in Appendix A to Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325, Appendix A.

(b) The level of Tier 1 Capital to be maintained during the life of this ORDER pursuant to this paragraph shall be in addition to a fully funded allowance for loan

and lease losses ("ALLL"), the adequacy of which shall be satisfactory to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

(c) Any increase in Tier 1 Capital necessary to meet the requirements of this paragraph may be accomplished by the following:

(i) sale of common stock; or

(ii) sale of noncumulative perpetual preferred stock; or

(iii) direct contribution of cash by the Board, shareholders, and/or parent holding company; or

(iv) any other means acceptable to the Supervisory Authorities; or

(v) any combination of the above means.

Any increase in Tier 1 Capital necessary to meet the requirements of this paragraph may not be accomplished through a deduction from the Bank's ALLL.

(d) If all or part of any increase in Tier 1 Capital required by this paragraph is accomplished by the sale of new securities, the Board shall forthwith take all necessary steps to adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank's existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with the Federal

securities laws. Prior to the implementation of the plan and, in any event, not less than fifteen (15) days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted for review to the FDIC, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429 and to the Office of Financial Regulation, 200 East Gaines Street, Tallahassee, Florida 32399-0371. Any changes requested to be made in the plan or materials by the FDIC or the OFR shall be made prior to their dissemination. If the increase in Tier 1 Capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and convertibility factor, shall be presented to the Supervisory Authorities for prior approval.

(e) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities, a written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within ten (10) days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(f) For the purposes of this ORDER, "Tier 1 Capital," "Total Risk-Based Capital," "total assets," and "total risk-weighted assets" shall have the meanings

ascribed to them in Part 325 of the FDIC Rules and Regulations, 12 C.F.R. Part 325.

**4. CHARGE-OFF**

(a) Within 30 days from the effective date of this ORDER, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "Loss" in the FDIC Report of Examination dated June 16, 2009 (the "ROE") that have not been previously collected or charged-off. Elimination of any of these assets through proceeds of other loans made by the Bank is not considered collection for purposes of this paragraph.

(b) Additionally, while this ORDER remains in effect, the Bank shall, within 30 days from the receipt of any official Report of Examination of the Bank from the FDIC or the OFR, eliminate from its books, by collection, charge-off, or other proper entries, the remaining balance of any asset classified "Loss" unless otherwise approved in writing by the Supervisory Authorities.

**5. REDUCTION OF ADVERSELY CLASSIFIED ASSETS**

(a) Within 90 days from the effective date of this ORDER, the Bank shall formulate and submit to the Supervisory Authorities, for review and comment, a written plan to reduce the Bank's risk position in each asset or relationship which is in excess of $1,000,000 and which is classified "Substandard" in the ROE. For purposes of this provision, "reduce" means to collect, charge off, or improve the quality of an asset so as to warrant its removal from adverse classification by the Supervisory Authorities. In developing the plan mandated by this paragraph, the Bank shall, at a minimum, and with respect to each adversely classified loan or

lease, review, analyze and document the financial position of the borrower, including source of repayment, repayment ability, and alternative repayment sources, as well as the value of and accessibility of any pledged or assigned collateral, and any possible actions to improve the Bank's collateral position. Within 10 days from the receipt of any comment from the Supervisory Authorities, and after due consideration of any recommended changes, the Bank shall approve the plan, which approval shall be recorded in the minutes of a Board meeting. Thereafter, the Bank shall implement and follow this plan. The plan shall be monitored and progress reports thereon shall be submitted to the Supervisory Authorities at 90 day intervals concurrent with the other reporting requirements set forth in this ORDER.

(b) The plan mandated by this paragraph shall include, but not be limited to, the following:

(i) the dollar levels to which risk in each classified asset will be reduced;

(ii) a description of the risk reduction methodology to be followed;

(iii) provisions for the submission of monthly written progress reports to the Board;

(iv) provisions mandating board review of said progress reports; and

(v) provisions for the mandated review to be recorded by notation in the minutes of the Board meetings.

(c) The written plan mandated by this paragraph shall further require a reduction in the aggregate balance of assets classified "Substandard" in the ROE

in accordance with the following schedule. For purposes of this paragraph, "number of days" means number of days from the effective date of this ORDER. The reduction schedule is:

(i) within 90 days, the aggregate balance of assets classified "Substandard" shall not exceed one hundred sixty percent (160%) of the sum of Tier 1 Capital and ALLL;

(ii) within 180 days, the aggregate balance of assets classified "Substandard" shall not exceed one hundred twenty-five percent (125%) of the sum of Tier 1 Capital and ALLL;

(iii) within 360 days, the aggregate balance of assets classified "Substandard" shall not exceed one hundred percent (100%) of the sum of Tier 1 Capital and ALLL;

(iv) within 540 days, the aggregate balance of assets classified "Substandard" shall not exceed seventy-five percent (75%) of the sum of Tier 1 Capital and ALLL; and

(v) within 720 days, the aggregate balance of assets classified "Substandard" shall not exceed fifty percent (50%) of the sum of Tier 1 Capital and ALLL

(d) The requirements of this paragraph are not to be construed as standards for future operations of the Bank. Following compliance with the above reduction schedule, the Bank shall continue to reduce the total volume of adversely classified assets.

## 6. ADDITIONAL CREDIT TO ADVERSELY CLASSIFIED BORROWERS

(a) As of the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" or “Doubtful” and is uncollected. The requirements of this paragraph shall not prohibit the Bank from renewing (after collection in cash of interest due from the borrower) any credit already extended to any borrower.

(b) Additionally, as of the effective date of this ORDER, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been classified, in whole or part, "Substandard" or “Special Mention” and is uncollected.

(c) Paragraph (b) of this paragraph shall not apply if the Bank’s failure to extend further credit to a particular borrower would be detrimental to the best interests of the Bank. Prior to the extending of any additional credit pursuant to this paragraph, either in the form of a renewal, extension, or further advance of funds, such additional credit shall be approved by a majority of the Board or a designated committee thereof, who shall certify in writing as follows:

(i) why the failure of the Bank to extend such credit would be detrimental to the best interests of the Bank;

(ii) that the Bank’s position would be improved thereby; and

(iii) how the Bank’s position would be improved.

The signed certification shall be made a part of the minutes of the Board or its designated committee and a copy of the signed certification shall be retained in the borrower's credit file.

**7. WRITTEN STRATEGIC/BUSINESS PLAN**

(a) Within 90 days from the effective date of this ORDER, the Bank shall prepare and submit to the Supervisory Authorities for review and comment a written business/strategic plan covering the overall operation of the Bank. At a minimum the plan shall establish objectives for the Bank's earnings performance, growth, balance sheet mix, liability structure, capital adequacy, and reduction of nonperforming and underperforming assets, together with strategies for achieving those objectives. The plan shall also identify capital, funding, managerial and other resources needed to accomplish its objectives. Such plan shall specifically provide for the following:

(i) goals for the composition of the loan portfolio by loan type including strategies to diversify the type and improve the quality of loans held;

(ii) goals for the composition of the deposit base including strategies to reduce reliance on volatile and costly deposits; and

(iii) plans for effective risk management and collection practices.

(b) Within 10 days from the receipt of any comments from the Supervisory Authorities, and after due consideration of any recommended changes, the Board shall approve the business/strategic plan, which approval shall be recorded in the minutes of the appropriate Board meeting.

**8. INTERNAL LOAN REVIEW**

Within 90 days from the effective date of this ORDER, the Bank shall adopt an effective internal loan review and grading system to provide for the periodic review of the Bank's loan portfolio in order to identify and categorize the Bank's loans, and other extensions of credit which are carried on the Bank's books as loans, on the basis of credit quality. Such system and its implementation shall be satisfactory to the Supervisory Authorities as determined at their initial review and at subsequent examinations and/or visitations.

**9. LENDING AND COLLECTION POLICIES**

Within 90 days from the effective date of this ORDER, the Bank shall revise, adopt and implement its written lending and collection policy to provide effective guidance and control over the Bank's lending function. That implementation shall include the resolution of those exceptions, problems and deficiencies described in the ROE, including those described on pages 11-13 thereof. In addition, the Bank shall obtain adequate and current documentation for all loans in the Bank's loan portfolio. Such policy and its implementation shall be in a form and manner acceptable to the Supervisory Authorities.

**10. CONCENTRATIONS OF CREDIT**

Within 45 days from the effective date of this ORDER, the Bank shall perform a risk segmentation analysis with respect to the Concentrations of Credit listed on page 37 of the ROE. Concentrations should be identified by product type, geographic distribution, underlying collateral or other asset groups, which are considered economically related and in the aggregate represent a large portion of the Bank’s Tier 1 Capital. A copy of this analysis shall be provided to the Supervisory Authorities and the Board shall develop a

plan to reduce any segment of the portfolio which the Supervisory Authorities deem to be an undue concentration of credit in relation to the Bank's Tier 1 Capital. The plan and its implementation shall be in a form and manner acceptable to the Supervisory Authorities.

**11. ALLOWANCE FOR LOAN AND LEASE LOSSES**

Within 30 days from the effective date of this ORDER, the Board shall review the adequacy of the ALLL and, within 90 days from the effective date of this ORDER, the Board shall establish a comprehensive policy for determining the adequacy of the ALLL. For the purpose of this determination, the adequacy of the ALLL shall be determined after the charge-off of all loans or other items classified "Loss." The policy shall provide for a review of the ALLL at least once each calendar quarter. Said review shall be completed in time to properly report the ALLL in the quarterly Reports of Condition and Income. The review shall focus on the results of the Bank's internal loan review, loan and lease loss experience, trends of delinquent and non-accrual loans, an estimate of potential loss exposure on significant credits, concentrations of credit, and present and prospective economic conditions. A deficiency in the ALLL shall be remedied in the calendar quarter it is discovered, prior to submitting the Reports of Condition and Income, by a charge to current operating earnings. The minutes of the Board meeting at which such review is undertaken shall indicate the results of the review. The Bank's policy for determining the adequacy of the ALLL and its implementation shall be satisfactory to the Supervisory Authorities.

**12. BUDGET**

(a) Within 60 days from the effective date of this ORDER, the Bank shall formulate and fully implement a written plan and a comprehensive budget for all

categories of income and expense for the calendar year ending December 31, 2010. The plan and budget required by this paragraph shall include formal goals and strategies, consistent with sound banking practices and taking into account the Bank's other written policies, to improve the Bank's net interest margin, increase interest income, reduce discretionary expenses, and improve and sustain earnings of the Bank. The plan shall include a description of the operating assumptions that form the basis for, and adequately support, major projected income and expense components. Thereafter, the Bank shall formulate such a plan and budget by November 30 of each subsequent year and submit the plan and budget to the Supervisory Authorities for review and comment by December 15 of each subsequent year.

(b) The plans and budgets required by this paragraph shall be acceptable to the Supervisory Authorities.

(c) Following the end of each calendar quarter, the Board shall evaluate the Bank's actual performance in relation to the plans and budgets required by this paragraph and shall record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting at which such evaluation is undertaken.

## 13. LIQUIDITY CONTINGENCY PLAN

(a) Within 90 days from the effective date of this Order, the Bank shall revise its Liquidity Contingency Plan to ensure the Bank has sufficient access to alternative funding sources. The Liquidity Contingency Plan should include

actions management will employ to improve liquidity levels and should address the items described on pages 13 and 14 of the ROE.

(b) The plan shall incorporate the guidance contained in Financial Bank Letter (FIL) 84-2008, dated August 26, 2008, entitled *Liquidity Risk Management*.

(c) A copy of the plan shall be submitted to the Supervisory Authorities upon its completion for review and comment. Within 10 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. Thereafter, the Bank shall implement and follow the plan, and implementation shall be in a form and manner acceptable to the Supervisory Authorities as determined at subsequent examinations and/or visitations.

**14. INTEREST RATE RISK MANAGEMENT**

Within 90 days from the effective date of this ORDER, the Bank shall develop and implement a written policy for managing interest rate risk in a manner that is appropriate to the size of the Bank and the complexity of its assets. The policy shall comply with the Joint Agency Policy Statement on Interest Rate Risk, 61 Fed. Reg. 33169 (June 26, 1996), shall be consistent with the comments and recommendations detailed in the ROE, and shall include, at a minimum, the means by which the interest rate risk position will be monitored, the establishment of risk parameters, and provision for periodic reporting to management and the Board regarding interest rate risk with adequate information provided to assess the level of risk. Such policy and its implementation shall be satisfactory to the Supervisory Authorities.

## 15. POLICY FOR INTERNAL ROUTINE AND CONTROL

Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a policy for the operation of the Bank in such a manner as to provide adequate internal routine and controls within the Bank consistent with safe and sound banking practices. Such policy and its implementation shall, at a minimum, eliminate and/or correct all internal routine and control deficiencies as more fully set forth on pages 14 and 15 of the ROE and shall be satisfactory to the Supervisory Authorities.

## 16. AUDITS

Within 90 days from the effective date of this ORDER, the Bank shall adopt and implement a comprehensive written audit program which shall be satisfactory to the Supervisory Authorities. A copy of the audit program shall be submitted to the Supervisory Authorities upon its completion for review and comment. Within 10 days from the receipt of any comments from the Supervisory Authorities, the Bank shall incorporate those recommended changes. The Bank shall thereafter implement and enforce an effective system of internal and external audits. The internal auditor shall make written monthly reports of audit findings directly to the Board. The minutes of the meetings of the Board shall reflect consideration of these reports and describe any action taken as a result thereof.

## 17. VIOLATIONS OF LAW, REGULATION AND POLICY

Within 30 days from the effective date of this ORDER, the Bank shall eliminate and/or correct all violations of law and regulation, and all contraventions of statements of policy, which are more fully set out on pages 16-19 of the ROE. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws, regulations, and applicable statements of policy.

**18. CALL REPORTS**

Within 30 days after eliminating from its books any asset in compliance with the "Charge-Off" paragraph of this ORDER and establishing an adequate ALLL in compliance with the Allowance For Loan and Lease Losses paragraph of this ORDER, the Bank shall file with the FDIC amended Reports of Condition and Income which shall accurately reflect the financial condition of the Bank as of June 30, 2009. Thereafter, during the life of this ORDER, the Bank shall file with the FDIC Reports of Condition and Income which accurately reflect the financial condition of the Bank as of the end of the period for which the Reports are filed, including any adjustment in the Bank's books made necessary or appropriate as a consequence of any official Report of Examination of the Bank from the FDIC or the OFR during that reporting period.

**19. CASH DIVIDENDS**

The Bank shall not pay cash dividends without the prior written consent of the Supervisory Authorities.

**20. BROKERED DEPOSITS**

Throughout the effective life of this ORDER, the Bank shall not accept, renew, rollover any brokered deposit, as defined by 12 C.F.R. § 337.6(a)(2), unless it is in compliance with the requirements of 12 C.F.R. § 337.6(b), governing solicitation and acceptance of brokered deposits by insured depository institutions. In addition, the Bank shall comply with the restrictions on the effective yields on deposits as described in 12 C.F.R. § 337.6.

**21. NO MATERIAL GROWTH WITHOUT PRIOR NOTICE**

While this ORDER is in effect, the Bank must notify the Supervisory Authorities at least 60 days prior to undertaking asset growth of 10% or more per annum or initiating

material changes in asset or liability composition. In no event shall asset growth result in non-compliance with the capital maintenance provisions of this ORDER unless the Bank receives prior written approval from the Supervisory Authorities.

**22. PROGRESS REPORTS**

Within 30 days from the end of the first quarter following the effective date of this ORDER, and within 30 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Supervisory Authorities detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. Such reports shall include a copy of the Bank's Reports of Condition and Income. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Supervisory Authorities have released the Bank in writing from making further reports. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the appropriate Board meeting.

**23. DISCLOSURE**

Following the effective date of this ORDER, the Bank shall send or otherwise furnish to its shareholders a description of this ORDER in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Room F-6066, Washington, D.C. 20429 and to the Director of DFI of the OFR, 200 East Gaines Street, Tallahassee, FL 32399-0371 at least

fifteen (15) days prior to dissemination to shareholders. Any changes requested to be made by the FDIC or the OFR shall be made prior to dissemination of the description, communication, notice, or statement.

The provisions of this ORDER shall not bar, estop, or otherwise prevent the FDIC, the OFR or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties, as such term is defined in 12 U.S.C. §1813(u) and Section 655.005(1)(i), Florida Statutes.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

The provisions of this ORDER shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the Supervisory Authorities.

Issued Pursuant to Delegated Authority

Dated this 25th day of November, 2009

/s/

______________________________

Doreen R. Eberley
Acting Regional Director
Division of Supervision and Consumer Protection
Atlanta Region
Federal Deposit Insurance Corporation

The Commissioner of the Florida Office of Financial Regulation, having duly approved the foregoing ORDER, and the Bank, through its Board, having agreed that the issuance of said ORDER by the FDIC shall be binding as between the Bank and the OFR to the same degree and legal effect that such ORDER would be binding upon the Bank if the OFR had issued a separate order that included and incorporated all of the provisions of the foregoing ORDER pursuant to Chapters 120, 655, and 658, Florida Statutes, including specifically Sections 655.033 and 655.041, Florida Statutes (2009).

Dated this 25th day of November, 2009.

/s/

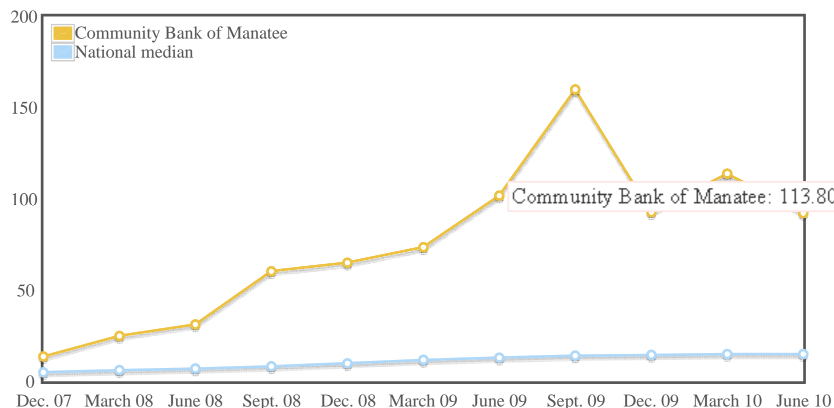
Linda B. Charity
Director
Division of Financial Institutions
Office of Financial Regulation
By Delegated Authority for the Commissioner,
Office of Financial Regulation

HOW HEALTHY IS THIS BANK?

# Community Bank of Manatee

HEADQUARTERED IN LAKEWOOD RANCH, FL

## THE TROUBLED ASSET RATIO




1. A "troubled asset ratio" compares the sum of troubled assets with the sum of Tier 1 Capital plus Loan Loss Reserves. Generally speaking, higher values in this ratio indicate that a bank is under more stress caused by loans that are not paying as scheduled. Each bank graphic is own it's own scale: use caution when comparing two banks.

2. The graphs are for comparing this bank to the national median troubled asset ratio. Because the ratio varies so widely among the 7,900 banks across the nation, the scale is not consistent from bank to bank and the graphs should not be used to compare banks to one another.

## FINANCIAL DETAILS FOR COMMUNITY BANK OF MANATEE

| Line item | June 30, 2009 | June 30, 2010 |
|---|---|---|
| Assets | $253,240,000 | $249,571,000 |
| Deposits | $217,126,000 | $204,908,000 |
| Loans | $187,176,000 | $178,104,000 |
| Loan loss provision | $6,935,000 | $899,000 |
| Profit | $-5,686,000 | $-1,725,000 |
| Capital | $10,131,000 | $22,480,000 |
| Reserves | $4,920,000 | $4,968,000 |
| Loans 90 days or more past due | $0 | $0 |
| Non-accruing loans | $12,899,000 | $14,002,000 |
| Other real estate owned | $2,430,000 | $11,341,000 |
| Capital plus reserves | $15,051,000 | $27,448,000 |
| Total troubled assets | $15,329,000 | $25,343,000 |

Note: The Federal Deposit Insurance Corp. insures deposit accounts up to $250,000. The "troubled asset ratio" is not an FDIC statistic. It is derived by adding the amounts of loans past due 90 days or more, loans in non-accrual status and other real estate owned (primarily properties obtained through foreclosure) and dividing that amount by the bank's capital and loan loss reserves. It is reported as a percentage. For example, a bank with $100,000 in "troubled assets" and $1,000,000 in capital would have a "troubled asset ratio" of 10 percent. For a fuller explanation, see our methodology.

© Copyright 2008-2010
American University School of Communication

This copy is for your personal, noncommercial use only. You can order presentation-ready copies for distribution to your colleagues, clients or customers here or use the "Reprints" tool that appears above any article. Order a reprint of this article now.

# Are we at the end of local bank failures?

*By John Hielscher*

*Published: Monday, September 20, 2010 at 1:00 a.m.*

*HERALD-TRIBUNE ARCHIVE*

Two Florida Highway Patrol Officers enter the downtown Sarasota branch of Flagship National Bank as federal regulators seized and closed the bank on Friday evening, Oct. 23, 2009.

To some in the banking industry, the end of the work week has become known as "Friday Night Lights Out."

After 6 p.m. on Fridays is when officials from the Federal Deposit Insurance Corp., accompanied by other federal or state regulators, walk into an ailing bank and pull the plug.

It has become an all-too-common event in Manatee, Sarasota and Charlotte counties, where eight community banks have failed in the past 25 months.

Thirteen community banks remain standing in the three counties, and — at this point — all appear able to survive in a still-struggling economy.

But Florida banking consultant Ken Thomas is not so sure. He now estimates 30 Florida banks will go down in 2010, up from his prediction of 20 at the start of the year.

"Problem banks are all over Florida, although a few regions like yours with many new banks have a disproportionate amount," Thomas said.

"Florida is for sure the leader in bank failures this year, but I did not anticipate that literally 10 percent of our banking industry would disappear this year, but we are on the way to that happening," he said.

So far, 23 Florida banks have failed this year, nine more than in all of 2009 and nearly 20 percent of the U.S. total. Some 286 banks and thrifts were in business at the start of 2010.

Horizon Bank of Bradenton was the latest failure, on Sept. 10. It became the fourth Manatee County bank to fall during the recession.

The region's weakest banks, according to analyst BauerFinancial Inc., are The Bank of Commerce and LandMark Bank of Florida, both based in Sarasota. Bauer gave each bank the lowest grade of zero stars in its report card based on June 30 data.

Both banks have uncomfortable levels of nonperforming assets to total assets, but neither are near the crippling levels that hastened the demise of Horizon or Peninsula Bank of Englewood, the region's other 2010 failure.

LandMark is considered undercapitalized because its total risk-based capital ratio has dipped to 7.75 percent, under the 8 percent needed to be adequately capitalized. Its other two key capital ratios are at the adequate level.

Bank of Commerce remains adequately capitalized. It has lost $1.8 million through the first half of 2010, the largest loss among the region's community banks.

EXHIBIT
9

Copyright © 2010 HeraldTribune.com — All rights reserved. Restricted use only.

Both banks are trying to raise fresh capital to strengthen their financial conditions.

Frank Knautz, a Sarasota consultant who works with banks throughout Florida, including LandMark, thinks the weakest local players have been weeded out.

“I think that it's over in this area,” Knautz said. “I don't believe we have any banks that are at a point of weakness that will cause the kind of concerns that we have experienced over the past 2 1/2 years.”

Plenty of Florida banks still have loan problems to work out in a weak economy, but Knautz said some bankers may not be as pessimistic as they were last year.

“The common response I'm getting to ‘How's business?' is ‘Not worse.' Nobody's willing to say ‘It's getting better,' but they aren't saying it's getting worse,” he said.

**Other zero-star players**

TIB Bank of Naples, which has branches in Venice and Nokomis, also was rated zero stars. But that will likely improve after an investor group pumps a promised $175 million into TIB later this year.

Southern Commerce Bank of Tampa, with branches in Bradenton and Punta Gorda, was rated zero stars. So was Superior Bank of Birmingham, Ala., which has offices in Sarasota and Bradenton.

Locally, Bauer rated Community Bank of Manatee, Englewood Bank and Sabal Palm Bank at two stars, or problematic.

1st Manatee Bank, Calusa National Bank, Charlotte State Bank and Insignia Bank graded at three stars, or adequate. National Bank of Southwest Florida was a 3 1/2-star bank, or good.

First America Bank, Florida Shores Bank-Southwest and Gateway Bank of Southwest Florida were the region's top rated at four stars, or excellent. It was Gateway's first rating after two years as a start-up.

No locally based bank earned Bauer's highest five-star superior grade.

**The big picture**

The nation's 7,830 banks earned a combined $21.6 billion in the second quarter, up from a year-ago loss of $4.4 billion and the best profit in nearly three years.

Florida banks, however, lost $263 million in the recent quarter, a tad higher than the $257 million loss last year.

The FDIC's confidential list of problem U.S. institutions is up to 829, a 17-year high.

“Every third bank in Florida is a problem bank, which means there is a big pipeline of potential failures,” Thomas said. “Not all problem banks, however, will fail, and many will be recapitalized by investors or others, and some of the troubled banks may be merged into other banks.”

Some bankers — former Horizon CEO Charles Conoley is one — believe federal regulators are closing community banks to deliberately shrink the industry's size to benefit the giant bank companies.

That also would concentrate power among federal regulators, such as FDIC Chairman Sheila Bair, those bankers say.

Thomas scoffs at what he calls a “Mel Gibson conspiracy theory.”

“Look at the financials of the failed Horizon and ask yourself, who put them in that position, Sheila Bair or the bank's board and senior management? Why was this the only bank she took over in a few weeks?” he said.

On the bright side, most experts, including Bair, believe bank failures will peak this year.

Thomas still expects 200 U.S. banks will fall in 2010, and “well over” 100 will go down in 2011.

“It took many years to get into this mess, and it will take many years to get out of it,” he said.

**Neil J. Gillespie**
8092 SW 115th Loop
Ocala, Florida 34481

VIA US CERTIFIED MAIL, RETURN RECEIPT
Article No.: 7009 1410 0001 5637 1467

January 4, 2010

David A. Rowland, Court Counsel
Administrative Offices Of The Courts
Thirteenth Judicial Circuit Of Florida
Legal Department
800 E. Twiggs Street, Suite 603
Tampa, Florida 33602

Dear Mr. Rowland:

This is a request for information and any related public records.

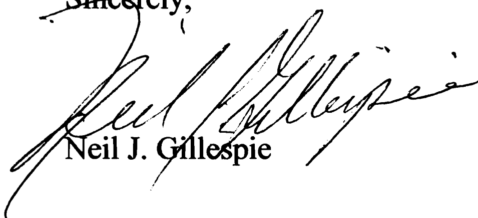
1. Please advise the undersigned if notice is required by Florida Statutes section 768.28(6)(a) prior to instituting an action on a claim against Thirteenth Judicial Circuit of Florida. If yes, kindly identify who is authorized to accept notice or service on behalf of the Thirteenth Judicial Circuit.

2. If notice is required by Florida Statutes section 768.28(6)(a), is one notice sufficient for the entire court, or are separate notices required for the HCSO for claims pertaining to security matters, or to the Clerk of Court for claims pertaining to the duties of the clerk? Is a separate notice required for claims pertaining to the ADA (Americans with Disabilities Act) office or coordinator?

3. Please advise the undersigned what effect a notice under Florida Statutes section 768.28(6)(a) would have on any litigation currently on the docket in the Thirteenth Judicial Circuit involving litigants now making a claim against the court pursuant to Florida Statutes section 768.28(6)(a)? What would happen to the existing litigation? Would that create a conflict of interest?

Thank you in advance for your cooperation.

Sincerely,



Neil J. Gillespie

EXHIBIT 10

**DR. KARIN HUFFER**

Licensed Marriage and Family Therapist #NV0082
ADAAA Titles II and III Specialist
Counseling and Forensic Psychology
3236 Mountain Spring Rd. Las Vegas, NV 89146
702-528-9588 www.lvaallc.com

October 28, 2010

To Whom It May Concern:

I created the first request for reasonable ADA Accommodations for Neil Gillespie. The document was properly and timely filed. As his ADA advocate, it appeared that his right to accommodations offsetting his functional impairments were in tact and he was being afforded full and equal access to the Court. Ever since this time, Mr. Gillespie has been subjected to ongoing denial of his accommodations and exploitation of his disabilities

As the litigation has proceeded, Mr. Gillespie is routinely denied participatory and testimonial access to the court. He is discriminated against in the most brutal ways possible. He is ridiculed by the opposition, accused of malingering by the Judge and now, with no accommodations approved or in place, Mr. Gillespie is threatened with arrest if he does not succumb to a deposition. This is like threatening to arrest a paraplegic if he does not show up at a deposition leaving his wheelchair behind. This is precedent setting in my experience. I intend to ask for DOJ guidance on this matter.

While my work is as a disinterested third party in terms of the legal particulars of a case, I am charged with assuring that the client has equal access to the court physically, psychologically, and emotionally. Critical to each case is that the disabled litigant is able to communicate and concentrate on equal footing to present and participate in their cases and protect themselves.

Unfortunately, there are cases that, due to the newness of the ADAAA, lack of training of judicial personnel, and entrenched patterns of litigating without being mandated to accommodate the disabled, that persons with disabilities become underserved and are too often ignored or summarily dismissed. Power differential becomes an abusive and oppressive issue between a person with disabilities and the opposition and/or court personnel. The litigant with disabilities progressively cannot overcome the stigma and bureaucratic barriers. Decisions are made by medically unqualified personnel causing them to be reckless in the endangering of the health and well being of the client. This creates a severe justice gap that prevents the ADAAA from being effectively applied. In our adversarial system, the situation can devolve into a war of attrition. For an unrepresented litigant with a disability to have a team of lawyers as adversaries, the demand of litigation exceeds the unrepresented, disabled litigantís ability to maintain health while pursuing justice in our courts. Neil Gillespieís case is one of those. At this juncture the harm to Neil Gillespieís health, economic situation, and general diminishment of him in terms of his legal case cannot be overestimated and this bell



EXHIBIT
11

cannot be unrung. He is left with permanent secondary wounds.

Additionally, Neil Gillespie faces risk to his life and health and exhaustion of the ability to continue to pursue justice with the failure of the ADA Administrative Offices to respond effectively to the request for accommodations per Federal and Florida mandates. It seems that the ADA Administrative offices that I have appealed to ignore his requests for reasonable accommodations, including a response in writing. It is against my medical advice for Neil Gillespie to continue the traditional legal path without properly being accommodated. It would be like sending a vulnerable human being into a field of bullies to sort out a legal problem.

I am accustomed to working nationally with courts of law as a public service. I agree that our courts must adhere to strict rules. However, they must be flexible when it comes to ADAAA Accommodations preserving the mandates of this federal law Under Title II of the ADA. While ìpublic entities are not required to create new programs that provide heretofore unprovided services to assist disabled persons.î (*Townsend v. Quasim* (9th Cir. 2003) 328 F.3d 511, 518) they are bound under ADAAA as a ministerial/administrative duty to approve any reasonable accommodation even in cases merely ìregardedî as having a disability with no formal diagnosis.

The United States Department of Justice Technical Assistance Manual adopted by Florida also provides instructive guidance: "The ADA provides for equality of opportunity, but does not guarantee equality of results. The foundation of many of the specific requirements in the Department's regulations is the principle that individuals with disabilities must be provided an equally effective opportunity to participate in or benefit from a public entity's aids, benefits, and services.î (U.S. Dept. of Justice, Title II, *Technical Assistance Manual* (1993) ß II-3.3000.) A successful ADA claim does not require ìexcruciating details as to how the plaintiff's capabilities have been affected by the impairment,î even at the summary judgment stage. *Gillen v. Fallon Ambulance Serv., Inc.*, 283 F.3d. My organization follows these guidelines maintaining a firm, focused and limited stance for equality of participatory and testimonial access. That is what has been denied Neil Gillespie.

The record of his ADAAA accommodations requests clearly shows that his well-documented disabilities are now becoming more stress-related and marked by depression and other serious symptoms that affect what he can do and how he can do it ñ particularly under stress. Purposeful exacerbation of his symptoms and the resulting harm is, without a doubt, a strategy of attrition mixed with incompetence at the ADA Administrative level of these courts. I am prepared to stand by that statement as an observer for more than two years.

**DE NEDERLANDSCHE BANK N.V.**
**AMSTERDAM, THE NETHERLANDS**

**UNITED STATES OF AMERICA**
**BEFORE THE**
**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM**
**WASHINGTON, D.C.**

**STATE OF ILLINOIS**
**DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION**

**NEW YORK STATE BANKING DEPARTMENT**
**NEW YORK, NEW YORK**

| In the Matter of | |
|---|---|
| | FRB Dkt. No. 05-035-B-FB |
| ABN AMRO BANK N.V.<br>Amsterdam, The Netherlands | Order to issue a Direction<br>(in Dutch, *"Besluit tot het geven van een aanwijzing"*);<br>Order to Cease and Desist<br>Issued Upon Consent |
| ABN AMRO BANK N.V.<br>NEW YORK BRANCH<br>New York, New York | |
| ABN AMRO BANK N.V.<br>CHICAGO BRANCH,<br>Chicago, Illinois | |

WHEREAS, De Nederlandsche Bank ("DNB") is the home country supervisor of ABN AMRO Bank N.V., Amsterdam, The Netherlands ("ABN AMRO"), a Netherlands bank;

WHEREAS, the Board of Governors of the Federal Reserve System (the "Board of Governors") is the host country supervisor in the United States of ABN AMRO, which is both a foreign bank as defined in section 3101(7) of the International Banking Act (12 U.S.C. § 3101(7)), including its New York Branch and its Chicago Branch (collectively, the "Branches"), and a registered bank holding company;

EXHIBIT
12

WHEREAS, the Illinois Department of Financial and Professional Regulation, Division of Banking (the "IDFPR"), pursuant to the authority provided under Section 3 of the Foreign Banking Office Act, (205 ILCS 645/1 et seq.) supervises and has examination authority over the foreign banking office maintained by ABN AMRO in the state of Illinois;

WHEREAS, the New York State Banking Department (the "NYSBD") is the licensing agency of the New York Branch of ABN AMRO, pursuant to Article II of the New York Banking Law ("NYBL"), and is responsible for the supervision and regulation thereof pursuant to the NYBL;

WHEREAS, the Board of Governors, the NYSBD, the IDFPR (collectively, the "U.S. Supervisors"), DNB (collectively with the U.S. Supervisors, the "Supervisors"), and ABN AMRO have the common goal to ensure that ABN AMRO complies with United States federal and state laws, rules and regulations wherever they are applicable within the United States or across jurisdictional borders, that ABN AMRO fosters a strong commitment towards compliance and has adequate compliance systems which cover in an appropriate manner all activities concerning the United States, and that ABN AMRO effectively manages the financial, operational, legal, reputational, and compliance risks of its operations in the United States;

WHEREAS, the U.S. Supervisors and ABN AMRO have mutually agreed to the issuance of this combined Order to Cease and Desist Upon Consent against ABN AMRO and the Branches, and DNB has decided to issue the Direction laid down in this Order to ABN AMRO and the Branches (collectively, the "Order");

WHEREAS, on July 23, 2004, ABN AMRO and the New York Branch entered into a Written Agreement with the Federal Reserve Banks of New York and Chicago (collectively, the "Reserve Banks"), the IDFPR, and the NYSBD designed to correct deficiencies

at the New York Branch relating to anti-money laundering policies, procedures, and practices (the “Written Agreement”), and ABN AMRO and the New York Branch have taken substantial steps to rectify the deficiencies set forth in the Written Agreement and continue to take additional steps;

WHEREAS, after execution of the Written Agreement, and in response to its requirements, ABN AMRO discovered and provided additional information to the Supervisors regarding a pattern of previously undisclosed unsafe and unsound practices warranting further enforcement action. Specifically, based on the information submitted by ABN AMRO and other information gathered by the Supervisors:

A. ABN AMRO lacked adequate risk management and legal review policies and procedures to ensure compliance with applicable U.S. law, and failed to adhere to those policies and procedures that it did have. As a result, one of ABN AMRO’s overseas branches was able to develop and implement “special procedures” for certain funds transfers, check clearing operations, and letter of credit transactions that were designed and used to circumvent the compliance systems established by the Branches to ensure compliance with the laws of the U.S. In particular, the “special procedures” circumvented the Branches’ systems for ensuring compliance with the regulations issued by the Office of Foreign Assets Control (“OFAC”) (31 C.F.R. Chapter V). ABN AMRO failed to adequately review such “special procedures” to determine whether the execution of the procedures was consistent with U.S. laws; and

B. ABN AMRO lacked effective systems of governance, audit, and internal control to oversee the activities of the Branches with respect to legal, compliance, and reputational risk, and failed to adhere to those systems that it did have, especially those relating to anti-money laundering policies and procedures, including the procedures to implement the Currency and

Foreign Transactions Reporting Act, 31 U.S.C. § 5311 *et seq.* (the Bank Secrecy Act (the "BSA")); the rules and regulations issued thereunder by the U.S. Department of the Treasury (31 C.F.R. Part 103); and the suspicious activity reporting requirements of Regulation K of the Board of the Governors (12 C.F.R. § 211.24(f)). As a result, ABN AMRO and the Branches: (1) failed to adequately document, report, and follow up on negative findings from certain internal audits; (2) failed to produce negative audit findings in a timely manner to the U.S. Supervisors, and to appropriate internal governing bodies; (3) failed to follow-up on inquiries referred to the New York Branch from overseas offices regarding compliance with U.S. law; (4) overstated to internal auditors, compliance personnel, and the U.S. Supervisors the extent of due diligence efforts undertaken by certain branches outside the United States with respect to high risk correspondent banking customers; and (5) failed to escalate the "special procedures" for review outside of the trade processing business or reporting line;

WHEREAS, to address the unsafe and unsound practices described above, ABN AMRO must continue to implement improvements in its oversight and compliance programs with respect to United States law in all countries in which ABN AMRO branches or affiliates do business that is in whole or in part governed by United States law, and must undertake specific additional measures to further improve oversight and compliance in the Branches and other U.S. offices of ABN AMRO;

WHEREAS, the unsafe and unsound practices described above also warrant the separate assessment of civil money penalties by the Board of Governors under section 8(i)(2)(B) of the Federal Deposit Insurance Act, as amended (12 U.S.C. § 1818(i)(2)(B)) (the "FDI Act"), the NYSBD pursuant to Section 44 of the NYBL, the IDFPR pursuant to the authority provided under Section 18 of the Foreign Banking Office Act, (205 ILCS 645/1 et seq.) and Section 48 (8)

of the Illinois Banking Act, (205 ILCS 5/1 et seq.), OFAC, and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN");

**Laws of The Netherlands**

WHEREAS, DNB is entrusted with the task of supervising financial institutions such as ABN AMRO pursuant to Section 4 of the Bank Act 1998 (in Dutch: "*Bankwet 1998*") and the Act on the Supervision of the Credit System 1992 (in Dutch: "*Wet toezicht kredietwezen 1992*");

WHEREAS, DNB has concluded that the unsafe and unsound practices referred to in A. and B. above also constitute failures to duly comply with the rules referred to in Sections 22 and 22a of the Act on the Supervision of the Credit System 1992 (in Dutch: *Wet toezicht kredietwezen 1992*) and warrant the issuance of a direction (in Dutch: *aanwijzing*) under Section 28 of such Act on the course of action to be pursued by ABN AMRO in respect of the matters specified in this Order; the course of action DNB requires ABN AMRO to take is set out in Paragraphs 1, 2, 6, 7, 8, 9, 10, and 11 of this Order;

WHEREAS, the measures required by the Supervisors have been discussed with ABN AMRO prior to the issuance of this Order, in conformity with the requirements of Netherlands law. By countersigning this document, ABN AMRO confirms (i) that the decision (in Dutch: *besluit*) to issue a direction (in Dutch: *aanwijzing*) has been sufficiently substantiated within the meaning of sections 3:46 and 3:48 of the Dutch General Administrative Law Act (in Dutch: *Algemene wet bestuursrecht*), (ii) that it is aware of and understands each of the measures it is required to take pursuant to this Order, and (iii) that none of the measures gives rise to any doubt as to its scope, substance or other aspects;

WHEREAS, the direction (in Dutch: *aanwijzing*) qualifies as a decision (in Dutch: *besluit)* within the meaning of section 1:3(1) of the Dutch General Administrative Law Act (in Dutch: *Algemene Wet Bestuursrecht*);

WHEREAS, the use of the English language in this Order is appropriate in accordance with Section 2:6 of the Netherlands General Administrative Law Act. By signing this document, ABN AMRO recognizes that the use of the English language is appropriate. In DNB's opinion the interests of third parties are not harmed by not using the Dutch language because the use of the English language is widely recognized as standard in similar matters;

WHEREAS, DNB must point out that every interested party (in Dutch: *belanghebbende*) is entitled to file an objection (in Dutch: *bezwaar)* against the decision (in Dutch: *besluit*) to issue a direction (in Dutch: *aanwijzing)* within the meaning of section 28 of the Act on the Supervision of the Credit System by sending in a writ of objections (in Dutch: *bezwaarschrift*) to DNB within six weeks after DNB having sent this decision to ABN AMRO. This decision has been sent to ABN AMRO on December 19, 2005; and

WHEREAS, by signing this document ABN AMRO confirms that it has informed DNB that it will not use its right to file an objection against this decision;

**Laws of the United States**

WHEREAS, the Board of Governors issues this Order pursuant to section 8(b) of the FDI Act (12 U.S.C. § 1818(b)); the IDFPR issues this Order pursuant to Section 18 of the Foreign Banking Office Act, (205 ILCS 645/1 et seq.) and Section 48 (6)(b) of the Illinois Banking Act, (205 ILCS 5/1 et seq.); and the NYSBD issues this Order pursuant to Section 39 of the New York Banking Law;

WHEREAS, on December 19, 2005, the Managing Board of ABN AMRO adopted a resolution:

A. authorizing and directing Rijkman W.J. Groenink, Chairman of ABN AMRO, and Joost Ch.L. Kuiper to enter into this Order, on behalf of ABN AMRO, the New York Branch, and the Chicago Branch consenting to compliance by ABN AMRO, the New York Branch, the Chicago Branch, and their institution-affiliated parties, as defined in sections 3(u) and 8(b)(4) of the FDI Act (12 U.S.C. §§ 1813(u) and 1818(b)(4)), with each and every provision of this Order;

B. waiving any and all rights that ABN AMRO, the New York Branch and the Chicago Branch may have pursuant to 12 U.S.C. §§ 1818 and 1847 or 12 C.F.R. Part 263, Section 25 of the Illinois Administrative Procedure Act, (5 ILCS 100/1-1 et seq.), or otherwise:

(i) to the issuance of a Notice of Charges and of Hearing on any matter set forth in this Order;

(ii) to a hearing for the purpose of taking evidence of any matters set forth in this Order;

(iii) to judicial review of this Order; and

(iv) to challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof;

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and without this Order constituting an admission or denial by ABN AMRO, the New York Branch, or the Chicago Branch of any

allegation made or implied by the Supervisors in connection with this matter, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony and pursuant to the aforesaid resolution:

## I. ENHANCED U.S. LAW COMPLIANCE PROGRAM

IT IS HEREBY ORDERED by the Supervisors that:

1. Within 90 days of this Order, ABN AMRO shall submit to the Supervisors an acceptable enhanced global regulatory compliance program ("U.S. Law Compliance Program") for all matters related to global compliance with the applicable state and federal laws of the United States ("U.S. Laws"), in particular, the laws and regulations set forth in this Order. The U.S. Law Compliance Program may include elements from existing or already proposed compliance systems.

**Management and Governance**

A. The management and governance structure of the U.S. Law Compliance Program shall include, at a minimum:

i. Designation of a committee of ABN AMRO's Supervisory Board (which could be a new committee or the existing Supervisory Board Compliance Oversight Committee)("Supervisory Board Compliance Committee") to be responsible for overseeing the U.S. Law Compliance Program; this committee shall ensure that periodic and other reports are provided to the Supervisory Board, and shall review all significant compliance incidents. The committee shall promptly receive information about significant compliance-related incidents, including how these incidents are resolved,

and ensure that information about such incidents is included in its periodic reports to the Supervisory Board;

ii. designation of a high ranking executive ("Chief Compliance Officer") to be responsible for the U.S. Law Compliance Program. The Chief Compliance Officer shall not have responsibility for any business line, and shall report to the Managing Board, as well as to the Supervisory Board Compliance Committee, with respect to the U.S. Law Compliance Program. The Chief Compliance Officer shall be given the authority and the resources necessary to meet these responsibilities. All decisions concerning the Chief Compliance Officer's hiring, appraisal, promotion, salary, and termination shall be approved by the Managing Board, with the explicit consent of the Supervisory Board;

iii. a systematic description of the organizational arrangements and control mechanisms of the U.S. Law Compliance Program, aimed at conducting the activities in a controlled and sound manner, including interfaces with non-U.S. offices and affiliates of ABN AMRO.

**Integrated Compliance Activities**

B. The U.S. Law Compliance Program shall include, at a minimum, the following elements designed to ensure that ABN AMRO complies with U.S. Laws, and to ensure that non-U.S. offices and affiliates do not engage in practices aimed at evading or circumventing ABN AMRO's compliance programs and controls in the United States:

i. A detailed analysis of the U.S. law compliance risks arising from ABN AMRO business conducted within or outside the United States;

ii. policies and procedures for obtaining and acting on, as appropriate, legal or any other technical advice;

iii. policies and procedures for reporting, as required, to the Supervisors, or, if relevant, another host country supervisor, or other government agency, sufficient to ensure compliance with U.S. Laws with respect to any business conducted by ABN AMRO that is governed in whole or in part by such laws. To the extent that reporting is limited or prohibited by the laws of the location where the activity takes place, the policies and procedures shall require that ABN AMRO use its best efforts to report to the Supervisors, another host country supervisor, or other government agency;

iv. the establishment of a compliance reporting system widely publicized within the organization and integrated into any other general reporting systems provided for by ABN AMRO that employees use to report known or suspected violations of law or bank policy concerning U.S. Laws, including a process for resolving or escalating the reported violations or apparent violations;

v. general guidelines that will specifically contain prescriptive criteria related to (a) compliance with U.S. Laws addressing cross-border payment processing procedures; and (b) due diligence concerning customers who directly or indirectly utilize the dollar clearing and other services,

including advising or confirming with respect to letter of credit transactions, of ABN AMRO in the United States;

vi. strategies for training employees in compliance issues appropriate to the employee's job responsibilities on an ongoing or periodic basis which will cover specifically, whenever appropriate, compliance with U.S. Laws;

vii. new product and process approval procedures designed to ensure that consideration is given to the applicability of U.S. laws and regulations, and that an adequate control infrastructure is developed and implemented to ensure compliance with any applicable U.S. laws and regulations;

viii. standards for employee performance appraisals (including compensation reviews) that take into account the employee's role in ensuring ABN AMRO's full compliance with U.S. Laws and the reporting of compliance incidents when discovered or suspected; and

ix. standards for and implementation of ongoing compliance testing and risk assessment procedures.

**Global Compliance Audit and Ongoing Reviews**

C. The U.S. Law Compliance Program shall also include, at a minimum:

i. An audit program that will require regular audits by internal auditors of ABN AMRO to identify and propose the correction of any deficiencies relating to U.S. Laws. The deficiencies may relate to violations of U.S. Laws or to procedures designed to circumvent the compliance systems of ABN AMRO's U.S. operations;

ii. a requirement that all internal audits under the U.S. Law Compliance Program be executed and delivered in accordance with industry standards, and result in written reports that will contain a formal rating and opinion on the effectiveness of internal controls and on compliance with applicable U.S. laws and regulations;

iii. systems and procedures to monitor the status and evaluate the effectiveness of corrective action taken to address weaknesses identified by audit and compliance personnel, or by the Supervisors. Such procedures shall include a mechanism to ensure that significant risk weaknesses identified are periodically brought to the attention of the Managing Board and the Supervisory Board Compliance Committee, together with accompanying management comments (plans for corrective action and timelines), as well as to be reported to the Audit Committee of the Supervisory Board;

iv. on at least an annual basis, in conjunction with audit(s) of the U.S. Law Compliance Program or otherwise, a review of ABN AMRO's policies and procedures and the implementation of changes that are appropriate to ensure that the U.S. Law Compliance Program is functioning effectively to minimize the incidence of compliance problems covered by this Order, and to effectively detect, correct, and report such problems when they occur; and

v. a regimen for the periodic and ongoing assessment by business areas of the effectiveness of U.S. Law Compliance Program implemented pursuant

to Part I of this Order, and reports to the Chief Compliance Officer of the results of such self assessments together with plans for addressing issues uncovered in such reviews, and oversight by the Supervisory Board Compliance Committee, which shall focus on the implementation and effectiveness of the plans proposed and implemented by business areas.

## II. HEAD OFFICE OVERSIGHT

IT IS FURTHER ORDERED by the Supervisors that:

2. Within 60 days of this Order, ABN AMRO shall submit to the Supervisors an acceptable written plan to strengthen oversight of the management of the Branches within the structure of ABN AMRO's global operations. The plan shall, at a minimum, set forth:

   A. The actions that ABN AMRO's head office management and U.S. management will take to improve its oversight of the Branches and maintain effective control over and supervision of the Branches' senior management, operations, and activities, including obtaining information sufficient to assess management's adherence with applicable written plans, policies, procedures, and programs;

   B. the responsibility of ABN AMRO's head office management and U.S. management to ensure that the Branches' policies and procedures are tailored to its operations, and adequately address its activities;

   C. the responsibility of ABN AMRO's head office management to ensure that the Branches' operations are conducted in a safe and sound manner by enforcing adherence to the Branches' anti-money laundering policies and

procedures, particularly those relating to its compliance function, and by overseeing activities of the Branches; and

D. the responsibility of ABN AMRO's head office management to monitor exceptions to approved policies and procedures.

## III. THE BRANCHES' ACTIVITIES AND OVERSIGHT

IT IS FURTHER ORDERED by the U.S. Supervisors that:

**Continued Compliance with Existing Written Agreement**

3. ABN AMRO and the New York Branch shall continue to implement the programs and plans required by the July 2004 Written Agreement that were submitted to the Reserve Banks, the NYSBD and the IDFPR with respect to Anti-Money Laundering Compliance (Paragraph 1), Independent Testing and Audit (Paragraph 2), Training (Paragraph 3), and Suspicious Activity Reporting and Customer Due Diligence (Paragraph 4) of the Written Agreement, as required by Paragraph 6 of the Written Agreement. In addition, ABN AMRO and the New York Branch shall fully implement additional recommendations and address the criticisms noted in the Examination Letter from the Federal Reserve Bank of New York and the New York State Banking Department to ABN AMRO, dated October 3, 2005, particularly those relating to ABN AMRO's customer due diligence program and transaction monitoring programs. If the Board of Governors, the NYSBD or the IDFPR request changes to those programs, ABN AMRO and the New York Branch shall submit an acceptable plan to implement those changes within 60 days of notification.
4. ABN AMRO and the New York Branch shall continue to submit reports as required by Paragraph 7 of the Written Agreement.

5. Except as incorporated by reference in Paragraphs 3 and 4 of this Order, upon the effective date of this Order, the Written Agreement is terminated and the terms of this Order are substituted in its place.

IT IS FURTHER ORDERED by the Supervisors that:

**Management Plan**

6. Within 60 days of this Order, ABN AMRO shall submit to the Supervisors a written plan to improve the effectiveness of the management structure of the Branches. The primary purpose of the management plan shall be to aid in the development of an effective management oversight structure and control environment for both business and compliance purposes. The management plan shall, at a minimum, include:

    A. An assessment of the effectiveness of the control infrastructure, corporate governance and organizational structure of the Branches within the structure of ABN AMRO's U.S. operations, including management supervision, internal controls, reporting lines, duties performed by each officer and employee, and compliance with applicable federal and state laws and regulations consistent with the U.S. Law Compliance Program set forth in Part I of this Order;

    B. an organization chart, reflecting both direct and indirect reporting lines, detailing the management structure for the ABN AMRO organization in the United States, including the Branches, that sets forth:

        i. the reporting lines within each of the Branches;

        ii. reporting lines to each of the Branches from other ABN AMRO offices or officials;

iii. reporting lines from the Branches to other ABN AMRO offices or officials; and

iv. the names and qualifications of the individuals in charge of each business line or control function in each of the Branches;

C. the development and adoption of escalation procedures relating to activities of the Branches designed to ensure that material issues are reported to appropriate committees and senior management of ABN AMRO outside of the respective business lines, and that appropriate corrective action is taken; and

D. the development of processes designed to ensure that any strategic or business line includes full due diligence and a sound strategic implementation plan that incorporates appropriate oversight, controls, compliance, and risk monitoring/reporting.

**Internal Audit**

7. ABN AMRO and the Branches shall continue to develop and improve the internal audit programs for the Branches. Within 60 days of the Order, ABN AMRO and the Branches shall jointly submit to the Supervisors acceptable enhanced written internal audit policies and procedures that shall, at a minimum, address, consider, and include:

A. Procedures to evaluate the Branches' compliance with applicable laws and regulations for each audit area consistent with the U.S. Law Compliance Program set forth in Part I of this Order;

B. policies and procedures for an ongoing program to provide quality assurance evaluations of the internal audit program;

C. procedures for the periodic submission directly to ABN AMRO's audit committee of all high risk audit issues or deficiencies, regardless of the format in which the issue or deficiency is documented;

D. procedures designed to ensure that Supervisors are given access to internal audit work products, including, but not limited to, all interim reports and final reports. For this purpose, interim reports include, at a minimum, any report that has been completed by Internal Audit for submission to management, regardless of whether subsequent reports are modified based on comments from management; and

E. procedures for the establishment of a process to monitor the status and designed to ensure effective follow-up of corrective action taken to address weaknesses identified by audit and compliance personnel, or the Supervisors, and establish procedures to conduct targeted audits to evaluate remedial action.

**OFAC Compliance**

8. Within 60 days of this Order, ABN AMRO shall submit to the Supervisors an acceptable written plan, consistent with the U.S. Law Compliance Program set forth in Part I of this Order, that includes:

A. Procedures designed to ensure that issues relating to compliance with OFAC regulations (31 C.F.R. Chapter V), or any guidelines issued or administered by OFAC, that arise in connection with operations of the Branches or other

U.S. offices of ABN AMRO, or that otherwise come to the attention of personnel of the Branches or other offices of ABN AMRO, are escalated to the appropriate compliance personnel;

B. procedures designed to ensure that any violations or apparent violations of regulations issued by OFAC are promptly reported and addressed;

C. the designation of a compliance official who has appropriate expertise in OFAC compliance for the Branches;

D. procedures designed to ensure that the compliance program of the Branches is adequately staffed and funded with respect to OFAC compliance; and

E. strategies for training of both U.S. and non-U.S. employees in OFAC issues appropriate to the employee's job responsibilities on an ongoing basis, especially with regard to cross border United States dollar payment processing procedures.

9. ABN AMRO shall continue to cooperate in providing information responding to any ongoing OFAC inquiries on the effective date of this Order, consistent with the cooperation it has provided to date in those inquiries.

**MISCELLANEOUS**

10. The program, plans, and policies and procedures required by Paragraphs 1, 2, and 7-8 of this Order shall be submitted to the Supervisors for review and approval. Programs, plans, and policies and procedures required by Paragraphs 1, 2, and 6-8 shall be submitted within the time periods set forth in this Order. ABN AMRO and the Branches shall adopt the approved programs, plans and policies and procedures within 10 days of approval by the Supervisors unless otherwise set

forth in a schedule of implementation included in the acceptable program, plan, or policies and procedures. During the term of this Order, the approved programs, plans and policies and procedures shall not be amended or rescinded without the prior written approval of the Supervisors, or U.S. Supervisors, as applicable.

11. Within 20 days of the end of each month following the date of this Order, ABN AMRO and the Branches shall jointly submit to the Supervisors written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order, and the results thereof. The Supervisors may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

12. The provisions of this Order shall not bar, estop or otherwise prevent any of DNB, or any agency or department of The Netherlands, the Board of Governors, IDFPR, and the NYSBD or any other U.S. federal or state agency or department from taking any other action affecting ABN AMRO or any of its current or former subsidiaries, or affiliates.

13. Each provision of this Order shall remain effective and enforceable according to the laws of The Netherlands, the United States of America, and the States of Illinois and New York, until stayed, modified, terminated or suspended by DNB, the Board of Governors, the IDFPR, and the NYSBD, as applicable. ABN AMRO may apply to DNB, the Board of Governors, the IDFPR and the NYSBD to have this Order terminated, modified or amended.

14. No amendment to the provisions of this Order shall be effective unless made in writing by DNB, the Board of Governors, the IDFPR and the NYSBD, as applicable, and by ABN AMRO.

15. The provisions of this Order shall be binding on ABN AMRO, its institution-affiliated parties, as defined by 12 U.S.C. §§ 1813(u) and 1818(b)(4) of the FDI Act, and ABN AMRO's successors and assigns.

16. No representations, either oral or written, except those provisions as set forth herein, were made to induce any of the parties to agree to the provisions as set forth herein.

17. Notwithstanding any provision of this Order, DNB, the Board of Governors, the IDFPR and the NYSBD may, in their discretion, grant written extensions of time to ABN AMRO to comply with any provision of this Order.

18. The Board of Governors delegates to the Reserve Banks the authority to approve the programs, plans or policies and procedures submitted pursuant to Paragraph 10, above.

19. All communications regarding this Order shall be addressed to:

(a) Mr. Arnold Schilder
Executive Director
De Nederlandsche Bank N.V.
Westeinde 1
1017 ZN Amsterdam
The Netherlands

(b) Scott G. Alvarez, Esq.
General Counsel
Board of Governors of the
Federal Reserve System
20th & C Streets, NW
Washington, DC 20551

(c) Mr. Robert A. O'Sullivan
Senior Vice President
Federal Reserve Bank of New York
33 Liberty Street
New York, NY 10045

(d) Ms. Catharine Lemieux, Ph. D.
Senior Vice President
Federal Reserve Bank of Chicago
230 North LaSalle St.
Chicago, IL 60604

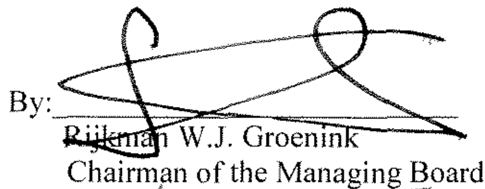
(e) Mr. Scott D. Clarke
Assistant Director
IDFPR, Division of Banking
500 East Monroe Street
Springfield, Illinois 62701

(f) Mr. Michael J. Lesser
Deputy Superintendent
New York State Banking Department
One State Street
New York, NY 10004

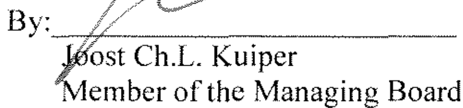
(g) ABN AMRO Bank N.V.
ABN AMRO Bank N.V. - - New York Branch
ABN AMRO Bank N.V. - - Chicago Branch
Carin Gorter
Group Compliance
Gustav Mahlerlaan 10, Amsterdam
P.O. Box 283 (HQ 9156)
1000 EA Amsterdam
The Netherlands

By order of De Nederlandsche Bank (with respect to all Paragraphs except Paragraphs 3-5), the Board of Governors of the Federal Reserve System, the Illinois Department of Financial and Professional Regulation and the New York State Banking Department, effective this 19th day of December 2005.

ABN AMRO BANK N.V.

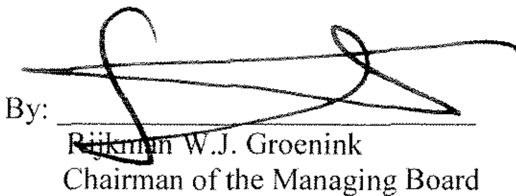


By:________________________
Rijkman W.J. Groenink
Chairman of the Managing Board

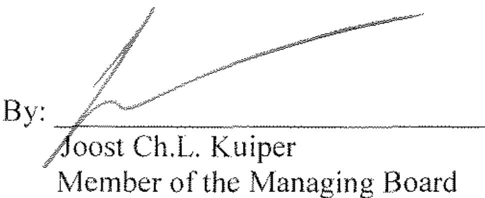


By:________________________
Joost Ch.L. Kuiper
Member of the Managing Board

ABN AMRO BANK N.V.
New York Branch

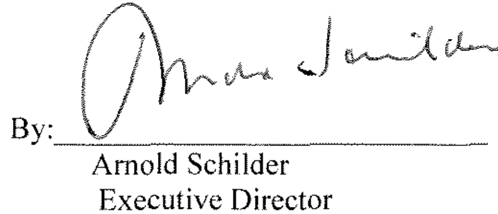


By: ________________________
Rijkman W.J. Groenink
Chairman of the Managing Board



By: ________________________
Joost Ch.L. Kuiper
Member of the Managing Board

DE NEDERLANDSCHE BANK N.V.



By:________________________
Arnold Schilder
Executive Director

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By:________________________
Jennifer J. Johnson
Secretary of the Board

NEW YORK STATE BANKING DEPARTMENT

By:________________________
Diana L. Taylor
Superintendent of Banks

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

By: ________________________
Scott D. Clarke
Assistant Director
Division of Banking

By order of De Nederlandsche Bank (with respect to all Paragraphs except Paragraphs 3-5), the Board of Governors of the Federal Reserve System, the Illinois Department of Financial and Professional Regulation and the New York State Banking Department, effective this 19th day of December 2005.

ABN AMRO BANK N.V.

By:______________________
Rijkman W.J. Groenink
Chairman of the Managing Board

By:______________________
Joost Ch.L. Kuiper
Member of the Managing Board

ABN AMRO BANK N.V.
New York Branch

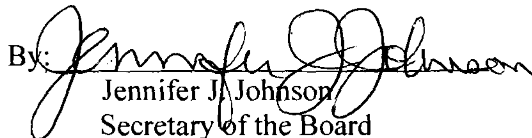
By: ______________________
Rijkman W.J. Groenink
Chairman of the Managing Board

By: ______________________
Joost Ch.L. Kuiper
Member of the Managing Board

DE NEDERLANDSCHE BANK N.V.

By:______________________
Arnold Schilder
Executive Director

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM



By:
Jennifer J. Johnson
Secretary of the Board

NEW YORK STATE BANKING DEPARTMENT

By:______________________
Diana L. Taylor
Superintendent of Banks

ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

By: ______________________
Scott D. Clarke
Assistant Director
Division of Banking

By order of De Nederlandsche Bank (with respect to all Paragraphs except Paragraphs 3-5), the Board of Governors of the Federal Reserve System, the Illinois Department of Financial and Professional Regulation and the New York State Banking Department, effective this ___ day of _________ 2005.

ABN AMRO BANK N.V.

By:_________________________
Rijkman W.J. Groenink
Chairman of the Managing Board

By:_________________________
Joost Ch.L. Kuiper
Member of the Managing Board

ABN AMRO BANK N.V.
New York Branch

By: _________________________
Rijkman W.J. Groenink
Chairman of the Managing Board

By: _________________________
Joost Ch.L. Kuiper
Member of the Managing Board

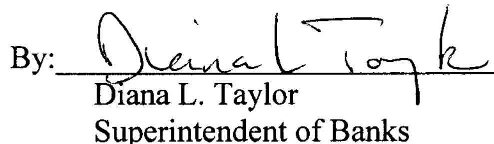
DE NEDERLANDSCHE BANK N.V.

By:_________________________
Arnold Schilder
Executive Director

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By:_________________________
Jennifer J. Johnson
Secretary of the Board

NEW YORK STATE BANKING
DEPARTMENT

By: 
Diana L. Taylor
Superintendent of Banks

ILLINOIS DEPARTMENT OF FINANCIAL
AND PROFESSIONAL REGULATION

By: _________________________
Scott D. Clarke
Assistant Director
Division of Banking

By order of De Nederlandsche Bank (with respect to all Paragraphs except Paragraphs 3-5), the Board of Governors of the Federal Reserve System, the Illinois Department of Financial and Professional Regulation and the New York State Banking Department, effective this ___ day of __________ 2005.

ABN AMRO BANK N.V.

By:____________________________
Rijkman W.J. Groenink
Chairman of the Managing Board

By:____________________________
Joost Ch.L. Kuiper
Member of the Managing Board

ABN AMRO BANK N.V.
New York Branch

By: ____________________________
Rijkman W.J. Groenink
Chairman of the Managing Board

By: ____________________________
Joost Ch.L. Kuiper
Member of the Managing Board

DE NEDERLANDSCHE BANK N.V.

By:____________________________
Arnold Schilder
Executive Director

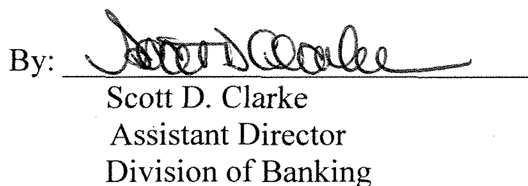
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

By:____________________________
Jennifer J. Johnson
Secretary of the Board

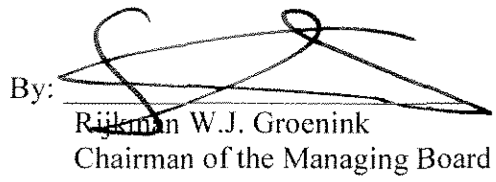
NEW YORK STATE BANKING DEPARTMENT

By:____________________________
Diana L. Taylor
Superintendent of Banks

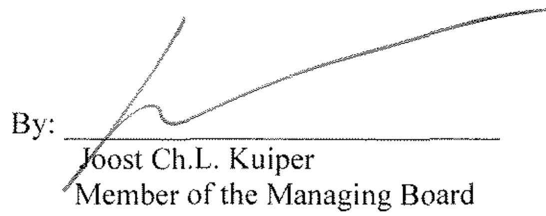
ILLINOIS DEPARTMENT OF FINANCIAL AND PROFESSIONAL REGULATION

By: 
Scott D. Clarke
Assistant Director
Division of Banking

ABN AMRO BANK N.V.
Chicago Branch



By: ______________________
Rijkman W.J. Groenink
Chairman of the Managing Board



By: ______________________
Joost Ch.L. Kuiper
Member of the Managing Board

**UNITED STATES OF AMERICA**
**DEPARTMENT OF THE TREASURY**
**FINANCIAL CRIMES ENFORCEMENT NETWORK**

| | | |
|---|---|---|
| **IN THE MATTER OF:** | ) | |
| | ) | |
| | ) | |
| | ) | **Number 2005-5** |
| **THE NEW YORK BRANCH** | ) | |
| **ABN AMRO BANK N.V.** | ) | |
| **NEW YORK, NEW YORK** | ) | |

# ASSESSMENT OF CIVIL MONEY PENALTY

## I. INTRODUCTION

The Secretary of the United States Department of the Treasury has delegated to the Director of the Financial Crimes Enforcement Network the authority to determine whether a financial institution has violated the Bank Secrecy Act and the regulations issued pursuant to that Act,[1] and what, if any, sanction is appropriate.

In order to resolve this matter, and only for that purpose, ABN AMRO Bank N.V. ("ABN AMRO") has entered into a CONSENT TO THE ASSESSMENT OF CIVIL MONEY PENALTY ("CONSENT") dated December 19, 2005, without admitting or denying the determinations by the Financial Crimes Enforcement Network, as described in Sections III and IV below, except as to jurisdiction in Section II below, which is admitted.

The CONSENT is incorporated into this ASSESSMENT OF CIVIL MONEY PENALTY ("ASSESSMENT") by this reference.

## II. JURISDICTION

ABN AMRO is a wholly-owned subsidiary of ABN AMRO Holding N.V., a public limited liability company incorporated under the laws of The Netherlands. ABN AMRO is a banking institution organized under the laws of The Netherlands, with headquarters in Amsterdam. ABN AMRO has over 3,000 branches, agencies, offices, and subsidiaries – members of the ABN AMRO Network – in over 60 countries. The ABN AMRO Network provides retail, private, corporate, correspondent, and other banking services to numerous businesses, institutions, and individuals throughout the world.

---

[1] 31 U.S.C. §§ 5311 et seq. and 31 CFR Part 103.

EXHIBIT
13

The ABN AMRO Network includes a number of branches, agencies, offices, or subsidiaries of ABN AMRO in the United States, through which ABN AMRO conducts operations in the United States. The New York Branch of ABN AMRO operates pursuant to a license from the New York State Banking Department. At all times relevant to this matter, the New York Branch of ABN AMRO was a "financial institution" and a "bank" within the meaning of the Bank Secrecy Act and the regulations issued pursuant to that Act.[2]

The Federal Reserve examines the operations of ABN AMRO in the United States for compliance with the Bank Secrecy Act and its implementing regulations, and for compliance with similar requirements under Title 12 of the United States Code. The New York State Banking Department also examines the New York Branch of ABN AMRO for compliance with requirements under banking laws of the State of New York comparable to those of the Bank Secrecy Act and its implementing regulations.

As of December 31, 2004, ABN AMRO Holding N.V. had consolidated total assets of approximately $830 billion. For the year ending December 31, 2004, ABN AMRO Holding N.V. had consolidated total revenue of approximately $24 billion. As of June 30, 2005, the New York Branch of ABN AMRO had assets of approximately $35 million.

## III. DETERMINATIONS

### A. Summary

This matter involves the North American Regional Clearing Center, a unit within the New York Branch of ABN AMRO. The North American Regional Clearing Center operated as a clearing institution for funds transfers in United States dollars. The North American Regional Clearing Center served as an intermediary institution. Prior to 1991, the North American Regional Clearing Center performed the clearing function primarily for other members of the ABN AMRO Network. Beginning in 1991, the New York Branch of ABN AMRO marketed the services of the North American Regional Clearing Center to institutions independent of the ABN AMRO Network. As of May 21, 2003, more than 400 institutions independent of the ABN AMRO Network held correspondent accounts with the North American Regional Clearing Center.

Beginning in 1998, the New York Branch of ABN AMRO focused substantial marketing efforts on small and mid-sized financial institutions in Russia. As of December 31, 1998, approximately 30 financial institutions in Russia held correspondent accounts with the North American Regional Clearing Center. The number more than tripled during the following year, and approximately 35 financial institutions in Russia opened correspondent accounts with the North American Regional Clearing Center during 2000. The majority of financial institutions in Russia had no relationship with the New York Branch of ABN AMRO other than correspondent accounts with the North American Regional Clearing Center, and no relationship with any member of the ABN AMRO Network other than the New York Branch of ABN AMRO. These financial institutions utilized the ABN AMRO Network and the New York Branch of ABN

[2] 31 U.S.C. § 5312(a)(2) and 31 C.F.R. § 103.11.

AMRO primarily as a means of obtaining access to dollar clearing and settlement systems in the United States.

On average, the North American Regional Clearing Center processed approximately 30,000 funds transfers per day. The location, number, and size of financial institutions holding correspondent accounts with the North American Regional Clearing Center – and the volume of funds transfers that the North American Regional Clearing Center processed – posed a substantial risk of money laundering. The New York Branch of ABN AMRO failed to apply an adequate system of internal controls reasonably designed to assure compliance with the Bank Secrecy Act and manage the risk of money laundering at the North American Regional Clearing Center. The New York Branch of ABN AMRO was not adequately staffed to coordinate and monitor day-to-day compliance with the Bank Secrecy Act. The New York Branch of ABN AMRO also failed to provide adequate training to ensure compliance with the Bank Secrecy Act. The New York Branch of ABN AMRO's failure to implement an adequate Bank Secrecy Act compliance or anti-money laundering program resulted in extensive violations of the requirement to report suspicious transactions. Violations of the Bank Secrecy Act and its implementing regulations by the New York Branch of ABN AMRO were serious, longstanding and systemic.

On July 23, 2004, ABN AMRO and the New York Branch of ABN AMRO executed a "Written Agreement," as the term is used in Section 8 of the Federal Deposit Insurance Act, with the Federal Reserve Bank of Chicago, the Federal Reserve Bank of New York, the New York State Banking Department, and the Illinois Department of Financial and Professional Regulation. The Agreement requires the implementation of measures to assure and monitor compliance with the Bank Secrecy Act and its implementing regulations, including, but not limited to, measures designed to improve the system of internal controls at the New York Branch of ABN AMRO, particularly in the area of dollar clearing operations.

B. Violations of the Requirement to Establish and Implement an Adequate Bank Secrecy Act Compliance or Anti-Money Laundering Program

The Financial Crimes Enforcement Network has determined that the New York Branch of ABN AMRO violated the requirement to establish and implement an adequate Bank Secrecy Act compliance or anti-money laundering program. Since April 24, 2002, the Bank Secrecy Act and its implementing regulations have required state-licensed branches of foreign banks to establish and implement anti-money laundering programs.[3] The New York Branch of ABN AMRO complies with this requirement if it establishes and implements a program that conforms with rules of the Board of Governors of the Federal Reserve System.[4] Since 1993, the Board of Governors of the Federal Reserve System has required a program "reasonably designed to assure and monitor compliance" with reporting and recordkeeping requirements under the Bank Secrecy Act.[5] Reporting requirements under the Bank Secrecy Act include the requirement to report suspicious transactions. A Bank Secrecy Act compliance or anti-money laundering

[3] 31 U.S.C. § 5318(h)(1) and 31 C.F.R. § 103.120.

[4] 31 C.F.R. § 103.120.

[5] 12 C.F.R. § 208.63(b)(1).

program must contain the following elements: (1) a system of internal controls;[6] (2) independent testing for compliance;[7] (3) the designation of an individual or individuals to coordinate and monitor day-to-day compliance;[8] and (4) training of appropriate personnel.[9]

1. Internal Controls

The New York Branch of ABN AMRO failed to implement a system of internal controls reasonably designed to manage the risk of money laundering and assure compliance with the Bank Secrecy Act. The locations, number and sizes of financial institutions holding correspondent accounts with the North American Regional Clearing Center – and the volume of funds transfers that the North American Regional Clearing Center processed – posed a substantial risk of money laundering.

Until August of 1999, the New York Branch of ABN AMRO had no formal procedures for conducting due diligence on financial institutions holding correspondent accounts with the North American Regional Clearing Center. Although the New York Branch of ABN AMRO did eventually establish formal procedures, the Branch lacked complete documentation to adequately assess the potential for money laundering and execute a risk rating for many of these financial institutions including important information on ownership, management, customer base or business activities. Furthermore, procedures and controls failed to ensure that the New York Branch of ABN AMRO gathered and reviewed meaningful information from the financial institutions or other readily available sources on the existence of anti-money laundering programs, relevant host country laws and regulations, or similar safeguards at the correspondent institutions. In short, documentation failed to include information necessary for assessing – in an accurate and meaningful manner – the risk of money laundering that each institution posed, and failed to evidence that the New York Branch of ABN AMRO ever conducted adequate due diligence on the financial institutions. The lack of complete documentation continued into 2003. In fact, an internal review of documentation at the North American Regional Clearing Center indicated that, as of January 26, 2003, the New York Branch of ABN AMRO lacked complete documentation for institutions holding fifty percent of all correspondent accounts with the North American Regional Clearing Center.

In addition, the New York Branch of ABN AMRO failed to adequately monitor funds transfers processed by the North American Regional Clearing Center for potential suspicious activity. Until February of 2002, ABN AMRO relied solely on sporadic manual transaction monitoring by a single employee, despite the need for automated monitoring of the funds transfers. In February of 2002, the New York Branch of ABN AMRO implemented an automated transaction monitoring system. However, a substantial percentage of funds transfers that the North American Regional Clearing Center processed flowed to or from beneficiaries or originators with accounts at institutions independent of the ABN AMRO Network. Due to the

---

[6] 12 C.F.R. § 208.63(c)(1).

[7] 12 C.F.R. § 208.63(c)(2).

[8] 12 C.F.R. § 208.63(c)(3).

[9] 12 C.F.R. § 208.63(c)(4).

lack of complete documentation for many of these institutions, the New York Branch of ABN AMRO often lacked information necessary for assessing – in an accurate and meaningful manner – the risk of money laundering and other illicit activity posed by each institution. This prevented the New York Branch of ABN AMRO from incorporating an accurate and meaningful assessment of the risk of money laundering – or information on which the New York Branch of ABN AMRO would base the assessment – into the automated monitoring system.

Moreover, the New York Branch of ABN AMRO failed to incorporate reliable and publicly available information concerning "shell companies" into the automated monitoring system. During the period from August of 2002 to September of 2003, the North American Regional Clearing Center processed approximately 20,000 funds transfers – with an aggregate value of approximately $3.2 billion – that involved "shell companies" in the United States serving as originators or beneficiaries, and institutions in Russia or other former Republics of the Soviet Union serving as originating or beneficiary institutions. The "shell companies" – business entities that lacked a physical presence – were primarily limited liability companies. In October of 2000, the Government Accounting Office published a report detailing the risk that criminals in Russia could utilize "shell companies" organized in the United States as a means of concealing identity. The New York Branch of ABN AMRO failed to adequately evaluate this readily available information and implement sufficient transaction monitoring systems and controls for shell company activity. Instead, and only upon strong urging from regulators, the New York Branch of ABN AMRO commenced an analysis of the activity in August of 2003 – one year after many of the transactions occurred.

Furthermore, the New York Branch of ABN AMRO failed to incorporate into the automated monitoring system information on institutions that the New York Branch of ABN AMRO had identified in suspicious activity reports, and information on institutions with correspondent accounts at the North American Regional Clearing Center that the New York Branch of ABN AMRO had closed. To illustrate, in January of 2002, the New York Branch of ABN AMRO filed a suspicious activity report involving a financial institution located in a former Republic of the Soviet Union. In July of 2002, the New York Branch of ABN AMRO closed all correspondent accounts that the institution held with the North American Regional Clearing Center. Afterwards, the same institution opened accounts at one or more institutions holding correspondent accounts with the North American Regional Clearing Center. From August of 2002 through September of 2003, the North American Regional Clearing Center processed approximately $100 million in funds transfers involving the institution. The funds transfers flowed through the correspondent accounts of the other institutions. The automated monitoring system at ABN AMRO failed to detect and enable the timely reporting of suspicious activity involving the financial institution.

Finally, the New York Branch of ABN AMRO failed to investigate numerous alerts generated by the automated monitoring system of transactions bearing indicia of suspicious activity. Until July of 2002, the New York Branch of ABN AMRO assigned the task of reviewing and investigating the alerts or reports to only three individuals – staffing clearly inadequate in light of both the volume of the alerts or reports, and the other functions these individuals performed for the New York Branch of ABN AMRO.

In April of 2003, the New York Branch of ABN AMRO attempted to address perceived inadequacies in the automated monitoring system by replacing the system. However, as of October 31, 2003, the New York Branch of ABN AMRO was still unable to fully utilize the capabilities of the new system to manage the risk of money laundering and ensure compliance with the Bank Secrecy Act.

2. The Designation of an Individual or Individuals to Coordinate and Monitor Day-To-Day Compliance with the Bank Secrecy Act

The New York Branch of ABN AMRO failed to adequately staff the compliance function at the New York Branch of ABN AMRO with individuals responsible for coordinating and monitoring day-to-day compliance with the Bank Secrecy Act. Until December of 2001, only one individual at the New York Branch of ABN AMRO coordinated and monitored day-to-day compliance with the Bank Secrecy Act. The individual had other demanding responsibilities as manager of reconciliation and financial reporting. Furthermore, the individual had no previous work history directly related to Bank Secrecy Act compliance. Until July of 2002, the New York Branch of ABN AMRO assigned the task of coordinating and monitoring day-to-day compliance with the Bank Secrecy Act to only three individuals – staffing clearly inadequate in light of the volume of the activities that the New York Branch of ABN AMRO conducted, and the risk that these activities posed.

3. Training

The New York Branch of ABN AMRO failed to provide adequate training. Bank Secrecy Act compliance staff in critical positions displayed a lack of knowledge on the detection and reporting of suspicious transactions – a deficiency especially serious considering the substantial risk of facilitating money laundering that confronted the New York Branch of ABN AMRO.

C. Violations of the Requirement to Report Suspicious Transactions

The Financial Crimes Enforcement Network has determined that New York Branch of ABN AMRO violated the requirement to report suspicious transactions.[10] The Bank Secrecy Act and its implementing regulations impose an obligation on a bank to report transactions that the bank "knows, suspects, or has reason to suspect" are suspicious. The bank must report the transactions if the transactions involve or aggregate to at least $5,000, and the transactions are "conducted or attempted by, at, or through" the bank. A transaction is "suspicious" if the transaction: (1) involves funds derived from illegal activities, or is conducted to disguise funds derived from illegal activities; (2) is designed to evade reporting or record keeping requirements under the Bank Secrecy Act; or (3) has no business or apparent lawful purpose or is not the sort in which the customer would normally be expected to engage, and the bank knows of no reasonable explanation for the transaction after examining the available facts, including background and possible purpose of the transaction.[11]

---

[10] 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.18.

[11] 31 C.F.R. § 103.18(a)(2)(i)-(iii).

Banks must report suspicious transactions by filing suspicious activity reports.[12] In general, a bank must file a suspicious activity report no later than thirty calendar days after detecting facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection, a bank may delay the filing for an additional thirty calendar days, to identify a suspect. However, in no event may the bank file a suspicious activity report more than sixty calendar days after the date of detection.[13]

The North American Regional Clearing Center operated as a clearing institution for funds transfers in United States dollars. All of these funds transfers represented transactions "conducted or attempted by, at, or through" the New York Branch of ABN AMRO.

The absence of effective internal controls, training and designated personnel at the New York Branch of ABN AMRO resulted in extensive violations of the requirement to timely report suspicious transactions. During the period from 1996 through 2001, the New York Branch of ABN AMRO filed only 12 suspicious activity reports. In contrast, the New York Branch of ABN AMRO filed escalating numbers of suspicious activity reports during the period from 2002 through 2004 – after the Federal Reserve and New York State Banking Department applied elevated scrutiny to compliance by the New York Branch of ABN AMRO with the Bank Secrecy Act. The New York Branch of ABN AMRO delinquently filed a substantial number of suspicious activity reports involving in aggregate a substantial dollar amount of transactions.

In addition, the New York Branch of ABN AMRO filed incomplete or inaccurate suspicious activity reports. Numerous suspicious activity reports characterized transactions as terrorist financing without sufficient cause, failed to identify as suspects institutions holding correspondent accounts with the North American Regional Clearing Center, or contained little or no description of the transactions at issue in direct contravention of the instructions on the report.

## IV. CIVIL MONEY PENALTY

Under the authority of the Bank Secrecy Act and the regulations issued pursuant to that Act,[14] the Financial Crimes Enforcement Network has determined that a civil money penalty is due for the violations of the Bank Secrecy Act and the regulations issued pursuant to that Act described in this ASSESSMENT.

Based on the seriousness of the violations at issue in this matter, and the financial resources available to the New York Branch of ABN AMRO, the Financial Crimes Enforcement Network has determined that the appropriate penalty in this matter is $30,000,000.

## V. CONSENT TO ASSESSMENT

---

[12] 31 C.F.R. § 103.18(b)(2).

[13] 31 C.F.R. § 103.18(b)(3).

[14] 31 U.S.C. § 5321 and 31 C.F.R. § 103.57.

To resolve this matter, and only for that purpose, ABN AMRO, without admitting or denying either the facts or determinations described in Sections III and IV above, except as to jurisdiction in Section II, which is admitted, consents to the assessment of a civil money penalty against the New York Branch of ABN AMRO in the amount of $30,000,000. The assessment shall be concurrent with the assessment of civil money penalty, in the amount of $40,000,000, by the Board of Governors of the Federal Reserve System, and shall be satisfied by one payment of $30,000,000 to the Department of the Treasury.

ABN AMRO agrees to pay the amount of $30,000,000 within five business days of this ASSESSMENT. Such payment shall be:

a. Made by certified check, bank cashier's check, bank money order, or wire;

b. Made payable to the United States Department of the Treasury;

c. Hand-delivered or sent by overnight mail to the Financial Crimes Enforcement Network, Attention: Associate Director, Administration & Communications Division, 2070 Chain Bridge Road, Suite 200, Vienna, Virginia 22182; and,

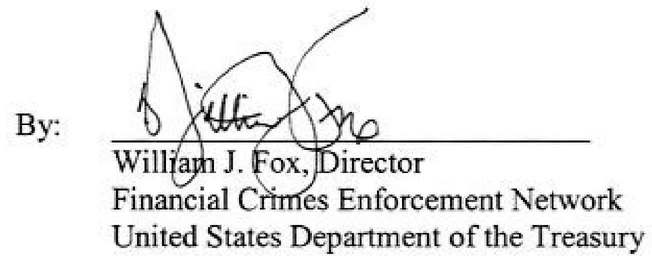
d. Submitted under a cover letter, which references the caption and file number in this matter.

ABN AMRO recognizes and states that it enters into the CONSENT freely and voluntarily and that no offers, promises, or inducements of any nature whatsoever have been made by the Financial Crimes Enforcement Network or any employee, agent, or representative of the Financial Crimes Enforcement Network to induce ABN AMRO to enter into the CONSENT, except for those specified in the CONSENT.

ABN AMRO understands and agrees that the CONSENT embodies the entire agreement between ABN AMRO and the Financial Crimes Enforcement Network relating to this enforcement matter only, as described in Section III above. ABN AMRO further understands and agrees that there are no express or implied promises, representations, or agreements between ABN AMRO and the Financial Crimes Enforcement Network other than those expressly set forth or referred to in the Consent and that nothing in the Consent or in this ASSESSMENT is binding on any other agency of government, whether federal, state, or local.

## VI. RELEASE

ABN AMRO understands that execution of the CONSENT, and compliance with the terms of this ASSESSMENT and the CONSENT, constitute a complete settlement of civil liability for the violations of the Bank Secrecy Act and regulations issued pursuant to that Act described in the CONSENT and this Assessment.

By: 

William J. Fox, Director
Financial Crimes Enforcement Network
United States Department of the Treasury

Date: 19-DECEMBER-2005

**Joint Press Release**

Board of Governors of the Federal Reserve System
Financial Crimes Enforcement Network
Office of Foreign Assets Control
New York State Banking Department
Illinois Department of Financial and Professional Regulation

For Release at 4 p.m. EST December 19, 2005

Bank supervisory and penalty actions released Monday will require ABN AMRO Bank, N.V. to undertake remedial action in its worldwide banking operations and to pay $80 million in penalties to U.S. federal and state regulators.

The Board of Governors of the Federal Reserve System, the New York State Banking Department, and the Illinois Department of Financial and Professional Regulation announced the issuance, together with De Nederlandsche Bank N.V. (the regulator of Dutch banks), of a consent Cease and Desist Order against ABN AMRO and its branches in New York, New York and Chicago, Illinois.

The Order requires ABN AMRO to make improvements to its global compliance and risk management systems to ensure adequate oversight, effective risk management, and full compliance with applicable U.S. laws and regulations. The Order incorporates and largely supersedes the July 23, 2004 Written Agreement among ABN AMRO, its New York branch, the Federal Reserve Bank of New York, the Federal Reserve Bank of Chicago, the New York State Banking Department, and the Illinois Department of Financial and Professional Regulation.

In addition, the Federal Reserve Board, the Financial Crimes Enforcement Network, the New York State Banking Department, the Illinois Department of Financial and Professional Regulation, and the Treasury Department's Office of Foreign Assets Control (OFAC) announced the assessment of penalties against ABN AMRO. The agencies have assessed penalties based on findings of unsafe and unsound practices; on findings of systemic defects in ABN AMRO's internal controls to ensure compliance with U.S. anti-money laundering laws and regulations, which resulted in failures to identify, analyze, and report suspicious activity; and on findings that ABN AMRO participated in transactions that violated U.S. sanctions laws. ABN AMRO is also required to take ongoing measures to ensure compliance with U.S. sanctions laws.

The Federal Reserve Board and OFAC have assessed a penalty in the amount of $40 million, payment of which will satisfy the penalty concurrently assessed by the Financial Crimes Enforcement Network in the amount of $30 million.

In addition, the New York State Banking Department has assessed a monetary payment of $20 million, the Illinois Department of Financial and Professional Regulation has assessed a monetary payment of $15 million, and ABN AMRO will make an additional $5 million voluntary payment to the Illinois Bank Examiners' Education Foundation.

Copies of the agencies' enforcement actions are attached.

Order to cease and desist (952 KB PDF)
Order of assessment of a civil money penalty (670 KB PDF)
Financial Crimes Enforcement Network assessment of civil money penalty (1.41 MB PDF)


**Last update: December 19, 2005**

**Illinois Department of Financial and Professional Regulation**

# NEWS

**For Immediate Release:**
December 19 , 2005

**Contact:**
Susan Hofer (IDFPR) 312-814-8197

# Illinois Signs Consent Orders Against ABN AMRO

## *Joins Federal Agencies and New York State in Largest Fine Ever Imposed Against Illinois Supervised Bank*

**Chicago** – A $15 million fine paid to the State of Illinois by ABN AMRO Bank N.V., head-quartered in the Netherlands, is the largest penalty ever imposed against an Illinois regulated bank. The fine is part of the $80 million settlement against the bank announced today to settle persistent problems with ABN AMRO's compliance of federal and state laws and regulations.

ABN AMRO has offices in Chicago with assets of more than $31.4 billion. It is regulated by the Illinois Department of Financial and Professional Regulation (IDFPR), under its International Bank Supervision section, which participated in the examination and investigation of the bank's business practices.

"We are pleased that ABN AMRO has agreed to address the problems raised in today's consent Orders. The size of the penalties demonstrates we will not tolerate or condone its regulated banks being involved in improper transactions such as doing business with sanctioned states and failing to report suspicious activities," said Acting Secretary Dean Martinez, IDFPR.

IDFPR joined the New York State Banking Department, the Board of Governors of the Federal Reserve System, Financial Crimes Enforcement Network (FinCEN) and the Office of Foreign Assets Control (OFAC) in investigating and drafting the consent Orders. The Orders requires ABN AMRO to make improvements to its global compliance and risk management systems to ensure compliance with Illinois and federal laws. Further, the Bank will be required to more carefully comply with anti- money laundering and suspicious activity monitoring and reporting. It also agreed to cease its participation in transactions that violate U.S. sanction laws. A joint statement regarding this order was issued today.

In addition to the $15 million fine ABN AMRO is required to pay to the Illinois General Revenue Fund in penalties, the Bank is also making an additional $5 million voluntary payment to the Illinois Bank Examiners' Education Foundation.

The Joint Statement and the consent Orders can be viewed by clicking on the links below:

Joint Statement
Order to Cease and Desist
Order of Assessment of a Civil Money Penalty

Copyright © 2010 Financial & Professional Regulation | Illinois Privacy Information | IDFPR Privacy Statement | Web Accessibility

MARKETS | DECEMBER 20, 2005

# ABN Amro to Pay $80 Million Fine Over Iran, Libya

Article | Comments | MORE IN MARKETS MAIN »

CLICK HERE FOR FULL ARTICLE ACCESS
Upgrade your account —
See what you're missing on WSJ.com!

BY GLENN R. SIMPSON STAFF REPORTER OF THE WALL STREET JOURNAL

Federal authorities fined Dutch bank ABN Amro Holding NV $80 million, one of the largest banking fines in U.S. history, for violating U.S. money-laundering laws and sanctions against Iran and Libya.

The move, by the U.S. Federal Reserve and the Treasury Department financial crime- and sanctions-control units, came in response to nearly a decade of violations involving billions of dollars in transactions that passed through the bank's offices in New York and Dubai, United Arab Emirates. (See the Fed's announcement.)

The U.S. Attorney for the Southern District of New York is investigating the matter, people familiar with the case said.

TO CONTINUE READING, SUBSCRIBE NOW »

Email Printer Friendly Order Reprints

Share:

Like Be the first of your friends to like this.

**BlackBerry® Smartphones**
Find More, Know More, Do More. BlackBerry Pulls It All Together.
BlackBerry.com

**Penny stocks soaring 900%**
Come experience penny stock gains with our free & accurate newsletter
www.PennyStocksUniverse.com

**#1 Penny Stock Newsletter**
News and Views on the Hottest OTC Stocks. Join Now Free!
WallStreetsHottestStocks.com

**Refinance Rates at 2.9%**
$160,000 mortgage: $659/mo. Free. No Obligation. Get a Quote! 3.1% APR
Lendgo.com/mortgage

DON'T MAKE A MISTAKE WHEN CHOOSING YOUR AUTO LOAN!
SPACE COAST CREDIT UNION
SCCU • COM



CLICK HERE for Full Article Access – and get
TWO WEEKS FREE
UPGRADE NOW
WSJ.com subscribers enjoy:
• Deeper core business, industry and market news
• Exclusive newsletters and alerts
• Save & share article functionality within the Journal Community



EXHIBIT 16

# White Collar Crime Prof Blog

A Member of the Law Professor Blogs Network

« Insider Trading on Howard Stern's New Job? | Main | How Much Are Your Diamonds Worth? »

December 20, 2005

## ABN AMRO Bank to Pay $80 Million in Civil Settlement

A massive consent order with state, federal, and international parties, has |ABN AMRO Bank, N.V. taking remedial measures and also paying "$80 million in penalties to U.S. federal and state regulators." (See Wall Street Jrl **here**).

The joint press release **here** demonstrates how several entities were able to cooperate to arrive at this resolution. It was issued by the Board of Governors of the Federal Reserve System, Financial Crimes Enforcement Network, Office of Foreign Assets Control, NY State Banking Dept., and the Illinois Dept. of Financial and Professional Regulation. The press release states in part:

> "The Order requires ABN AMRO to make improvements to its global compliance and risk management systems to ensure adequate oversight, effective risk management, and full compliance with applicable U.S. laws and regulations. . . .
>
> ". . . . The agencies have assessed penalties based on findings of unsafe and unsound practices; on findings of systemic defects in ABN AMRO's internal controls to ensure compliance with U.S. anti-money laundering laws and regulations, which resulted in failures to identify, analyze, and report suspicious activity; and on findings that ABN AMRO participated in transactions that violated U.S. sanctions laws. ABN AMRO is also required to take


### Blog Editor

**Ellen S. Podgor**
Gary R. Trombley Family White-Collar Crime Research Professor
Professor of Law
Stetson University College of Law
• Email
• Web Profile
• SSRN Author Page

### Contributing Editor

**Solomon L. Wisenberg**
Barnes & Thornburg LLP
Partner & Co-Chair of the White Collar Crime Defense Practice Group
• Email
• Web Profile

### Research Associate

**Whitney Curtis**
Reference/Instructional Services Librarian
Stetson Univ. College of Law Library
• Email

### Blog Editor Emeritus

**Peter J. Henning**
Professor of Law
Wayne State Univ. Law School


### News Readers & Feeds

FeedBurner Subscription Service

Enter your Email:

Subscribe me!

Powered by FeedBlitz

*View Recent Posts from Network Blog Feeds*

### Resources

**About White Collar Crime Prof Blog**
- Email Editor Comments & Content

**Find Criminal Law Profs**
- Google Scholar
- Law Schools
- SSRN

**Teaching**
- Course Materials

**Scholarship**
- SSRN Criminal Law & Procedure
- American Criminal Law Review
- American Journal of Criminal Law
- Buffalo Criminal Law Review
- California Criminal Law Review
- Journal of Criminal Law and Criminology

**Criminal Law**

**Congress**
- Federal Criminal Law (Title 18)
- Federal Securities Laws (Title 15)

**Executive Branch**
- Code of Federal Regulations (Dept. of Justice)
- U.S. Attorney's Manual
- Securities Lawyer's Deskbook

**Agencies**
- U.S. Department of Justice
- U.S. Attorneys Offices
- U.S. Department of Justice: Criminal Division
- U.S. Department of Justice: Tax Division
- U.S. Department of Justice: Antitrust Division
- U.S. Securities & Exchange Commission
- Department of Health and Human Services: Office of Inspector General
- Department of Defense: Office of Inspector General
- Department of the Treasury
- Office of Terrorism and Financial Intelligence
- Internal Revenue Service
- Office of the Comptroller of the Currency
- Office of Thrift Supervision

> ongoing measures to ensure compliance with U.S. sanctions laws."

There are 34 signature lines (the ABN AMRO's lines are repeats for each of the parties) on this "Order to Cease and Desist Issued Upon Consent" (**here**) and it even has the Dutch translation of the title of this Order included in the document [Order to issue a Direction (in Dutch, *"Besluit tot het geven van een aanwijzing*")].

And although there is a consent to a civil penalty, one does not find an admitting to wrongdoing. For example, in the Assessment of Civil Penalty (**here**) it specifically states that it was entered into "without admitting or denying the determinations by the Financial Crimes Enforcement Network, as described in Sections III and IV below."

(esp)

**December 20, 2005 in Civil Enforcement, Money Laundering, Settlement | Permalink**

## TrackBack

TrackBack URL for this entry:
http://www.typepad.com/services/trackback/6a00d8341bfae553ef00d83459d87a69e2

Listed below are links to weblogs that reference **ABN AMRO Bank to Pay $80 Million in Civil Settlement**:

» **Lasik** from Lasik
Lasik **[Read More]**

**Tracked on Jan 9, 2006 6:11:07 PM**

» **Black Pearls** from Black Pearls
Black Pearls **[Read More]**

**Tracked on Jan 9, 2006 10:01:12 PM**

» **Everything you wanted to know about health** from Lasik News Blog
MedlinePlus can provide you with a goldmine of good health information from the world's largest medical library, the National Library of Medicine. All over the globe both health professionals and consumers alike depend on it for information that is aut... **[Read More]**

## Department of Justice Press Release

**For Immediate Release**
May 10, 2010

**U.S. Department of Justice**
**Office of Public Affairs**
**(202) 514-2007/TDD (202) 514-1888**

### Former ABN AMRO Bank N.V. Agrees to Forfeit $500 Million in Connection with Conspiracy to Defraud the United States and with Violation of the Bank Secrecy Act

WASHINGTON—The former ABN AMRO Bank N.V., now named the Royal Bank of Scotland N.V., has agreed to forfeit $500 million to the United States in connection with a conspiracy to defraud the United States, to violate the International Emergency Economic Powers Act (IEEPA) and to violate the Trading with the Enemy Act (TWEA), as well as a violation of the Bank Secrecy Act (BSA), announced Assistant Attorney General Lanny A. Breuer of the Criminal Division and U.S. Attorney Ronald C. Machen Jr., for the District of Columbia.

A criminal information was filed today in U.S. District Court for the District of Columbia charging the former ABN AMRO, a Dutch corporation that was headquartered in Amsterdam, with one count of violating the BSA and one count of conspiracy to defraud the United States and violate the IEEPA and TWEA. The bank waived indictment, agreed to the filing of the information, and has accepted and acknowledged responsibility for its conduct. ABN AMRO agreed to forfeit $500 million as part of a deferred prosecution agreement, also filed today in the District of Columbia. U.S. District Court Judge Colleen Kollar-Kotelly today accepted the deferred prosecution agreement.

“ABN AMRO facilitated the movement of illegal money through the U.S. financial system by stripping information from transactions and turning a blind eye to its compliance obligations,” said Assistant Attorney General Breuer. “It is essential that financial institutions both large and small properly monitor the origins of funds flowing into our financial system. When financial institutions fail to do so, and, even worse, manipulate information in order to profit from prohibited transactions, they will be held accountable.”

“Over the course of a decade, ABN AMRO assisted sanctioned countries and entities in evading U.S. laws by facilitating hundreds of millions of U.S. dollar transactions,” said U.S. Attorney Machen. “We will continue to use all resources at our disposal to hold those who knowingly and intentionally seek to circumvent U.S. sanctions and banking laws accountable for their actions.”

Under IEEPA, it is a crime to willfully violate, or attempt to violate sanctions administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC). TWEA makes it a crime to willfully engage in financial transactions by, at the direction of, or for the benefit of Cuba or Cuban nationals. Under the BSA, it is a crime to willfully fail to establish an adequate anti-money laundering program.

The IEEPA and TWEA violations relate to ABN AMRO conspiring to facilitate illegal U.S. dollar transactions on behalf of financial institutions and customers from Iran, Libya, the Sudan, Cuba and other countries sanctioned in programs administered by OFAC.

According to court documents, from approximately 1995 and continuing through December 2005, certain offices, branches, affiliates and subsidiaries of ABN AMRO removed or altered names and references to sanctioned countries from payment messages. ABN AMRO implemented procedures and a special manual queue to flag payments involving sanctioned countries so that ABN AMRO could amend any problematic text and it added instructions to payment manuals on how to process transactions with these countries in order to circumvent the laws of the United States. Despite the institution of improved controls by ABN and its subsidiaries and affiliates after 2005, a limited number of additional transactions involving sanctioned countries occurred from 2006 through 2007.

According to court documents, ABN AMRO used similar stripping procedures when processing U.S. dollar checks, traveler’s checks, letters of credit and foreign exchange transactions related to sanctioned countries. ABN AMRO and the sanctioned entities knew and discussed the fact that,

EXHIBIT
18

without such alterations, amendments and code words, the automated OFAC filters at banks in the United States would likely halt the payment messages and other transactions, and, in many cases, the banks would reject or block the sanctions-related transactions and report the same to OFAC. By removing or altering material information, these payments and other transactions would pass undetected through filters at U.S. financial institutions. This scheme allowed U.S. sanctioned countries and entities to move hundreds of millions of dollars through the U.S. financial system.

The BSA violations involved the failure of the New York branch of ABN AMRO to maintain adequate anti-money laundering procedures and processes. According to court documents, beginning as early as January 1998 and continuing until approximately December 2005, ABN AMRO's New York branch office willfully failed to establish an adequate AML program. According to court documents, the office did not have adequate staffing, training and oversight, which permitted multiple high-risk shell companies and foreign financial institutions to use the bank to launder money through the United States. According to court documents, more than $3.2 billion dollars involving shell companies and high risk transactions with foreign financial institutions flowed through ABN AMRO's New York branch. ABN AMRO also admitted it failed to maintain proper documentation regarding its customers or maintain readily available documentation about its high risk clients.

"If global banks and businesses wish to conduct financial transactions in America, they are welcome to do so as long as they abide by our laws that govern those transactions," said Victor S. O. Song, Chief, IRS Criminal Investigation. "The IRS is proud to share its hallmark financial investigative expertise in this and other increasingly sophisticated financial investigations. Indeed, creating new strategies and models of cooperation among governments on international financial compliance is a top priority for the IRS."

"This agreement is the result of tremendous work by agents, investigators and analysts—here and abroad—who were able to piece together this international crime. Whether or not a threat is overt in nature, together with our partners, we remain vigilant," said Assistant Director in Charge Shawn Henry of the FBI's Washington Field Office.

Throughout the investigation, ABN AMRO has provided prompt and substantial cooperation, including working with U.S. and foreign regulators. ABN AMRO has also committed substantial resources to conducting an extensive internal investigation into their misconduct and has agreed to enhance its sanctions compliance programs to be fully transparent in its international payment operations.

In light of the bank's remedial actions, previous penalty payments and consent agreements, and its willingness to acknowledge and accept responsibility for its actions, the Department of Justice has agreed to recommend the dismissal of the information in one year, provided ABN AMRO fully cooperates with, and abides by, the terms of the deferred prosecution agreement. In December 2005, ABN AMRO entered into a consent decree and paid penalties involving OFAC, the Board of Governors of the Federal Reserve System, the State of Illinois Department of Financial and Professional Regulation, the New York State Banking Department, De Nederlandsche Bank and the U.S. Treasury's Financial Crimes Enforcement Network.

The case was prosecuted by Steven Pelak, formerly with the U.S. Attorney's Office for the District of Columbia; Cynthia Stone, formerly with the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS); AFMLS Trial Attorney Kevin Gerrity; and Assistant U.S. Attorney for the District of Columbia Denise Cheung; and was supported by Laurie Bender of AFMLS. The case was investigated by IRS-Criminal Investigation's Washington Field Division and the FBI's Washington Field Office. The Department of Justice also expresses gratitude to OFAC, the New York Federal Reserve and the Board of Governors of the Federal Reserve System for their significant and valuable assistance.

Press Releases | Washington Field Office Home

Accessibility | eRulemaking | Freedom of Information Act | Legal Notices | Legal Policies and Disclaimers | Links
Privacy Policy | USA.gov | White House
FBI.gov is an official site of the U.S. Federal Government, U.S. Department of Justice.

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | | |
|---|---|---|
| **UNITED STATES OF AMERICA** | : | **CRIMINAL NO.** |
| | : | |
| | : | **VIOLATIONS: 18 U.S.C. § 371** |
| **v.** | : | **(Conspiracy to Violate IEEPA** |
| | : | **and TWEA and to Defraud the** |
| | : | **United States)** |
| **The former ABN AMRO** | : | |
| **BANK N.V., now known as** | : | **31 U.S.C. §§ 5318(h) and 5322** |
| **THE ROYAL BANK OF** | : | **(Failure to Maintain an Adequate** |
| **SCOTLAND N.V.,** | : | **Anti-Money Laundering Program)** |
| | : | |
| **Defendant.** | : | |

## INFORMATION

The United States informs the Court that:

## GENERAL ALLEGATIONS

At all times material to this Information:

1. Defendant, the former ABN AMRO BANK N.V., now known as The Royal Bank of Scotland N.V. (hereinafter "ABN"), was a publicly-traded financial institution registered and organized under the laws of the Netherlands.

2. Defendant ABN was subject to oversight and regulation in the United States by the Board of Governors of the Federal Reserve System.

3. Defendant ABN conducted United States Dollar clearing at ABN's New York Branch.

EXHIBIT 19

4. Defendant ABN facilitated United States Dollar clearing through financial institutions in New York and others located elsewhere in the United States.

5. From in or about June 1995 through in or about December 2005, Defendant ABN facilitated United States Dollar transactions for a number of co-conspirators, both known and unknown to the United States. For the most part, these co-conspirators consisted primarily of banks from Iran, Libya, the Sudan, and Cuba.

6. From in or about January 2006 through in or about December 2007, a limited number of additional transactions involving banks from Iran, the Sudan, and Cuba occurred.

7. Over the years, the United States has employed sanctions and embargoes with regard to countries such as Iran, Libya, the Sudan, and Cuba. Whether by statute, Executive Order, or regulation, those sanctions arose in response to repeated support by those nations for international terror against United States citizens and its allies.

8. From in or about June 1995 through in or about December 2007, financial transactions conducted by wire on behalf of Iranian and Cuban banks were subject to United States sanctions. From in or about November 1997 through in or about December 2007, financial transactions conducted by wire on behalf of Sudanese banks were subject to United States sanctions. From in or about June 1995 until in or about September 2004, financial transactions conducted by wire on behalf of Libyan banks were subject to United States sanctions.

9. The United States Department of the Treasury, Office of Foreign Assets Control ("OFAC"), which was located in the District of Columbia, among other things, administered and enforced economic and trade sanctions against targeted foreign countries and entities associated

with those targeted countries. OFAC acted under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on certain transactions.

10. In regards to certain sanctions against Iran, Libya, the Sudan, and Cuba, and Iranian, Libyan, Sudanese, and Cuban banks, OFAC had responsibility for administering regulations against these countries and entities and was empowered to authorize transactions with these countries and entities through the granting of authorization, in the form of a license.

International Emergency Economic Powers Act

11. The International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701-1706, authorized the President of the United States to impose economic sanctions against a foreign country in response to an unusual or extraordinary threat to the national security, foreign policy, or economy of the United States when the President declared a national emergency with respect to that threat.

Iranian Sanctions

12. On March 15, 1995, President William J. Clinton issued Executive Order No. 12957, finding that "the actions and policies of the Government of Iran constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States" and declaring "a national emergency to deal with that threat." Executive Order No. 12957, as expanded and continued by Executive Order Nos. 12959 and 13059 and Presidential Notice of March 10, 2004, was in effect at all times relevant to this Information.

13. Executive Order Nos. 12957, 12959, and 13059 (collectively, the "Iranian Executive Orders") imposed economic sanctions, including a trade embargo, on Iran. The Iranian Executive Orders prohibited, among other things, the exportation, re-exportation, sale, or

supply, directly or indirectly, to Iran of any goods, technology, or services from the United States or by a United States person. The Iranian Executive Orders also prohibited any transaction by any United States person or within the United States that evaded or avoided, or had the purpose of evading or avoiding, any prohibition set forth in the Executive Orders.

The Iranian Transactions Regulations

14. The Iranian Executive Orders authorized the Secretary of the Treasury, in consultation with the Secretary of State, "to take such actions, including the promulgation of rules and regulations, as may be necessary to carry out the purposes" of the Iranian Executive Orders. Pursuant to this authority, the Secretary of the Treasury promulgated the Iranian Transactions Regulations, 31 C.F.R. Part 560, implementing the sanctions imposed by the Iranian Executive Orders. The Iranian Transaction Regulations were in effect at all times relevant to this Information.

15. Under the Iranian Transactions Regulations, 31 C.F.R. Part 560:

a. Section 560.204 provided that no goods, technology, or services may be exported, re-exported, sold, or supplied to Iran, directly or indirectly, from the United States or by a United States person wherever located, without authorization. 31 C.F.R. § 560.204.

b. Section 560.203 prohibited any transaction by any United States person or within the United States that evaded or avoided, or had the purpose of evading or avoiding, or that attempted to violate, any of the prohibitions set forth in Part 560. Section 560.203 further prohibited any attempt to violate the prohibitions contained in Part 560. 31 C.F.R. § 560.203.

16. OFAC had responsibility for administering the Iranian Transactions Regulations and was the entity empowered to authorize transactions with Iran during the embargo through the granting of a license.

The Libyan Sanctions

17. On January 7, 1986, President Ronald Reagan issued Executive Order No. 12543, which imposed broad economic sanctions against Libya. One day later, the President issued Executive Order No. 12544, which also ordered the blocking of all property and interests in property of the Government of Libya. President George H.W. Bush strengthened those sanctions in 1992 pursuant to Executive Order No. 12801. These sanctions remained in effect until September 22, 2004, when President George W. Bush issued Executive Order No. 13357, which terminated the national emergency with regard to Libya and revoked the sanction measures imposed by the prior Executive Orders. The Libyan Sanctions were in effect during times relevant to the Information.

The Sudan Sanctions

18. On November 3, 1997, President William J. Clinton issued Executive Order No. 13067, which imposed a trade embargo against Sudan and blocked all property and interests in property of the Government of Sudan. President George W. Bush strengthened those sanctions in 2006 pursuant to Executive Order No. 13412. The Executive Orders prohibited virtually all trade and investment activities between the United States and Sudan, including, but not limited to, broad prohibitions on: (a) the importation into the United States of goods or services from Sudan; (b) the exportation or re-exportation of any goods, technology, or services from the United States or by a United States person to Sudan; and (c) trade- and service-related

transactions with Sudan by United States persons, including financing, facilitating or guaranteeing such transactions. The Executive Orders further prohibited "[a]ny transactions by a United States person or within the United States that evades or avoids, has the purposes of evading or avoiding, or attempts to violate any of the prohibitions set forth in [these orders]." With the exception of certain exempt or authorized transactions, OFAC regulations implementing the Sudanese Sanctions generally prohibited the export of services to Sudan from the United States. The Sudanese Sanctions were in effect at all times relevant to the Information.

The Cuban Sanctions

19. Beginning with Executive Orders and regulations issued at the direction of President John F. Kennedy, the United States had maintained an economic embargo against Cuba through the enactment of various laws and regulations restricting United States trade and economic transactions with Cuba. OFAC controlled imports and blocked all transactions relating to Cuban assets based upon the Cuban Assets Control Regulations ("CACR"), which were promulgated under the Trading With the Enemy Act ("TWEA"), Title 50, United States Code Appendix, Sections 1-39, and 41-44.

20. Unless authorized by OFAC, United States persons were prohibited from engaging in financial transactions, among other types of transactions, which were by, at the direction of, or for the benefit of, Cuba or Cuban nationals, or which involved property in which Cuba or Cuban nationals had any direct or indirect interest, including all "transfers of credit and all payments" and "transactions in foreign exchange." 31 C.F.R. § 515.201(a). Unless authorized by OFAC, United States persons were prohibited from engaging in transactions involving property in which Cuba or Cuban nationals had any direct or indirect interest,

including all "dealings in . . . any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States" and all "transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States." 31 C.F.R. § 515.201(b). The Cuban Assets Control Regulations also prohibited any "transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions" set forth in the OFAC regulations. 31 C.F.R. § 515.201(c). The Cuban Sanctions were in effect at all times relevant to the Information.

Bank Secrecy Act

21. The Bank Secrecy Act ("BSA"), 31 U. S. C. § 5311 *et seq.*, and its implementing regulations, which Congress enacted to address an increase in criminal money laundering activities utilizing financial institutions, required domestic banks, insured banks and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering and other financial crimes, and to maintain certain records and file reports related thereto that are especially useful in criminal, tax or regulatory investigations or proceedings.

22. Pursuant to Title 31, United States Code, Section 5318(h)(1), defendant ABN was required to establish and maintain an anti-money laundering ("AML") program, including, at a minimum:

(a) the development of internal policies, procedures, and controls;

(b) the designation of a compliance officer;

(c) an ongoing employee training program; and

(d) an independent audit function to test programs.

## COUNT ONE
## CONSPIRACY TO VIOLATE IEEPA AND TWEA AND TO DEFRAUD THE UNITED STATES (18 U.S.C. § 371)

1. Paragraphs 1 through 22 of the General Allegations are re-alleged as if fully set forth herein.

2. From in or about May 1995, and continuing until in or about December 2007, the exact dates being unknown to the United States, in the District of Columbia and elsewhere, Defendant, the former ABN AMRO BANK N.V., now known as The Royal Bank of Scotland N.V., did willfully and knowingly conspire, confederate and agree with persons, both known and unknown to the United States, to commit offenses against the United States, that is:

(a) to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the United States Department of Treasury, Office of Foreign Assets Control, in the application and enforcement of sanctions and embargo regulations against Iran, Libya, the Sudan, and Cuba, and entities affiliated with Iran, Libya, the Sudan, and Cuba;

(b) to engage in financial transactions with entities affiliated with Iran, Libya, and the Sudan, in violation of the International Emergency Economic Powers Act, Title 50, United States Code, Section 1705, and regulations and embargoes issued thereunder; and

(c) to engage in financial transactions with entities associated with Cuba, in violation of the Trading With the Enemy Act, Title 50, United States Code Appendix, Sections 1-39, and 41-44, and regulations and embargoes issued thereunder.

## PURPOSES OF THE CONSPIRACY

3. A purpose of the conspiracy was for the defendant and the co-conspirators to profit financially by undertaking a variety of financial transactions in or through the United States.

4. A further purpose of the conspiracy was for the defendant and the co-conspirators to conceal the movement of the co-conspirators' property and assets through the United States from the United States Government and others.

5. A further purpose of the conspiracy was for the defendant and the co-conspirators to circumvent United States sanctions by manipulating material information concerning entities sanctioned by the United States, such as the true originator or beneficiary of financial transactions, in order to facilitate illegal United States Dollar transactions.

6. A further purpose of the conspiracy was for the defendant and the co-conspirators to conceal from the United States and financial regulatory agencies the full scope and extent of the defendant's violations of United States sanctions and regulations concerning entities sanctioned by the United States.

## MANNER AND MEANS

7. It was part of the conspiracy that the defendant discussed with the co-conspirators how to format United States Dollar message payments so that such payments would avoid detection by automated filters used by financial institutions in the United States and thus evade United States sanctions.

8. It was part of the conspiracy that the defendant removed names and references to the co-conspirators in United States Dollar message payments routed through the United States.

9. It was part of the conspiracy that the defendant altered the names and references to the co-conspirators in United States Dollar message payments routed through the United States.

10. It was part of the conspiracy that the defendant instructed the co-conspirators to use code words in United States Dollar payment messages.

11. It was part of the conspiracy that the defendant created a special processing queue to manually and materially alter any of the co-conspirators' United States Dollar message payments that were to be routed through the United States.

12. It was part of the conspiracy that the defendant replaced the names of the co-conspirators with the defendant's name in United States Dollar letters of credit transactions.

13. It was part of the conspiracy that the defendant replaced the names of the co-conspirators with the defendant's name in United States Dollar foreign exchange transactions.

14. It was part of the conspiracy that the defendant created "Special Conditions" in the defendant's payment manuals in order to process any co-conspirators' United States Dollar transactions.

15. It was part of the conspiracy that the defendant caused its United States affiliates to submit materially false and misleading reports or statements to the United States Department of the Treasury, OFAC.

**OVERT ACTS**

16. In furtherance of the conspiracy and to achieve the objects and purposes thereof, the defendant and the co-conspirators, both known and unknown to the United States, committed and caused to be committed, in the District of Columbia and elsewhere, the following overt acts,

among others:

a. In or about May 1995, co-conspirators requested that the defendant assist them in circumventing United States laws regarding transactions with sanctioned entities.

b. In or about May 1995, the defendant agreed to assist the co-conspirators by facilitating the co-conspirators' United States Dollar transactions.

c. On various dates certain between in or about June 1995 and in or about May 2005, the defendant used a special processing queue to manually and materially alter the co-conspirators' United States Dollar transactions.

d. On various dates certain between in or about June 1995 and in or about December 2007, the defendant, or subsidiaries or associates in which the defendant maintained a minority ownership interest, used various methods to materially alter United States Dollar payment messages and transactions from the co-conspirators.

e. On various dates certain between in or about June 1995 and in or about December 2005, the defendant caused its United States affiliates to make material omissions to the United States Government, specifically to the Department of the Treasury, Office of Foreign Assets Control, concerning the transactions the defendant was altering for the co-conspirators.

f. In or about November 2003, the defendant created "Special Conditions" in the defendant's payment procedure manual to explain how to alter and process the co-conspirators' United States Dollar transactions.

g. On various dates certain between in or about November 2003 and in or about May 2005, the "Special Conditions" section of the defendant's payment procedure

manual specifically stated: “Payments by order of Iranian Banks . . . maintaining accounts with ABN, Dubai are to be handled with extra care to ensure the wordings “Iran” etc., are not mentioned in the payment due to OFAC regulations.”

h. In or about November 2003, the defendant instructed the co-conspirators to use the code word “SPARE” in the United States Dollar transactions.

All in violation of Title 18, United States Code, Section 371.

[REST OF THE PAGE IS INTENTIONALLY BLANK]

**COUNT TWO**
**FAILURE TO MAINTAIN AN ADEQUATE ANTI-MONEY LAUNDERING PROGRAM**
**(31 U.S.C. §§ 5318(h) and 5322)**

1. Paragraphs 1 through 22 of the General Allegations are re-alleged as if fully set forth herein.

2 From in or about January 1998, and continuing until in or about December 2005, the exact dates being unknown to the United States, within the District of Columbia and elsewhere, Defendant, the former ABN AMRO BANK N.V., now known as The Royal Bank of Scotland N.V., did willfully fail to establish an adequate anti-money laundering program, including, at a minimum, (a) the development of internal policies, procedures, and controls; (b) the designation of a compliance officer; (c) an ongoing employee training program; and (d) an independent audit function to test programs.

All in violation of Title 31, United States Code, Sections 5318 (h) (1) and 5322.

____________________________
RONALD C. MACHEN JR.
United States Attorney
District of Columbia
D.C. Bar No. 447-889
555 4th Street, N.W.
Washington, D.C. 20530
(202) 514-6600

____________________________
JAMES MEADE, Acting Chief
Asset Forfeiture and
Money Laundering Section
Criminal Division
United States Department of Justice
D.C. Bar No. 414-732
1400 New York Avenue, N.W.
Washington, D.C. 20530
(202) 307-2115

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | |
|---|---|
| UNITED STATES OF AMERICA | |
| v. | No. 10-124 (CKK) |
| The former ABN AMRO BANK N.V., now known as THE ROYAL BANK OF SCOTLAND N.V., | DEFERRED PROSECUTION AGREEMENT |
| Defendant. | |

FILED
MAY 10 2010
Clerk, U.S. District & Bankruptcy Courts for the District of Columbia

The Royal Bank of Scotland N.V. ("RBS N.V."), formerly known as ABN AMRO Bank N.V., (both RBS N.V. and the former ABN AMRO Bank N.V. are referred to herein as "ABN")[1] an international financial institution registered and organized under the laws of the Netherlands, as authorized to specifically act and approve this agreement by the Managing Board of ABN in a corporate resolution dated May 4, 2010, hereby enters into this Deferred Prosecution Agreement (the "Agreement") with the Asset Forfeiture and Money Laundering Section of the Criminal Division of the United States

[1] ABN AMRO Holding N.V., the parent company of the former ABN AMRO Bank N.V., was acquired in October 2007 by a consortium of Fortis, the Royal Bank of Scotland ("RBS"), and Banco Santander, using the acquisition vehicle RFS Holdings. In October 2008, the Dutch State announced that it had acquired the Dutch businesses of Fortis. In December 2008, the Dutch State replaced Fortis as a stakeholder in RFS Holdings. The former ABN AMRO Bank N.V. subsequently underwent a restructuring process to transfer its Dutch State-acquired businesses and activities out of the existing ABN AMRO Group. To achieve this, the relevant Dutch State-acquired businesses were first transferred to a new legal entity owned by ABN AMRO Holding N.V. On February 5, 2010, through a statutory demerger process, the former ABN AMRO Bank N.V. was renamed RBS N.V., and the newly created Dutch legal entity was re-named ABN AMRO N.V. ("new ABN AMRO"). Full legal separation, at which time ABN AMRO Holding N.V. ceased to own new ABN AMRO, was completed on April 1, 2010. New ABN AMRO is now 100% owned by the Dutch Government. RBS N.V. is a subsidiary undertaking of, and controlled by, RBS. This Agreement is with RBS N.V. and not new ABN AMRO. Both RBS N.V. and the former ABN AMRO Bank N.V. are referred throughout this Agreement as "ABN."

EXHIBIT 20

Department of Justice and the United States Attorney's Office for the District of Columbia (collectively, the "United States").

1. **Charges**: ABN agrees that it shall waive indictment and agrees to the filing of a two-count Criminal Information ("Information") in the United States District Court for the District of Columbia, charging ABN with:

(a) knowingly and willfully conspiring, in violation of Title 18, United States Code, Section 371:

(i) to defraud the United States and the U.S. Department of Treasury, Office of Foreign Assets Control ("OFAC"); and

(ii) to commit the following criminal offenses:

a. engaging in transactions with entities associated with state sponsors of terrorism, in violation of the International Emergency Economic Powers Act, Title 50, United States Code, Section 1705, and regulations issued thereunder; and

b. engaging in transactions with entities associated with Cuba, a state sponsor of terrorism, in violation of the Trading With the Enemy Act, Title 50, United States Code, Appendix, Sections 1-6, 7-39, and 41-44, and regulations issued thereunder; and

(b) willfully failing to establish an adequate anti-money laundering program in violation of Title 31, United States Code, Sections 5318(h) and 5322.

2. **Acceptance of Responsibility**: ABN accepts and acknowledges responsibility for its conduct and that of its employees as set forth in the Factual Statement attached hereto as Exhibit A and incorporated herein by reference (the "Factual

Statement"). If the United States, pursuant to Paragraph 10 of this Agreement, initiates a prosecution that is deferred by this Agreement against ABN, ABN agrees that it will neither contest the admissibility of the Factual Statement, reports, or any other documents provided by ABN to the United States or the government of the Netherlands, nor contradict in any such proceeding the facts contained within the Factual Statement. Except as provided in Paragraph 4 below, ABN waives and forgoes any right under the United States Constitution, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other rule, that any plea, plea discussions, and any relating statements made by or on behalf of ABN prior or subsequent to this Agreement, or any leads derived therefrom, shall be inadmissible, suppressed, or otherwise excluded from evidence at any judicial proceeding arising from this Agreement.

3. **Forfeiture Amount**: As a result of ABN's conduct, including the conduct set forth in the Factual Statement, the parties agree that the United States could institute a civil and/or criminal forfeiture action against certain funds held by ABN and certain funds held by or passed through certain accounts at ABN. Said funds would be forfeitable pursuant to Title 18, United States Code, Sections 981 or 982. ABN hereby acknowledges that at least $500,000,000 was involved in transactions described in the Factual Statement, and that such transactions by ABN, or involving funds that were held at, or passed through certain accounts at ABN, violated: Title 50, United States Code, Section 1705 and the regulations issued thereunder; Title 50, United States Code, Appendix, Sections 1-6, 7-39, and 41-44 and the regulations issued thereunder; and/or Title 18, United States Code, Sections 1956 and 1957. In lieu of forfeiture resulting

from a criminal forfeiture proceeding, ABN hereby agrees to pay to the United States the sum of $500,000,000 (the "Forfeiture Amount"). ABN hereby agrees that the funds paid by ABN pursuant to this Agreement shall be considered substitute *res* for the purpose of forfeiture to the United States pursuant to Title 18, United States Code, Sections 981 and 982, and ABN releases any and all claims it may have to such funds. ABN shall pay the Forfeiture Amount within five (5) business days from the entry of this Agreement pursuant to payment instructions as directed by the United States in its sole discretion.

4. **Court is Not Bound**: ABN and the United States understand that the Agreement must be approved by the United States District Court for the District of Columbia in accordance with Title 18, United States Code, Section 3161(h)(2). If that Court declines to approve this Agreement for any reason, the United States and ABN are released from any obligation imposed upon them by this Agreement, this Agreement shall be null and void, and the United States shall not premise any prosecution of ABN upon any admissions or acknowledgements contained herein, including in the Factual Statement.

5. **Deferral of Prosecution**: In consideration of ABN's remedial actions to date and its willingness to: (a) acknowledge and accept responsibility for its actions; (b) have terminated the conduct set forth in the Factual Statement; (c) continue its cooperation with the United States as stated in Paragraphs 6 and 7; (d) demonstrate its future good conduct and full compliance with Financial Action Task Force international Anti-Money Laundering and Combating Financing of Terrorism best practices and the Wolfsberg Anti-Money Laundering Principles for Correspondent Banking; and (e) settle

any and all civil and criminal claims currently held by the United States for any act within the scope of the Factual Statement, the United States agrees as follows:

i. the United States shall recommend to the Court, pursuant to Title 18, United States Code, Section 3161(h)(2), that prosecution of ABN on the Information filed pursuant to Paragraph 1 be deferred for a period of twelve (12) months from the date of the filing of the Information referred to in Paragraph 1. In determining the appropriate length of deferral, the United States has taken the following factors, among others, into consideration: (a) the extraordinary remedial actions already taken by ABN, including the retention of an independent third party to conduct an extensive transaction review; (b) the fact that in December 2005 ABN voluntarily agreed to a Cease and Desist Order as well as an Order of Assessment of a Civil Money Penalty, Monetary Payment and Order to File Reports Issued Upon Consent with OFAC and federal, state, and foreign banking regulators; (c) ABN's full compliance with the terms of those written settlements; and (d) the extensive cooperation already provided by ABN to the United States since an agreement in principle was reached by ABN and the United States to resolve this investigation. ABN shall consent to a motion, the contents to be agreed upon by the parties, to be filed by the United States with the Court promptly upon execution of this Agreement, pursuant to Title 18, United States Code, Section 3161(h)(2), in which the United States will present this Agreement to the Court and move for a continuance of all further criminal proceedings, including trial, for a period of twelve (12) months, for speedy trial exclusion of all time covered by such a continuance, and for approval by the Court of this deferred prosecution. ABN further agrees to waive and does hereby expressly waive any and all rights to a speedy trial pursuant to the Fifth and Sixth

Amendments of the United States Constitution; Title 18, United States Code, Section 3161; Federal Rule of Criminal Procedure 48(b); and any applicable Local Rules of the United States District Court for the District of Columbia for the period that this Agreement is in effect. ABN agrees that any and all statutes of limitation are tolled and waived for the period from October 1, 2004, through May 10, 2011. ABN agrees to waive and forgo any and all defenses, bars, or claims based on Title 18, United States Code, Section 3282, or any other statute of limitations for the time period from October 1, 2004, until May 10, 2011. ABN agrees to this waiver based upon its own assessment of the matter after full consultation with its legal counsel; and

ii. the United States shall, if ABN is in full compliance with all of its obligations under this Agreement, within thirty (30) days of the expiration of the time period set forth above in Paragraph 5(i), or less at the discretion of the United States, seek dismissal with prejudice of the Information filed against ABN.

6. **Cooperation**: ABN agrees, acknowledges, and understands that its cooperation with this investigation and any subsequent prosecution against other entities or individuals is an important and material factor underlying the decision by the United States to enter into this Agreement. ABN agrees for the duration of this agreement, in accordance with and subject to all applicable United States and foreign law, to cooperate fully, honestly, without reservation, and affirmatively with the United States and with any other federal, state or local governmental department or agency designated by the United States ("Designated Agency") relating to the Information and Statement of Facts. This cooperation includes, but is not limited to, the following:

(a) Completely and truthfully disclosing all additional information and materials in its possession, custody, or control to the United States that the United States or its Designated Agency may request, including, but not limited to, all information about the activities of ABN and present and former directors, officers, employees, consultants, representatives, agents, subsidiary entities, any entities in which ABN has a minority ownership interest, and affiliated entities;

(b) Assembling, organizing, translating, and providing, in a responsive and prompt fashion, all additional information and materials in the possession, custody, or control of ABN as may be requested by the United States;

(c) Using its good faith efforts to make available, at its cost, ABN's and its successors' current and former directors, officers, employees, consultants, representatives, and agents to provide additional information and materials and to testify when requested by the United States, including sworn testimony before a grand jury or in any judicial proceeding and interviews with the United States and designated agencies;

(d) Identifying witnesses and notifying the United States of witnesses who, to ABN's knowledge and information, may have material information concerning the conduct set forth in the Information and Statement of Facts;

(e) Providing information, materials, and testimony as necessary or requested to identify or establish the original location, authenticity, or other basis for admission into evidence of documents or physical evidence in any criminal or judicial proceeding;

(f) Consenting to the disclosure of information or materials, which were initially obtained by the United States from ABN, to any designated agency as the United States, in its sole discretion, deems appropriate;

(g) Obtaining, collecting, and providing to the United States in Washington, D.C., upon request, any additional information or materials, which the Bank has a contractual or business right or obligation to inspect, audit, and maintain and which are relevant to any criminal investigation;

(h) Cooperating in any other reasonable request by the United States, as determined by the United States in its sole and non-reviewable discretion, in any law enforcement action, operation, transaction, procedure, or training;

(i) Cooperating in any other reasonable request by the United States to assist any federal or state regulatory agency in educating and informing other financial institutions, businesses, and individuals of applicable federal and state laws and regulations which are relevant to this matter;

(j) Implementing compliance procedures and training designed to ensure that the ABN compliance officer in charge of sanctions is made aware, in a timely manner, of any known requests or attempts by any entity (including, but not limited to, ABN customers, financial institutions, companies, organizations, groups, or persons) to withhold or alter its name or other identifying information where the request or attempt appears to be related to circumventing or evading U.S. sanctions laws. The ABN compliance officer in charge of sanctions shall report to the United States the name and contact information of any entity that makes such a request;

(k) Applying the OFAC sanctions list to the same extent as any European, Dutch, or United Nations sanctions or freeze lists are applied to U.S. Dollar transactions and the acceptance of customers and screening and checking against the OFAC list all U.S. Dollar cross-border Society for Worldwide Interbank Financial Telecommunications

("SWIFT") incoming and outgoing messages involving payment instructions or electronic transfer of funds, whether through any international, regional, or local SWIFT gateway or payment center of ABN or any electronic, magnetic or optical device, telephone instrument, or computer;

(l) Except as otherwise permitted by United States law, and in accordance with European Union laws pertaining to transactions with Cuba, undertaking no U.S. Dollar cross-border electronic funds transfer or any other U.S. Dollar transaction for, on behalf of, or in relation to any person or entity resident or operating in, or the governments of, Iran, North Korea, the Sudan (except for those regions and activities exempted from the United States embargo by Executive Order No. 13412), Syria, Cuba, or Burma;

(m) Requiring the use of the SWIFT Message Transfer ("MT") 202COV bank-to-bank payment message where appropriate for all U.S. Dollar cross-border electronic funds transfer cover payments;

(n) Maintaining appropriate and specific, and, where necessary, enhanced due diligence policies, procedures and controls that are reasonably designed to detect and report instances of money laundering through foreign correspondent and private banking accounts;

(o) Maintaining the electronic database of SWIFT MT payment messages and other internal ABN documents relating to U.S. Dollar payments processed during the period from January 1, 2002, through April 30, 2007, in electronic format for a period of five (5) years from the date of this Agreement;

(p) Providing the United States with written summaries concerning the actions of ABN's subsidiaries and affiliates;

(q) Seeking, to the extent reasonably possible, to ensure that any subsidiary financial institution in which ABN holds an ownership interest: (1) does, and will continue to, apply and filter its clients and U.S. Dollar transactions against the OFAC list; (2) will not conduct any U.S. Dollar transactions with or on behalf of an OFAC designated person or entity except where permitted by United States law; and (3) in conducting any U.S. Dollar transactions or transactions through the United States, will comply with all United States laws; and

(r) In light of prior remediation and reporting obligations met pursuant to the 2005 Cease and Desist Order and Order of Assessment of a Civil Money Penalty, Monetary Payment and Order to File Reports Issued on Consent, with the De Nederlandsche Bank, the Board of Governors of the Federal Reserve System, the State of Illinois Department of Financial and Professional Regulation, the New York State Banking Department, and OFAC, providing a certification by ABN's Head of Compliance nine (9) months from the date that this Agreement is entered that he or she (1) has reviewed the foregoing commitments contained in Paragraph 6 of this Agreement; (2) has made inquiries with relevant ABN personnel, including the responsible heads of internal audit and operations; and (3) based on those inquiries, can attest that ABN has, to the best of his or her ability to determine, complied with the commitments contained in Paragraph 6 of this Agreement.

7. ABN agrees that for the term of this Agreement, in accordance with applicable laws, it shall supply and/or make available upon request by the United States any additional relevant documents, electronic data, or other objects in ABN's possession, custody, or control as of the date of this Agreement relating to any transaction within the

scope of or relating to the Factual Statement. Nothing in this Agreement shall be construed to require ABN to produce any documents, records or tangible evidence that are protected by the attorney-client privilege or attorney work product doctrine. To the extent that a United States request requires transmittal through formal government channels, ABN agrees to use its best efforts to facilitate such a transfer and agrees not to oppose any such request, either publicly or privately.

8. **Government Commitments**: In return for the full and truthful cooperation of ABN and compliance with the terms and conditions of this Agreement, the United States agrees that neither it nor the National Security Division of the United States Department of Justice shall seek to prosecute ABN, its corporate parents, subsidiaries, affiliates, successors, or predecessors for any acts by ABN or its former affiliates or subsidiaries that are within the scope of the Factual Statement from 1995 through December 31, 2007, unless: (a) other than the transactions that have already been disclosed and documented to the United States, ABN knowingly and willfully transmitted or approved the transmission of U.S. Dollar-denominated funds that went to or came from persons or entities designated at the time of the transaction by OFAC as a Specially Designated Terrorist, a Specially Designated Global Terrorist, a Foreign Terrorist Organization, or a proliferator of Weapons of Mass Destruction (an "Undisclosed Special SDN Transaction"); or (b) in the sole discretion of the United States, there is a willful and material breach of this Agreement. In the event of a breach resulting in a prosecution of ABN or a prosecution related to an Undisclosed Special SDN transaction, the United States may use any information provided by or on behalf of ABN to the United States or

any investigative agency, whether prior to or subsequent to this Agreement, and/or any leads derived from such information, including the attached Factual Statement.

9. **Waiver of Rights**: ABN expressly waives:

(a) any challenges to the venue or jurisdiction of the United States District Court for the District of Columbia;

(b) any right to be charged by an Indictment returned by a grand jury, and agrees to be prosecuted on the Information filed; and

(c) any right to trial by jury.

10. **Breach of the Agreement**: If the United States determines that ABN has committed a willful and material breach of any provision of this Agreement, the United States shall provide written notice to ABN's counsel of the alleged breach and provide ABN with a two-week period from the date of receipt of said notice, or longer at the discretion of the United States, in which to make a presentation to the United States to demonstrate that no breach has occurred or, to the extent applicable, that the breach is not willful or material, or has been cured. The parties hereto expressly understand and agree that if ABN fails to make the above-noted presentation within such time period, it shall be presumed that ABN is in willful and material breach of this Agreement. The parties further understand and agree that the United States' exercise of discretion under this paragraph is not subject to review in any court or tribunal outside the Criminal Division of the Department of Justice and the United States Attorney's Office for the District of Columbia. In the event of a breach of this Agreement that results in a prosecution, such prosecution may be premised upon any information provided by or on behalf of ABN to the United States or any investigative agencies, whether prior to or subsequent to this

Agreement, and/or any leads derived from such information, including the attached Factual Statement, unless otherwise agreed to by the United States and ABN in writing at the time the information was provided to the United States.

11. ABN hereby further expressly agrees that within six (6) months of a willful and material breach of this Agreement by ABN, any violations of federal law that were not time-barred by the applicable statute of limitations as of the date of this Agreement, including any claims covered by the tolling agreement signed by the parties, and that: (a) relate to the Factual Statement; or (b) were hereinafter discovered by the United States, may in the sole discretion of the United States be charged against ABN, notwithstanding the provisions or expiration of any applicable statute of limitations. In the event of a breach, ABN expressly waives (a) any challenges to the venue or jurisdiction of the United States District Court for the District of Columbia; (b) any right to be charged by an Indictment returned by a grand jury, and agrees to be prosecuted on the Information filed in this matter or a superseding Information arising from the facts presented in the Factual Statement.

12. **Requirement to Obey the Law:** If the United States determines during the term of this Agreement that ABN has committed any federal crime after the date of the signing of this Agreement, ABN shall, in the sole discretion of the United States, thereafter be subject to prosecution for any federal crimes of which the United States has knowledge, including, but not limited to, the conduct described in the Factual Statement. The discovery by the United States of any purely historical criminal conduct that did not take place during the term of the Agreement will not constitute a breach of this provision.

13. **Parties Bound by the Agreement**: This Agreement and all provisions set forth herein bind ABN and all of its subsidiaries in which it holds a majority ownership interest. It is further understood that this Agreement and all provisions set forth herein are binding on the Asset Forfeiture and Money Laundering Section of the Criminal Division of the United States Department of Justice and the United States Attorney's Office for the District of Columbia, but, unless otherwise provided herein, specifically do not bind any other federal agencies, or any state or local authorities, although the United States will bring the cooperation of ABN and its compliance with its other obligations under this Agreement to the attention of federal, state, or local prosecuting offices or regulatory agencies, if requested by ABN or its attorneys. Nothing in this Agreement restricts in any way the ability of the United States, any other federal department or agency, or any state or local government from proceeding criminally, civilly, or administratively, against any current or former directors, officers, employees, or agents of ABN or against any other entities or individuals. The parties to this agreement intend that the Agreement does not confer or provide any benefits, privileges, immunities, or rights to any other individual or entity other than the parties hereto.

14. **Public Statements**: ABN expressly agrees that it shall not, through its attorneys, board of directors, agents, officers, employees, consultants, contractors, subcontractors, or representatives, including any person or entity controlled by any of them, make any public statement contradicting, excusing, or justifying any statement of fact contained in the Factual Statement. Any such public statement by ABN, its attorneys, board of directors, agents, officers, employees, consultants, contractors, subcontractors, or representatives, including any person or entity controlled by any of

them, shall constitute a willful and material breach of this Agreement as governed by Paragraph 10 of this Agreement, and ABN would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether any public statement by any such person contradicting, excusing, or justifying a fact contained in the Factual Statement will be imputed to ABN for the purpose of determining whether ABN has breached this Agreement shall be in the sole and reasonable discretion of the United States. Upon the United States' notification to ABN of a public statement by any such person that in whole or in part contradicts, excuses, or justifies a statement of fact contained in the Factual Statement, ABN may avoid breach of this Agreement by publicly repudiating such statement within seventy-two hours after notification by the United States. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by a governmental or private party against such individual regarding that individual's personal conduct.

15. **Sales, Mergers, or Demergers**: ABN agrees that if it sells, merges, demerges, or transfers all or substantially all of its business operations or assets as they exist as of the date of this Agreement to a single purchaser or group of affiliated purchasers during the term of this Agreement, it shall include in any contract for sale, merger, demerger, or transfer, a provision binding the purchaser/successor/transferee ("purchaser(s)") to the obligations described in this Agreement. This provision shall explicitly confirm the assumption of all the obligations described in this Agreement by such purchaser(s). Any such provision in a contract of sale, merger, demerger, or transfer

shall not expand or impose additional obligations on ABN as they relate to Paragraphs 6 and 7 of this Agreement.

16. **Conduct Covered by Agreement**: It is further understood that this Agreement does not relate to or cover any conduct by ABN other than the actions of ABN or its former affiliates or subsidiaries that are within the scope of the Factual Statement and this Agreement.

17. **Public Filing**: ABN and the United States agree that, upon acceptance by the United States District Court for the District of Columbia, this Agreement (and its attachments) and an Order deferring prosecution shall be publicly filed in the United States District Court for the District of Columbia.

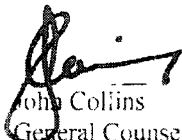
18. **Complete Agreement**: This Agreement sets forth all the terms of the Agreement between ABN and the United States. There are no promises, agreements, or conditions that have been entered into other than those expressly set forth in this Agreement, and none shall be entered into and/or be binding upon ABN or the United States unless signed by the United States, ABN's attorneys, and a duly authorized representative of ABN. This Agreement supersedes any prior promises, agreements, or conditions between ABN and the United States. ABN agrees that it has the full legal right, power, and authority to enter into and perform all of its obligations under this Agreement and it agrees to abide by all terms and obligations of this Agreement as described herein.

[REST OF THE PAGE IS INTENTIONALLY BLANK]

**Acknowledgement on behalf of RBS N.V.,**

**formerly known as ABN AMRO Bank N.V.**

We, John Collins and Mary Elizabeth Taylor, the duly authorized representatives of The Royal Bank of Scotland N.V., formerly known as ABN AMRO Bank N.V., (the "Bank") hereby expressly acknowledge the following: (1) that we have read this entire Agreement as well as the other documents filed herewith in conjunction with this Agreement, including the Information and Statement of Facts; (2) that we have had an opportunity to discuss this Agreement fully and freely with the Bank's attorneys, (3) that the Bank fully and completely understands each and every provision of this Agreement, (4) that the Bank is fully satisfied with the advice and representation provided by its attorneys; (5) that we are authorized, on behalf of the Bank, to enter this Agreement; and (6) that the Bank enters this Agreement knowingly and voluntarily.



John Collins
General Counsel
The Royal Bank of Scotland
N.V., formerly known as
ABN AMRO Bank N.V

May 10, 2010
Date

Mary Elizabeth Taylor
Associate General Counsel/
Head of Litigation,
RBS Americas

Date

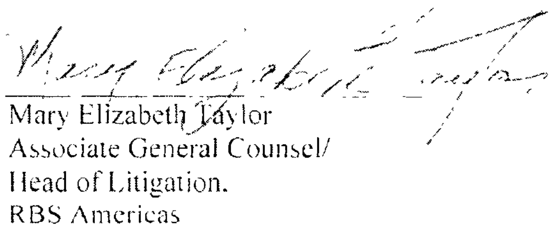
**Acknowledgement on behalf of RBS N.V.,**

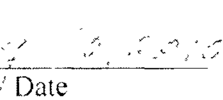
**formerly known as ABN AMRO Bank N.V.**

We, John Collins and Mary Elizabeth Taylor, the duly authorized representatives of The Royal Bank of Scotland N.V., formerly known as ABN AMRO Bank N.V., (the "Bank") hereby expressly acknowledge the following: (1) that we have read this entire Agreement as well as the other documents filed herewith in conjunction with this Agreement, including the Information and Statement of Facts: (2) that we have had an opportunity to discuss this Agreement fully and freely with the Bank's attorneys; (3) that the Bank fully and completely understands each and every provision of this Agreement: (4) that the Bank is fully satisfied with the advice and representation provided by its attorneys: (5) that we are authorized, on behalf of the Bank, to enter this Agreement; and (6) that the Bank enters this Agreement knowingly and voluntarily.

John Collins
General Counsel
The Royal Bank of Scotland
N.V., formerly known as
ABN AMRO Bank N.V.

Date



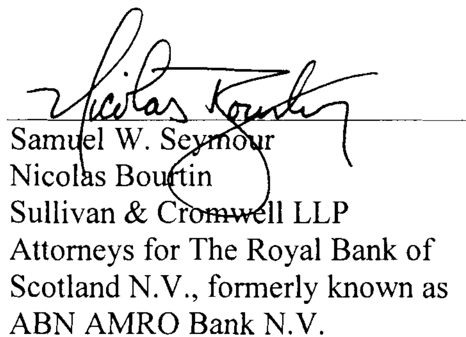


Mary Elizabeth Taylor
Associate General Counsel/
Head of Litigation.
RBS Americas

Date

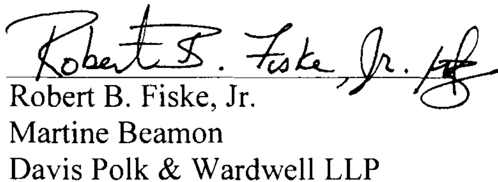
**Acknowledgment by Defense Counsel**

We, the undersigned, are attorneys representing The Royal Bank of Scotland N.V., formerly known as ABN AMRO Bank N.V., in this matter. In connection with such representation, we hereby expressly acknowledge the following: (1) we have reviewed and discussed this Agreement with our client; (2) we have explained fully each of the terms and conditions of this Agreement to our client; (3) we have answered fully each and every question asked of us by our client; and (4) we believe that our client fully and completely understands all of the Agreement's terms.



Samuel W. Seymour
Nicolas Bourtin
Sullivan & Cromwell LLP
Attorneys for The Royal Bank of Scotland N.V., formerly known as ABN AMRO Bank N.V.

MAY 10, 2010
Date

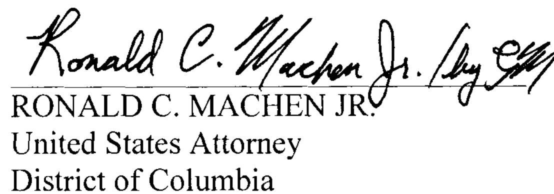


Robert B. Fiske, Jr.
Martine Beamon
Davis Polk & Wardwell LLP

MAY 10, 2010
Date

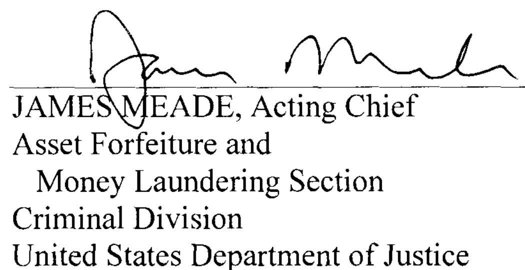
***On Behalf of the Government***

5/10/2010
DATE



RONALD C. MACHEN JR.
United States Attorney
District of Columbia

5/10/2010
DATE



JAMES MEADE, Acting Chief
Asset Forfeiture and
Money Laundering Section
Criminal Division
United States Department of Justice

***Exhibit A***

Factual Statement

## EXHIBIT A -- FACTUAL STATEMENT

### I. Introduction

1. This Factual Statement is made pursuant to, and is part of, the Deferred Prosecution Agreement dated May 10, 2010, between The Royal Bank of Scotland N.V. ("RBS N.V."), formerly known as ABN AMRO Bank N.V. (both RBS N.V. and the former ABN AMRO Bank N.V. are referred to herein as "ABN"), and the Asset Forfeiture and Money Laundering Section of the Criminal Division of the United States Department of Justice and the United States Attorney's Office for the District of Columbia (collectively, the "Government").

2. Beginning after the announcement of U.S. sanctions against countries and entities designated as supporting international terrorism in the mid-1990s, certain offices, branches, subsidiaries, and affiliates of ABN systematically violated the laws of the United States by conspiring with entities subject to U.S. sanctions on ways to circumvent the sanctions and by facilitating the movement of hundreds of millions of dollars illegally through the U.S. financial system on behalf of those sanctioned entities.

3. ABN engaged in this criminal conduct by: (a) methodically removing or falsifying references from outgoing[1] United States Dollar ("USD") payment messages that principally involved countries such as Iran, Libya, the Sudan, and Cuba, banks from Iran, Libya, the Sudan or Cuba, or persons listed as parties or jurisdictions sanctioned by the United States Department of the Treasury's Office of Foreign Assets Control ("OFAC") (collectively, the "Sanctioned Entities"); (b) advising the Sanctioned Entities

---

[1] References to "outgoing" messages indicate those payment messages that were transmitted by ABN to ABN's U.S. affiliates and correspondent banks. "Incoming" messages refer to: (a) payment messages sent by the Sanctioned Entities to ABN for further transmission to ABN's U.S. affiliates and correspondent banks; and (b) payment messages that were transmitted to ABN from financial institutions in the United States.

how to evade automated filters at financial institutions in the United States; and (c) willfully failing to maintain or establish appropriate Bank Secrecy Act ("BSA") and Anti-Money Laundering ("AML") procedures or to conduct effective due diligence reviews concerning foreign correspondent accounts.

4. Additionally, as part of this criminal conduct, ABN: (a) caused financial institutions in the United States to process transactions involving Sanctioned Entities, including banks from Iran, Libya, the Sudan, and Cuba, that the U.S. financial institutions would not otherwise have processed; and (b) prevented financial institutions in the United States from filing required BSA and OFAC-related reports with U.S. authorities.

5. Certain offices, branches, and subsidiaries of ABN used procedures to alter USD payment messages by: (a) removing names and references to Sanctioned Entities from payment messages; (b) altering the names of the Sanctioned Entities; (c) instructing the Sanctioned Entities to include the code word "SPARE" in their payment messages so ABN could first segregate these messages from normal message payment processing and then amend the message by removing/altering any potentially problematic text; (d) creating a manual queue to ensure certain payment methods and language were used to effectuate the sanctioned payments; (e) replacing the names of Sanctioned Entities with ABN on letters of credit and foreign exchange transactions; and (f) adding to payment manuals the "Special Conditions" that were to be used for certain Sanctioned Entities in order to circumvent the laws of the United States. In addition, ABN used these same procedures for Sanctioned Entities with respect to letters of credit, and the processing of USD checks and traveler's checks. ABN and the Sanctioned Entities knew and discussed the fact that without such alterations, amendments, and code words, the automated OFAC

filters at clearing banks in the United States would likely halt the payment messages and other transactions, and, in many cases, would reject or block the sanctions-related transactions and report the same to OFAC. ABN knew that financial institutions in the United States could choose not to process permissible payments on behalf of any of the Sanctioned Entities. By making the transactions appear to be on behalf of ABN and not the Sanctioned Entities, ABN's actions effectively denied the financial institutions in the United States that opportunity. ABN therefore also prevented the financial institutions in the United States from filing required BSA and OFAC-related reports with the U.S. authorities. Further, because of ABN's actions, civil monetary judgments against the Sanctioned Entities could not be enforced in the United States, nor could the Sanctioned Entities' funds be seized since no one, other than ABN, knew the money actually was owned by the Sanctioned Entities. ABN management identified these practices in 2004 and terminated them in 2005. The implementation of more robust controls continued through 2006.

6. In addition to altering USD payment messages, ABN conspired with the Sanctioned Entities about how to format USD payments so that such payments would evade U.S. sanctions and detection by automated filters used by financial institutions in the United States. When ABN employees received payment messages from the Sanctioned Entities that contained words that could trigger a U.S. bank's OFAC filter, ABN would manually alter or amend the messages to ensure that they would not be detected by financial institutions in the United States. ABN's actions in facilitating these payments were motivated by the profit ABN could make from the Sanctioned Entities.

7. Each year between and including 1996 and 2004, ABN caused ABN's U.S. affiliate to file false, misleading, and inaccurate Annual Reports of Blocked Property to OFAC. In each of those reports, the U.S. affiliate of ABN certified to OFAC that all information provided was accurate and that all material facts in connection with the report had been set forth.

8. In May 2005, ABN provided the Government with the results of ABN's internal investigation into its USD business with Sanctioned Entities. In December 2005, ABN was issued a Cease and Desist order from the Federal Reserve and other regulators ordering ABN to make improvements and enhancements to its compliance program to ensure that it would not engage in practices that resulted in the processing of impermissible USD payments for the Sanctioned Entities. After May 2005, ABN provided assistance by sharing with the Government, as well as the relevant regulators, the results of that internal investigation and other relevant materials.

## II. ABN's Business Organization and Assets

9. ABN was a leading international financial institution with its headquarters in Amsterdam, Netherlands, operating in more than 50 countries through offices, branches, affiliates, and subsidiaries around the globe, including within the United States. ABN's business included commercial lending, Treasury transactions among governments, Treasury transactions between governments and private investors, consumer deposits and loans, investment banking, private banking or wealth management for individuals, and various other financial activities typically conducted by modern international financial institutions.

10. At all times relevant to the Factual Statement, ABN was considered a "foreign bank" and a "bank holding company"[2] in the United States. ABN, in the form of its predecessor corporations, began U.S. operations in January 1941. Since that time, ABN has owned several banks in the United States. During the 1990s, by total assets, ABN was the largest foreign bank in the United States.

11. The United States market was a vital and leading profit center for ABN. In 1996, ABN sought and obtained a listing on the New York Stock Exchange. Further, at certain points in time, U.S. operations or business delivered greater gross profits than did operations in any other country. During the Third Quarter of 2003, for instance, ABN reported net operating income of approximately $2 billion USD. More than thirty-three percent of that total, or approximately $700 million USD for one calendar quarter, arose from the U.S. business unit.

12. ABN's strong U.S. presence, operations, and facilities were used to solicit, obtain and maintain business and resulting profits throughout the world. For example, ABN marketed itself to foreign financial institutions and international businesses based upon its U.S. presence, business, and clearing services and facilities, particularly emphasizing that it was the largest foreign bank in the United States and that it considered the United States its second "home" market.

13. The Board of Governors of the Federal Reserve System ("Federal Reserve") had supervisory authority over ABN operations in the United States. In New York, ABN was also subject to oversight and regulation by the New York State Banking Department. In

[2] The term "foreign bank" is defined in the International Banking Act, 12 U.S.C. § 3101(7), and the term a "bank holding company" is defined in the Bank Holding Company Act of 1956, 12 U.S.C. § 1841.

Illinois, ABN was also subject to oversight and regulation by the Illinois State Banking Department. ABN's home country supervisor was De Nederlandsche Bank ("DNB").

14. The December 31, 2009, annual report, which is the most recent annual report for the bank (which at that time was named ABN AMRO Bank N.V.) listed the bank's annual audited consolidated net income attributable to shareholders as $6.14 billion USD; and $5.27 billion USD for Dec 31, 2008. Total audited consolidated assets as of the same dates equaled $676 billion USD and $930 billion USD, respectively.

15. ABN AMRO Holding N.V., the parent company of the former ABN AMRO Bank N.V., was acquired in October 2007 by a consortium of Fortis, the Royal Bank of Scotland ("RBS"), and Banco Santander, using the acquisition vehicle RFS Holdings. In October 2008, the Dutch State announced that it had acquired the Dutch businesses of Fortis. In December 2008, the Dutch State replaced Fortis as a stakeholder in RFS Holdings. The former ABN AMRO Bank N.V. subsequently underwent a restructuring process to transfer its Dutch State-acquired businesses and activities out of the existing ABN AMRO Group. To achieve this, the relevant Dutch State-acquired businesses were first transferred to a new legal entity owned by ABN AMRO Holding N.V. On February 5, 2010, through a statutory demerger process, the former ABN AMRO Bank N.V. was renamed RBS N.V., and the newly created Dutch legal entity was re-named ABN AMRO N.V. ("new ABN AMRO"). Full legal separation, at which time ABN AMRO Holding N.V. ceased to own new ABN AMRO, was completed on April 1, 2010. New ABN AMRO is now 100% owned by the Dutch Government. RBS N.V. is a subsidiary undertaking of, and controlled by, RBS.

## III. Applicable Laws and Background

16. In order to protect its citizens, the United States has employed sanctions and embargoes with regard to state sponsors of terrorism such as Iran, Libya, the Sudan, and Cuba. Whether by statute, Executive Order, or regulation, those sanctions arose in response to repeated support by those nations for international terror against U.S. citizens and its allies. To safeguard the national security of the United States and its allies, the U.S. Congress and the President of the United States authorized and implemented such sanctions as the Trading with the Enemy Act, the Iranian Transactions Regulations, and regulations and embargoes against Libya and the Sudan, and made a willful violation of those sanctions a federal criminal offense.

### *A. Libyan Sanctions*

17. On January 7, 1986, President Ronald Reagan issued Executive Order No. 12543, which imposed broad economic sanctions against Libya. One day later, the President issued Executive Order No. 12544, which also ordered the blocking of all property and interests in property of the Government of Libya. President George H.W. Bush strengthened those sanctions in 1992 pursuant to Executive Order No. 12801. On September 22, 2004, President George W. Bush issued Executive Order No. 13357, terminating the national emergency with regard to Libya and revoking the sanction measures imposed by the prior Executive Orders.

### *B. Iranian Sanctions*

18. In 1987, President Reagan issued Executive Order No. 12613, which imposed a broad embargo on imports of Iranian-origin goods and services. In 1995 and 1997, President William Clinton issued Executive Order Nos. 12957, 12959, and 13059, which

strengthened existing U.S. sanctions against Iran. The Executive Orders prohibited virtually all trade and investment activities between the United States and Iran, including, but not limited to, broad prohibitions on: (a) the importation into the United States of goods or services from Iran; (b) the exportation, sale, or supply of goods, technology or services from the United States or by a U.S. person to Iran; (c) trade-related transactions with Iran by U.S. persons, including financing, facilitating or guaranteeing such transactions; and (d) investment by U.S. persons in Iran or in property owned or controlled by Iran (collectively, the "Iranian Sanctions"). With the exception of certain exempt or authorized transactions, OFAC regulations implementing the Iranian Sanctions generally prohibited the export of services to Iran from the United States. Under the Iranian Transactions Regulations, 31 C.F.R. Part 560, no goods, technology, or services could be exported, re-exported, sold, or supplied to Iran, directly or indirectly, from the United States or by a U.S. person wherever located, without authorization. 31 C.F.R. § 560.204. Section 560.203 prohibited any transaction by any U.S. person or within the United States that evaded or avoided, or had the purpose of evading or avoiding, or that attempted to violate, any of the prohibitions set forth in Part 560. Section 560.203 further prohibited any attempt to violate the prohibitions contained in Part 560. 31 C.F.R. § 560.203. The Iranian Sanctions were in effect at all times relevant to the Statement of Facts.

### *C. Sudanese Sanctions*

19. On November 3, 1997, President William J. Clinton issued Executive Order No. 13067, which imposed a trade embargo against the Sudan and blocked all property and interests in property of the Government of Sudan. President George W. Bush

strengthened those sanctions in 2006 pursuant to Executive Order No. 13412. The Executive Orders prohibited virtually all trade and investment activities between the United States and the Sudan, including, but not limited to, broad prohibitions on: (a) the importation into the United States of goods or services from the Sudan; (b) the exportation or re-exportation of any goods, technology, or services from the United States or by a U.S. person to the Sudan; and (c) trade- and service-related transactions with the Sudan by U.S. persons, including financing, facilitating or guaranteeing such transactions. The Executive Orders further prohibited "[a]ny transactions by a United States person or within the United States that evades or avoids, has the purposes of evading or avoiding, or attempts to violate any of the prohibitions set forth in [these orders]." With the exception of certain exempt or authorized transactions, OFAC regulations implementing the Sudanese Sanctions generally prohibited the export of services to the Sudan from the United States. The Sudanese Sanctions were in effect at all times relevant to the Statement of Facts.

***D. Cuban Sanctions***

20. Beginning with Executive Orders and regulations issued at the direction of President John F. Kennedy, the United States has maintained an economic embargo against Cuba through the enactment of various laws and regulations restricting U.S. trade and economic transactions with Cuba. OFAC controls imports and blocks all transactions relating to Cuban assets based upon the Cuban Assets Control Regulations ("CACR"), which were promulgated under the Trading With the Enemy Act ("TWEA"), Title 50, United States Code Appendix, Sections 1-39, and 41-44.

21. Unless authorized by OFAC, U.S. persons are prohibited from engaging in financial transactions, among other types of transactions, which are by, at the direction of, or for the benefit of, Cuba or Cuban nationals, or which involve property in which Cuba or Cuban nationals have any direct or indirect interest, including all "transfers of credit and all payments" and "transactions in foreign exchange." 31 C.F.R.§ 515.201(a). Unless authorized by OFAC, U.S. persons are prohibited from engaging in transactions involving property in which Cuba or Cuban nationals have any direct or indirect interest, including all "dealings in . . . any property or evidences of indebtedness or evidences of ownership of property by any person subject to the jurisdiction of the United States" and all "transfers outside the United States with regard to any property or property interest subject to the jurisdiction of the United States." 31 C.F.R. § 515.201(b). The Cuban Assets Control Regulations also prohibited any "transaction for the purpose or which has the effect of evading or avoiding any of the prohibitions" set forth in the OFAC regulations. 31 C.F.R. § 515.201(c). The Cuban Sanctions were in effect at all times relevant to the Statement of Facts.

### *E. Bank Secrecy Act*

22. The Bank Secrecy Act, 31 U.S.C. § 5311 *et seq.*, and its implementing regulations, which Congress enacted to address the increase in criminal money laundering activities utilizing financial institutions, require domestic banks, insured banks and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering, terrorist financing and other financial crimes, and to maintain certain records and file reports related thereto.

Banks are also required to conduct due diligence for foreign correspondent accounts. The Bank Secrecy Act was in effect at all times relevant to the Statement of Facts.

## IV. Charges

### *A. Conspiracy*

23. The Government alleges and ABN agrees that ABN violated Title 18, United States Code, Section 371, by conspiring:

a. to defraud the United States by impeding, impairing, obstructing and defeating the lawful functions of the U.S. Department of Treasury, Office of Foreign Assets Control, in the application and enforcement of sanctions and embargo regulations against Iran, Libya, the Sudan, and Cuba, and entities affiliated with Iran, Libya, the Sudan, and Cuba;

b. to engage in financial transactions with entities affiliated with Iran, Libya, and the Sudan, in violation of the International Emergency Economic Powers Act, Title 50, United States Code, Section 1705, and regulations and embargoes issued thereunder; and

c. to engage in financial transactions with entities associated with Cuba, in violation of the Trading With the Enemy Act, Title 50, United States Code, Appendix, Sections 1-39, and 41-44, and regulations and embargoes issued thereunder.

### *B. Bank Secrecy Act/Anti-Money Laundering Charge*

24. The Government alleges and ABN agrees that ABN did not maintain an adequate BSA/AML program, in violation of Title 31, United States Code, Sections 5318(h) and 5322.

**V. Conduct of ABN**

25. In order to carry out its many functions and operations, ABN employed a wide range of officers and professionals with expertise in modern finance, management, business administration, risk management, auditing, regulatory compliance, and the law. ABN's management, lawyers, auditors, and compliance officials were well aware of U.S. sanctions against Sanctioned Entities. For instance, on or about May 18, 1995, top officials of ABN in Amsterdam sent an electronic mail message to the entire management of ABN in Europe, Asia, South America, Africa, the Caribbean, and North America, advising and noting that any financial transactions in USD undertaken for or on behalf of Iranian persons or banks were subject to seizure or blocking in the United States:

> URGENT
> US Sanctions against Iran
> Your attention is urgently drawn to the unilateral imposition of sanctions by the USA against Iran. Whilst no clear picture of the exact extent of the sanctions has yet emerged, all offices should give special attention to any payment traffic in US$ in favour of Iranian beneficiaries of any sort; it is known that such US$ transfers are being blocked in the USA.

26. Soon after President Clinton signed the Executive Order implementing sanctions against Iran in May 1995, Iranian banks needed to find a way to conduct USD transactions. The banks sought the services of ABN and other banks in aiding the Iranians to circumvent U.S. laws. Certain ABN employees were aware of these requests, discussed these requests with the other facilitating bank, and thereafter approved of ABN conducting the illegal transactions. This was contrary to the advice of outside counsel that ABN's involvement in such transactions would potentially violate U.S. law. ABN employees engaged in these transactions in part in order to further strengthen ABN's commercial relationship with its Iranian bank customers.

27. To overcome U.S. sanctions, certain Sanctioned Entities began requesting that ABN omit their names and Bank Identification Codes ("BICs") from payment messages sent by ABN to ABN's U.S. correspondent banks. ABN complied with the requests of these Sanctioned Entities and omitted those banks' names and identifiers in order to help bypass the OFAC filtering mechanisms of U.S. financial institutions.

28. ABN and the Sanctioned Entities discussed additional ways to avoid future rejections or delays to any payments. ABN also used cover payments, on their face legitimate payment methods, to shield the identities of the Sanctioned Entities.[3] For instance, instead of using serial MT 103 payment messages, ABN began to use MT 202 cover payment messages to avoid revealing the identity of the ordering customer and beneficiary party for USD payments sent through financial institutions in the United States.

29. In addition to using cover payments, ABN agreed to remove the names, BICs, and any other identifying information of the Sanctioned Entities in the payment messages sent to ABN's U.S. correspondent banks. ABN employees knew that any references to the Sanctioned Entities put the payments at risk of detection, rejection, delay, or possible blocking by financial institutions in the United States. For any rejected or blocked payments, the U.S. financial institutions would have been required under U.S. law to file reports with OFAC regarding such transactions.

---

[3] An MT 103 message is the de facto industry standard used in cross-border customer credit transfers; an MT 202 is the de facto industry standard used for making bank-to-bank credit transfers. A cover payment is typically a payment where a SWIFT MT 103 payment message is sent between the originator and the beneficiary banks, but the actual funds are transferred by using an MT 202 bank payment that normally lacks the payment details of the MT 103. In this instance, a U.S. financial institution processing a cover payment would not know who the funds were being transferred for or if the transaction involved a Sanctioned Entity.

30. As illustration, on or about June 5, 1995, representatives of Iranian Bank A made a request to ABN officials in Dubai that ABN act as a conduit for all USD transactions of Iranian Bank A in Dubai. They requested that all USD payments of Iranian Bank A be routed through or be issued in the name of ABN and carry no reference to the fact that these payments were issued on behalf of Iranian Bank A, and that all USD receipts of Iranian Bank A would come into ABN's account.

31. On or about June 5, 1995, officials of ABN in Dubai forwarded Iranian Bank A's request to officials at ABN Headquarters, noting the current financial profit and future profit of entering the scheme with Iranian Bank A:

> Our relations with [Iranian Bank A] are excellent and they frequently help us with our Overnight Dirham funding. They also maintain an average of USD[ollar] 20 mio [million] in call balances with us. Apart from this relationship angle, we will derive the following benefits: (a) from the interest free balances with us; (b) management fees; and (c) TT/DD charges, etc. There is also the possibility of cash backed L/Cs [Letters of Credit] of approx. USD[ollar] 200 mio [million] being routed through us in the future.

32. On or about June 7, 1995, officials within ABN's Amsterdam Headquarters informed officials of ABN in Dubai that ABN's Central Credit Committee, which included several members of ABN's Board of Directors, should decide whether or not to assist Iranian Bank A through entering into the scheme.

33. Similarly, on or about June 11, 1995, officials of Iranian Bank B sent a written communication to certain banks in the United Arab Emirates and its correspondent banks instructing those banks to undertake USD payments for Iranian Bank B in the name of a European financial institution "WITHOUT MENTIONING OUR BANK'S NAME" to defeat and circumvent the sanctions imposed upon Iran by the United States (emphasis in original).

34. On or about June 13, 1995, an official of ABN in Dubai forwarded to officials located in several departments of the Amsterdam Headquarters of ABN a copy of the June 11 request by Iranian Bank B to use the named European financial institution as Iranian Bank B's conduit to defeat and evade the U.S. sanctions, stating: "Enclosed please find a copy of telefax message received from [Iranian Bank B] which is self-explanatory. As would be obvious, [Iranian Bank B] has worked out an arrangement with [the financial institution] along similarities to what [Iranian Bank A] has proposed to us."

35. On or about June 14, 1995, officials of ABN in Amsterdam and the named European financial institution communicated on the topic of the U.S. sanctions against Iran.

36. In or about June and July 1995, officials at ABN's Amsterdam Headquarters and New York offices were advised by outside U.S. counsel that the proposal by Iranian Bank A and other Iranian banks for ABN to serve as a conduit or means to bypass and avoid the sanctions imposed by the United States upon Iran risked breaching U.S. law: "The fund transfer mechanics proposed by [Iranian Bank A] are an attempt to circumvent the Iranian trade embargo. Given that violations of the Executive Order and OFAC regulations carry substantial penalties, not to mention the negative publicity, the [Iranian Bank A] proposal must be strictly scrutinized and ABN AMRO must weigh the risks before proceeding with any such transfers."

37. Beginning in or about August 1995, officials of the Dubai branch of ABN accepted and then acted upon the request of Iranian Bank A and other Iranian banks to serve as their conduit to undertake financial transactions, including the processing of

payments, the confirmation or processing of letters of credit, the processing of checks, and the foreign exchange among governmental Treasuries, through the United States without disclosing that the Iranian government, financial institutions or nationals were behind such transactions.

38. For example, in or about December 1995, officials of ABN in Amsterdam negotiated and acted to facilitate payments totalling approximately $2 million USD by Iranian Bank C to ABN.

39. On or about February 5, 2000, an official of the Dubai branch of ABN wrote to a Regional Director of Iranian Bank A assuring him that the Bank would take care to carry out the scheme to evade and defeat the U.S. sanctions: "We understand the special nature of your US$ transactions and will ensure that all operations departments concerned are properly briefed regarding this, as well."

40. Similarly, in or about October 1997, officials of the Dubai branch of ABN visited with officials at Libyan Bank A, a bank partially owned by the Libyan government, and noted that ABN was ready to engage in transactions with Libyan Bank A again.

41. In or about December 1997, Libyan Bank A opened an account at the Dubai branch of ABN, with the agreement and understanding between the banks that Libyan Bank A's name would not be mentioned in USD transactions sent to the United States on behalf of Libyan Bank A.

42. From in or about December 1997 until the lifting of U.S. sanctions against Libya in 2004, Libyan Bank A sent payment instructions to ABN for financial transactions in USD to be processed through the United States with the direction: "PLEASE DO NOT QUOTE OUR NAME AS REMITTING BANK."

43. From in or about December 1997 until 2004, ABN transmitted instructions for financial transactions to ABN's New York branch on behalf of Libyan Bank A without referencing or mentioning Libyan Bank A by name or otherwise.

44. On or about July 28, 1999, a payment instruction from the Dubai branch of ABN to the New York branch included a reference to Libyan Bank A. The payment was automatically held by the computer system in the New York branch because of the reference to Libyan Bank A. The Dubai branch then sent a communication to the New York branch directing that the payment be made and stating that the reference to Libyan Bank A, a sanctioned Libyan entity, was a typographical error:

> Due to typographical error in our MT100 by one of our staff member the name of [Libyan Bank A] in Field 52A [of the SWIFT MT100 instruction] has been wrongly mentioned which has no relation to this payment transfer. We regret very much for the inconv[enience] . . . and request you to delete the name of [Libyan Bank A] from the captioned payment order and execute the payment as requested.

45. In or about August 1999, after employees of the New York branch refused to execute the July 28, 1999, payment, the Dubai branch officials of ABN re-executed the transfer through the New York branch without disclosing the involvement or interest of Libyan Bank A.

46. On or about October 10, 1999, Iranian Bank B agreed with the Dubai branch of ABN to open a USD account in Dubai, as well as other foreign currency accounts at ABN in Amsterdam, with the following terms or understanding: "NOTE: PLEASE DO NOT MENTION THE NAME [IRANIAN BANK B] IN ANY OUTGOING PAYMENT. PAYMENTS TO BE PROCESSED LIKE [LIBYAN BANK A]."

47. On or about November 26, 1999, ABN told a customer that it would be willing to provide advice on routing Cuban payments to evade U.S. sanctions but that the customer

must contact ABN directly and could not rely upon ABN catching or noticing the reference to Cuba in the money transfer instruction.

48. Between approximately August 3, 2000 and August 28, 2000, Libyan Bank A sent payment instructions to the Romanian branch of ABN relating to financial transactions in USD, which were processed through the United States, and requested ABN to: "Please do not quote our name as the remitting bank in all your contacts with your USA correspondent or any American bank regarding this payment."

49. From in or about January 2001, seven subsidiaries and affiliates of ABN used similar procedures as ABN, including cover payments, to process USD transactions on behalf of Sanctioned Entities, including Sudanese banks and persons. These payments were processed through ABN's New York branch, among other USD clearing banks.

50. In or about June and July 2003, business and compliance executives of ABN in Amsterdam, London, New York, the United Arab Emirates and elsewhere, discussed and exchanged communications regarding U.S. sanctions. At the conclusion of those discussions and communications, ABN, through a number of its branches and affiliate banks, continued in the scheme to evade and circumvent U.S. sanctions.

**VI. Special Services for Sanctioned Entities**

51. The Dubai branch of ABN created a special payment system for the Sanctioned Entities. Payment messages involving the Sanctioned Entities were pulled from the normal processing procedure, manually reviewed, and, if needed, altered, before they were sent to financial institutions in the United States. Thus, if the payment message contained a reference that would cause the payment to be stopped in the United States, ABN would alter the payment before sending it to the United States. As ABN's payment

systems became more automated, ABN instructed the Sanctioned Entities to put the code word "SPARE" into the payment message. The payment message would then be stopped by ABN, routed into a special queue, and then manually altered to avoid any OFAC filters. In this manner, ABN assisted the Sanctioned Entities and assured the processing of USD transactions by formatting payment messages so they would not be rejected or blocked by OFAC filters at financial institutions in the United States.

52. Beginning as early as 1995 and continuing until in or about 2005, the Dubai branch of ABN created procedures and guidelines to facilitate the processing of prohibited USD transactions. For instance, one section of the ABN payment manual entitled "Special Conditions" listed specific instructions on how to effectuate these payments and avoid OFAC filters. A specific instruction from this manual stated:

> Payments by order of Iranian Banks [A & D] maintaining accounts with ABN, Dubai are to be handled with extra care to ensure the wordings "Iran" etc. are not mentioned in the payment due to OFAC regulations.

53. On or about October 12, 1999, an official of the Dubai branch of ABN noted that undertaking the special scheme for the Iranian and Libyan banks involved manual intervention in the payment process which readily could result in "errors" leading to losses. The official requested assistance with arriving at an automated or technical solution, which was subsequently instituted.

### *A. Use of Cover Payments*

54. In October 2001, Special Recommendation VII of the Financial Action Task Force[4] stated that countries should take measures to require financial institutions to

[4] The Financial Action Task Force was an inter-governmental body, of which the Netherlands was a member, whose purpose was the development and promotion of national and international policies to combat money laundering and terrorist financing.

include accurate and meaningful originator information on funds transfers and related payment messages. It further stated that member countries should closely monitor any funds transfers that did not contain complete originator information.

55. In 2003, ABN Dubai made a decision to discontinue cover payments and instead use the serial payment method. However, for certain Sanctioned Entities, ABN Dubai continued to use the cover payment method, thereby hiding the Sanctioned Entities' identities and effectuating payments in violation of U.S. sanctions. ABN again created special exceptions to its normal processing of transactions by using cover payments where it should have used serial payments.

### *B. Personal Checks and Traveler's Checks*

56. The Sanctioned Entities intentionally sent bundles of checks to ABN Dubai without a stamp or endorsement marked on the checks. ABN would then credit the Sanctioned Entities' accounts at ABN Dubai and send the bundles of checks to ABN Chicago's check processing center for processing and collection. Proceeds were deposited into ABN Dubai's account at the New York branch. ABN Dubai processed and accounted for the checks to make it appear that the payees had accounts at ABN and maintained records of the checks in a handwritten ledger. ABN Dubai created the above procedures specifically to provide prohibited USD clearing services to Sanctioned Entities.

### *C. Letters of Credit and Foreign Exchange Transactions*

57. In order to effectuate Letters of Credit and Foreign Exchange transactions, the Dubai branch of ABN purposefully removed the name of any Iranian bank and replaced it with ABN's name so that the Iranian bank's true identity was disguised. This was done

even though the overwhelming majority of these transactions were permissible under U.S. regulations, as they were exempted from Iranian sanctions pursuant to the "u-turn" exemption.[5] However, ABN and the Iranian banks nonetheless removed the Iranian identifiers, believing that any payment message that mentioned the Iranian banks, even a permissible payment, would be stopped and investigated in the United States.

**VII. Failure to Maintain Effective BSA/AML Procedures**

58. From in or about January 1998, and continuing until in or about December 2005, the USD clearing center of ABN's New York branch, the U.S. Dollar and Euro Clearing Center ("USDECC") (and formerly the North American Regional Clearing Center ("NARCC")), willfully failed to establish and implement an adequate BSA/AML compliance program or to conduct appropriate due diligence on foreign correspondent accounts.

59. The New York branch was not adequately staffed to coordinate and monitor day-to-day compliance with the BSA. The New York branch also failed to provide adequate training to ensure BSA compliance. These failures to implement an adequate BSA/AML compliance program resulted in a significant number of violations of the requirement to report suspicious transactions and to conduct effective due diligence in reviewing foreign correspondent accounts.

60. The NARCC operated as a clearing institution for funds transfers in USD and served as an intermediary institution. Prior to 1991, the NARCC performed the clearing function primarily for the various branches and operations of ABN (the "Bank Network"). Beginning in 1991, the New York branch marketed the services of the NARCC to institutions outside of, and independent of, the Bank Network. As of May 21,

[5] After November 2008, this exemption no longer exists for Iranian sanctions.

2003, more than 400 institutions independent of the Bank Network held correspondent accounts with the NARCC.

61. Beginning in 1998, the New York branch focused substantial marketing efforts on small and mid-sized financial institutions in Russia. As of December 31, 1998, approximately 30 financial institutions in Russia held correspondent accounts with the NARCC. After a U.S. financial institution in New York shut down numerous Russian accounts for their involvement with shell companies and other suspicious activities, ABN intentionally marketed ABN's U.S. financial services to these suspicious Russian financial institutions. The number of Russian accounts more than tripled during the following year, and approximately 35 financial institutions in Russia opened correspondent accounts with the NARCC during 2000. The majority of these financial institutions in Russia had no relationship with the New York branch other than having correspondent accounts with the NARCC, and had no relationship with any member of the Bank Network. These financial institutions utilized the Bank Network and the New York branch primarily as a means of obtaining access to USD clearing and settlement systems in the United States.

62. ABN targeted the Russian accounts despite media and other governmental warnings about the high risk involved with these accounts at the time. A New York branch employee's email to ABN Moscow in 1999 read:

> [P]lease phone them, push really hard, we need new accounts on our books. I must make my projections of $500,000 in revenues for 1999 from all russian banks. Please lend me your HAND!

63. Later in 1999, an employee from ABN Moscow emailed concerns about these new Russian bank account openings to the same New York branch employee:

> There is no logic in opening a/c [accounts] to all those half-dead tiny Russian banks kicked out of [U.S. financial institutions]. We are all heading for trouble if we do it. Hardly any revenue will be generated either. We are losing focus and risk becoming a niche provider to a wrong clientele.

64. On average, the NARCC processed approximately 30,000 funds transfers per day. The location, number, and size of financial institutions holding correspondent accounts with the NARCC and the volume of funds transfers processed posed a substantial risk of money laundering. The New York branch failed to apply an adequate system of internal controls reasonably designed to assure BSA/AML compliance and to manage the risk of money laundering at the NARCC.

65. Until August of 1999, the New York branch did not have a formal procedure for conducting due diligence on financial institutions holding correspondent accounts with the NARCC. Although the New York branch did eventually establish formal procedures, the branch lacked internal controls, did not maintain necessary documentation to adequately assess the potential for money laundering and execute a risk rating for many of these financial institutions, including important information on ownership, management, customer base or business activities. Documentation failed to include information necessary for assessing, in an accurate and meaningful manner, the risk of money laundering that each institution posed, and failed to evidence that the New York branch ever conducted adequate due diligence on the financial institutions. The lack of necessary documentation continued until in or about 2003.

66. In addition, the New York branch failed to adequately monitor funds transfers processed by the NARCC for potential suspicious activity. Until February of 2002, the New York branch relied solely on sporadic manual transaction monitoring by a single

employee, despite the need for automated monitoring of the funds transfers. In February of 2002, the New York branch implemented an automated transaction monitoring system. However, a substantial percentage of funds transfers that the NARCC processed flowed to or from beneficiaries or originators with accounts at institutions independent of the Bank Network. Due to the lack of complete documentation for many of these institutions, the New York branch often lacked information necessary for assessing, in an accurate and meaningful manner, the risk of money laundering and other illicit activity posed by each institution. This prevented the New York branch from incorporating an accurate and meaningful assessment of the risk of money laundering, or information on which the New York branch would base the assessment, into the automated monitoring system.

67. The New York branch failed to incorporate reliable and publicly available information concerning "shell companies" (business entities that lacked a physical presence) into the automated monitoring system. During the period from August of 2002 to September of 2003, the NARCC processed approximately 20,000 funds transfers, with an aggregate value of approximately $3.2 billion USD, that involved "shell companies" in the United States serving as originators or beneficiaries, and institutions in Russia or other former Republics of the Soviet Union serving as originating or beneficiary institutions. In October of 2000, the Government Accounting Office published a report detailing the risk that criminals in Russia could utilize "shell companies" organized in the United States as a means of concealing identity. The New York branch failed to adequately evaluate this readily available information or other media stories and

implement sufficient transaction monitoring systems and controls for "shell company" activity.

68. The New York branch failed to incorporate into the automated monitoring system information on institutions that it had identified in suspicious activity reports and information on institutions with correspondent accounts at the NARCC that the New York branch had closed.

69. The New York branch failed to investigate numerous internal suspicious activity alerts generated by the automated monitoring system of transactions.

70. Until July of 2002, the New York branch assigned the task of reviewing and investigating the alerts or reports to only three individuals. This staffing level was clearly inadequate in light of both the volume of the alerts or reports and the other functions these individuals performed.

71. The New York branch failed to provide adequate training regarding BSA/AML compliance. BSA/AML compliance staff in critical positions displayed a lack of knowledge on the detection and reporting of suspicious transactions and failed to properly monitor or conduct due diligence on foreign correspondent accounts.

**VIII. Scope of Conduct**

72. From in or about 1995 through in or about December 2005, ABN, through a number of its branches, offices, subsidiaries, and affiliates, executed payment messages designed to evade detection by OFAC filters at financial institutions in the United States. In doing so, ABN altered SWIFT payment messages for Sanctioned Entities and used cover payments. Further, ABN provided special services to ensure that payments in violation of IEEPA, TWEA, and OFAC regulations, cleared through U.S. financial

institutions. ABN undertook financial transactions and services totaling in the hundreds of millions of USD, in and through the United States, with an intent to evade and circumvent the Iranian, Libyan, Cuban, and Sudanese sanctions and regulations of OFAC. From in or about January 2006 through in or about December 2007, despite the institution of improved controls by ABN and its subsidiaries and affiliates, a limited number of additional transactions involving Sanctioned Entities occurred. From in or about January 1998, and continuing until in or about December 2005, ABN, through the New York Branch, willfully failed to establish and implement an adequate BSA/AML compliance program or to conduct appropriate due diligence on foreign correspondent accounts. During the time periods specified above, financial transactions in an amount in excess of $500,000,000 were conducted in and through the United States via ABN's branches, affiliate banks, and client accounts, which transactions 1) involved violations of IEEPA and TWEA, and/or 2) involved violations of Title 18, United States Code, Sections 1956 and 1957.

**IX. ABN's Internal Investigation**

73. In 2004, after several years of the Federal Reserve and other regulators raising numerous concerns about ABN's BSA/AML program, ABN self-identified the special procedures used by the Dubai branch of ABN, began an internal investigation into violations of U.S. sanctions, and reported the results of the investigations to the United States and ABN's U.S. and foreign bank regulators. This investigation brought to light many of the various methods ABN used to circumvent U.S. sanctions.

## X. ABN's Cooperation, Remedial Actions and Mitigation

74. ABN has made extensive efforts at remediation, including a significant revision of its compliance function. These efforts included:

a. Retaining independent outside firms to conduct an extensive transaction review of over 35 million payment messages sent and received over a five-year period;

b. Implementing enhancements to the transaction filtering process on a global basis;

c. Retaining an outside, independent firm to validate implementation of ABN's Client Acceptance and Anti-Money Laundering Policy on a global basis;

d. Creating a Compliance Committee of the Supervisory Board;

e. Strengthening Audit Committee oversight of Group Audit;

f. Introducing compliance-based performance objectives for all staff, including the Managing Board;

g. Launching a High Profile Compliance Initiative;

h. Reviewing major compliance risks facing ABN and establishing plans and protocols for managing such risks on an annual basis;

i. Improving reporting lines on compliance issues throughout ABN;

j. Strengthening communication with regulators;

k. Working with the Government and relevant Dutch authorities to develop an effective approach to disclose, in compliance with Dutch law, data, communications, and documents underlying the misconduct;

l. Committing significant resources to conduct internal investigations into the provision of USD clearing services to the Sanctioned Entities;

m. Providing regular and detailed updates to the Government, on the results of its investigation and forensic SWIFT data analyses and responding to additional specific requests by the Government;

n. Producing more than eight million pages of documents in response to Government requests; and

o. Making employees of ABN available for interviews by the Government.

75. ABN has taken disciplinary action against those employees found to have failed in their duties, including the termination of senior management, audit, legal, and compliance officials in the United States, as well as the dismissals or sanctions of other senior Bank officials.

# Wymoo International™

KNOW WHAT TO DO. KNOW WYMOO.

International Investigation

**** Confidential ****

Wymoo provides background checks and investigations for over 100 countries worldwide.

THE INFORMATION CONTAINED IN THIS REPORT IS THE INTELLECTUAL PROPERTY OF WYMOO INTERNATIONAL, LLC AND IS CONSIDERED PRIVILEGED AND CONFIDENTIAL AND IS TO BE READ BY THE INTENDED RECIPIENT ONLY. NO PART OF THIS REPORT MAY BE COPIED, SHARED, RESOLD OR DISTRIBUTED TO THIRD PARTIES WITHOUT THE WRITTEN PERMISSION OF WYMOO, A LEGAL TRADEMARK OF WYMOO INTERNATIONAL, LLC. ALL RIGHTS RESERVED. © COPYRIGHT 2007, 2008.

EXHIBIT

21

**Wymoo International**
Global Background Checks and Investigations
www.wymoo.com

Find out why. Find out Wymoo.

**International Background Check** ** CONFIDENTIAL **
Date: September 5, 2008
Client: Joseph Matthews
Investigator: David Brooks
Billing Hours: 14 hours at $50 per hour
Discount Applied: 10%

Total Fee: $630 USD
**Billing Status: PAID**
Case #: 06018

**Investigation:** Background investigation on Marcelo Farla de Lima currently residing in Sao Paulo, Brazil.

## Part I Case Summary

The client contacted Wymoo International in order to conduct a background check investigation on the subject in Sao Paulo, Brazil who has proposed to obtain a controlling interest in a financial institution. The client's primary concern in this case is to verify that the subject is who he claims to be, verify the subject's education and employment history, and to search for nationwide criminal and court records on the subject in Brazil.

## Part II Subject Data

**Full Name:** Marcelo Faria de Lima
**Date of Birth:** [illegible]
**Current Resid**[illegible]
**Prior Residence:** [illegible], Sao Paulo, Brazil, [illegible].
**Education:** PUC-RJ (Pontificia Universidade Catolica RJ). Dates attended from 1981 to 1985.
**Employment:** EDG, Estilo, Design e Gestao S.A.

## Part III Summary of Findings

**Business Profile:** Confirmed

- Mr. Marcelo Faria de Lima was appointed as the Chairman of the Board of Metalfrio Solutions on January 19, 2007. Mr. Lima worked in financial markets for 12 years in banks, such as Donaldson, Lufkin, & Jenrette (1998 to 2000), where he was an executive officer, serving mainly in the M&A area; Banco Garantia (which was purchased in 1998 by Credit Suisse) (1996 to 1998), serving in the M&A and capital markets areas; and ABN Amro Bank (1989 to 1996), where he was Chief Economist for Brazil, an investment fund manager, as well as in the corporate finance and project finance areas. He was the co-founder and Director / President of AreaUtil.com, in 2000, an internet portal specializing in the real estate market. Mr. Lima is a current shareholder and former member of the board of directors of Neovia Telecomunicações S.A., a Brazilian provider of wireless broadband access in Brazil. Since January 2004, Mr. Lima has been a direct and indirect shareholder of this telecommunications firm. Mr. Lima is also a shareholder and manager for Abyara Planejamento Imobiliario

THE INFORMATION CONTAINED IN THIS REPORT IS THE INTELLECTUAL PROPERTY OF WYMOO INTERNATIONAL LLC AND IS CONSIDERED PRIVILEGED AND CONFIDENTIAL AND IS TO BE READ BY THE INTENDED RECIPIENT ONLY. NO PART OF THIS REPORT MAY BE COPIED, SHARED, RESOLD OR DISTRIBUTED TO THIRD PARTIES WITHOUT THE WRITTEN PERMISSION OF WYMOO, A LEGAL TRADEMARK OF WYMOO INTERNATIONAL, LLC. ALL RIGHTS RESERVED. © COPYRIGHT 2007, 2008.

## Part III Summary of Findings (cont.)

**Company Profile:** Confirmed

- Metalfrio Solutions SA is a Brazilian company involved in the commercial cooling sector. The Company's product portfolio consists of over 200 different models of horizontal and upright plug-in commercial refrigerators, each with a set of different applications, such as cooling beer, soft drinks, ice cream and other products. Due to their multiple functions, which include refrigeration and the display and marketing of merchandise, the Company's refrigerators are used as refrigerated retail space in supermarkets, restaurants, convenience stores, bars and other venues that sell cold or frozen products to the public, and as a marketing tool for its customers. The Company sells its products to its customers directly or through its network of distributors and sales agents. Metalfrio Solutions' direct subsidiaries include: Metalfrio Solutions AS in Denmark, Metalfrio Solutions Inc in the United States of America and Metalfrio Solutions Mexico SA de CV in Mexico.

**Subject Profile:** Confirmed

- Mr. Lima is a native and current citizen of Brazil, who currently resides in the nation's largest city, Sao Paulo. According to public records, he has lived in Sao Paulo, Brazil for over 10 years and has no criminal record. He received a bachelor's degree in Economics from Pontifícia Universidade Católica of Rio de Janeiro (PUC-RJ) in 1985, where he was a professor of Economics from 1988 to 1989.

**Address Verification:** Confirmed

The following data is from official Sao Paulo-based government and public records.

- **Curren**
- **Prior:**

**Education Verification:** Confirmed

According to official University records, the subject was awarded the following degree.

- **Pontificia Universidade Catolica RJ** - Bachelor of Economics in 1985.

The subject was a professor of Economy from 1988 to 1989 at Pontificia Universidade Catolica RJ.

**Employment Verification:** Confirmed

- Metalfrio Solutions SA – Current
- Donaldson, Lufkin, & Jenrette – 1998 to 2000
- Banco Garantia – 1996 to 1998
- ABN Amro Bank – 1989 to 1996

THE INFORMATION CONTAINED IN THIS REPORT IS THE INTELLECTUAL PROPERTY OF WYMOO INTERNATIONAL, LLC AND IS CONSIDERED PRIVILEGED AND CONFIDENTIAL AND IS TO BE READ BY THE INTENDED RECIPIENT ONLY. NO PART OF THIS REPORT MAY BE COPIED, SHARED, RESOLD OR DISTRIBUTED TO THIRD PARTIES WITHOUT THE WRITTEN PERMISSION OF WYMOO, A LEGAL TRADEMARK OF WYMOO INTERNATIONAL, LLC. ALL RIGHTS RESERVED. © COPYRIGHT 2007, 2008.

## Part III Summary of Findings (cont.)

**Criminal and Court Records:** Confirmed

- **Criminal and Courts Records** – Nationwide public records were searched on the subject, Marcelo Faria de Lima, born [redacted] for criminal and court records from Sao Paulo, Brasilia, and Rio de Janeiro. No records were found on the subject having criminal record or court records. Based on this finding, it is highly unlikely that the subject has any criminal record in the country of Brazil. It is also highly unlikely that the subject has been the defendant in any federal or state court cases.

## Part IV Conclusion

- **The subject's current address was confirmed along with the subject previous residence.**
- **The subject's education was confirmed for a completed degree in Economics from PUC-RJ.**
- **Employment history was verified and no evidence was found of fraud or misrepresentation.**
- **No history of criminal or court records were found in our nationwide search on the subject.**
- **Based on these case findings, Wymoo finds no evidence of fraud or misrepresentation.**

THE INFORMATION CONTAINED IN THIS REPORT IS THE INTELLECTUAL PROPERTY OF WYMOO INTERNATIONAL LLC AND IS CONSIDERED PRIVILEGED AND CONFIDENTIAL AND IS TO BE READ BY THE INTENDED RECIPIENT ONLY. NO PART OF THIS REPORT MAY BE COPIED SHARED, RESOLD OR DISTRIBUTED TO THIRD PARTIES WITHOUT THE WRITTEN PERMISSION OF WYMOO, A LEGAL TRADEMARK OF WYMOO INTERNATIONAL, LLC. ALL RIGHTS RESERVED. © COPYRIGHT 2007, 2008.

## Part V Legal Disclaimer and Agreement

**1. Investigations.** Wymoo International, LLC ("Wymoo") provides confidential background checks, surveillance and investigations for clients. Wymoo makes its best effort to obtain reliable information for our clients. Wymoo is unable to make any guarantee of reliability, or completeness of the findings provided to our clients. Wymoo requires prepayment for all services and Client understands that services cannot be returned or cancelled once the services are provided or initiated.

**2. General Restrictions.** You agree to use the information Wymoo provides through its services for appropriate and legal purposes. It is the Client's responsibility to comply with local, state and federal laws regarding the use and dissemination of the services received. You agree that any information received from our services will not be used to harm, harass or threaten any individual or entity. The information shall not be provided or resold to any other person or entity without prior written consent from Wymoo. Clients consent and understand that if the information is misused Wymoo may at its option report the misuse to any governmental agency. Wymoo reports are only to be used to aid the client in his or her own decision-making. All Wymoo services are strictly confidential.

**3. Additional Restrictions.** Criminal and civil court record background checks should not be relied upon as a complete and accurate history. Clients must consult state and federal laws before using this information for employment related issues. Wymoo is not licensed to practice law and as such cannot offer legal advice on how to use the information provided. Proper use of our investigative reports, surveillance services and background checks is the sole responsibility of the client or customer. Clients agree that Wymoo information and reports may not be copied, shared or distributed to any third party without the written permission of Wymoo.

**4. Misuse.** In the event that Wymoo suspects that any of the services provided to Clients have been misused, it may contact appropriate law enforcement agencies and may provide any information within its possession. Wymoo reserves the right to cancel any services ordered, at any time without cause.

**5. Fees and Refund Policy.** Wymoo requires prepayment for all services. All client purchases are final and payments are non refundable. Client agrees to pay the appropriate fees to Wymoo with a valid credit card. Client certifies that he/she is an authorized user of the credit card. Client understands that Wymoo takes credit card fraud seriously, and Wymoo works with law enforcement and private parties to address cases of fraud against our Company. PayPal or another merchant bank of our choice processes all payments made to Wymoo. Wymoo will make its best effort to deliver accurate information in a timely manner, however, client understands and accepts our services "AS IS" and without warranty.

**6. Disclaimer Of Warranties.** The information provided by Wymoo has been compiled from third parties, global public records, and other proprietary sources. Wymoo makes no warranty that the information contained in any report is current, complete or accurate. WYMOO HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE ACCURACY, CURRENCY, OR COMPLETENESS OF THE INFORMATION CONTAINED IN OUR REPORTS AND BACKGROUND CHECKS, INCLUDING (WITHOUT LIMITATION) ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, UNDER NO CIRCUMSTANCES SHALL WYMOO BE LIABLE TO ANY CLIENT FOR ANY DAMAGES IN EXCESS OF THE FEES CHARGED, INCLUDING (WITHOUT LIMITATION) ANY DIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR ANY OTHER CLAIMS OF YOURS OR THIRD PARTIES, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. You assume all risks associated with the use of our services.

**7. Indemnification.** You hereby agree to indemnify and hold harmless Wymoo, its management, employees, members, agents, associates, vendors, contractors, and assignees against any and all direct or indirect losses, claims, demands, expenses (including attorneys' fees, litigation costs, and expenses).

**8. Communication.** Wymoo may contact clients by phone upon client request; however, Wymoo's primary mode of communication with its clients is by email. All client receipts, confirmation notices, reports and client messages are to be delivered through electronic communications. Wymoo may communicate with clients to inform them of any changes, or to report status to our existing clients via email. Clients are requesting that all reports be sent by email.

**9. Term.** The term of this Client Agreement shall begin on the day that you agree to these terms by clicking 'Buy Now' below the Client Agreement and submit payment to Wymoo. This agreement shall terminate upon the completion of services by Wymoo. Paragraphs 2-6,7,10-14 shall survive the termination of this agreement.

**10. Application Law.** This Agreement and the application or interpretation hereof, shall be governed exclusively by its terms and by the laws of the State of Florida, United States of America, and specifically the Act, without regard to the State of Florida's choice of law provisions.

**11. Integration.** Except as otherwise provided in the Agreement, this Agreement constitutes the entire agreement of the Company, Wymoo International, LLC ("Wymoo") and the Client with respect to the subject matter hereof. This agreement supersedes all prior agreements, representations and understanding of the parties.

THE INFORMATION CONTAINED IN THIS REPORT IS THE INTELLECTUAL PROPERTY OF WYMOO INTERNATIONAL, LLC AND IS CONSIDERED PRIVILEGED AND CONFIDENTIAL AND IS TO BE READ BY THE INTENDED RECIPIENT ONLY. NO PART OF THIS REPORT MAY BE COPIED, SHARED, RESOLD OR DISTRIBUTED TO THIRD PARTIES WITHOUT THE WRITTEN PERMISSION OF WYMOO, A LEGAL TRADEMARK OF WYMOO INTERNATIONAL, LLC. ALL RIGHTS RESERVED. © COPYRIGHT 2007, 2008.

**Bruce Ricca**

**From:** Joseph Matthews
**Sent:** Monday, September 08, 2008 9:15 AM
**To:** Bruce Ricca
**Subject:** FW: Investigation Report - Lima

**From:** David Brooks [mailto:dbrooks@wymoo.com]
**Sent:** Friday, September 05, 2008 4:03 PM
**To:** Joseph Matthews
**Subject:** Investigation Report

Hi Joe:

Attached is your completed background check report. The subject came back clean with no history of court or criminal records in Brazil. We also verified and confirmed his employment, education and address history in Brazil. Based on the findings of our investigation, this person appears to be who he claims to be. We find no evidence of fraud or criminal history.

Let me know if you have any questions about the report. Thank you for choosing Wymoo.

Enjoy your weekend.

Regards,

David Brooks
**Investigation Analyst**
www.wymoo.com
Wymoo International, LLC
4320 Deerwood Lake Pkwy
Suite 514
Jacksonville, FL 32216
United States

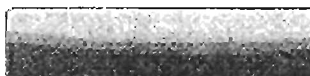
**Please give us your feedback! Just one minute to complete our survey.**
Click on or visit this address: https://www.wymoo.com/ssl/survey.html
**100% Confidential and Anonymous. Tell us what you really think!**

This email message, including attachments, may contain confidential and/or privileged information and is intended only for the individual or recipient named on this transmission. If you are not the intended recipient, please be aware that any kind of disclosure, copying, or distribution of this email is strictly prohibited and legally exempt from disclosure. If you have received this email in error, please notify the sender or Wymoo International, LLC immediately and delete the message from your system. Thank you.

LATEST NEWS OBAMA AIMS TO HEAL PARTY RIFT

Broker Center sponsored links

Trading will never be the same.



Learn to Trade with a FREE Guide.

$0 stock trades. 10 free per r

You are here: Home > Business & Finance > Stocks > Officers and Directors

HOME
BUSINESS & FINANCE
Markets
Deals
Industries
Industry Summits
Stocks
Advanced Stock Search
Overview
Option Quote
Chart
Officers and Directors
Key Developments
Company News
Press Releases
Financial Highlights
Ratios
Financial Statements
Performance
Insider Trading
Estimates
Recommendations
Analyst Research
Stock Buzz
Funds
ETFs
Currencies
Commodities
Options
Bonds
Analyst Research
Portfolio
NEWS

# Officers & Directors Detail

## Metalfrio Solutions SA (Sao Paolo Stock Exchange)

**Sector:** Cyclical Consumer Goods & Services . **Industry:** Appliances, Tools & Housewares · View FR

| As of 21 Aug 2008 | | Price Change | Percent Change | Analyst Recommendations |
|---|---|---|---|---|
| 11.75 | BRL | -0.50 | -4.00% | Sell Hold Buy |

**Faria de Lima, Marcelo**
Brief Biography

Mr. Marcelo Faria de Lima was appointed as the Chairman of the Board of Metalfrio Solutions on Janu
worked in financial markets for 12 years in banks, such as Donaldson, Lufkin, & Jenrette (1998 to 200
executive officer, serving mainly in the M&A area; Banco Garantia (which was purchased in 1998 by C
1998), serving in the M&A and Capital Markets areas; and ABNAmro Bank (1989 to 1996), where he v
Brazil, an Investment Fund manager, as well as in the Corporate Finance and Project Finance areas.
Director-President of AreaUtil.com, in 2000, an internet portal specialized in the real estate market. Mr
former member of the board of directors of Neovia Telecomunicações S.A., a provider of wireless bro
Since January 2004, Mr. Lima has been a direct and indirect shareholder of the Company. Mr. Lima is
executive officer of Abyara Planejamento Imobiliario S.A. Mr. Lima received a bachelor's degree in Ec
Universidade Católica of Rio de Janeiro (PUC-RJ) in 1985, where he was a professor of Economy fro

BASIC COMPENSATION

| Total Annual Compensation, | Long-Term Incentive Plans, | All Other, |
|---|---|---|
| -- | -- | -- |

OPTIONS COMPENSATION

| Quantity | | Value |
|---|---|---|
| Exercisable | -- | Market Value |
| Unexercisable | -- | Market Value |
| Exercised | -- | Market Value |

FIND OUT MORE ABOUT FRIO3.SA

Insider Trading
Institutional Holders

**Research Another Stock:** Enter a symbol Symbol Look-up

**Do More With Reuters**

- RSS
- Widgets
- Mobile
- Podcasts
- Newsletters
- You Witness News
- Make Reuters My Homepage

**Partner Services**

- CareerBuilder
- Affiliate Network

**Professional Products**

- Support (Customer Zone)
- Reuters Media
- Financial Products

**About Thomson Reuters**

REUTERS LIFESTYLE
HEALTH & FITNESS

- Women pass on female condom
- Give flying families a break

› Find more

**Reuters.com:** Help and Contact Us | Advertise With Us | Mobile | Newsletters | RSS | Interactive TV | Labs | Reuters in S[illegible]

**Thomson Reuters Corporate:** Copyright | Disclaimer | Privacy | Professional Products | Professional Products Support | About

**International Editions:** Africa | Arabic | Argentina | Brazil | Canada | China | France | Germany | India | Italy | Japan | Lat
United States

Thomson Reuters is the world's largest international multimedia news agency, providing investing news, world news, business news, technology news, stock market, and mutual funds information available on Reuters.com, video, mobile, and interactive television platforms. Thomson Reuters journalists [illegible] and disclosure of relevant interests.

NYSE and AMEX quotes delayed by at least 20 minutes. Nasdaq delayed by at least 15 minutes. For a complete list of exchanges and delays, please

# Metalfrio Solutions SA (Public, SAO:FRIO3) - Discuss FRIO3

## Summary

Metalfrio Solutions SA is a Brazilian company involved in the commercial cooling sector. The Company's product portfolio consists of over 200 different models of horizontal and upright plug-in commercial refrigerators, each with a set of different applications, such as cooling beer, soft drinks, ice cream and other products. Due to their multiple functions, which include refrigeration and the display and marketing of merchandise, the Company's refrigerators are used as refrigerated retail space in supermarkets, restaurants, convenience stores, bars and other venues that sell cold or frozen products to the public, and as a marketing tool for its customers. The Company sells its products to its customers directly or through its network of distributors and sales agents. Metalfrio Solutions' direct subsidiaries include: Metalfrio Solutions AS in Denmark, Metalfrio Solutions Inc in the United States of America and Metalfrio Solutions Mexico SA de CV in Mexico.

Av Abrahao Goncalves Braga
412 Km 12,5
Sao Paulo, 04186-220
Brazil
+55-11-63339000 (Phone)
+55-11-63339195 (Fax)

Company website:
http://www.metalfrio.com.br
News Releases, Investor Relations, Financial Information, Corporate History/Profile, Executives, Products/Services

## Key Stats & Ratios

| | Quarterly (Mar '08) | Annual (2007) | Annual (TTM) |
|---|---|---|---|
| Net Profit Margin | 1.24% | 0.25% | 1.96% |
| Operating Margin | 3.92% | 2.25% | 2.35% |
| EBITD Margin | - | -5.01% | - |
| Return on Average Assets | 1.09% | 0.33% | 2.19% |
| Return on Average Equity | 2.21% | 0.73% | 6.20% |

## Financials (In millions of BRL)

| Income Statement | Quarterly (Mar '08) | Annual (2007) | Annual (2006) |
|---|---|---|---|
| Total Revenue | 156.73 | 576.18 | 295.86 |
| Gross Profit | 22.20 | 78.88 | 50.95 |
| Operating Income | 6.15 | 12.95 | 26.12 |
| Net Income | 1.95 | 1.50 | 16.99 |
| Balance Sheet | | | |
| Total Current Assets | 561.31 | 499.05 | 202.75 |
| Total Assets | 815.90 | 623.25 | 254.02 |

Find more results for FRIO3

## News

/CORRECTION -- Metalfrio So
MarketWatch - Aug 6, 2008 -

View all news »

## Officers and directors

Marcelo Faria de Lima >

Luiz Eduardo Moreira Caio >

Erwin Theodor Herman Louise

Steven Michael Pease >

Eduardo Bartoli de Noronha >

Fabio Eliezer Figueiredo >

Antonio Abdallah Cury >

Vicente Antonio Justo >

Serkan Gulec >

Marcio Da Rocha Camargo >

Full list on Reuters »

## Discussions

Start a discussion about Metalf

| | | | |
|---|---|---|---|
| Total Current Liabilities | 211.20 | 145.63 | 123.21 |
| Total Liabilities | 460.32 | 269.63 | 194.69 |
| Total Equity | 355.58 | 353.63 | 59.33 |
| Cash Flow | | | |
| Net Income/Starting Line | 1.95 | 1.50 | 16.99 |
| Cash from Operating Activities | -28.75 | -132.02 | -2.36 |
| Cash from Investing Activities | -122.54 | -78.13 | -26.99 |
| Cash from Financing Activities | 53.35 | 350.57 | 53.47 |
| Net Change in Cash | -97.94 | 140.43 | 24.12 |

**Related Companies**

| Name | Exchange | Symbol | Last Trade | Change | Mkt Cap |
|---|---|---|---|---|---|
| C.T.I. Compania Tecno Industrial S.A. | SCL | CTI | | | |
| Welling Holding Limited | HKG | 0382 | 0.183* | +0.003 (1.67%) | 864.86M |
| Hisense Kelon Electrical Hldngs Co., Ltd | SHE | 000921 | 2.79 | +0.04 (1.45%) | 2.77B |
| Snaige AB | VSE | SNG1L | | | |
| Delta Industrial Co DEAL SAE | CAI | IDEA | | | |
| Inversiones Frimetal S.A. | SCL | FRIMETAL | | | |
| Whirlpool Of India Ltd. | BOM | 500238 | 56.85* | +0.55 (0.98%) | 7.21B |
| Qingdao Haier Co., Ltd. | SHA | 600690 | 9.89 | +0.31 (3.24%) | 13.24B |
| Whirlpool Corporation | NYSE | WHR | 81.41 | 0.00 (0.00%) | 6.06B |
| Saratovskoye elektr. proizv. ob. OAO (P) | RTB | SEPO | | | |

* Delayed by up to 20 minutes - Disclaimer

International Google Finance: Canada - U.K. - ______(China)

Information is provided 'as is' and solely for informational purposes, not for trading purposes or advice, and may be
To see all exchange delays, please see disclaimer

©2008 Google Google Home - Help - Privacy Policy - Terms of Service

See other sites:

Cover
Í index
Exclusive Online
Reports
Tests
Gallery of photos
Astrology
Dicion á river
Special
Editorias
E-Commerce
Economy
Interview
Style Money
Financial ç the
Business
Your Money
Sections
Editorial
The Week
Cobi the ç
Companies in the well
Digital Market
Media & Cia
Strong Currency
Can
Letters
Search
Find other mat é rias

Previous editions
Signatures
Expedient
Advertising
Contact Us
Subscribe to Newsletter

N EG Ó CIOS — Wednesday, January 21, 2004

# THE NEW MAN OF METALFRIO

**About Marcelo de Lima, the former economist who has paid the Guarantee**
**$ 20 million by a company that is synonymous with freezers**

Click here to comment on this story

**Read also é m**
From branch to branch

*Can Patricia ç ado*

Few companies in Brazil had so many owners as Metalfrio. It was founded by entrepreneurs Joaquim Caio and Alfredo Brazil in 1960. Associated itself later to Springer and Panasonic. In 1989 it was acquired by Continental. There are exact ten years came to the time of the multinational German BSH, one of the largest manufacturers of home appliances in the world. It seemed their final destination. It was not. The company has just been bought by Artesia, a firm of management of resources controlled by economist Marcelo Faria de Lima and administrator Márcio Camargo. After a negotiation that lasted six months - with three breaks in the middle of the road - the new owners are taking, for as little as $ 20 million (second assessments of the market), a company apparently healthy. The turnover reached U.S. $ 170 million in 2003 and its debts do not exceed $ 7 million. With 550 employees, the Metalfrio owns half of the Brazilian market of commercial freezers, which competes with Hussmann and Mercofrio. Profit is not disclosed, but Lima ensures that the company operates in blue. "We considered over 60 opportunities in the last two years. The Metalfrio was the best option that appeared, "says Lima, 42 years, the man who vai occupy the chair of the board of Metalfrio. "The company has a strong position in the market, a modern manufacturing plant and good potential for growth in coming years, despite the industry being at the bottom of the well."

**LIMA:** The idea now is to introduce the company a culture of "meritocracy"

The venda of the company was announced since 2002, when its operation became independent group of BSH. Brazil was the only

place in the world where the multinational still producing commercial freezers. "The business was not bad, but it was not our focus," explains Bernhard Schuster, president of BSH for Latin America. It is true that the last investment made by the group occurred five years ago, when the BSH spent $ 7 million in upgrading the plant. The Artesia delivered its proposal to purchase the group BSH ten days before the deadline. Besides, three other companies, whose names can not be revealed, were in páreo. "We learned of venda in the last minute, but we already have experience in evaluating new business and take quick decisions," says Márcio Camargo. With the venda, almost nothing changes in the team Metalfrio. At least for now. The executive office will continue in the hands of Luiz Eduardo Moreira Caio, the son of the founder of the company and one of the men who most believe this segment in Brazil. "We went through so many hands in forty years will not be difficult to survive yet another change," said Caio. "It is up to a nice combination. The financial management is what they have to better. Already we are industrialists, we believe the product, customer. "

If so, the better, because from now on the style of management vai change radically. The new owners will lead to Metalfrio the culture of "meritocracy", inherited from the days when they worked at the Bank Guarantee - Lima and Camargo had a passage by the bank of investments in the mid-90. The idea now is to introduce a management policy focused on results. All officials, from continuing the President, de -
has to worry about profit. "It's a Darwinian system. Sobrevive the best, which is intelligence, sense of priority, objectivity and want to profit for themselves and for the company, "says the banker Cézar Luiz Fernandes, deep knowledge of that culture. "For the individual is painful, but for the company has nothing better." Founder of Guarantee, Fernandes also took the "concept" for its other bank, the Pactual. The shareholders of Artesia also think so and just chat with them a few hours to realize the common feature. "We are more aggressive that BSH, but we have no reason to quit changing everything," explains Lima. "In our head, the important thing now is to grow and gain international customers." Established in 2000, the Artesia has had as a rule buy business, make them grow quickly and, later, sell a stake to a shareholder capitalist. It was thus with the advertising agency and the Eugênio Neovia, a large company in banda radio. Once Lima joined the advertising Mauritius Eugênio the agency, it has grown 250% in three years and earned a foreign partner: the U.S. group DDB, owner of DM9 in Brazil. In Neovia the new members appeared in its first year of opera -
ration. In December 2003, Intel Capital and a fund Brazilian of technology, Stratus, bought shares in the company of banda large. It will be then that Metalfrio will soon have another owner? Lima says not. If this occurs, there will be no novi -
bility to Metalfrio. ◘

## From branch to branch

**1960**
• The Metalfrio is based in Sao Paulo by Joaquim Caio and Alfredo Brazil to manufacture components for refrigeration and refrigerators for industry, ice cream and drinks

## 1986

• Two new companies - the Panasonic and Springer, Mario Amato - are associated with Metalfrio

## 1989

• The Continental 2001, the family Giaffone, the purchase Metalfrio.

Leader of the market for stoves, Continental made the acquisition with the goal of expanding its line of eletrodom é sticos

**1994**
• The German multinational BSH acquired the Continental 2001, with the leading brand Metalfrio

**2002**
• The Metalfrio Solutions wins the surname and now operates as an independent company. Luiz Eduardo Moreira Caio, the son of the founder, is chosen to lead the company. It is the first step in its venda. Brazil was the only place in the world where the multinational still manufactured industrial freezer

## 2004

• The Artesia, economists Marcelo Faria de Lima and Márcio Camargo, win the game. They lead a company U.S. $ 170 million and 500 employees.

Istoé | Istoé PEOPLE | PLANET | PREVIOUS EDITIONS | SPECIAL
SIGN UP THE NEWSLETTER | SIGNATURES | EXPEDIENTE | CONTACT U.S. | ADVERTISING | LEGAL
© 1996/2004 Publisher Three

# NEW YORK TIMES

**March 17, 2004**

## In Brazil, Chafing at Economic Restraints

By TONY SMITH

SÃO PAULO, Brazil, March 16 - As the refrigerators roll off the production line at Metalfrio Solutions, Brazil's leading manufacturer of commercial iceboxes and freezers, its chairman, Marcelo Faria de Lima, voices a concern that is typical of Brazilian business executives these days: has President Luiz Inácio Lula da Silva's embrace of orthodox, pro-market policies turned into a bear hug that is suffocating Brazil's economy?

"Lula's economic policy in his first year in office made all the sense in the world," Mr. Lima said. "Inflation was verging on 30 percent, and the real was way over 3.60 to the dollar.

"But now," he said, "with the country showing negative growth and inflation at a completely acceptable level, it seems to me that insisting on high interest rates and a strong real won't do anything to get the economy rolling again and create jobs."

It might initially seem strange that the business community is calling on Mr. da Silva to loosen his fiscal and monetary discipline.

After all, when he took office last year, business leaders were relieved when Mr. da Silva, a former union leader noted for his fiery antimarket rhetoric, declared that he would not steer Brazil off the free-market path, even if it meant making tough economic decisions.

To prove his point, the government moved decisively to halt a worrying surge of inflation by raising its benchmark overnight interest rate to a dizzying 26.5 percent.

That succeeded in reining in prices, but it also threw the economy into reverse - it shrank 0.2 percent last year, its worst performance in more than a decade - and sent unemployment spiraling to 20 percent in São Paulo, the heart of the nation's economy. Also, the average income of Brazilian families fell 14 percent last year, government figures showed.

According to A. C. Nielsen, a consulting firm, nearly half of Brazilian families last year cut spending on basic food because of economic belt-tightening. Fecomércio, São Paulo's

trade federation, says that more than a quarter of São Paulo residents are behind on credit card or loan payments.

Brazilians do not necessarily blame Mr. da Silva for that, arguing that the economy was already a mess before he took office, but they do remember his campaign pledges to "change the economic model" so as not to be a slave to the markets, as he claimed the previous government had been, and to create 10 million jobs.

Last year, even as the economy contracted, the president confidently predicted that Brazil would soon witness "spectacular growth."

"He's in a bit of a spot," said Douglas Smith, chief economist for the Americas at Standard Chartered in New York. "It's been a bit over a year now, and the social indicators are not changing; if anything, they're worse."

The president is now under increasing pressure to get the economy growing again, and fast - most likely by pressing the central bank to resume lowering its main interest rate as early as this week.

After slashing the overnight rate 10 percentage points, to 16.5 percent, in the second half of last year, the central bank has disappointed markets in the last two months by keeping the rate unchanged, citing fears of resurgent inflation.

The central bank president, Henrique de Campos Meirelles, insists that data from the last quarter of 2003 show Brazil growing at an annual rate of 6 percent.

That has prompted his critics to accuse Mr. Meirelles, who has been derided by some as an "inflation fundamentalist," of being out of touch with the economy.

On Monday, the leader of the Liberal Party, a pro-business party in Mr. da Silva's coalition, publicly called for the resignations of Mr. Meirelles and his boss, Antonio Palocci Filho, the finance minister.

Speaking at a government ceremony, the Liberal leader, Valdemar Costa Neto, said there was widespread dissatisfaction with economic policy.

"A banker, like Meirelles, only defends bankers," Mr. Costa Neto said.

According to Denise Neumann, a columnist at Valor Econômico, a business daily, central bank officials "are insisting the Brazilian economy is overheating, something which has no basis in reality."

Indeed, recent data show the economy could use a bit of stimulus. Last month, consumer prices fell in the São Paulo metropolitan region, despite contradictory signs that wholesale prices were rising. Then, in sharp contrast to Mr. Meirelles's glowing forecast,

the government revised its growth projection for this year from 3.6 percent down to 3.4 percent.

All that has left Mr. da Silva open to friendly fire. After his own Workers' Party issued a statement demanding changes in economic policy, the president rallied to defend Mr. Palocci and Mr. Meirelles, who was brought in from FleetBoston to help dispel fears on Wall Street that Mr. da Silva could sink Brazil with irresponsible public spending.

Speaking at a meeting of ministers and business leaders in Brasília, Mr. da Silva claimed that "for the first time ever, we are stabilizing the economy without any economic inventions."

"For interest rates to fall," he said, "the country needs to have solid foundations and credibility."

But many in the business community feel the central bank's inflation target of 5.5 percent for this year is far too radical and is stifling recovery.

"I'm not questioning inflation targeting, just the 5.5 percent target," said Horácio Lafer Piva, head of the influential São Paulo Federation of Industries.

At Metalfrio, which is the sort of company Mr. da Silva says he wants to see more of in Brazil - Brazilian-owned and run and aggressive in export markets - Mr. Lima says he could create 100 permanent new jobs tomorrow if the central bank eased policy even slightly.

A former investment banker who took over the company in January, Mr. Lima says he can see the government's quandary: it needs to ease policy enough to get the economy up and running, but remain tough on inflation to maintain its credibility on international markets.

"The central bank's logic is the logic of the capital markets, not the logic of the productive sector, the real economy," he said. "They really should be measuring the cost of controlling inflation."

The central bank could use other tools besides simply lowering interest rates, analysts say.

If, for example, the central bank started to increase its reserves by buying dollars on the open market rather than issuing fresh debt, that would drive the real down against the dollar and help lift exports. Some economists, however, say a weaker real would also spur inflation.

But for Mr. Lima, there is no doubt.

"A slightly weaker real would mean more exports," he said. "More exports, besides creating more jobs, would also reduce the debt-export ratio, improving the chances of Brazil's becoming investment grade in the near future, which is the central bank's dream."

Just a small shift in the exchange rate, he said, would allow Metalfrio to penetrate more global markets. The real now trades at 2.90 to the dollar.

"With the real at 2.80, I am competitive within Latin America," he said. "At 2.90 I can compete in European markets, while at 3.10 to the dollar I would be competitive in any country in the world, including Asia."

Copyright 2004 The New York Times Company | Home | Privacy Policy | Search | Corrections | Help | Back to Top

**Neil Gillespie**

---

**From:** "Neil Gillespie" <neilgillespie@mfi.net>
**To:** <Lisa.Trimble@freshfromflorida.com>
**Sent:** Wednesday, March 23, 2011 4:33 PM
**Subject:** Wymoo International

Hi Lisa,

Does Wymoo International have to be licensed as a Private Investigation Agency under Chapter 493, Florida Statutes to do an International Background Check for the Office of Financial Regulation for its inquiry of a foreign national to obtain a controlling interest in a Florida financial institution?

Wymoo International, LLC
Investigation Headquarters
4320 Deerwood Lake Pkwy, Suite #514
Jacksonville, FL 32216

Thank you.

Sincerely,

Neil Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

**Neil Gillespie**

**From:** "Trimble, Lisa" <Lisa.Trimble@freshfromflorida.com>
**To:** "Neil Gillespie" <neilgillespie@mfi.net>
**Sent:** Wednesday, March 23, 2011 4:56 PM
**Attach:** ATT00015.txt
**Subject:** Read: Wymoo International

Your message

To: Trimble, Lisa
Subject: Wymoo International
Sent: Wed, 23 Mar 2011 16:33:39 -0400

was read on Wed, 23 Mar 2011 16:56:31 -0400

**Complaints/Unlicensed Activity**

The Department of Agriculture and Consumer Services, Division of Licensing, investigates complaints regarding the security industry, private investigative industry, and the recovery industry. If you have a complaint, contact the regional office in your area, or contact us by mail, phone, or email.

Bureau of Regulation and Enforcement
Post Office Box 6687
Tallahassee, Florida 32314-6687
(850) 245-5499
Lisa Trimble

## Neil Gillespie

**From:** "Neil Gillespie" <neilgillespie@mfi.net>
**To:** "Jo Schultz" <Josephine.Schultz@flofr.com>
**Sent:** Thursday, March 17, 2011 12:00 PM
**Subject:** Re: Public Records Request 23531

Ms. Schultz:

Thank you. Concerning Wymoo International, why was that company chosen by OFR? Wymoo appears more suited for online dating background checks than for the kind on inquiry needed by OFR, see the links to Wymoo's YouTube posted commercials. Thank you.

Sincerely,

Neil J. Gillespie
8092 SW 115th Loop
Ocala, FL 34481
(352) 854-7808
neilgillespie@mfi.net

Uploaded by wymoo on Jul 19, 2010
Wymoo® on Fox News about online dating background checks
http://www.youtube.com/watch?v=UUwjf4Y_hqI

Uploaded by wymoo on Jan 11, 2011
Wymoo® on NBC News story about the risks of online dating and romance scams. Criminals continue to target victims on dating and social networking websites such as Match.com, eHarmony and Facebook. Wymoo International offers private investigation, surveillance and background checks in over 100 countries.
http://www.youtube.com/watch?v=oJ__O5rxCs4&feature=mfu_in_order&list=UL

Global Background Checks - Wymoo® Commercial
Uploaded by wymoo on Jan 10, 2010
Wymoo International commercial on international background checks and international private investigators. Wymoo conducts professional investigations, surveillance and global background checks in over 100 countries.
http://www.youtube.com/watch?v=kqEc3rNq5MM&feature=mfu_in_order&list=UL

> ----- Original Message -----
> **From:** Jo Schultz
> **To:** Neil Gillespie
> **Sent:** Thursday, March 17, 2011 11:47 AM
> **Subject:** RE: Public Records Request 23531
>
> Mr. Gillespie:
>
> Thank you for the notice.  I'll watch for the check.  As soon as I receive it, I'll e-mail the documents to you.
>
> As for the copies, I can only send you what I am provided; however, I will do what I can to improve any copies I receive.

Jo Schultz
Chief Counsel

---

**From:** Neil Gillespie [mailto:neilgillespie@mfi.net]
**Sent:** Thursday, March 17, 2011 11:23 AM
**To:** Jo Schultz
**Subject:** Re: Public Records Request 23531

Ms. Schultz:

Today I mailed $7.55 to your attention for the records. You may email the records to save time and expense. Please provide clear copies. Previously OFR provided poor quality copies of the Interagency and Biographical Report for Mr. Lima/CBM and the Wymoo International background check of Mr. Lima.

Concerning Wymoo International, why was that company chosen by OFR? Wymoo appears more suited for online dating background checks than for the kind on inquiry needed by OFR, see the links to Wymoo's YouTube posted commercials. Thank you.

Sincerely,

Neil J. Gillespie
8092 SW 115th Loop
Ocala, FL 34481
(352) 854-7808
neilgillespie@mfi.net

Uploaded by wymoo on Jul 19, 2010
Wymoo® on Fox News about online dating background checks
http://www.youtube.com/watch?v=UUwjf4Y_hqI

Uploaded by wymoo on Jan 11, 2011
Wymoo® on NBC News story about the risks of online dating and romance scams. Criminals continue to target victims on dating and social networking websites such as Match.com, eHarmony and Facebook. Wymoo International offers private investigation, surveillance and background checks in over 100 countries.
http://www.youtube.com/watch?v=oJ__O5rxCs4&feature=mfu_in_order&list=UL

Global Background Checks - Wymoo® Commercial
Uploaded by wymoo on Jan 10, 2010
Wymoo International commercial on international background checks and international private investigators. Wymoo conducts professional investigations, surveillance and global background checks in over 100 countries.

http://www.youtube.com/watch?v=kqEc3rNq5MM&feature=mfu_in_order&list=UL

----- Original Message -----
**From:** Jo Schultz
**To:** Neil Gillespie
**Sent:** Wednesday, March 16, 2011 5:10 PM
**Subject:** RE: Public Records Request 23531

Mr. Gillespie,

I don't believe so. However, tomorrow I can find out exactly what documents are included.

Jo Schultz
Chief Counsel

---

**From:** Neil Gillespie [mailto:neilgillespie@mfi.net]
**Sent:** Wednesday, March 16, 2011 5:07 PM
**To:** Jo Schultz
**Subject:** Re: Public Records Request 23531

Mar-16-11

Ms. Schultz:

Thank you. Is this information currently published on the OFR website?

Sincerely,

Neil Gillespie

----- Original Message -----
**From:** Jo Schultz
**To:** Neil Gillespie
**Sent:** Wednesday, March 16, 2011 4:52 PM
**Subject:** RE: Public Records Request 23531

Mr. Gillespie

Per your request the attached e-mail provides the invoice in PDF format. The OFR does not accept credit card payments.

Jo Schultz
Chief Counsel

---

**From:** Neil Gillespie [mailto:neilgillespie@mfi.net]
**Sent:** Wednesday, March 16, 2011 4:44 PM
**To:** Jo Schultz
**Subject:** Re: Public Records Request 23531

Ms. Schultz:

The attached invoice is not legible. Kindly provide an invoice in PDF format. Please advise if OFR accepts payment by Visa card. Thank you.

Sincerely,

Neil Gillespie

----- Original Message -----
**From:** Jo Schultz
**To:** neilgillespie@mfi.net
**Sent:** Wednesday, March 16, 2011 4:25 PM
**Subject:** FW: Public Records Request 23531

Public Records Request #: 23531

Dear Mr. Gillespie:

In response to your public records request for records relating to the CBM Florida Holding Company deal to buy First Community Bank Corporation of America and merge it with Comunity Bank of Manatee, now called Community Bank & Co., attached is an invoice for the costs associated with producing the requested informartion.

Please return the enclosed invoice with payment to the Office of Financial Regulation, Post Office Box 8050, Tallahassee, FL 32314-8050. Upon receipt of payment, our office will prepare the documents responsive to your request. At that time, you will be provided with the requested information. In the event you have over or underpaid, this Office will contact you to make the necessary arrangements to satisfy payment.

If payment is not received by the Office within 30 days from receipt of the attached invoice, your request for public records will be closed.

Should you have any questions please feel free to contact me at the number listed below.

Jo Schultz
Chief Counsel
Office of General Counsel
Office of Financial Regulation
Fletcher Building, Ste. 118
200 E. Gaines Street
Tallahassee, FL 32399-0370
850.410.9896
josephine.schultz@flofr.com

---

**From:** Jo Schultz
**Sent:** Wednesday, February 23, 2011 1:12 PM
**To:** 'neilgillespie@mfi.net'
**Subject:** FW: CBM Florida Holding Company deal to buy First Community Bank Corporation of America

Mr. Gillespie:

This e-mail acknowledges receipt of your public records request dated today, February 23, 2010, for public records related to the purchase of First Community Bank Corporation of America by CBM Florida Holding

Company and the proposed merger of First Community Bank Corporation of America with Community Bank of Manatee. A staff member of our Office will reach out to you as soon as possible regarding the associated costs to fulfill your request.

Please be aware that some public records, or portions thereof, are made confidential by statute. If the records you have requested contain confidential information, the records will be provided with the confidential information redacted. If an entire record is confidential, it will not be produced and a letter will be sent to you regarding the confidentiality of the records requested.

Should you have any questions, please feel free to contact me at the number listed below.

Jo Schultz
Chief Counsel
Office of General Counsel
Office of Financial Regulation
Fletcher Building, Ste 118
200 E. Gaines Street
Tallahassee, FL 32399-0370
850.410.9896
josephine.schultz@flofr.com

---

**From:** Neil Gillespie [mailto:neilgillespie@mfi.net]
**Sent:** Wednesday, February 23, 2011 12:35 PM
**To:** Linda Charity
**Subject:** CBM Florida Holding Company deal to buy First Community Bank Corporation of America

Linda B. Charity, Director
Office of Financial Regulation

Ms. Charity:

I object to the CBM Florida Holding Company deal to buy First Community Bank Corporation of America for $10 million cash and merge it with Community Bank of Manatee, now called Community Bank & Co.

Please provide public records relating to this proposed deal.

Kindly advise the undersigned of any public hearings in this matter as I plan to attend and speak against this proposed deal.

Sincerely,

Neil J. Gillespie
8092 SW 115th Loop
Ocala, Florida 34481

# Who is Wymoo?

The Florida Division of Corporations shows Wymoo International LLC was formed December 19, 2007 with an effective date January 1, 2008 by Brent Cinnamond manager and David Goldman registered agent. Mr. Goldman is a lawyer admitted to practice June 28, 2007.

Wymoo's website http://www.wymoo.com/ provides virtually no information about its management team's background or experience. Wymoo appears affiliated with Philippines Private Investigators http://www.philippinepi.com/ and Private Investigators in Russia and Ukraine http://www.russiapi.com/ all share Brent Cinnamond and David Wilkerson of Wymoo's management team.

Wymoo has several YouTube videos posted. One is a basic commercial featuring guitar music and a number of young attractive actors that provides virtually no information about the company. There are also two news videos about Wymoo's background investigations for online dating services, a Fox News story and another by NBC news.

Global Background Checks - Wymoo® Commercial
Uploaded by wymoo on Jan 10, 2010
Wymoo International commercial on international background checks and international private investigators. Wymoo conducts professional investigations, surveillance and global background checks in over 100 countries.
http://www.youtube.com/watch?v=kqEc3rNq5MM&feature=mfu_in_order&list=UL

Uploaded by wymoo on Jul 19, 2010
Wymoo® on Fox News about online dating background checks
http://www.youtube.com/watch?v=UUwjf4Y_hqI

Uploaded by wymoo on Jan 11, 2011
Wymoo® on NBC News story about the risks of online dating and romance scams. Criminals continue to target victims on dating and social networking websites such as Match.com, eHarmony and Facebook. Wymoo International offers private investigation, surveillance and background checks in over 100 countries.
http://www.youtube.com/watch?v=oJ__O5rxCs4&feature=mfu_in_order&list=UL

Further Internet searches reveal no substantive information about Wymoo. Instead, and more troubling, Wymoo appears to have engaged in questionable self-promotion on ehow and google knol, and self-generated news releases regurgitated by a few outlets. One press release dated January 14, 2011 is especially credulous, and states:

"JACKSONVILLE, FLORIDA (January 14, 2011) - Wymoo International, a U.S.- based background check and international private investigation firm, reported today that the company beat all growth expectations for 2010. Revenue and case volume at the company rose by over 50% compared to 2009 levels, and surpassed management's 40% growth rate projections. The record growth was fueled by an increase in the demand for due diligence, international private

EXHIBIT
24

investigators, and dating background checks." The numbers appear unpublished, self-generated and unethical under GAAP.

Another interesting review was done by the International Background Checks & Private Investigators Blog Friday March 9, 2007, long before Wymoo was a Florida LLC.

http://detective1.blogspot.com/2007/03/why-all-buzz-about-wymoo-investigations.html

The title of the blog post is "Why all the Buzz About Wymoo?" The blog quotes an interview by "Our industry expert Danny Olson" and Wymoo International Vice President, David Wilkerson.

In fact, the entire International Background Checks & Private Investigators Blog appears a thinly veiled commercial for Wymoo or one of Wymoo's affiliated companies.

Wymoo was removed from Wikipedia for "blatant advertising" on September 15, 2008.
http://en.wikipedia.org/wiki/Wymoo_international

# Owens OnLine®

a service of Owens OnLine, Inc.

Worldwide Credit Reports and Background Investigations on Companies and Individuals

---

Report Type: International Employment Screening Report
Date Prepared: September 16, 2008
Reference Number: 87242-A-100682
Client Reference: Not Provided

---

**INFORMATION PROVIDED**

Name: **Marcelo Faria de Lima**
Address: [redacted]

City: Sao Paulo
State/Province: Sao Paulo
Zip/Postal Code: 05678-030
Country: Brazil

Date of Birth: [redacted]
Father's Full Name: Celso Rodrigues de Lima
Mother's Full Name: Gilcia de Almeida Faria Lima
CPF #: 7152694704

---

**CRIMINAL RECORD INFORMATION**

Area Searched: Local
Entity Searched: Tribunal de Justiça do Estado de São Paulo - Comarca de São Paulo - Capital
Period of Search: 2003 to Present
Valid Through: September 5, 2008
Results: No record found.

---

**PERSONAL CREDIT REPORT**

Registered Name: Marcelo Faria De Lima

Phone: Not Available
Date of Birth: [redacted]
Nationality: Not Available
Marital Status: Not Available
CPF #: 715.269.947,04
Parents: Glicia de Almeida Faria Lima

RESIDENCY INFORMATION

EXHIBIT 25

Our agent was unable to confirm the subject's residency at the above address.
The following unconfirmed address was found for the subject:

EMPLOYMENT/PROFESSIONAL INFORMATION

The subject has relations/interest in the following companies:

> RIO VERDE CONSULTORIA E PARTICIPAÇÕES LTDA, CNPJ 04.422.992/0001-04, SÃO LOURENÇO DA SERRA/SP.
>
> METALFRIO SOLUTIONS LTDA, CNPJ 04.821.041/0001-08, SÃO PAULO/SP.

GOVERNMENT RECORDS

No detrimental records were found.

CONSUMER SEARCH INFORMATION

There are neither returned checks nor bank debts in the subject's name.

According to the Central Bank of Brazil, the subject has no returned checks to date.

---

**EMPLOYMENT HISTORY**

No information was provided on your order for verification.

---

**EDUCATIONAL HISTORY**

No information was provided on your order for verification.

---

**COMMENTS / ADDITIONAL INFORMATION**

None

---

**END OF REPORT**

**IMPORTANT NOTICE**

OWENS ONLINE, INC. DOES NOT WARRANT THE COMPLETENESS OR CORRECTNESS OF THIS REPORT OR ANY OF THE INFORMATION CONTAINED HEREIN. OWENS ONLINE, INC. IS NOT LIABLE FOR ANY LOSS, DAMAGE OR INJURY CAUSED BY THE NEGLIGENCE OR OTHER ACT OR FAILURE OF OWENS ONLINE, INC. IN PROCURING, COLLECTING OR COMMUNICATING ANY SUCH INFORMATION. RELIANCE ON ANY INFORMATION CONTAINED HEREIN SHALL BE SOLELY AT THE USER'S RISK AND SHALL CONSTITUTE A WAIVER OF

ANY CLAIM AGAINST, AND A RELEASE OF, OWENS ONLINE, INC. THIS REPORT IS FURNISHED IN STRICT CONFIDENCE FOR YOUR EXCLUSIVE USE FOR LEGITIMATE BUSINESS PURPOSES AND FOR NO OTHER PURPOSE, AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART IN ANY MANNER WHATSOEVER.

---

**QUESTIONS?**

If you have any questions about this report, please feel free to contact us:

Phone: (USA 001) 813-877-2008
Toll Free: (USA only) 800-745-4656
Fax: (USA 001) 813-877-1826
Email: email@owens.com
Website: www.owens.com
www.owensonline.com

CONFIDENTIAL

JUN 15 2009

*INTERAGENCY BIOGRAPHICAL AND FINANCIAL REPORT*

JUN 15 2009

This is filed with respect to:

Community Bank of Manatee
Name of Subject Institution or Holding Company, Location

**Type of Filing**

- [ ] Bank or Thrift Charter
- [ ] Bank or Thrift Holding Company
- [x] Change in Bank Control
- [ ] Change in Senior Executive Officer or Director
- [ ] Citizenship Waiver
- [ ] Charter Conversion
- [ ] Deposit Insurance
- [ ] Federal Branch or Agency
- [ ] Other

**Position**

- [ ] Organizer
- [ ] Director
- [ ] Senior Executive Officer
- [ ] Title:
- [ ] Principal Shareholder
- [ ] Trustee
- [ ] Manager
- [ ] Manager
- [ ] Other

**BIOGRAPHICAL REPORT**

**1. Personal Information**

(a) Name **Lima** (Last) **Marcelo** (First) **Faria de** (Middle-no initials)

(b) Residence:

(c) If at residence less than five years, list addresses and dates occupied for past five years.

| Date From | Date To | Number and Street | State ZIP Code | Country |
|---|---|---|---|---|
| Feb. 2000 | Feb. 2008 | 171, Rua das Tuias | 05675-140 | Brazil |

(d) Date of Birth: Month: [redacted]

(e) Place of Birth: Campina Verde (City) MG (State) Brazil (Country)

(f) United States Social Security Number: N.A.

(g) Citizenship: Brazil (Country) N.A. (Date, if Naturalized)

(h) If not a United States citizen, provide:
Passport Number:
Home Country Identification Number:
Immigration File Number: N.A.
Father's full name: Celso Rodrigues de Lima
Mother's full name, including maiden name: Glícia de Almeida Faria Lima

(i) Telephone and fax numbers where you may be reached during business hours and an e-mail address:

(j) List other names you used and the period of time you used them (for example, your maiden name, name by a former marriage, former name, alias, or nickname). If the other name is your maiden name, put "nee" in front of it.

N.A.

## 2. Employment Record

(a) List employment in reverse chronological order for the last five years. The list should include the beginning and ending dates of employment, the employer's name and location (city, state), nature of business, title or position, nature of duties, and reason for leaving.

| Beginning and ending date of relationship | Company Name/Location | Nature of business | Position held/ relationship | Reason for leaving |
|---|---|---|---|---|
| May/08 – present | EDG – Estilo, Design e Gestão S.A. | Holding Company | -Executive Officer | Still working for the Company |
| Mar/08 – May/09 | Senocak Holding A/S Istanbul – Turkey | Holding company in the manufacture and sale of commercial refrigerators and freezers | -Director | Opening vacancy for local Director |
| Mar/08 – present | Klimasan Klima S.T.A.S. – Turkey | Commercial refrigeration | -Director | Still working for the Company |
| Mar/08 – present | Senocak Sogutma S.T.S.A.S. - Turkey | Commercial refrigeration | -Director | Still working for the Company |
| Mar/08 – present | Senocak Marmara Sogutma Tic. Ve Paz A.S. | Commercial refrigeration | -Director | Still working for the Company |
| Sep/07 present | Artesia Capital Management Ltd. – Hamilton - Bermudas | Holding Company | -Director | Still working for the Company |

| | | | | |
|---|---|---|---|---|
| Sep/07 – present | MARSPE Empreendimentos e Participações S.A. São Paulo – Brazil | Holding company | - Director | Still working for the Company |
| Jul/07 – present | Produquimica Indústria e Comércio S.A. | Inorganic specialty micronutrients for animal food and agriculture | - Director | Still working for the Company |
| Dec/06 - present | Ashby Investment Management Inc. BVI | Holding company | -Director<br>-Indirect shareholder | Still working for the Company |
| Dec/06 - present | Turquoise Capital C.V. Amsterdam – the Netherlands | Holding company | - Shareholder<br>- Managing Partner | Still working for the Company |
| Dec/06 - present | Peach Tree LLC Delaware - USA | Holding company | - Indirect shareholder<br>- Operating Manager | Still working for the Company |
| Feb/06 present | Lider Metalfrio A.S. – Turkey (**) | Commercial refrigeration | - Director | Still working for the Company |
| Jan/06 Nov/07 | Abyara Planejamento Imobiliário S.A. São Paulo – Brazil | Real estate development and brokerage | - Shareholder<br>- COO (Jan/06 to April/07)<br>- Director (Feb/07 to Nov/07) | Equity interest sold to a fund of Morgan Stanley |
| Jan/04 – present | Metalfrio Solutions S.A. São Paulo – Brazil | Manufacture and sale of commercial refrigerators and freezers | - Direct and indirect shareholder<br>- CFO (Jan/04 to Feb/07)<br>- Chairman of the Board of Directors (Feb/07 to present) | Still working for the Company |
| Dec/03 – present | Serra do Acarai Emp. E Participações S.A. – São Paulo – Brazil | Holding Company | -Executive Officer | Still working for the Company |
| Feb/03 present | Artesia Gestão de Recursos S.A. São Paulo – Brazil | Asset management | -Executive Officer | Still working for the Company |
| Mar/01 - present | Rio Verde Consultoria e Participações Ltda. Santana do Parnaiba – SP Brazil | Holding company | -Executive Officer | Still working for the Company |
| Apr/04 – present | MFL & RJB Participações Ltda.- São Paulo – Brazil (*) | Holding Company | -Executive Officer | Still working for the Company |
| May/05 – Nov/08 | Life Cycle Assistencia Técnica Ltda. – Três Lagoas – MS (**) | Maintenance and services on refrigerators, freezers and air conditioning equipments | -Executive Officer | Opening vacancy for an Officer from its holding company Metalfrio Solutions S.A. |
| Apr/09 - present | Le Lis Blanc Deux Comércio e Confecções de Roupas S.A. | Designer and specialty retailer of women's premium fashion apparel | - Director and indirect shareholder | Still working for the Company |

(*) MFL & RJB Participações Ltda. has not started its activities and should be closed soon.
(**) Metafrio Solutions S.A. subsidiary. Metalfrio has been reported in the prior Interagency Biographical and Financial Report.

(b) Have you ever been dismissed or asked to resign from any past employment, including a less than honorable discharge from military service? ☐ Yes [X] No

If "yes," provide the employer's name, address, and telephone number; title or position; date of discharge; and explanation.

## 3. Education and Professional Credentials

(a) List each diploma or degree from high schools, colleges, universities, or other schools.

| School's Name/Location | From | To | Degree |
|---|---|---|---|
| Colégio Pitágoras<br>Campina Verde - MG<br>Brazil | 1977 | 1978 | High School |
| PUC-RJ (Pontifícia Universidade Católica RJ)<br>Rio de Janeiro - Brazil | 1981 | 1985 | Economics College Degree |

(b) List each professional license or similar certificate you now hold or have held (for example, Attorney, Physician, CPA, NASD or SEC registration).

| | Issuing Authority | Date Issued | Status | Expiration |
|---|---|---|---|---|
| [redacted] | CRE - Conselho Regional de Economia (Regional Council of Economists)<br>São Paulo - Brazil | 21-Sept-1998 | Active | N/A |

## 4. Business and Banking Affiliations

### Business

(a) List any company with which you are associated, providing the company name, location, nature or type of business, position held or relationship to the company, ownership percentage, and beginning date of the relationship.

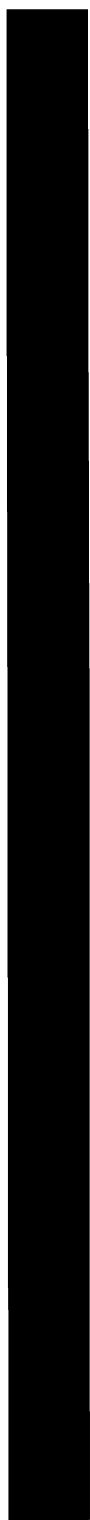
| Beginning date of relationship | Company Name / Location | Nature of business | Position held / relationship | Ownership (Direct participation) (%) |
|---|---|---|---|---|
| Mar/2001 | Rio Verde Consultoria e Participações Ltda.<br>Santana do Parnaiba - SP<br>Brazil | Holding company | [redacted]<br>- Executive Officer | [redacted] |

| | | | |
|---|---|---|---|
| Feb/2003 | Artesia Gestão de Recursos S.A.<br>São Paulo – Brazil | Asset management | - Executive Officer |
| Dec/2003 | Serra do Acarai Emp. e Participações S.A.<br>São Paulo – Brazil | Holding company | - Officer |
| Dec/2006 | Turquoise Capital C.V.<br>Amsterdam – the Netherlands | Holding company | - Shareholder<br>- Managing Partner |
| Jun/2007 | Zircon Investment Group C.V. | Holding company | - Limited Partner |
| Jul/2007 | Le Lis Blanc Deux Comércio e Confecções de Roupas S.A.<br>São Paulo – Brazil | Designer and specialty retailer of women's premium fashion apparel | - Direct and indirect shareholder (indirect<br>- Board member since April 2009 |
| Aug/07 | MARSPE Empreendimento e Participações S.A. – São Paulo - Brazil | Holding company | - Shareholder<br>- Director |

**Following are companies where Mr. Lima has indirect participation:**

| | | | |
|---|---|---|---|
| Jan/2004 | Metalfrio Solutions S.A.<br>São Paulo – Brazil | Manufacture and sale of commercial refrigerators and freezers | - Direct and indirect shareholder (indirect<br>- CFO (Jan/04 to Feb/07)<br>- Chairman of the Board of Directors (since Feb/07) |
| Dec/2006 | Peach Tree LLC<br>Delaware - USA | Holding company | - Indirect shareholder<br>- Operating Manager |
| Dec/2006 | Ashby Investment Management Inc.- British Virgin Islands (BVI) | Holding company | - Indirect shareholder<br>- Director |
| Jul/2007 | EDG – Estilo, Design e Gestão S.A.<br>São Paulo – Brazil | Holding company | - Indirect shareholder<br>- Executive officer (since May/08) |
| Jul/2007 | Produquimica Indústria e Comércio S.A.<br>São Paulo – Brazil | Inorganic specialty micronutrients for animal food and agriculture | - Indirect shareholder<br>- Director |
| Aug/07 | Tourmaline LLC<br>Delaware - USA | Holding company | - Indirect shareholder |

| | | | |
|---|---|---|---|
| Aug/07 | Volga LLC – Delaware - USA | Holding company | - Indirect shareholder |
| Aug/07 | Artesia Capital Management Ltd. – Hamilton - Bermudas | Holding company | - Indirect shareholder<br>- Director |
| Aug/07 | Terrativa S.A. | Research and development of properties (mining) | Indirect shareholder |
| Mar/05 – present | Life Cycle Assistencia Técnica Ltda. - Três Lagoas – MS (**) | Maintenance and services on refrigerators, freezers and air conditioning equipments | - Indirect shareholder |
| Jul/06 – present | Metalfrio Solutions A.S. – Denmark (**) | Commercial refrigeration | - Indirect shareholder |
| Jul/06 – present | Hold Co A.S. – Denmark (**) | Holding Company | - Indirect shareholder |
| Jul/06 – present | OOO Metalfrio Solutions LLC – Russia (**) | Commercial refrigeration | - Indirect shareholder |
| Jul/06 – present | OOO Estate LLC – Russia (**) | Commercial refrigeration | - Indirect shareholder |
| Jul/06 – present | OOO Caravell Derby (**) | Commercial refrigeration | |
| Feb/06 – present | Lider Metalfrio A.S. – Turkey (**) | Commercial refrigeration | - Indirect shareholder |
| Dec/06 – present | Metalfrio Solutions Inc. – USA (**) | Commercial refrigeration | - Indirect shareholder |
| Jun/07 – present | Rome Investment Management Ltd. – Bahamas (**) | Investment Company | - Indirect shareholder |
| Mar/08 – present | Klimasan Klima S.T. A.S. – Turkey (**) | Commercial refrigeration | - Indirect shareholder |
| Mar/08 – present | Senocak Sogutma S.T.S.A.S. – Turkey (**) | Commercial refrigeration | - Indirect shareholder<br>– Director |



| | | | |
|---|---|---|---|
| Mar/08 – present | Senocak Holding A.S. – Turkey (**) | Holding Company | - Indirect shareholder |
| Mar/08 – present | Klimasan Ukraine LLC – Ukraine (**) | Commercial refrigeration | - Indirect shareholder |
| Mar/08 – present | Klimasan LLC – Russia (**) | Commercial refrigeration | - Indirect shareholder |
| Mar/08 – present | Senocak Marmara Sogutma Tic. Ve Paz A.S.(**) | Commercial refrigeration | - Indirect shareholder<br>-Director |
| Apr/07 – present | Metalfrio Solutions S.A. de C.V. – Mexico (**) | Commercial refrigeration | - Indirect shareholder |
| Ago/07 – present | GPD S.A. de C.V. – Mexico (**) | Commercial refrigeration | - Indirect shareholder |
| Jul/07 – present | Fermavi Eletroquímica Ltda. – Brazil (***) | Micronutrients and chemicals | - Indirect shareholder |
| Jul/07 – present | Reluz Nordeste Indústria e Comércio Ltda. – Brazil (***) | Micronutrients and chemicals | - Indirect shareholder |
| Mar/08 – present | Mixmicro Indústria e Comércio de Produtos Químicos Ltda. – Brazil (***) | Micronutrients and chemicals | - Indirect shareholder |
| Jul/07 – present | Igarassú Agroindustrial Ltda. – Brazil (***) | Chemicals | - Indirect shareholder |
| Jul/07 – present | Reluz Química Industrial Ltda. – Brazil (***) | Micronutrients and chemicals | - Indirect shareholder |
| Fev/07 - present | Fundo Artesia Série Azul de Investimento em Participações(****) | Investment fund | - Indirect shareholder |
| Jul/08 – present | Fundo Artesia Série Verde de Investimento em Participações(****) | Investment fund | - Indirect shareholder |

| Jan/08 | present | Fundo Artesia Série Ouro de Investimento em Participações(****) | Investment fund | - Indirect shareholder | [redacted] |
|---|---|---|---|---|---|

(*) MFL & RJB Participações Ltda. has not started its activities and should be closed soon.
(**) Metafrio Solutions S.A. subsidiary.
(***) Produquímica Indústria e Comércio S.A. subsidiary.
(****) The *Fundos de Investimento em Participações* ("FIPs") are investment funds, which in Brazil are not considered legal entities.

**Banking Affiliations**

(b) List the name of any depository institution or depository institution holding company with which you are or were associated. Also list the location, nature of banking activity, position held or relationship, ownership percentage, and beginning and ending dates of the relationship.

N/A

c) Are you in the process of being considered for a senior executive officer or director position at another depository institution or depository institution holding company?

☐ Yes ☒ No

If "yes," provide the name of the depository institution or depository institution holding company and the position. If the application has been submitted for regulatory review, provide the name of the regulatory agency.

d) Are you now or are you proposed to be a "management official" of another insured depository institution or depository institution holding company? ☐ Yes ☒ No

If "yes," explain either why the potential interlock is not a violation of the Depository Institution Management Interlocks Act (12 U.S.C. §§ 3201-3208) or what action will be taken to prevent a violation.

## 5. Legal and Related Matters

(a) Have you been involved in any of the following filings where the filing was denied, disapproved, withdrawn, or otherwise returned without favorable action by a federal or state regulatory authority or a self-regulatory organization:

(1) A charter or license application, a depository institution holding company organizer, director, senior executive officer, or a person that would own or control (either individually or as a member of a group) 10 percent or more of any class of voting securities or other voting equity interest of the institution, or similar position?

☐ Yes ☒ No

(2) A merger application in which you were listed as a director, senior executive officer, or similar position? ☐ Yes ☒ No

(3) A notice of change in director or senior executive officer, or similar form, in which you were listed as a director, senior executive officer, or similar position?

☐ Yes ☒ No

(4) A notice of change in control for a depository institution or other company, or a similar form, in which you were listed (either individually or as a member of a group) as an acquirer or transferee? ☐ Yes ☒ No

(5) Any other application, notice, or other regulatory or administrative request which was filed with a federal or state regulatory authority or a self-regulatory organization in which you were listed in some capacity? ☐ Yes ☒ No

(b) Have you or any depository institution or depository institution holding company with which you are or were associated been subject to any supervisory agreement, enforcement action, civil money penalty, prohibition or removal order, or other supervisory or administrative action taken or imposed by any federal or state regulatory authority or other governmental entity? ☐ Yes ☒ No

(c) Has any depository institution with which you are or were associated:

(1) Been placed into conservatorship or receivership or otherwise failed?

☐ Yes ☒ No

(2) Received financial assistance from a federal agency or instrumentality (for example, FDIC, Resolution Trust Corporation, Federal Savings and Loan Insurance Corporation)? ☐ Yes ☒ No

(3) Merged with or been acquired by an institution that received financial assistance from a federal agency or instrumentality in connection with the transaction?

☐ Yes ☒ No

(d) Have you or any company with which you are or were associated:

(1) Filed a petition under any chapter of the Bankruptcy Code or had an involuntary bankruptcy petition filed against you or the company? ☐ Yes ☒ No

(2) Defaulted on a loan or financial obligation of any sort, whether as obligor, cosigner, or guarantor? ☐ Yes ☒ No

(3) Forfeited property in full or partial satisfaction of any financial obligation?

☐ Yes ☒ No

(4) Had a lien placed against property for failure to pay taxes or other debts?

☐ Yes ☒ No

(5) Had wages or income garnished for any reason? ☐ Yes ☒ No

(6) Failed or refused to pay any outstanding judgments? ☐ Yes ☒ No

(e) Have you or any company or depository institution with which you are or were associated been involved in any lawsuit, formal or informal investigation, examination, or administrative proceeding that may result in, or resulted in, any penalty (including, but not limited to, any sanction, fine, order to pay damages, loss of right or benefit, forfeiture of property interest, or revocation of license), agreement, undertaking, consent, judgment, or order imposed by or entered into with any of the following entities:

(1) Any federal or state court? ☐ Yes ☒ No

(2) Any department, agency, or commission of the United States government?

☐ Yes ☒ No

(3) Any state, municipal, or foreign governmental entity? ☐ Yes ☒ No

(4) Any self-regulatory organization (for example, NASD, FASB, state bar)?

☐ Yes ☒ No

(f) Have you or any company or depository institution with which you are or were associated been arrested for, charged with, indicted for, or convicted of (including a conviction where the record was expunged), or ever pleaded nolo contendere to, any criminal matter (other than minor traffic violations)?

☐ Yes ☒ No

(g) If you answer "yes" to any question in 5(a) through 5(f), provide your explanation by identifying the number of the question, describing the situation in detail, and, where relevant, including the:

- Name and location of any institution, company, party, court, regulatory agency, or self-regulatory organization involved.
- Nature of your association with any institution or company (for example, officer, director, organizer, principal shareholder, or owner).
- Type of any application, notice, or other regulatory or administrative request.
- Nature of any supervisory, enforcement, or administrative action.
- Direct and indirect debt terms, defaulted amount, and creditor regarding any financial obligation.
- Date of any relevant event.
- Nature of any lawsuit, charge, or proceeding.
- Jurisdiction in which any legal proceeding occurred.
- Resolution or disposition of the matter.

**Important note:** Although not technically required by Question 5(c), I note that some of the operating companies that I am or have been associated with, including Metalfrio Solutions S.A., Neovia Telecomunicações S.A., Le Lis Blanc Deux Comércio e Confecções de Roupas S.A., Abyara Planejamento Imobiliário S.A. and Produquimica Industria e Comercio S.A., are subject to ordinary course employment, tax, environmental and other business claims, disputes, or lawsuits in Brazil. To my best knowledge, I have not been individually named in any of these actions nor are there any such actions before any courts or governmental entity in the United States of America.

6. **Additional Information**

Present any other information you believe is important to evaluate your filing. If you are involved in the organization of a new depository institution or depository institution holding company, discuss your specific role

#1028

**Application For Certificate of Approval to Purchase or Acquire**
**A Controlling Interest in a State Bank or Trust Company**
**Pursuant to Section 658.28, Florida Statutes**

____ Direct acquisition of bank or trust company stock -- NOT APPLICABLE

Name of Bank or Trust Company:

228 1138216 2009-06-08
000012 $7,500.00

Location: (City) (County)

_X_ Indirect acquisition of bank or trust company stock by a proposed bank holding company:

Name of Holding Company: CBM Florida Holding Company (in organization)

Location: 251 Woody Row Road, Milan, Dutchess County, New York 12571
(Street Address) (City) (County) (State) (Zip Code)

| Bank or Trust Company | Location (City, County) |
|---|---|
| (1) Community Bank of Manatee | Bradenton, Manatee County, Florida |
| (2) | |
| (3) | |
| (4) | |
| (5) | |

Attach additional page, as necessary

RECEIVED
DEPT OF FINANCIAL SERVICES
STATE OF FLORIDA
09 JUN -8 AM 10:56
CASHIER'S OFFICE

**CORRESPONDENT**
Additional details concerning this application may be obtained from:

Bowman Brown, Esq. (Name) Attorney (Title)

Shutts & Bowen LLP, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131
(Mailing Address)

Telephone: 305-379-9107 E-Mail: bbrown@shutts.com

Application fee of $7,500.00 * payable to the Office of Financial Regulation is attached for deposit to Financial Institutions Regulatory Trust Fund.
Account No. 44202110000 00 001098
* $7,500.00 for 1; (plus an additional $3,500 for each additional institution being acquired)

## GENERAL INFORMATION AND INSTRUCTIONS

(1) An original and one copy of all portions of the application, with the appropriate filing fee, should be submitted to the Office of Financial Regulation. The following supplemental forms are required, as applicable, for each copy of the application.

(a) The biographical portion of the Interagency Biographical and Financial Report for each proposed purchaser and for each person not a purchaser, who will be a new executive officer or director of the bank or trust company. If Purchaser is a corporation, submit a Biographical Report for each major (10% or more) stockholder.

(b) The financial portion of the Interagency Biographical and Financial Report for each purchaser dated no earlier than one (1) year of the date of the application. If Purchaser is a corporation, a published financial statement dated no earlier than six months of the date of the application, and a Personal Financial Report for each major (10% or more) stockholder of the corporation.

(c) If the proposed purchaser is a Registered Bank Holding Company, attach Annual Reports for the last three (3) years.

(d) If purchaser is a corporation, submit a copy of a resolution(s) passed by the corporation's Board of Directors authorizing the filing of the application with the Department. The corporation's Secretary should certify that the resolution(s) is/are presently in full force and effect and has/have not been revoked or rescinded.

(2) The filing fee of $7,500.00 for each bank or trust company being acquired plus an additional $3,500.00 for each additional institution being acquired not to exceed $15,000 must be submitted with the application by check made payable to the Office of Financial Regulation.

(3) For informational purposes, one copy of the application should be submitted to the Federal Deposit Insurance Corporation, Atlanta, Georgia, as applicable, concurrent with submission to the Office of Financial Regulation.

(4) Prior to preparing and submitting an application, the applicants are requested to read carefully Section 658.28 and 655.057, Florida Statutes.

(5) Information deemed to be confidential pursuant to Section 655.057, Florida Statutes, is requested in a separate confidential section. All other information submitted will be a part of the public section of the file.

(6) Warning - persons could unlawfully exercise a controlling influence over the management and policies of a Florida-chartered bank or trust company, or control the election of a majority of the board of directors, even though owning or controlling less than 25 percent of the voting stock of the bank or trust company. While this acquisition of control application form was designed for 25 percent or more stock ownership, persons contemplating other transactions related to Florida-chartered banks or trust companies that might result in a change of control pursuant to Section 658.27 - 658.29, Florida Statutes, are advised to first request in writing instructions from the Office of Financial Regulation. Violators of Sections 658.27 - 658.29, Florida Statutes, are subject to enforcement actions including injunctions which may prohibit them from voting or giving proxies to vote bank or trust company stock; attending or voting at board of directors meetings or stockholders meetings; acquiring additional stock options, or proxies; directing or attempting to direct the management of the bank or trust company; and exercising control over a Florida-chartered bank or trust company any way.

Applicant(s) hereby apply to the Office of Financial Regulation, pursuant to Section 658.28, Florida Statutes, for a Certificate of Approval to Purchase or Acquire a controlling interest in Community Bank of Manatee.

## CERTIFICATE

The undersigned affirm that this application has been prepared at their direction, that it is accurate and complete as to all factors according to their best knowledge and belief, and each subscriber hereto has agreed to purchase stock of said bank in good faith in his own right and not as agent or attorney for any undisclosed person.

| (Individuals) | (Corporations) |
|---|---|
| Sign ______________________ | Name CBM Florida Holding Company |
| | Sign ______________________ |
| Type ______________________ | By Marcelo Lima |
| Sign ______________________ | Title Chairman |
| | Sign ______________________ |
| Type ______________________ | By Trevor R. Burgess |
| | Title Vice Chairman |

STATE OF ______________________)
COUNTY OF ______________________)

Before me, the undersigned Notary Public, in and for the State of __________ at Large, personally appeared ______________________, and ______________________, both to me well known, and known by me to be the individuals described in and who executed the foregoing application and, each being duly sworn, severally acknowledged that he executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this ________ day of ______________________, 2009.

______________________

Notary Public - State of __________ At Large. My Commission Expires: ______________, 20____.

**CERTIFICATE**

The undersigned affirm that this application has been prepared at their direction, that it is accurate and complete as to all factors according to their best knowledge and belief, and each subscriber hereto has agreed to purchase stock of said bank in good faith in his own right and not as agent or attorney for any undisclosed person.

| (Individuals) | | (Corporations) | |
|---|---|---|---|
| Sign | | Name | CBM Florida Holding Company |
| | | Sign | |
| Type | | By | Marcelo Lima |
| Sign | | Title | Chairman |
| | | Sign | |
| Type | | By | Trevor R. Burgess |
| | | Title | Vice Chairman |

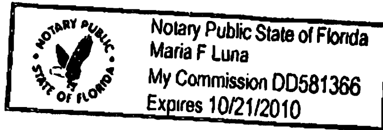
STATE OF Florida )
COUNTY OF Manatee )

Before me, the undersigned Notary Public, in and for the State of Florida at Large, personally appeared Marcelo Lima and Trevor Burgess

all to me well known, and known to me to be the individuals described in and who executed the foregoing application and, each being duly sworn severally acknowledged that he executed the same for the uses and purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 4th day of June, 2009

Notary Public - State of Florida At Large. My Commission Expires: October, 21, 2010.



I. **STATUS OF CAPITAL ACCOUNT** (Bank or Trust Company)

(A) **Present Capital Structure:** (date) March 31, 2009

| | #Shares | Par Value | Int. Rate | Due Date | Amount ($000) |
|---|---|---|---|---|---|
| Common Stock | 2,094,762 | $2.00 | | | $4,194 |
| Preferred Stock | 104,930 | $11.00 | | | |
| | 201,474 | $12.50 | | | |
| | 106,259 | $13.50 | | | |
| | | | | | $5,107 |
| Surplus | ______ | ______ | ______ | ______ | $7,135 |
| Undivided Profits and Reserve for Contingencies and Other Capital Reserves | | | | | $1,633 |
| TOTAL Equity Capital | | | | | $18,069 |
| Capital Notes | | | ______ | ______ | NONE |
| GRAND TOTAL | | | | | $18,069 |

(B) **Proposed Increase to Capital:**

| | #Shares | Par Value | Amount ($000) |
|---|---|---|---|
| Common Stock | 2,609,769 | $2.00 | $ 5,220 |
| Preferred Stock | NONE | | ______ |
| Surplus | | | $ 4,780 |
| Capital Notes | NONE | | ______ |
| TOTAL | | | $10,000 |

Comment as to new capital proposals:

We intend to increase the bank's capital as necessary to meet or exceed the "Well Capitalized" regulatory requirements. A condensed balance sheet for the bank, including actual amounts as of March 31, 2009, including a pro forma balance sheet showing the effects of the proposed transaction with accounting adjustments, together with comparative capital ratios and calculations, are attached as Exhibit 1.

(C) **Market for Stock:**

| | Date | # Shares | $ Per Share |
|---|---|---|---|
| 1. Bank or Trust Company Stock Five (5) most recent sales transactions: | 10/27/08 | 694 | $6.50 |
| | 08/19/08 | 5,280 | $6.37 |
| | 08/19/08 | 5,280 | $6.37 |
| | 08/19/08 | 2,540 | $4.75 |
| | 08/19/08 | 5,280 | $6.37 |

2. Corporate Stock to be Exchanged for Bank or Trust Company Stock: NONE. CASH TRANSACTION.

**Five (5) most recent sales or quarterly quotations for past year: (Please refer to table on preceding page.)**

| Where Traded | Bid | Ask | Date | # Shares | $ Per Share |
|---|---|---|---|---|---|
| | | | | | |
| | | | | | |

**II. STATUS OF TRANSACTION:**

**(A) List of Purchasers:**

**Name and Address**

**CBM Florida Holding Company**
**251 Woody Row Road**
**Milan, NY 12571**

**Total Shares to be acquired: 2,609,769**

**Percent of total share outstanding: 51% of outstanding shares**

**CBM Florida Holding Company owned by:**

**Trevor R. Burgess**
**251 Woody Row Road**
**Milan, NY 12571**

**Marcelo Lima**
**Av. Das Naçoes Unidas, 12.551 15°, CJ 1507**
**04578-000 São Paulo, SP BRAZIL**

**Marcio Camargo**
**Av. Das Naçoes Unidas, 12.551 15°, CJ 1507**
**04578-000 São Paulo, SP BRAZIL**

**Erwin Russel**
**Av. Das Naçoes Unidas, 12.551 15°, CJ 1507**
**04578-000 São Paulo, SP BRAZIL**

**(B) Identify any person employed, retained or to be compensated by the acquiring party or by any person on his behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition and provide a brief description of the terms of such employment, retainer, or arrangements for compensation.**

**NONE.**

(C) Terms and Conditions:

1. Bank or Trust Company stock to be purchased for cash at $3.83175 per share.

   Total purchase price for the entire proposed transaction: $ 10,000,000

2. Bank or Trust Company stock to be exchanged for corporate stock on the following basis:

   NOT APPLICABLE.

3. Other:

   NOT APPLICABLE.

4. Provide copies of all invitations or tenders or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

   NOT APPLICABLE. PRIVATELY NEGOTIATED TRANSACTION WITH BANK.

III. FUTURE MANAGEMENT

(A) List Present Directors & Officers

| Name | Title |
|---|---|
| William H. Sedgeman, Jr. | CEO & Director |
| Michael P. McCoy | President |
| Marvin R. DeBerry | Chief Lending Officer |
| J. Larry Tucker | CFO |
| Denise L. Baker | Director |
| Charles M. Brown | Director |
| Brian D. Burghardt | Director |
| Phillip L. Burghardt | Director |
| Thomas S. Downs | Director |
| Thomas A. Howze | Director |
| Duane L. Moore | Director |
| Kenneth L. Schermer | Director |
| Thomas R. Sprenger | Director |

List Proposed Directors & Officers*

| Name | Title |
|---|---|
| William H. Sedgeman, Jr. | CEO & Director |
| Michael P. McCoy | President |
| Marvin R. DeBerry | Chief Lending Officer |
| J. Larry Tucker | CFO |
| Denise L. Baker | Director |
| Charles M. Brown | Director |
| Brian D. Burghardt | Director |
| Phillip L. Burghardt | Director |
| Thomas S. Downs | Director |
| Thomas A. Howze | Director |
| Duane L. Moore | Director |
| Kenneth L. Schermer | Director |
| Thomas R. Sprenger | Director |
| Trevor R. Burgess | Director |
| Marcelo Lima | Director |

*Pending Regulatory Approval

**(B)** **Described any plans to make changes to the bank or trust company's management or Board of Directors:**

**MR. LIMA AND MR. BURGESS WOULD JOIN THE BOARD OF DIRECTORS. NO OTHER CHANGES ARE CONTEMPLATED.**

**(C)** **Describe any plans or proposals which any acquiring party making the acquisition may have to liquidate the bank or trust company, to sell its assets or to merge it with any company or to make any other major change in its business or corporate structure or management.**

**NOT APPLICABLE.**

**(D)** **Describe any affect the proposed change in control may have on the public's interest, specifically, any probable effect on the needs and convenience of the community to be served:**

**This recapitalization will provide the bank with the necessary capital to continue to serve the needs of the community. The Applicant's proposed business plan calls for: growing core local deposits, making cautiously underwritten loans, reinvigorating the brand and managing the existing loan portfolio to minimize losses.**

**(E)** **Indicate briefly the reason(s) for the proposed change in control and future plans/intentions for the bank or trust company:**

**With a thirteen year history of community banking in Manatee and Hillsborough Counties, Community Bank of Manatee has a strong franchise from which to continue to build a premier bank. With the right level of capital the bank will be poised to take advantage of currently market conditions – in loan growth, branch growth and in deposit customer growth.**

**A copy of Applicant's confidential business plan for the bank prepared in connection with proposed transaction is provided as Confidential Exhibit A.**

## EXHIBIT 1

## Pro Forma Balance Sheet and Comparative Capital Ratios

| BALANCE SHEET | 1Q09A | Capital (1) | Addition to ALLL (2) | W-off of loans (3) | ALLL adjustment for w-off (4) | Pro-forma 1Q09PF |
|---|---|---|---|---|---|---|
| Total accruing loans | 188,821 | 0 | 0 | (2,256) | 0 | 186,565 |
| Total nonaccruing loans | 14,989 | 0 | 0 | (4,506) | 0 | 10,483 |
| Allowance for loan losses | (5,265) | 0 | (3,510) | 0 | 6,762 | (2,013) |
| **Total net loans** | **198,545** | **0** | **(3,510)** | **(6,762)** | **6,762** | **195,035** |
| | | | | | | |
| Securities | 15,951 | 9,600 | 0 | 0 | 0 | 25,551 |
| Federal funds sold | 20,708 | 0 | 0 | 0 | 0 | 20,708 |
| Cash and cash equivalents | 2,805 | 0 | 0 | 0 | 0 | 2,805 |
| Premises and fixed assets | 12,810 | 0 | 0 | 0 | 0 | 12,810 |
| Other assets and investments in subsidiary | 6,941 | 0 | 1,351 | 0 | 0 | 8,292 |
| **Total other assets** | **59,215** | **9,600** | **1,351** | **0** | **0** | **70,166** |
| | | | | | | |
| **Total assets** | **257,760** | **9,600** | **(2,158)** | **(6,762)** | **6,762** | **265,202** |
| | | | | | | |
| MMDA | 32,315 | 0 | 0 | 0 | 0 | 32,315 |
| Savings deposit | 10,387 | 0 | 0 | 0 | 0 | 10,387 |
| CD < 100M | 90,410 | 0 | 0 | 0 | 0 | 90,410 |
| CD > 100M | 54,955 | 0 | 0 | 0 | 0 | 54,955 |
| NOW accounts | 10,172 | 0 | 0 | 0 | 0 | 10,172 |
| DDA | 17,843 | 0 | 0 | 0 | 0 | 17,843 |
| **Total deposits** | **216,082** | **0** | **0** | **0** | **0** | **216,082** |
| | | | | | | |
| Other borrowed money | 18,800 | 0 | 0 | 0 | 0 | 18,800 |
| Other funds and liabilities | 4,808 | 0 | 0 | 0 | 0 | 4,808 |
| **Total other funds and liabilities** | **23,608** | **0** | **0** | **0** | **0** | **23,608** |
| | | | | | | |
| **Total liabilities** | **239,690** | **0** | **0** | **0** | **0** | **239,690** |
| | | | | | | |
| Minority interest | 0 | 0 | 0 | 0 | 0 | 0 |
| Common shares | 4,194 | 9,600 | 0 | 0 | 0 | 13,794 |
| Reserves and other equity accounts | 12,216 | 0 | 0 | 0 | 0 | 12,216 |
| Retained earnings | 1,660 | 0 | (2,158) | (6,762) | 6,762 | (498) |
| **Total shareholder's equity** | **18,070** | **9,600** | **(2,158)** | **(6,762)** | **6,762** | **25,512** |
| | | | | | | |
| **Total liabilities and shareholder's equity** | **257,760** | **9,600** | **(2,158)** | **(6,762)** | **6,762** | **265,202** |
| Check | 0 | 0 | 0 | 0 | 0 | 0 |

| CAPITAL RATIOS CALCULATION | 1Q09A | 1Q09PF |
|---|---|---|
| Captital calculation | | |
| A: Shareholders' equity | 18,070 | 25,512 |
| B: Unrealized gain/(loss) on securities | 0 | 0 |
| C: Disallowed deferred tax assets | 0 | 1,351 |
| D: Disallowed servicing assets | 34 | 34 |
| **Tier 1 capital (A - B - C - D)** | **18,036** | **24,126** |
| E: ALLL includible in Tier 2 | 2,826 | 2,013 |
| F: Qualifying subordinated debt | 3,075 | 3,075 |
| Tier 2 capital (E+F) | 5,901 | 5,088 |
| **Total risk-based capital (Tier 1 + Tier 2)** | **23,937** | **29,214** |
| | | |
| **Average total assets** | **264,208** | **268,686** |
| **Total risk weighted assets** | **223,610** | **226,808** |

| CAPITAL RATIOS | 1Q09A | 1Q09PF |
|---|---|---|
| **Leverage Ratio** | **6.8%** | **9.0%** |
| **Tier 1 ratio** | **8.1%** | **10.6%** |
| **Total risk-based capital ratio** | **10.7%** | **12.9%** |

**STATE OF FLORIDA**
**OFFICE OF FINANCIAL REGULATION**
**DIVISION OF FINANCIAL INSTITUTIONS**

| | | |
|---|---|---|
| IN RE: | ) | |
| | ) | |
| APPLICATION FOR AUTHORITY TO | ) | Administrative Proceeding |
| ACQUIRE A CONTROLLING INTEREST | ) | No. 0641-FI-06/09 |
| IN COMMUNITY BANK OF MANATEE | ) | |

RECEIVED
JUL 10 2009
LEGAL OFFICE

## JOINT PREHEARING STIPULATION

In connection with the public hearing to be held on July 13, 2009 by the State of Florida, Office of Financial Regulation, Division of Financial Institutions (hereinafter "Office") concerning the application received from CBM Florida Holding Company, Trevor R. Burgess and Marcelo Lima ("Applicants") for Authorization to Acquire a Controlling Interest in Community Bank of Manatee, the Office and the Applicants, through their undersigned counsel, do hereby submit this Joint Prehearing Stipulation in order to set forth the following facts:

1. Community Bank of Manatee ("Bank") is a Florida state chartered bank with its principal place of business in Lakewood Ranch, Manatee County, Florida.
2. The bank is privately owned with the voting common stock presently held by approximately 350 shareholders.
3. On June 5, 2009, the Applicants filed an application for Authorization to Acquire Controlling Interest in Community Bank of Manatee ("Application") through their holding company, CBM Florida Holding Company ("CBM").
4. CBM is acquiring fifty-one percent (51%) of the outstanding shares of stock in the Bank thereby assuming control of the Bank.



EXHIBIT
28

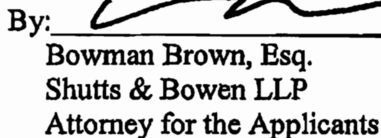
5. Marcelo Lima, a national of a country other than the United States, owns 66.34% of CBM and, therefore, will own 33.83% of the Bank. He will have a seat on the Bank's Board of Directors.
6. Trevor Burgess owns 13.86% of CBM and therefore will own less than 10% of the Bank, but will have a seat on the Bank's Board of Directors.
7. The Office caused notice of its receipt of the Application to be published in the Florida Administrative Weekly on June 19, 2009.
8. Pursuant to Section 120.80(3), Florida Statutes, a public hearing is required prior to the Office granting authorization for the change of control.
9. The OFR and the Applicants consented to the appointment of an OFR hearing officer in this matter.
10. On June 11, 2009, Linda B. Charity, Acting Commissioner of the OFR, issued an order appointing Robert D. Hayes, Bureau Chief, Bureau of Credit Unions, Division of Financial Institutions, as Hearing Officer for the public hearing.
11. No other person submitted a request for hearing in this matter.
12. The public hearing was scheduled for July 13, 2009, to take place through video conferencing with live hearing sites in Tallahassee and Miami.
13. The Applicants published a notice in the June 26, 2009 edition of the Bradenton Herald, a newspaper of general circulation in the community in which the Bank conducts business. The notice indicated the date, time, and locations of the scheduled public hearing and otherwise complied with the requirements of Rule 69U-105.105(1), Florida Administrative Code.

14. The Office caused notice of the public hearing to be published on the Office's Internet Website, www.flofr.com, on June 29, 2009 and in the Florida Administrative Weekly on July 10, 2009.

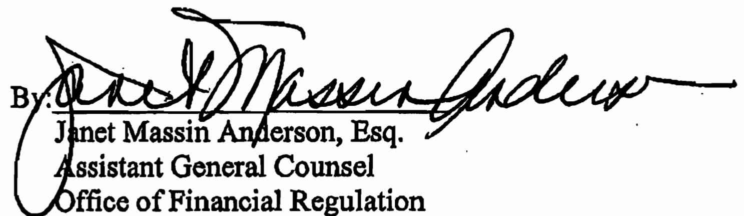
15. Applicants Lima and Burgess previously applied for authorization to acquire a controlling interest in Riverside Bank of the Gulf Coast, a Florida state-chartered bank, in 2008 (Administrative Proceeding No. 0548-FI-8/08).

16. The application was approved following a public hearing. The transcript of the hearing held on October 3, 2008 and the Report of Public Hearing filed October 17, 2008 are entered as joint exhibits in the instant matter.

IN WITNESS WHEREOF, the undersigned have entered into this Prehearing Stipulation effective July 9th, 2009.



By: ______________________
Bowman Brown, Esq.
Shutts & Bowen LLP
Attorney for the Applicants



By: ______________________
Janet Massin Anderson, Esq.
Assistant General Counsel
Office of Financial Regulation

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS

IN RE:

| APPLICATION FOR AUTHORITY TO ) ACQUIRE A CONTROLLING INTEREST ) IN COMMUNITY BANK OF MANATEE ) | Administrative Proceeding No. 0641-FI-06/09 |
|---|---|

**REPORT OF PUBLIC HEARING**

Pursuant to Section 120.80(3)(a), Florida Statutes, a public hearing was held in the above-styled cause on July 13, 2009, by video conferencing with sites in Tallahassee and Miami, Florida, before Robert D. Hayes, a duly designated Hearing Officer of the Florida Office of Financial Regulation (the "OFR").

**APPEARANCES**

Counsel for the Applicants,
Trevor R. Burgess and Marcelo Lima

Bowman Brown, Esquire
Shutts & Bowen LLP
1500 Miami Center
201 South Biscayne Boulevard
Miami, Florida 33131

Counsel for the Office of
Financial Regulation

Janet M. Anderson, Esquire
Assistant General Counsel
Office of Financial Regulation
The Fletcher Building
101 East Gaines Street, Suite 526
Tallahassee, Florida 32399-0350

**STATEMENT OF THE ISSUES**

The purpose of the public hearing (the "Hearing") was to review, in accordance with Florida law, the pending Application by Trevor R. Burgess and Marcelo Lima for Authority to Acquire a Controlling Interest in Community Bank of Manatee (the "Application"), including

EXHIBIT
29

(1) The requirement under Section 120.80(3)(a)4., Florida Statutes, that any foreign national person seeking to acquire a controlling interest in a state bank appear personally at such a public hearing; and

(2) The criteria established by Section 658.28(1), Florida Statutes, on the basis of which the OFR is required to base its determination whether or not the Application should be approved.

**PRELIMINARY STATEMENT**

These matters began on June 8, 2009, when Trevor R. Burgess and Marcelo Lima (collectively, the "Applicants") submitted an application to the OFR for approval to acquire a controlling interest in Community Bank of Manatee, Bradenton, Manatee County, Florida (the "Bank"). The OFR published notice of its receipt of the Application in the *Florida Administrative Weekly* on June 19, 2009.

As reflected in his biographical report which accompanied the Application, Mr. Lima is a citizen of the Federative Republic of Brazil. Consequently, the OFR was required by Section 120.80(3)(a)4., Florida Statutes, to request that the Hearing be conducted. The Applicants and the OFR (collectively "the Parties") agreed to the OFR appointing a Hearing Officer instead of requesting the appointment of an administrative law judge by the Division of Administrative Hearings. Accordingly, on June 11, 2009, the OFR issued an order requiring that the Hearing be held and appointing Robert D. Hayes, Chief of the OFR's Bureau of Credit Unions, to act as the Hearing Officer. No other person requested a hearing with respect to the Application. The OFR has the authority to administer hearings under the provisions of the Florida Administrative Procedure Act, Chapter 120, Florida Statutes, and has jurisdiction over this matter pursuant to Chapter 658, Florida Statutes, and Chapter 69U, Florida Administrative Code.

In accordance with the requirements of Section 69U-105.105, Florida Administrative Code, the Applicants published notice of the Hearing in the *Bradenton Herald*, a newspaper of

general circulation in the community in which the principal office of the Bank is located, on June 28, 2009. The OFR placed notice of the Hearing on its website on June 28, 2009 and caused notice of the Hearing to be published in the *Florida Administrative Weekly* on July 10, 2009.

Prior to the Hearing, the Parties filed a Joint Prehearing Stipulation which was entered into evidence. In addition, the Parties introduced and had admitted the following exhibits: (1) Office Exhibit 1 containing a true and correct copy of the public portions of the Application, the proof of publication of the Notice of Public Hearing published in the *Bradenton Herald*, and the OFR's Notice of Public Hearing as published in the *Florida Administrative Weekly*. (2) Office Exhibit 2 containing a true and correct copy of the transcript of a public hearing held on October 3, 2008 with regard to the Applicants' previous application for approval to acquire a controlling interest in Riverside Bank of the Gulf Coast, Cape Coral, Florida, and the resultant Report of Hearing. The transcript and Report of Hearing are incorporated into this record in their entirety. (3) Confidential Office Exhibit A containing a true and correct copy of the confidential portions of the Application was also entered into evidence. Each of the exhibits was certified by the OFR's Financial Administrator for Licensing.

After publication of the notices to the public, the Hearing was conducted by video teleconference on July 13, 2009, from offices located at 1500 Mahan Drive, Suite 140, Tallahassee, Florida 32308 and 201 South Biscayne Boulevard, 28th Floor, Miami, Florida 33131. The Applicants appeared personally at the Hearing in Miami and presented their oral testimony under oath. No member of the public appeared at either hearing site.

## FINDINGS OF FACT

(1) On June 8, 2009, Trevor R. Burgess and Marcelo Lima submitted an application to the OFR seeking the OFR's approval their proposed acquisition of a controlling interest in the Bank.

(2) The requisite filing fee and the Applicants' respective Interagency Biographical and Financial Reports ("IBFR") were submitted with the Application.

(3) The Applicants submitted a written request for OFR to appoint a Hearing Officer with the Application and IBFRs.

(4) On June 11, 2009, the OFR issued an order directing that a public hearing be conducted pursuant to Chapters 120, 655, and 658, Florida Statutes, and the relevant rules promulgated thereunder, and appointing Robert D. Hayes, Chief of the Bureau of Credit Unions in the OFR's Division of Financial Institutions to act as the Hearing Officer.

(5) On June 19, 2009, the OFR caused notice of its receipt of the Application to be published in the *Florida Administrative Weekly.* This published notice met the requirements of Rule 69U-105.103(1), Florida Administrative Code. No person requested a hearing within the twenty-one (21) day notice period pursuant to the notice.

(6) On June 25, 2009, the Hearing Officer issued a Notice of Hearing setting the public hearing on the Application to be held at 2:00 p.m. on Monday, July 13, 2009, by video teleconference from offices located at 1500 Mahan Drive, Suite 140, Tallahassee, Florida 32308, and 201 South Biscayne Boulevard, 28th Floor, Miami, Florida 33131.

(7) The Applicants caused notice of the Hearing to be published in the *Bradenton Herald*, a newspaper of general circulation in Manatee County, Florida, including Bradenton, the

community in which the Bank principally conducts its business, on June 28, 2009. The published notice met the requirements of Rule 69U-105.105(1), Florida Administrative Code.

(8) The OFR caused notice of the Hearing to be published on its website on June 28, 2009 and in the *Florida Administrative Weekly* on July 10, 2009.

(9) No other person requested a hearing, no member of the public appeared at the public hearing, and no one spoke in opposition to the Application.

(10) The Applicants propose to acquire a controlling interest in the Bank through CBM Florida Holding Company, a proposed bank holding company ("CBM"). Upon completion of the proposed transaction, Community Bank of Manatee will continue to exist under its current Florida charter.

(11) The Applicants, together with certain other investors, propose to acquire all of the issued and outstanding shares of CBM which will, in turn, acquire newly-issued shares of the voting common stock of the Bank representing 51% of the then-outstanding shares of the Bank's capital stock (the "Acquisition").

(12) The Applicants were approved in October 2008 to acquire control of Riverside Bank of the Gulf Coast after completing the necessary application forms and participating in a public hearing. The transaction was not consummated for non-regulatory reasons. The Applicants' legal and financial circumstances have remained substantially unchanged since October 2008.

(13) Mr. Trevor Burgess is a principal and manager of an investment management firm, Artesia Capital Management USA, LLC. For almost 10 years, he was an investment banker with Morgan Stanley, one of the major U.S. investment banks. At Morgan Stanley, he served as a Managing Director and head of debt and equity execution in Europe, the Middle East

and Africa. He also served as the chairperson of Morgan Stanley's equity underwriting committee, responsible for all underwriting commitments made by the firm in his area and was responsible for raising over US $50 billion in capital for over 100 governments and global companies, including the governments of Brazil, Colombia, The Dominican Republic, Jamaica, Peru and Uruguay and such entities as Banco Minas Gerais, E*Trade, IndyMac Bancorp, Danske Bank, Greek Postal Savings Bank, Pireaus Bank, Chicago Mercantile Exchange, International Securities Exchange and AON. Prior to his tenure with Morgan Stanley, Mr. Burgess was a management consultant for three years at Monitor Company in Cambridge, Massachusetts.

As a major investment bank, Morgan Stanley is subject to extensive supervision and regulation by both state and federal government agencies, including the United States Securities and Exchange Commission, the Financial Industry Regulatory Authority (formerly the NASD). Accordingly, as an investment banker at Morgan Stanley, Mr. Burgess was subject to licensure by the NASD/FINRA and held a Series 7 license which required examination and continuing education. He was also a registered representative with the Financial Services Authority in the United Kingdom, and, in connection with his securities license, he was subject to disclosure and reporting requirements similar to, but more frequent than, those applicable to officers and directors of commercial banks.

Mr. Burgess testified that neither he nor, to his knowledge, any of the companies in which he has been involved, has ever been the subject of any investigation, civil charges or penalties imposed by any governmental or administrative agency, made a filing in any bankruptcy or similar proceeding, failed to pay any judgment or other debt which he or it was lawfully obligated to pay, or been convicted of, or pled guilty or no contest to, any charge of fraud, money laundering or other financial crime.

(14) The OFR conducted a background investigation with respect to Mr. Burgess and discovered no negative information that would reflect adversely on his qualifications to own, control, and operate the Bank in a legal and proper manner.

(15) Mr. Marcelo Lima attended the Pontificia Universidade Católica in Rio de Janeiro, where he earned a degree in economics. He holds a professional enrollment in the Regional Council of Economists in Sao Paulo. He is principally engaged in the active oversight of a wide variety of investments, primarily through his service as a director of several investment companies and other holding companies.

Most of Mr. Lima's investments are made through Turquois Capital, C.V., which is his principal holding company. In addition to brokerage and deposit accounts in a number of banking institutions, it has significant interests in several industrial firms, including both public and privately held companies, involved in such disparate lines of business as commercial refrigeration, fertilizer and retail. As a result of his investments, Mr. Lima is actively involved in 17 different companies and has served as an executive officer of at least 7 of those companies and as a director of four of them, including service as Chairman of the Board of two of those companies.

With regard to direct bank experience, from 1989 to 1996 Mr. Lima worked for ABN Amro Bank both in Brazil and in Chicago, serving initially as a fund manager in Brazil and, subsequently, as chief economist of ABN Amro in Brazil advising the bank's Asset-Liability Committee. He then served in the corporate banking area, mainly in commercial relations with some significant clients in Brazil, such as Panasonic, Volkswagen and General Motors. He also served as regional manager for the bank in Campinas, Brazil, where he was responsible for,

among other things, commercial banking, retail banking and trade-related and financing activities. During this period he also chaired the bank's regional Credit Committee.

During his tenure in Chicago, Mr. Lima was primarily engaged in project finance banking and was responsible for analyzing new projects and reviewing credit related matters of several ongoing projects related to power generation in states such as New Hampshire, Pennsylvania, Hawaii and Connecticut, sponsored by companies such as Tractebel AES and Intergen. From 1996 to 1998, he worked for Banco Garantia in Brazil, serving in the capital markets and M&A areas, advising customers such as Florida Power and Light, Pacific Corp. and National Power of U.K. From 1998 to 2000, he worked for the investment bank, Donaldson, Lufkin & Jenrette in Brazil, serving mainly in the corporate finance and mergers and acquisitions areas.

Mr. Lima testified that, with the exception of ordinary course disputes, claims, and lawsuits in Brazil involving his various business interests in Brazil, including matters related to employment, tax, environmental, and other business disputes, neither he nor, to his knowledge, any of the companies in which he has been involved, has ever been the subject of any investigation, civil charges, or penalties imposed by any governmental or administrative agency, made a filing in any bankruptcy or similar proceeding, failed to pay any judgment or other debt which he or they were lawfully obligated to pay, or been convicted of, or pled guilty or no contest to, any charge of fraud, money laundering or other financial crime. Additionally, he testified that he has not been named personally in any such actions involving companies in which he is involved and that no such actions have been brought before any courts or governmental entities in the United States of America.

(16) The OFR conducted a background investigation with respect to Mr. Lima and discovered no negative information that would reflect adversely on his qualifications to own, control, and operate the Bank in a legal and proper manner.

(17) The Applicants and the other prospective investors have strong financial positions and are able to provide the capital presently needed by the Bank from their own available resources. Although Mr. Burgess will utilize funds lent to him by Mr. Lima to make his investment, none of the other investors will be relying on borrowed funds to invest in the Bank.

(18) The Applicants plan to join the Bank's board of directors following the Acquisition and will retain all of the Bank's present directors following the Acquisition. The Applicants also plan to retain the Bank's present senior executive officers, including the Chief Executive Officer, the President, the Chief Financial Officer, and the Chief Lending Officer. The continuing board members and management will play an important role in preserving and building on the goodwill the Bank has established with its customers and the community.

(19) The capital to be contributed to the Bank by the Applicants and other investors will enable the Bank to achieve a more prominent role in the community, better serving existing customers, and growing the core deposits needed to support renewed lending activity as the economy recovers.

## CONCLUSIONS OF LAW

(1) The OFR is the duly designated Florida agency vested with the responsibility for processing and approving or disapproving a proposed acquisition of a controlling interest in a state bank or trust company pursuant to Section 658.28, Florida Statutes.

(2) The statutory criteria set forth in Section 658.28, Florida Statutes, are the standards which govern the Applicants' proposed acquisition of a controlling interest in the Bank.

(3) Chapter 69U-105, Florida Administrative Code, contains the procedural rules for processing an application for approval to acquire a controlling interest in a state bank or trust company.

(4) When an application for approval of the acquisition of a controlling interest in a state bank or trust company is filed with the OFR, it is the applicants' responsibility to prove that the minimum requirements set forth in Section 658.28, Florida Statutes, and Chapter 69U-105, Florida Administrative Code, have been met. It is the responsibility of the OFR to evaluate whether the applicants have satisfied the criteria and requirements listed therein, and then to approve or disapprove the application.

(5) Section 658.28(1), Florida Statutes, provides that:

> (1) In any case in which a person or a group of persons, directly or indirectly or acting by or through one or more persons, proposes to purchase or acquire a controlling interest in any state bank or state trust company, and thereby to change the control of that bank or trust company, each person or group of persons shall first make application to the [OFR] for a certificate of approval of such proposed change of control of the bank or trust company. The application shall contain the name and address, and such other relevant information as the commission or office requires, including information relating to other and former addresses and the reputation, character, responsibility, and business affiliations, of the proposed new owner or each of the proposed new owners of the controlling interest. The [OFR] shall issue a certificate of approval only after it has made an investigation and determined that the proposed new owner or owners of the interest are qualified by reputation, character, experience, and financial responsibility to control and operate the bank or trust company in a legal and proper manner and that the interests of the other stockholders, if any, and the depositors and creditors of the bank or trust company and the interests of the public generally will not be jeopardized by the proposed change in ownership, controlling interest, or management. No person who has been convicted of, or pled guilty or nolo contendere to, a violation of section 655.50, relating to the Florida Control of Money Laundering in Financial Institutions Act; chapter 896,

relating to offenses related to financial transactions; or any similar state or federal law shall be given a certificate of approval by the [OFR].

(6) Based upon the foregoing Findings of Fact and the evidence submitted at the Hearing, the Applicants meet all the requirements of Florida law as to the acquisition of a controlling interest in a state bank in that they are qualified by reputation, character, experience, and financial responsibility to control and operate the Bank in a legal and proper manner, and they have not been convicted of or pled guilty or *nolo contendere* to a violation of Section 655.50, Florida Statutes, relating to the Florida Control of Money Laundering in Financial Institutions Act, Chapter 896, Florida Statutes, relating to offenses related to financial transactions, or any similar state or federal law.

(7) Based upon the foregoing Findings of Fact and the evidence submitted at the Hearing, the Applicants' proposed acquisition of a controlling interest in the Bank will not jeopardize the interests of the Bank's stockholders or the depositors and creditors of the Bank.

(8) Based upon the foregoing Findings of Fact and the evidence submitted at the Hearing, the Applicants' proposed acquisition of a controlling interest in the Bank is not contrary to the public interest.

## RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusions of Law, and having considered the Application and the evidence presented at the Hearing, and having concluded that the Application satisfies the criteria and requirements contained in Sections 120.80(3)(a)4. and 658.28(1), Florida Statutes, it is hereby recommended that a final order be entered approving the Application subject to the following conditions:

(1) That the Board of Governors of the Federal Reserve System or its designee approves the proposed Acquisition and any related application filed with the Federal Reserve

Bank of Atlanta for Applicants to acquire, directly or indirectly, a controlling interest in the Bank.

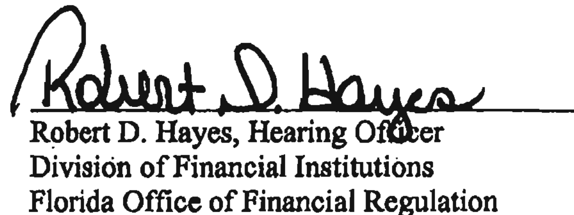
(2) That until further notice pursuant to Section 655.0385, Florida Statutes, the Bank's existing executive officers will continue to serve as executive officers of the Bank, and the Bank's directors will be: Denise L. Baker, Charles M. Brown, Trevor R. Burgess, Brian D. Burghardt, Phillip L. Burghardt, Thomas S. Downs, Thomas A. Howze, Marcelo Lima, Duane L. Moore, Kenneth L. Schermer, William H. Sedgeman, Jr., and Thomas R. Sprenger.

(3) That any and all approvals contained in any final order shall expire six (6) months from the date of the final order, unless in the meantime the OFR has granted a request for an extension of time for good cause.

(4) That before all the conditions specified above and other reasonable requirements of the OFR have been fulfilled, or if any interim development is deemed by the Commissioner of the Office of Financial Regulation to warrant such action, the Commissioner retains the right to alter, suspend, or withdraw approval of the proposed change in control of the Bank.

(5) That due to the change in control of the Bank resulting from the Acquisition, the Bank shall be required to comply with Section 655.0385, Florida Statutes, for a period of two years following the effective date of the Acquisition.

Done this day of July 22, 2009, in Tallahassee, Leon County, Florida.



Robert D. Hayes, Hearing Officer
Division of Financial Institutions
Florida Office of Financial Regulation

## NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions to this Report of Public Hearing ("Report"). Any exceptions to this Report must be filed with the OFR within ten (10) days of the date of entry of this Report.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Report of Public Hearing has been sent via U.S. Mail and electronic mail to Mr. Bowman Brown, counsel for the Applicants, at Shutts & Bowen, LLP, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, FL 33131, and by hand delivery to Ms. Janet Anderson, counsel for the Office of Financial Regulation, at 200 East Gaines Street, Fletcher Building, Suite 526, Tallahassee, FL 32399-0379, this day of July 22, 2009.

Bruce Kuhse
FL Bar # 0308470
Assistant General Counsel
Office of Financial Regulation
200 East Gaines Street,
Fletcher Bldg., Suite 526
Tallahassee, FL 32399-0379
Telephone: (850) 410-9896
Facsimile: (850) 410-9645

cc: Agency Clerk

J. THOMAS CARDWELL
COMMISSIONER

STREET ADDRESS 101 East Gaines Street, Suite 636 • PHONE (850) 410-9800 • FAX (850) 410-9548
MAILING ADDRESS Division of Financial Institutions, 200 East Gaines Street, Tallahassee, FL 32399-0371
Visit us on the web WWW.FLOFR.COM • Toll Free (800) 848-3792

December 3, 2010

Marcelo Lima

Re: Your previous employment with ABN AMRO Bank N.V.

Dear Mr. Lima:

Enclosed is a news release issued by the United States Department of Justice ("DOJ") regarding a deferred prosecution agreement between the DOJ and ABN AMRO Bank N.V. The criminal charges brought against ABN AMRO Bank allege an elaborate scheme to move U.S. dollars to countries where the movement of U.S. dollars was prohibited by law.

According to court documents, the activities upon which the charges are based occurred between 1995 and 2005. The beginning of this timeframe coincides with the last year of your tenure with the bank. Please describe your job duties with ABN AMRO at that time. Did your duties involve countries with which U.S. law prohibited doing business? Did you have contact with anyone involved with doing business with these countries? Were you aware that ABN AMRO was doing business with these countries?

When your Change of Control applications for Community Bank of Manatee and Riverside Bank of the Gulf Coast were pending before the Office of Financial Regulation, were you aware of the ongoing investigation into the activities of your former employer? Were you contacted by the Department of Justice, any other law enforcement agency, or the bank and asked about this matter? If you were contacted, what information did you provide?

Although we believe the application review process you underwent in 2008 and 2009 was thorough, we need to update our records with regard to this new information about ABN AMRO Bank. I would appreciate your response to this letter before December 31, 2010

Sincerely,

John G. Alcorn, Chief
Bureau of Bank Regulation

Encl.

FINANCIAL SERVICES COMMISSION

CHARLIE CRIST BILL McCOLLUM ALEX SINK CHARLES BRONSON

THE COMMON LAW IS THE WILL OF Mankind ISSUING FROM THE Life OF THE People

SEARCH THE SITE





JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE Monday, May 10, 2010

## Former ABN Amro Bank N.V. Agrees to Forfeit $500 Million in Connection with Conspiracy to Defraud the United States and with Violation of the Bank Secrecy Act

WASHINGTON – The former ABN AMRO Bank N.V., now named the Royal Bank of Scotland N.V., has agreed to forfeit $500 million to the United States in connection with a conspiracy to defraud the United States, to violate the International Emergency Economic Powers Act (IEEPA) and to violate the Trading with the Enemy Act (TWEA), as well as a violation of the Bank Secrecy Act (BSA), announced Assistant Attorney General Lanny A. Breuer of the Criminal Division and U.S. Attorney Ronald C. Machen Jr., for the District of Columbia.

A criminal information was filed today in U.S. District Court for the District of Columbia charging the former ABN AMRO, a Dutch corporation that was headquartered in Amsterdam, with one count of violating the BSA and one count of conspiracy to defraud the United States and violate the IEEPA and TWEA. The bank waived indictment, agreed to the filing of the information, and has accepted and acknowledged responsibility for its conduct. ABN AMRO agreed to forfeit $500 million as part of a deferred prosecution agreement, also filed today in the District of Columbia. U.S. District Court Judge Colleen Kollar Kotelly today accepted the deferred prosecution agreement.

"ABN AMRO facilitated the movement of illegal money through the U.S. financial system by stripping information from transactions and turning a blind eye to its compliance obligations," said Assistant Attorney General Breuer. "It is essential that financial institutions both large and small properly monitor the origins of funds flowing into our financial system. When financial institutions fail to do so, and, even worse, manipulate information in order to profit from prohibited transactions, they will be held accountable."

"Over the course of a decade, ABN AMRO assisted sanctioned countries and entities in evading U.S. laws by facilitating hundreds of millions of U.S. dollar transactions," said U.S. Attorney Machen. "We will continue to use all resources at our disposal to hold those who knowingly and intentionally seek to circumvent U.S. sanctions and banking laws accountable for their actions."

Under IEEPA, it is a crime to willfully violate, or attempt to violate sanctions administered by the Department of the Treasury's Office of Foreign Assets Control (OFAC). TWEA makes it a crime to willfully engage in financial transactions by, at the direction of, or for the benefit of Cuba or Cuban nationals. Under the BSA, it is a crime to willfully fail to establish an adequate anti-money laundering program.

The IEEPA and TWEA violations relate to ABN AMRO conspiring to facilitate illegal U.S. dollar transactions on behalf of financial institutions and customers from Iran, Libya, the Sudan, Cuba and other countries sanctioned in programs administered by OFAC.

According to court documents, from approximately 1995 and continuing through December 2005, certain offices, branches, affiliates and subsidiaries of ABN AMRO removed or altered names and references to sanctioned countries from payment messages. ABN AMRO implemented procedures and a special manual queue to flag payments involving sanctioned countries so that ABN AMRO could amend any problematic text and it added instructions to payment manuals on how to process transactions with these countries in order to circumvent the laws of the United States. Despite the institution of improved controls by ABN and its subsidiaries and affiliates after 2005, a limited number of additional transactions involving sanctioned countries occurred from 2006 through 2007.

According to court documents, ABN AMRO used similar stripping procedures when processing U.S. dollar checks, traveler's checks, letters of credit and foreign exchange transactions related to sanctioned countries. ABN AMRO and the sanctioned entities knew and discussed the fact that, without such alterations, amendments and code words, the automated OFAC filters at banks in the United States would likely halt the payment messages and other transactions, and, in many cases, the banks would reject or block the sanctions-related transactions and report the same to OFAC. By removing or altering material information, these payments and other transactions would pass undetected through

JUSTICE.GOV en ESPAÑOL

DEPARTMENT of JUSTICE ACTION CENTER

Report a Crime

Get a Job

Locate a Prison, Inmate or Sex Offender

Apply for a Grant

Submit a Complaint

Report Waste, Fraud, Abuse or Misconduct to the Inspector General

Find Sales of Seized Property

Find Help and Information for Crime Victims

Register, Apply for Permits or Request Records

Identify Our Most Wanted Fugitives

Find a Form

Report and Identify Missing Persons

Contact Us

filters at U.S. financial institutions. This scheme allowed U.S. sanctioned countries and entities to move hundreds of millions of dollars through the U.S. financial system.

The BSA violations involved the failure of the New York branch of ABN AMRO to maintain adequate anti-money laundering procedures and processes. According to court documents, beginning as early as January 1998 and continuing until approximately December 2005, ABN AMRO's New York branch office willfully failed to establish an adequate AML program. According to court documents, the office did not have adequate staffing, training and oversight, which permitted multiple high-risk shell companies and foreign financial institutions to use the bank to launder money through the United States. According to court documents, more than $3.2 billion dollars involving shell companies and high risk transactions with foreign financial institutions flowed through ABN AMRO's New York branch. ABN AMRO also admitted it failed to maintain proper documentation regarding its customers or maintain readily available documentation about its high risk clients.

"If global banks and businesses wish to conduct financial transactions in America, they are welcome to do so as long as they abide by our laws that govern those transactions," said Victor S. O. Song, Chief, IRS Criminal Investigation. "The IRS is proud to share its hallmark financial investigative expertise in this and other increasingly sophisticated financial investigations. Indeed, creating new strategies and models of cooperation among governments on international financial compliance is a top priority for the IRS."

"This agreement is the result of tremendous work by agents, investigators and analysts – here and abroad who were able to piece together this international crime. Whether or not a threat is overt in nature, together with our partners, we remain vigilant," said Assistant Director in Charge Shawn Henry of the FBI's Washington Field Office.

Throughout the investigation, ABN AMRO has provided prompt and substantial cooperation, including working with U.S. and foreign regulators. ABN AMRO has also committed substantial resources to conducting an extensive internal investigation into their misconduct and has agreed to enhance its sanctions compliance program to be fully transparent in its international payment operations.

In light of the bank's remedial actions, previous penalty payments and consent agreements, and its willingness to acknowledge and accept responsibility for its actions, the Department of Justice has agreed to recommend the dismissal of the Information in one year, provided ABN AMRO fully cooperates with, and abides by, the terms of the deferred prosecution agreement. In December 2005, ABN AMRO entered into a consent decree and paid penalties involving OFAC, the Board of Governors of the Federal Reserve System, the State of Illinois Department of Financial and Professional Regulation, the New York State Banking Department, De Nederlandsche Bank and the U.S. Treasury's Financial Crimes Enforcement Network.

The case was prosecuted by Steven Pelak, formerly with the U.S. Attorney's Office for the District of Columbia, Cynthia Stone, formerly with the Criminal Division's Asset Forfeiture and Money Laundering Section (AFMLS); AFMLS Trial Attorney Kevin Gerrity, and Assistant U.S. Attorney for the District of Columbia Denise Cheung, and was supported by Laurie Bender of AFMLS. The case was investigated by IRS-Criminal Investigation's Washington Field Division and the FBI's Washington Field Office. The Department of Justice also expresses gratitude to OFAC, the New York Federal Reserve and the Board of Governors of the Federal Reserve System for their significant and valuable assistance.

10-548 Criminal Division

STAY CONNECTED

December 21, 2010.

**FLORIDA OFFICE OF FINANCIAL REGULATION**
Division of Financial Institutions
200 East Gaines Street
32399-0371 Tallahassee, FL

**Att. Mr. John G. Alcorn, Chief** – Bureau of Bank Regulation

Re: My previous employment with ABM AMRO Bank

Dear Mr. Alcorn,

Reference is made to the attached letter dated December 3, 2010 in which some information related to my employment with ABN AMRO Bank are requested. Please find below the answers for your questions:

*Please describe your job duties with ABM AMRO at that time.*

During 1995-1996, period corresponding to the beginning of the activities upon which the charges of the United States Department of Justice against ABN AMRO Bank are based, I worked on analyzing credit risk related to project finance for power plants.

*Did your duties involve countries with which U.S. law prohibited doing business?*

My duties at ABN AMRO Bank did not involve any countries with which U.S. law prohibited doing business.

*Did you have contact with anyone involved with doing business with these countries?*

To the best of my knowledge, during my tenure at ABN AMRO Bank, I had no contact with anyone involved with doing business with countries with which U.S. law prohibited doing business.

EXHIBIT
31

*Were you aware that ABN AMRO was doing business with these countries?*

Until reading the release issued by the United States Department of Justice sent attached to your letter, I was not aware of ABN AMRO Bank doing business with countries with which U.S. law prohibited doing business.

*When your Change of Control applications for Community Bank of Manatee and Riverside Bank of the Gulf Coast were pending before the Office of Financial Regulation, were you aware of the ongoing investigation into the activities of your former employer?*

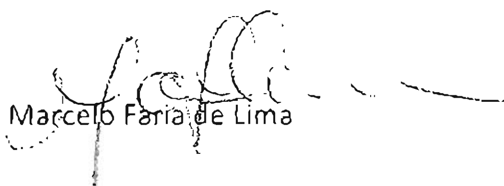
As metioned above, only yesterday, when I saw the release attached to your letter, I became aware of the investigation of the United States Department of Justice into the activities of ABN AMRO Bank.

*Were you contacted by the Department of Justice, any other law enforcement agency, or the bank and asked about this matter? If you were contacted, what information did you provide?*

I was never contacted by the United States Department of Justice or any other law enforcement agency or the bank referred above about this matter.

Finally, I am at your entire disposal to answer any additional question you may have in relation to the matter abovementioned.

Sincerely,



Marcelo Faria de Lima

STATE OF FLORIDA
OFFICE OF FINANCIAL REGULATION
DIVISION OF FINANCIAL INSTITUTIONS

IN RE: )
)
APPLICATION FOR AUTHORITY TO )
ACQUIRE A CONTROLLING INTEREST ) Administrative Proceeding
IN COMMUNITY BANK OF MANATEE ) No. 0641-FI-06/09
)

**FINAL ORDER OF APPROVAL**

Pursuant to Section 120.80(3)(a), Florida Statutes, a public hearing was held in the above styled cause on July 13, 2009, by video conferencing with sites in Tallahassee and Miami, before Robert D. Hayes, a duly designated Hearing Officer of the Florida Office of Financial Regulation (the "OFR"). On July 22, 2009, the Hearing Officer filed the attached Report of Hearing with Notice of Right to Submit Exceptions ("Report"). On July 23, 2009, the counsel for the Applicants, Trevor R. Burgess and Marcelo Lima, and the counsel for the OFR, submitted statements of having no exceptions to the Report.

Accordingly, it is ORDERED:

1. The findings of fact, conclusions of law, and recommended conditions contained in the attached Report of Hearing, dated July 22, 2009, are hereby approved, adopted in their entirety, and incorporated into this Order by reference.

2. Pursuant to sections 120.80(3) and 658.28, Florida Statutes, the Application by Trevor R. Burgess and Marcelo Lima for Authority to Acquire a Controlling Interest in Community Bank of Manatee is APPROVED, subject to satisfaction of the conditions contained in the Report and those set forth below which require:



EXHIBIT
32

(a) That Community Bank of Manatee (the "Bank") shall operate within the parameters of the business plan submitted with the Application. The Bank shall promptly notify the OFR of any material deviations or changes from that business plan and submit proposed revisions to the business plan to the OFR for its review and comment. Any revised financial projections shall reflect current understanding of costs, competition, interest rate levels and trends, local demand for the products and services offered, and other factors affecting the performance and growth of the Bank. If the OFR determines the Bank has significantly deviated from the business plan within one year of consummation of the acquisition of control, a new business plan shall be developed and submitted to the OFR and the appropriate federal regulators for review and concurrence.

(b) That the OFR be provided with copies of any agreements or contracts between the Bank and the Applicants, or any company, partnership, or other business entity owned or controlled by or affiliated with the Applicants. Prior to any such agreement or contract being effective, the OFR must review and not object to it in writing. This condition shall be in effect as of the date of this Order and for two years following the acquisition of the Bank.

(c) That any substantial change in the structure of ownership from that proposed in the Application must be reported to the OFR to determine continued compliance with Section 658.28, Florida Statutes.

(d) That written notice is provided to the OFR when acquisition of control is accomplished. This written notice should include the exact number of shares of the Bank's or bank holding company's stock acquired by the Applicants and any other

purchaser who purchases the Bank's or holding company's stock in conjunction with the transaction.

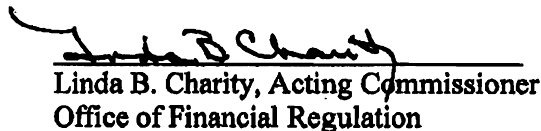
(e) That the consummation of the acquisition of control conforms to all requirements of State and Federal Law.

(f) That the acquisition of control be approved by the Federal Reserve Board of Governors.

(g) That as a result of the acquisition of control, the Bank shall comply with Section 655.0385, Florida Statutes, for a period of two years following the date the acquisition of control is consummated.

3. The Applicants must satisfy the conditions of approval specified in this Order. Until these conditions have been met, or if any interim development is deemed to warrant further action by the OFR, the Commissioner reserves the right to alter, suspend, or withdraw approval. Any and all approvals contained in this Order shall expire six (6) months from the date of the Order, unless in the meantime the OFR has granted a request for an extension of time for good cause.

**Done and Ordered** this 24th of July, 2009, at Tallahassee, Florida.



Linda B. Charity, Acting Commissioner
Office of Financial Regulation

## NOTICE OF APPELLLATE RIGHTS

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK FOR THE OFFICE OF FINANCIAL REGULATION, SUITE 526, THE FLETCHER BUILDING, 200 E. GAINES STREET, TALLAHASSEE, FLORIDA 32399-0379, AND A COPY, ACCOMPANIED BY THE FILING FEES AS REQUIRED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, 301 S. MARTIN LUTHER KING, JR., BOULEVARD, TALLAHASSEE, FLORIDA 32399-1850, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. **THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.**

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing FINAL ORDER OF APPROVAL and the NOTICE OF RIGHTS TO JUDICIAL REVIEW has been furnished by electronic and U.S. Mail, to Mr. Bowman Brown, counsel for the Applicants, at Shutts & Bowen, LLP, 1500 Miami Center, 201 South Biscayne Boulevard, Miami, Florida 33131 and by hand delivery to Ms. Janet Anderson, counsel for the Office of Financial

Regulation, 200 East Gaines Street, Fletcher Building Ste. 526, Tallahassee, Florida 32399-0379, on this 24th day of July, 2009.

Bruce Kuhse
Fla. Bar No.: 0308470
Assistant General Counsel
Office of Financial Regulation
Fletcher Building Ste. 526
200 East Gaines Street
Tallahassee, Florida 32399-0379
Tel: 850-410-9896