

*Quarterly
Journal*

**SPECIAL SUPERVISION AND
ENFORCEMENT ACTIVITIES**

SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

The Special Supervision Division of the Midsize and Community Bank Supervision Department supervises critical problem banks through rehabilitation or through other resolution processes such as orderly failure management or the sale, merger, or liquidation of such institutions. The Special Supervision Division monitors the supervision of delegated problem banks, coordinates safety and soundness examinations, provides training, analyzes and disseminates information, and supports OCC supervisory objectives as an advisor and liaison to OCC management and field staff on emerging problem bank-related issues.

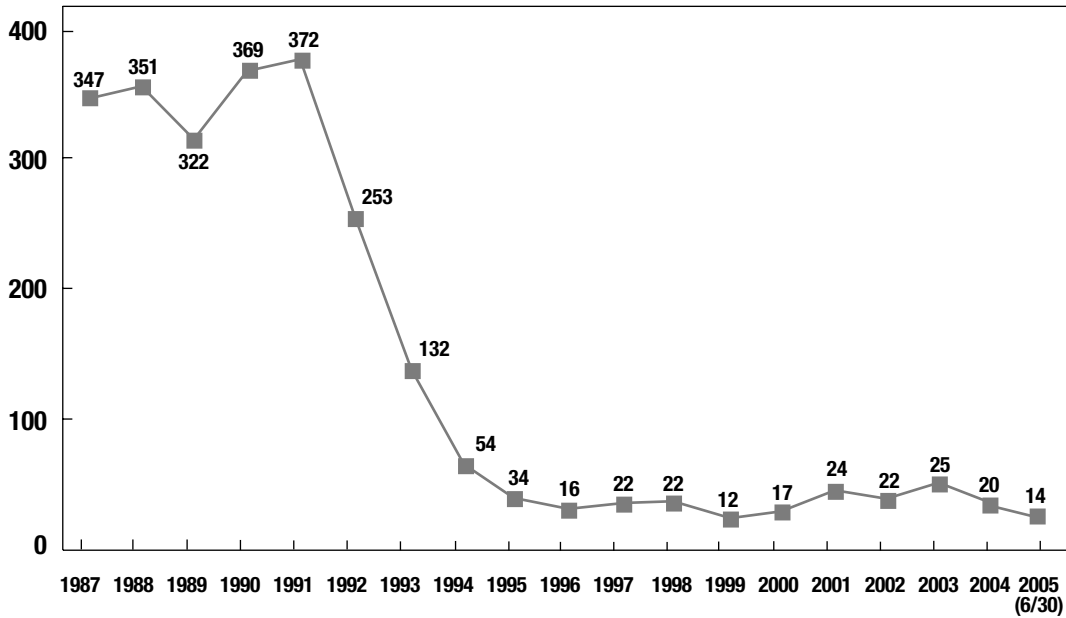
This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by OCC's Special Supervision Division and the FDIC's Department of Resolutions in Washington. Information on enforcement actions is provided by the Enforcement and Compliance Division (E&C) of the Law Department. The latter is principally responsible for presenting and litigating administrative actions on the OCC's behalf against banks requiring special supervision.

Problem National Banks and National Bank Failures

Problem banks represented less than 1 percent of the national bank population as of June 30, 2005. The volume of problem banks, those with a CAMELS rating of 4 or 5, has been stable for several years and declined in 2005. The CAMELS rating is the composite bank rating based on examiner assessment of capital, asset quality, management, earnings, liquidity, and sensitivity to market risk. The total number of problem banks is 14 at June 30, 2005. This low volume of problem banks reflects the stable economy and generally favorable economic conditions enjoyed for the past several years. No banks have failed as of June 30, 2005.

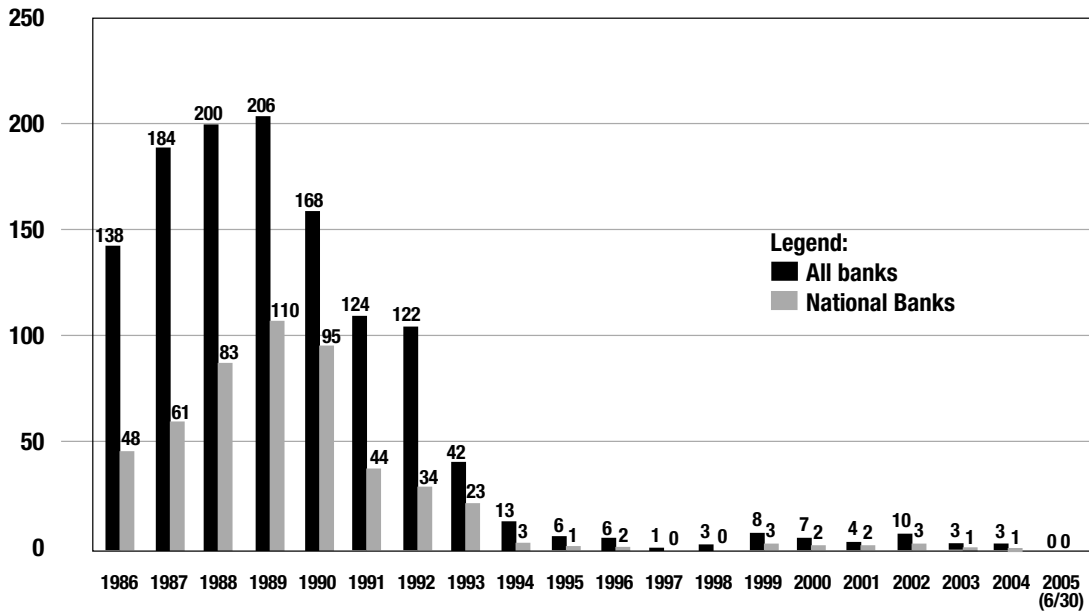
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Figure 1—Problem national bank historical trend line



Source: Special Supervision

Figure 2—Number of bank failures



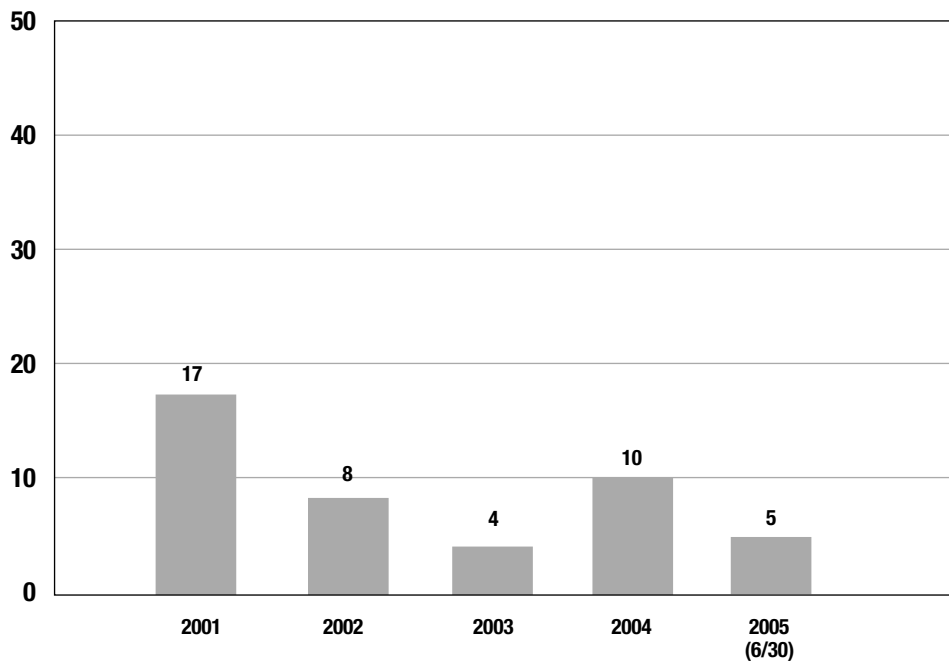
Source: Federal Deposit Insurance Corporation

Enforcement Actions

The OCC has a number of remedies with which to carry out its supervisory responsibilities. When it identifies safety and soundness or compliance problems, these remedies range from advice and moral suasion to informal and formal enforcement actions. These mechanisms are designed to achieve expeditious corrective and remedial action to return the bank to a safe and sound condition.

The OCC takes enforcement actions against national banks, parties affiliated with national banks, and servicing companies that provide data processing and other services to national banks. The OCC's informal enforcement actions against banks include commitment letters and memorandums of understanding (MOUs). Informal enforcement actions are meant to handle less serious supervisory problems identified by the OCC in its supervision of national banks. Failure to honor informal enforcement actions will provide strong evidence of the need for the OCC to take formal enforcement action. The charts below show total numbers of the various types of informal enforcement actions completed by the OCC against banks in the last several years.

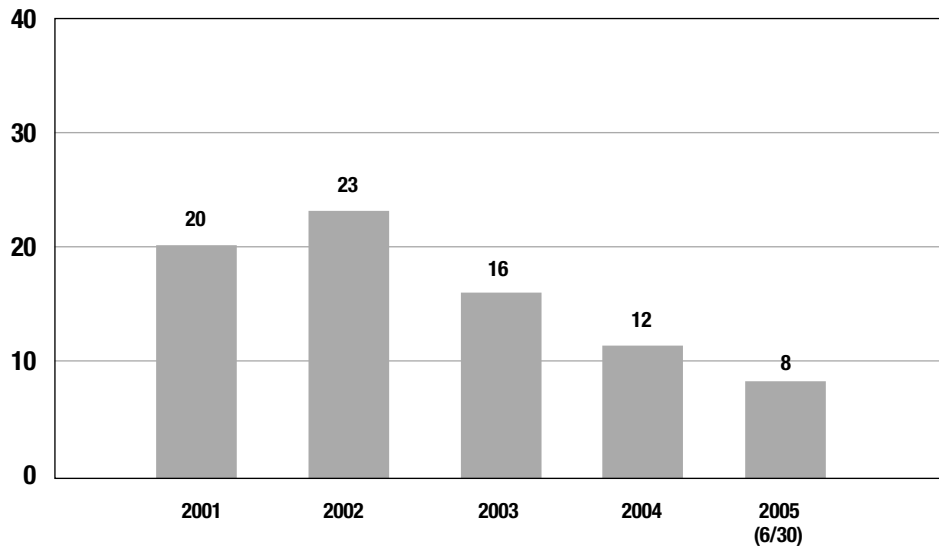
Figure 3—Commitment letters



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

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Figure 4—Memorandums of understanding

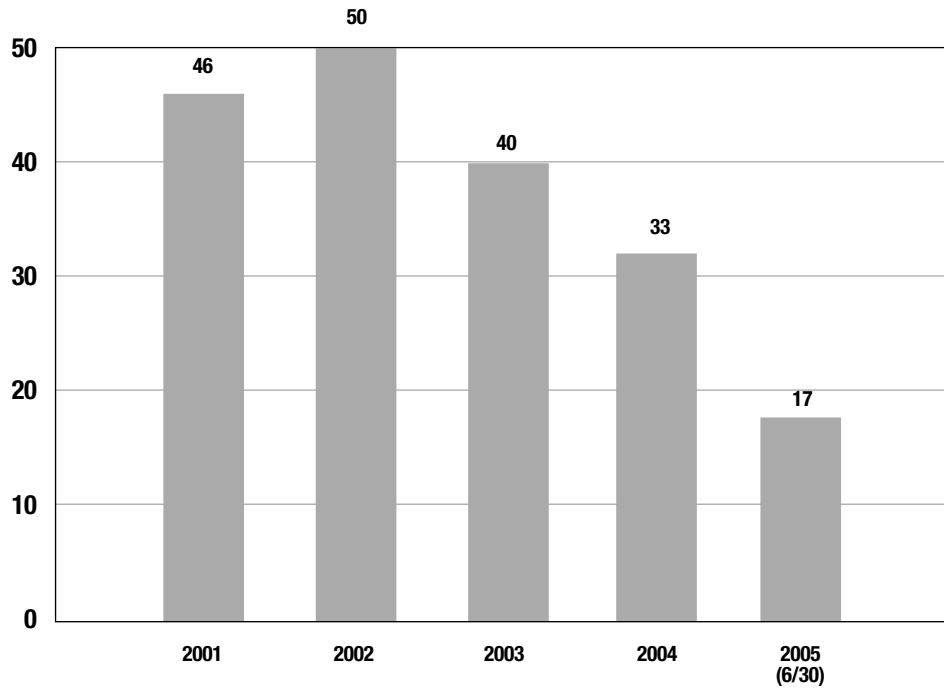


Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

The most common types of formal enforcement actions issued by the OCC against banks over the past several years have been formal agreements and cease-and-desist orders. Formal agreements are documents signed by a national bank's board of directors and the OCC in which specific corrective and remedial measures are enumerated as necessary to return the bank to a safe and sound condition. Cease-and-desist orders (C&Ds), sometimes issued as consent orders, are similar in content to formal agreements, but may be enforced either through assessment of civil money penalties (CMPs) or by an action for injunctive relief in federal district court. The OCC may also assess CMPs against banks, and in 2005, the OCC assessed CMPs against 10 banks.

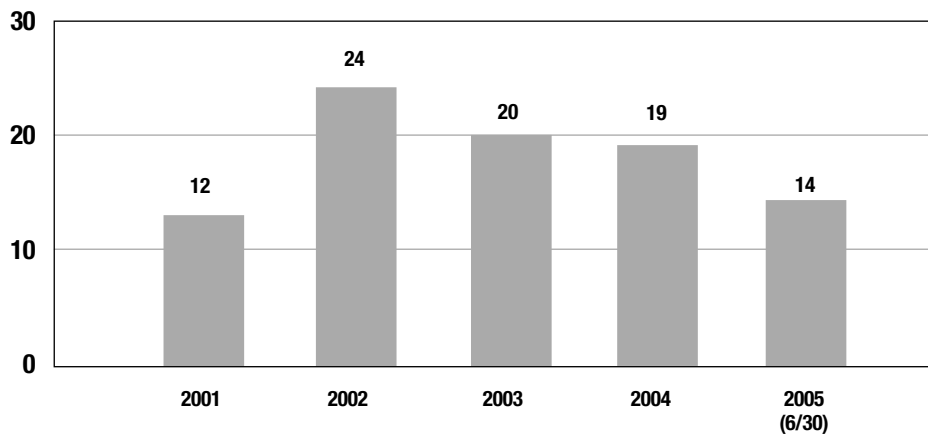
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Figure 5—Formal agreements



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 6—Cease-and-desist orders against banks

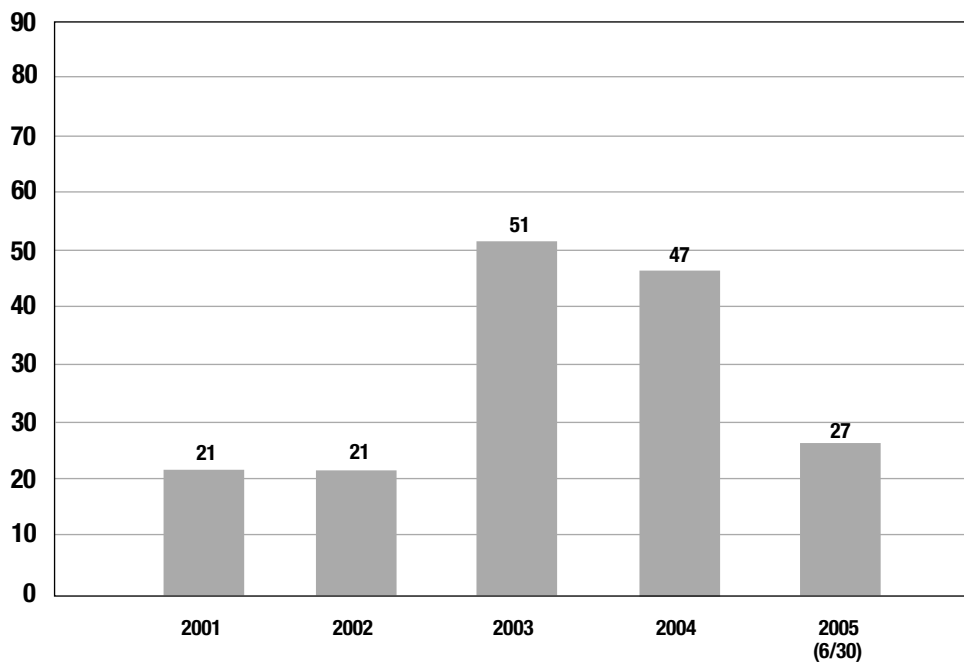


Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

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The most common enforcement actions against individuals and other institution-affiliated parties are CMPs, personal C&Ds, and removal and prohibition orders. CMPs are authorized for violations of laws, rules, regulations, formal written agreements, final orders, conditions imposed in writing, unsafe or unsound banking practices, and breaches of fiduciary duty. Personal C&Ds may be used to restrict activities, order payment of restitution, or require institution-affiliated parties to take other affirmative action to correct the results of past conduct. Removal and prohibition actions, which are used in the most serious cases, result in lifetime bans from the banking industry.

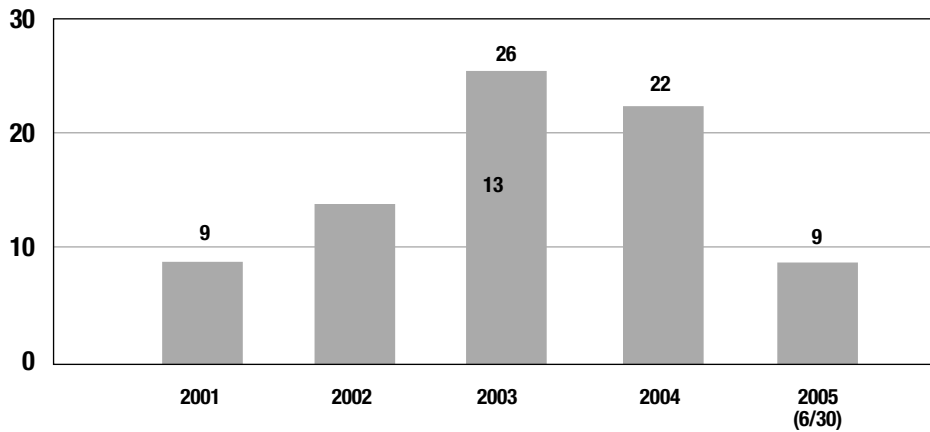
Figure 7—Civil money penalties against institution-affiliated parties



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

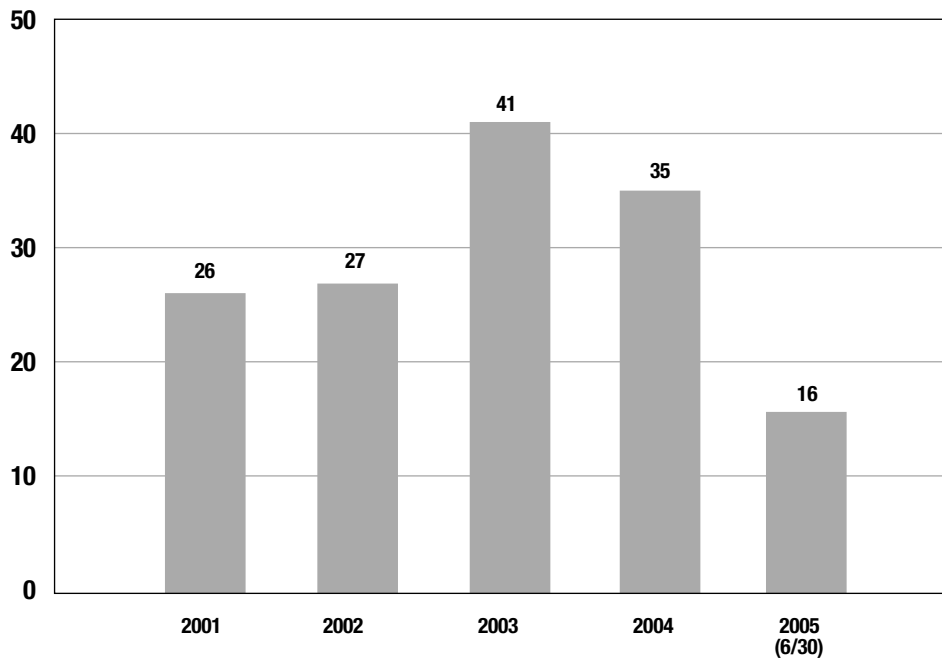
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Figure 8—Cease-and-desist orders against institution-affiliated parties



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Figure 9—Removal and prohibition orders



Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

Recent Enforcement Cases

Below are summaries of the significant cases completed between January 1 and June 30, 2005:

A. Actions Involving Anti-Money Laundering/Bank Secrecy Act Compliance

Banks ordered to comply with BSA/AML provisions. The OCC brought enforcement actions against banks for failing to maintain adequate BSA/AML compliance programs and ordered those banks to provide for internal controls, auditing, and employee training and to designate a BSA compliance officer. *In the Matter of Asian Pacific National Bank, San Gabriel, Calif.*, Doc. No. 2005-3 (Jan. 24, 2005); *In the Matter of Arab Bank PLC, New York, N.Y. (federal branch)*, Doc. Nos. 2005-13 (Feb. 8, 2005) and 2005-14 (Feb. 24, 2005); *In the Matter of City National Bank, Beverly Hills, Calif.*, Doc. No. 2005-16 (Feb. 23, 2005); *United Americas Bank, N.A., Atlanta, Ga.*, Doc. No. 2005-19 (Feb. 23, 2005); *The Fulton County National Bank and Trust Company, McConnellsburg, Penn.*, Doc. No. 2005-29 (Mar. 23, 2005); *Interbusiness Bank, N.A., Diamond Bar, Calif.*, Doc. No. 2005-53 (May 16, 2005); *Far East National Bank, Los Angeles, Calif.*, Doc. No. 2005-63 (June 13, 2005); *United National Bank, San Marino, Calif.*, Doc. No. 2005-64 (June 16, 2005); and *Continental National Bank of Miami, Miami, Fla.*, Doc. No. 2005-65 (June 22, 2005).

Order issued against bank and bank officer prohibited and ordered to pay fine. The OCC issued a cease-and-desist order by consent against the federal branch of Banco de Chile for deficiencies in the branch's internal controls, particularly in the area of BSA/AML compliance. The OCC also issued a prohibition order by consent and assessed a \$200,000 civil money penalty against the branch's former general manager. *In the Matter of Banco de Chile, New York, N.Y. (federal branch)*, Doc. No. 2005-2 (Feb. 1, 2005); *In the Matter of Hernan Donoso*, Doc. No. 2005-42 (Apr. 14, 2005).

B. Unfair and Deceptive Acts or Practices

Banks given guidance on unfair real estate lending practices. On Feb. 2, 2005, the OCC issued residential real estate lending standards and, on May 16, 2005, issued (jointly with other financial regulators) Credit Risk Management Guidance for Home Equity Lending, to assist national banks in their efforts to avoid becoming involved in predatory, abusive, unfair, or deceptive residential mortgage lending practices. (OCC Bulletin 2005-3, News Release 2005-48)

Former bank officer fined for real estate-secured lending practices. The OCC issued prohibition and cease-and-desist orders by consent and assessed a \$20,000 civil money penalty against a former bank vice president and loan officer for making tax lien loans that violated the Home Ownership Equity Protection Act, the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Federal Trade Commission Act and for receiving a large portion of excessive and duplicative fees collected by the bank from customers, including fees for services that were never performed. The OCC had earlier required the bank to make restitution to affected customers and

had issued a cease-and-desist order by consent against the company that marketed, originated, serviced, and collected the tax lien loans to restrict its conduct of business with insured depository institutions. *In the Matter of Michael K. Muckleroy*, Doc. No. 2005-46 (Apr. 19, 2005).

C. Actions to Combat Identity Theft

Former bank teller prohibited and ordered to make restitution. The OCC issued prohibition and restitution orders by consent against a former bank teller for allegedly making unauthorized and fraudulent withdrawals from a bank customer's account, for his own benefit. *In the Matter of Bradley A. Odom, Bank of America, N.A., Charlotte, N.C.*, Doc. No. 2005-50 (Apr. 28, 2005).

Former bank employee prohibited and ordered to make restitution. Following the OCC's issuance of a Notice of Charges, the Federal Reserve Board issued a prohibition order and the OCC issued a restitution order against a former bank employee for allegedly altering bank records to inflate the amount of deposits into customers' accounts and depositing the surplus into his own account and for diverting for his own use a cash overage that resulted when he conducted an improper transaction. *In the Matter of Kenneth L. Coleman, PNC Bank, N.A., Pittsburgh, Pa., and Mellon Bank, N.A., Pittsburgh, Pa.*, Doc. No. 2005-37 (Mar. 1, 2005); *In the Matter of Kenneth L. Coleman*, Doc. No. 2005-38 (Mar. 2, 2005).

Former bank employee prohibited and ordered to pay fine. The OCC issued a prohibition order by consent and assessed a \$5,000 civil money penalty against a former bank employee who allegedly made unauthorized transfers from her relatives' accounts into her business account; made unauthorized loans to, and withdrawals from, accounts of unrelated bank customers; and provided falsified bank documents to another bank for the purpose of obtaining a business loan. *In the Matter of Angie Cox, The Peoples National Bank of McLeansboro, McLeansboro, Ill.*, Doc. No. 2005-20 (Feb. 9, 2005).

Bank operating subsidiary ordered to pay fine. The OCC assessed a \$180,000 civil money penalty by consent against a bank's operating subsidiary for allegedly failing to dispose of confidential customer information in a secure fashion, in violation of OCC regulations governing the security of customer information. *In the Matter of First Horizon Home Loan Corporation (operating subsidiary of First Tennessee Bank N.A., Memphis, Tenn.)*, Doc. No. 2005-78 (June 30, 2005).

D. Actions to Enforce Flood Insurance Requirements

In the first half of 2005, the OCC assessed civil money penalties totaling \$650,700 against 8 banks for violations of flood insurance requirements.

Banks ordered to pay fines for flood insurance violations. The OCC assessed civil money penalties of \$500,000 and \$115,000, respectively, against two banks for allegedly engaging in patterns of making loans in special flood hazard areas without requiring coverage of the property securing the loans by requisite flood insurance. The first bank also allegedly failed to provide required

notice to borrowers of insufficient flood insurance, and failed to purchase flood insurance on borrowers' behalf where required. *In the Matter of Charter One Bank, N.A., Cleveland, Ohio*, Doc. No. 2005-55 (May 17, 2005); *In the Matter of Wells Fargo Bank, N.A., Sioux Falls, S.D.*, Doc. No. 2005-77 (June 27, 2005).

E. Actions to Combat Insider Abuse

Actions against bank officers and directors for violations of law, unsafe or unsound practices, and breaches of fiduciary duty. The OCC issued prohibition and restitution (\$50,000) orders by consent and assessed a \$20,000 civil money penalty against the former president of a bank. The Federal Reserve issued a prohibition order against the bank's former vice president and director on an action initiated by the OCC, which also assessed a \$50,000 civil money penalty. The bank, which had been operating under a formal agreement since 2001, allegedly failed to correct deficiencies in lending practices, asset quality, and internal controls and allegedly failed to correct violations of law, including suspected violations of the legal lending limit. The bank's four outside directors consented to assessments of civil money penalties in amounts ranging from \$5,000 to \$18,000. Three of those directors consented to cease-and-desist orders and the fourth consented to a prohibition order. *In the Matter of Robert C. Hobgood, First National Bank, Lubbock, Tex.*, Doc. No. 2005-33 (Feb. 18, 2005); *In the Matter of Walter C. "Charlie" Cleveland*, Doc. Nos. 2005-79 (June 20, 2005) and 2005-121 (Aug. 17, 2005); *In the Matter of Kim Morris*, Doc. No. 2004-111 (Sept. 3, 2004); *In the Matter of Darrell Hobgood*, Doc. No. 2004-110 (Sept. 28, 2004); *In the Matter of Brian Burns*, Doc. No. 2004-125 (Oct. 13, 2004); *In the Matter of Johnny Bob Carruth*, Doc. No. 2004-109 (Sept. 22, 2004).

Joint action by OCC and HUD against banks' settlement agent. The OCC issued a cease-and-desist order by consent and, jointly with the Dept. of Housing and Urban Development, assessed a \$5 million civil money penalty against a title insurance company for an alleged pattern of violation of the Real Estate Settlement Procedures Act by providing inaccurate HUD-1 Settlement Statements to borrowers and to federally insured depository institutions and for unsafe or unsound settlement practices. Two loan officers, one of whom is suspected to have engaged in misconduct at two successive banks, allegedly received payments and other benefit for making several million dollars' worth of loans to non-creditworthy borrowers for the benefit of a third party and to the detriment of the banks issuing the loans. The OCC issued prohibition actions by consent and assessed civil money penalties of \$250,000 and \$130,000 against those two former bank officers for misconduct in connection with the origination of loans. *In the Matter of Chicago Title Insurance Co., settlement agent for Whitney National Bank, New Orleans, La.; Southwest Bank of Texas, N.A., Houston, Tex., and Frost National Bank, San Antonio, Tex.*, Doc. No. 2005-12 (Feb. 24, 2005); *In the Matter of Tom J. Trammell, Southwest Bank of Texas, N.A., and Whitney National Bank*, Doc. No. 2005-11 (Feb. 4, 2005); *In the Matter of David A. Ranostaj, Whitney National Bank*, Doc. No. 2004-152 (Dec. 23, 2004).

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Action against bank for insider abuse. The OCC issued a cease-and-desist order against a community bank for alleged insider abuse and for failure to comply with a 2002 Formal Agreement. *In the Matter of First National Bank of Shelby County, Columbiana, Ala.*, Doc. No. 2005-52 (May 18, 2005).

Petitions for review of enforcement actions rejected by Ninth Circuit Court of Appeals. In 2003, following the OCC's issuance of Notices of Charges, the Federal Reserve Board issued orders for prohibition against two former bank insiders, and the OCC issued an order for joint payment of \$232,000 in restitution and assessed civil money penalties of \$35,000 and \$20,000. In April 2005, a panel of the Ninth Circuit Court of Appeals rejected the insiders' petitions for review of the earlier orders. *In the Matter of Gene Ulrich and Susan Diehl McCarthy, Six Rivers National Bank, Eureka, Calif.*, 9th Cir. Ct. Docket Nos. 03-73491, 03-73591, 03-73854, 03-73997 (Apr. 27, 2005); *In the Matter of Gene Ulrich and Susan Diehl McCarthy*, Doc. Nos. 2003-169 (Sept. 2, 2003) and 2003-170 (Oct. 15, 2003).

Former bank officer prohibited and ordered to pay fine. The OCC issued a prohibition order by consent and assessed a \$2,500 civil money penalty against a former bank senior vice president for a pattern of misconduct involving unsafe or unsound lending practices and extending credit in violation of the bank's legal lending limits. *In the Matter of Daniel R. Kline, The National Union Bank of Kinderhook, Kinderhook, N.Y.*, Doc. No. 2005-30 (Mar. 28, 2005).

F. Early Intervention for Problem Banks

Former bank president ordered to pay fine and take remedial action. The OCC issued a cease-and-desist order by consent and assessed a \$35,000 civil money penalty against the former president of a bank that had allegedly engaged in a questionable loan transaction with The Central Bank of the Gambia. Seven of the bank's directors previously had consented to the OCC's assessments of civil money penalties for varying levels of alleged culpability for the loan transaction and other deficiencies in the bank's operations. *In the Matter of Richard Dean, First Liberty National Bank, Washington, D.C.*, Doc. Nos. 2005-41 and 2005-48 (Apr. 13, 2005); *In the Matter of Arthur Mason*, Doc. No. 2004-104; *In the Matter of Madhu Mohan*, Doc. No. 2004-105; *In the Matter of Patrick M. Donahue*, Doc. No. 2004-99; *In the Matter of John J. Mahoney*, Doc. No. 2004-103; *In the Matter of Shailendra Kumar*, Doc. No. 2004-102; *In the Matter of Kailash C. Goel*, Doc. No. 2004-100; *In the Matter of John M. Jacquemin*, Doc. No. 2004-101 (Sept. 22, 2004).

Actions against bank's chairman of the board and directors. The OCC issued a cease-and-desist order by consent and assessed a \$27,500 civil money penalty against a bank's former chairman of the board for allegedly engaging in unsafe or unsound practices or breaches of fiduciary duty by (a) his continued unreasonable disregard of examination findings and direction of the OCC and (b) repeatedly failing to ensure that bank management for which he was responsible took steps to accurately report the bank's condition, as required by 12 USC 161. In addition, he allegedly

engaged in unsafe and unsound practices or breaches of fiduciary duty while acting as the bank's outside counsel by failing to obtain approval of the bank's board of directors and failing to apprise the OCC of his law firm's stipulation to an injunction against the bank in a suit against the bank, which stipulation consented to an encumbrance of all of the bank's assets. The OCC also assessed civil money penalties ranging from \$10,000 to \$15,000 against five bank directors for alleged disregard of regulatory direction and inaccurate regulatory reports. *In the Matter of David A. Barrett, Guaranty National Bank of Tallahassee, Tallahassee, Fla.*, Doc. No. 2005-66 (June 24, 2005); *In the Matter of Linda Alexionok*, Doc. No. 2005-54 (May 17, 2005); *In the Matter of Rica Barrett*, Doc. No. 2005-67 (June 14, 2005); *In the Matter of Kenneth Fuqua*, Doc. No. 2005-68 (June 24, 2005); *In the Matter of Wilma Lauder*, Doc. No. 2005-69 (June 8, 2005).

G. Fast Track Enforcement Cases

The OCC continued its Fast Track Enforcement program, initiated in 1996, which ensures that bank insiders who have engaged in criminal acts in banks but who are not being criminally prosecuted are prohibited from working in the banking industry. As part of the Fast Track Enforcement program, the OCC secured 5 consent prohibition orders against institution-affiliated parties from January 1, 2005, through May 25, 2005. Four of these orders incorporated restitution to the appropriate bank for losses incurred, and one of the orders incorporated a civil money penalty. During the same period, the OCC sent out notifications to 220 former bank employees who were convicted of crimes of dishonesty; the letters informed them that under federal law they are prohibited from working again in any federally insured depository institution.