

*Quarterly  
Journal*

SPECIAL SUPERVISION  
AND ENFORCEMENT ACTIVITIES

# SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

---

The Special Supervision Division of the Mid-size/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.

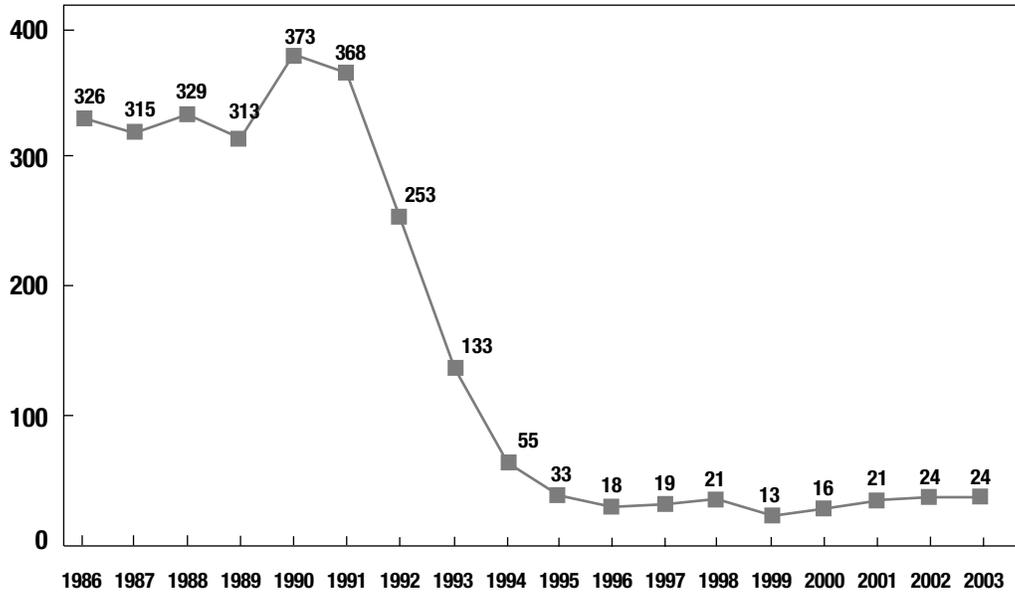
This section includes information on problem national banks, national bank failures, and enforcement actions. Data on problem banks and bank failures is provided by OCC's Special Supervision department and the FDIC's Department of Resolutions in Washington. Information on enforcement actions is provided 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 approximately 1 percent of the national bank population as of December 31, 2003. The volume of problem banks, those with a CAMELS rating of 4 or 5, has been stable for several years. 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 24 at December 31, 2003, and is the same as the number reported at December 31, 2002. This low volume of problem banks reflects the stable economy and generally favorable economic conditions enjoyed for the past several years. One national bank failure occurred during 2003 out of the three commercial bank failures.

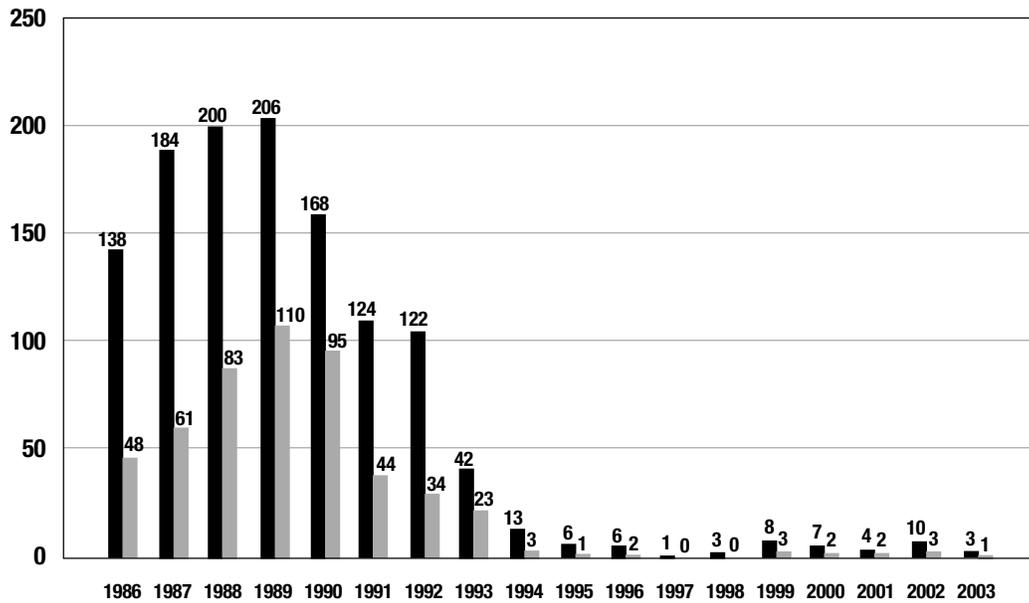
SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

Figure 1—Problem national bank historical trend line



Source: Special Supervision

Figure 2—Total Bank Failures Compared to OCC Failures



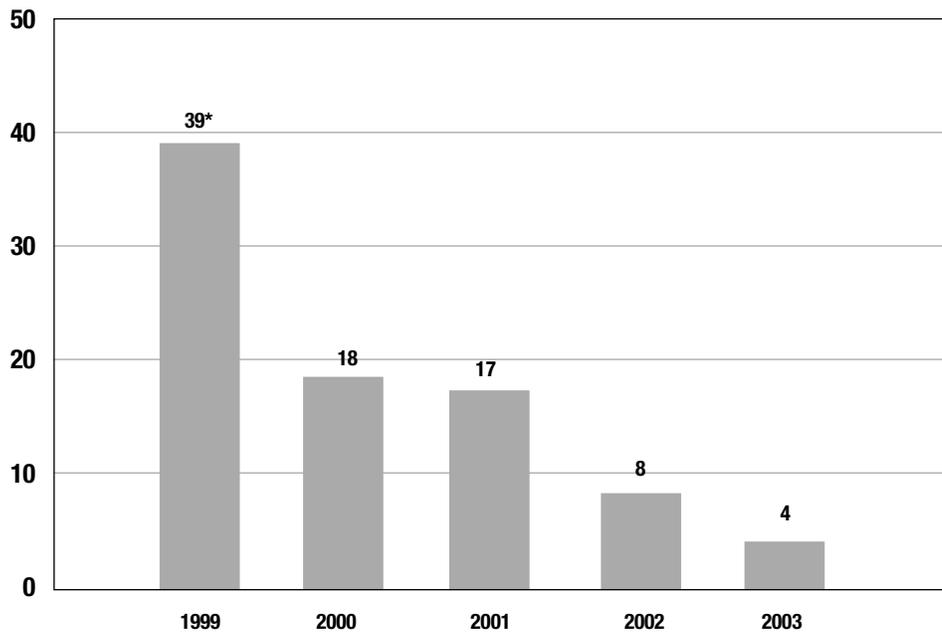
Source: Federal Deposit Insurance Corporation

## 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. (Year-2000-related actions taken in 1999 are noted in the figure footnotes.)

**Figure 3—Commitment letters**

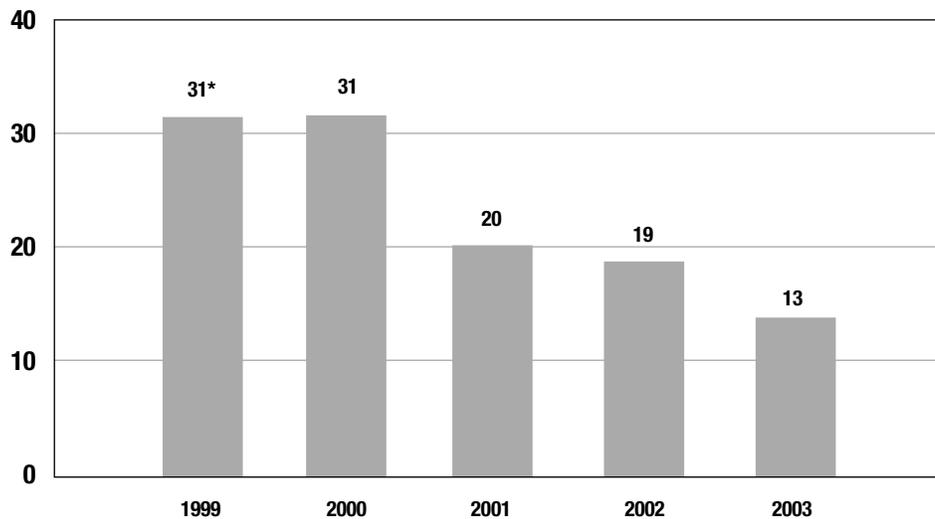


Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

\*6 of which are for year-2000 problems

## SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

**Figure 4—Memorandums of understanding**



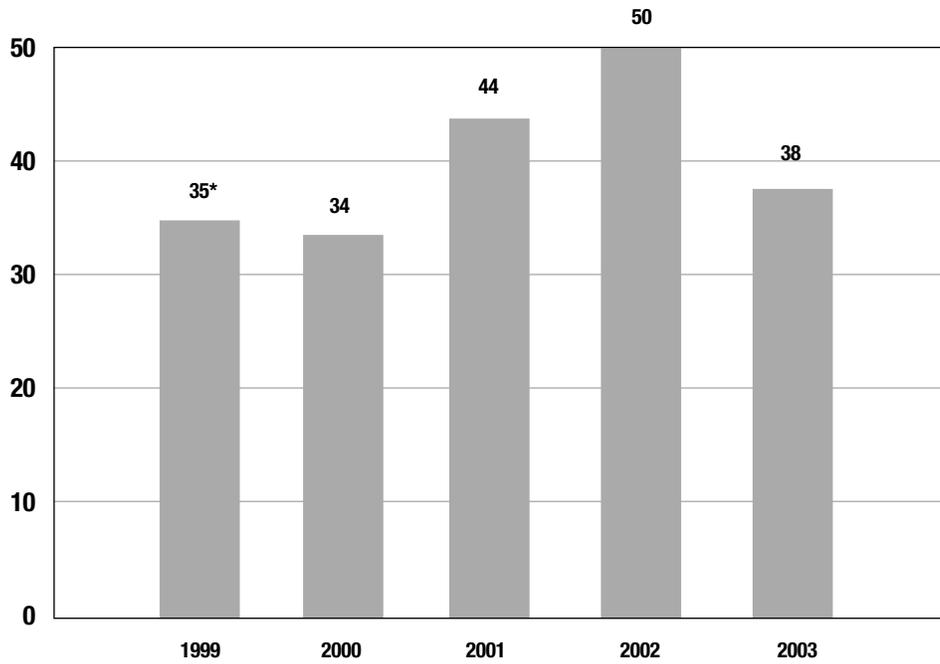
Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

\*6 of which are for year-2000 problems

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 calendar year 2003, the OCC assessed CMPs against nine banks.

## SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

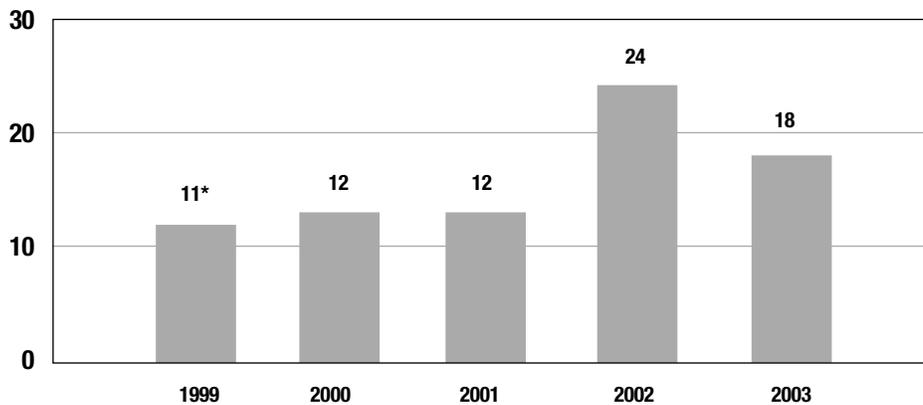
**Figure 5—Formal agreements**



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

\*2 of which are for year-2000 problems

**Figure 6—Cease-and-desist orders against banks**



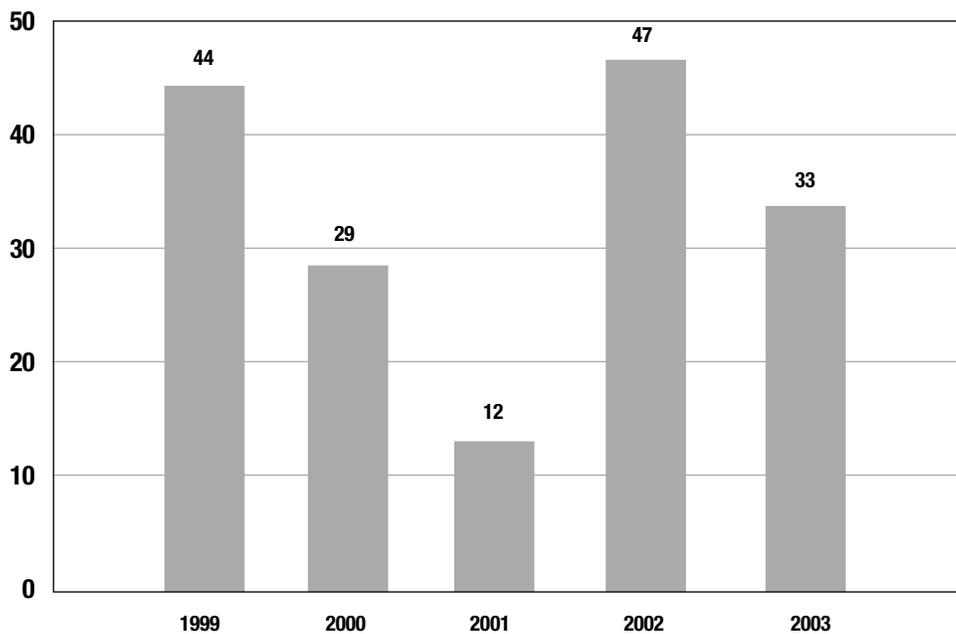
Source: OCC Systems. Note that totals for previous years' completed enforcement actions may be adjusted to reflect revised aggregates.

\*1 of which is for year-2000 problems

## SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

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.

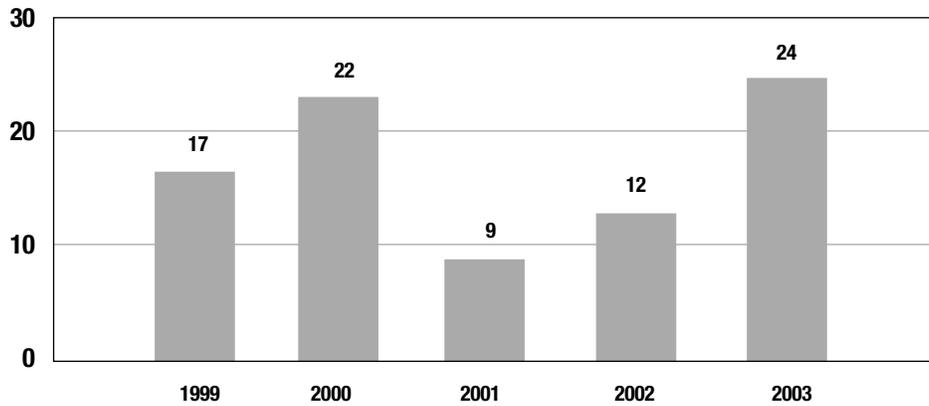
**Figure 7—Civil money penalties against institution-affiliated parties**



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

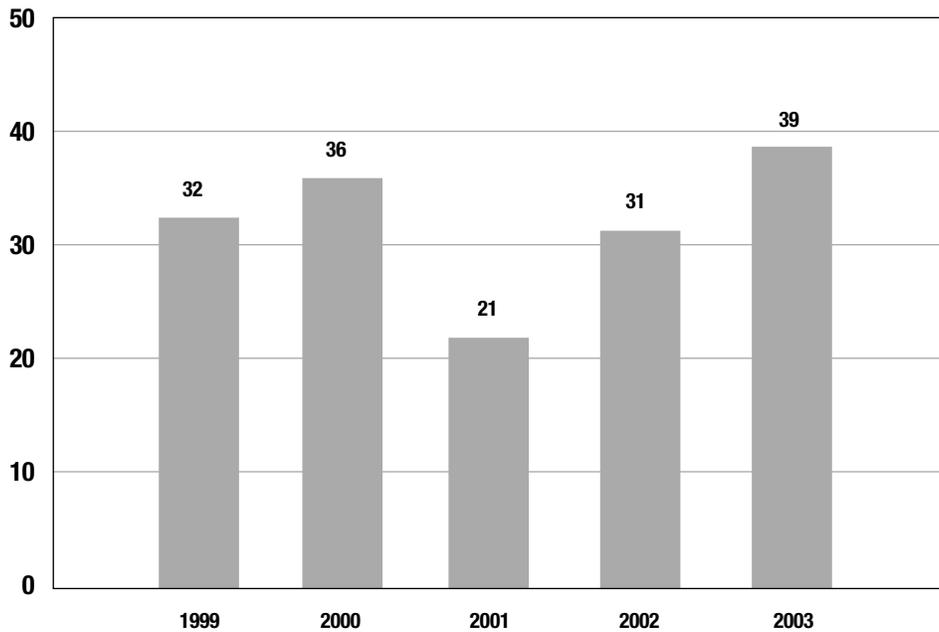
## SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

**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 July 1 and December 31, 2003:

### A. Consumer Protection

*OCC brings first unfair practices case under the FTC Act; restitution ordered.* In November 2003, the OCC issued a consent cease-and-desist order in connection with a Texas bank predecessor's abusive tax lien loans to subprime borrowers. The loans involved violations of the Truth in Lending Act, Home Ownership Equity Protection Act, and Real Estate Settlement and Procedures Act, and unfair practices under section 5 of the Federal Trade Commission Act. The unfair practices included fees that were charged for services that were never performed, duplicative fees, and, in some cases, fees far above the fees charged to other customers for the services provided. The OCC ordered the bank to make full restitution to tax lien customers for all fees and interest charged on the loans, and to review a mortgage loan portfolio considered at-risk for similar violations. The OCC ordered the bank to pay additional restitution to any customers in this mortgage loan portfolio who were victims of violations of law or unfair practices. The OCC also issued a consent cease-and-desist order to the partnership that originated and collected the bank's tax lien loans, requiring the partnership to seek the OCC's non-objection prior to entering into agreements with other national banks. Finally, in connection with the tax lien loans, the OCC issued a consent personal cease-and-desist order against a former officer of the predecessor bank restricting her future lending activity and assessing a \$10,000 civil money penalty. *In the Matter of Clear Lake National Bank, San Antonio, Texas*, Enforcement Action No. 2003-135 (November 7, 2003); *In the Matter of Sedona Pacific Housing Partnership, D/B/A Sedona Pacific Properties, San Antonio, Texas*, Enforcement Action No. 2003-149 (November 19, 2003); *In the Matter of Nancy Kinder*, Enforcement Action No. 2003-153 (October 20, 2003).

*Troubled bank fined for violation of consumer protection statutes; ordered to take corrective action.* In May and July 2003, the OCC issued consent cease-and-desist and civil money penalty orders against a Florida-based bank. The consent order terminated a litigated enforcement proceeding that had been initiated by the OCC in 2002. The OCC's 2003 cease-and-desist order was intended to remedy a number of serious safety and soundness concerns. If certain triggers are met, the order may also require the bank to submit a plan to sell, merge, or liquidate at no cost to the Federal Deposit Insurance Fund. The bank was also ordered to pay a \$25,000 civil money penalty for violation of a variety of consumer protection statutes or their implementing regulations, including the Real Estate Settlement Procedures Act, Federal Trade Commission Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, and Truth in Lending Act. *In the Matter of Guaranty National Bank of Tallahassee, Tallahassee, Florida*, Enforcement Action Nos. 2003-37 (May 2, 2003) and 2003-81 (July 10, 2003).

*Restitution of annual and over-the-limit fees mandated for credit card customers.* The OCC required a credit card bank to sell, merge, or liquidate, pursuant to a consent cease-and-desist order issued in 2002. Pursuant to this consent order, on December 28, 2002, the bank entered into a

contractual agreement whereby the bank knew or should have known that its credit card customers likely would not have use of their cards for an entire year from the date of this December 28 agreement. Yet, the bank continued to charge annual fees on account holders' monthly credit card statements in January and February 2003. In some cases, these fees caused several bank customers' accounts to exceed their credit limit, thereby generating additional "overlimit fees." The bank then terminated its credit card program on March 7, 2003, making the credit cards useless to consumers. The OCC found these practices to violate section 5 of the Federal Trade Commission Act. In a July 2003 formal agreement, the OCC required the bank to refund the pro rata share of the annual fees it charged customers on or after December 28, 2002. Any overlimit fees generated by these annual fees were also subject to a full refund. *In the Matter of First Consumers National Bank, Beaverton, Oregon*, Enforcement Action No. 2003-100 (July 31, 2003).

## B. Early Intervention for Problem Banks

*OCC issues orders against uninsured trust bank and nonbank holding company relating to improper mutual fund trading, mandating resolution of the trust bank.* During the fall of 2003, the OCC issued a number of orders resulting in the trust bank's cessation of business. In October 2003, the OCC issued consent orders against the trust bank and its nonbank holding company. The bank's consent order required the cessation of questionable mutual fund trading activity, preservation of its assets, prohibition of certain expenditures, development of a business/liquidation plan, and maintenance of adequate capital and liquidity. The holding company's consent order required the immediate infusion of \$4 million into the bank, execution of a capital adequacy liquidity maintenance agreement ("CALMA"), and a pledge and preservation of assets. In November 2003, the OCC issued an amended consent order requiring the bank's submission, within ten days, of a plan to sell, merge, or liquidate. The plan resulted in the bank's cessation of business by March 2004. Finally, in December 2003, the OCC issued a consent order requiring the bank to transfer all virtually all assets through a bulk transfer to a third party. *In the Matter of Security Trust Company, NA, Phoenix, Arizona*, Enforcement Action No. 2003-136 (October 29, 2003); *In the Matter of Capital Management Investors Holdings, Inc., Chicago, Illinois*, Enforcement Action No. 2003-137 (October 29, 2003); *In the Matter of Security Trust Company, NA, Phoenix, Arizona*, Enforcement Action No. 2003-138 (November 24, 2003); *In the Matter of Security Trust Company, NA, Phoenix, Arizona*, Enforcement Action No. 2003-160 (December 30, 2003).

## C. Anti-Money Laundering Efforts

*Midsized national bank ordered to improve compliance with anti-money laundering provisions.* In July 2003, the OCC issued a consent cease-and-desist order requiring a midsized bank to address its compliance with federal anti-money laundering requirements. Among other things, the OCC ordered the bank to employ an independent external consultant to conduct a study of the bank's compliance with the Bank Secrecy Act and regulations, including amendments from the USA PATRIOT Act, and the rules and regulations of the Office of Foreign Assets Control ("OFAC"). The order also requires that the bank develop and implement a program of policies and procedures to

provide for Bank Secrecy Act and OFAC compliance, expand the bank's existing Bank Secrecy Act audit procedures, and develop and implement a comprehensive Bank Secrecy Act training program for specified bank employees. *In the Matter of Riggs Bank, N.A., McLean, Virginia*, Enforcement Action 2003–79 (July 16, 2003).

*Federal branch official ordered to comply with anti-money laundering and OFAC requirements.* In October 2003, the OCC issued a consent cease-and-desist order requiring an official of a federal branch of a Shanghai, China, bank to take precautions when dealing with multiple bills of lading and prohibiting him from engaging in any trade settlement transactions involving false documentation or a violation of OFAC provisions. *In the Matter of Stephen Lee*, Enforcement Action No. 2003–145 (October 29, 2003).

#### D. Actions to Combat Bank Insider Abuse

*\$1.3 million in fines and restitution from former officials of failed Florida bank.* During 2003, the OCC initiated removal, restitution, and civil money penalty actions against numerous insiders associated with a failed Florida bank. In April 2003, the OCC issued consent orders against three former officers and directors of the bank—two personal cease-and-desist orders, one prohibition, and a total of \$60,000 in civil money penalties. In May 2003, the OCC filed notices of charges against another four former officers and directors—one personal cease-and-desist action and three prohibitions—demanding restitution and civil money penalties. Concurrent with the commencement of these enforcement actions, the OCC issued temporary cease-and-desist orders against three of these former officers and directors, ordering certain assets frozen. In opposition to the asset freeze, the former officers and directors filed a challenge in U. S. District Court for the Southern District of Florida, and the OCC cross-moved for enforcement of the temporary orders. After significant motions practice and oral argument before the court, a U. S. magistrate judge issued a report and recommendation that the former officers' challenge to the asset freeze be dismissed and that the OCC's motion to enforce the asset freeze be granted. While on appeal to the district judge, two former officers subject to the asset freeze entered into consent orders issued by the OCC. As a condition of the OCC's motion to dismiss its injunctive action to enforce the asset freeze, the OCC required one former officer to consent to the district judge entering a judgment enforcing the consent order; the consent order was "so ordered" on December 29, 2003. Finally, in November 2003, the OCC initiated an enforcement action against another bank insider, seeking a personal cease-and-desist order and civil money penalty. During 2003, the total amount of fines and restitution ordered from these OCC enforcement actions approximates \$1,310,000. *In the Matter of Eduardo Masferrer*, Enforcement Action No. 2003–150, (December 22, 2003); *In the Matter of Carlos Bernace*, Enforcement Action No. 2003–122 (October 31, 2003); *In the Matter of Ronald Lacayo*, Enforcement Action No. 2003–52 (May 15, 2003); *In the Matter of Antonio Arbulu*, Enforcement Action No. 2003–60 (May 15, 2003); *In the Matter of Alina Cannon*, Enforcement Action No. 2003–41 (April 24, 2003).

*Indictment against officials who caused the failure of Arkansas bank.* During 2003, the OCC rendered assistance and support to criminal authorities in their continuing criminal investigation into the failure of an Arkansas community bank. This assistance contributed to the guilty plea of a former outside counsel to the bank. In November 2003, the former chairman and vice-chair of the bank, along with the former president of a Missouri-based consumer finance company, were indicted for conspiracy, making false statements to the OCC, illegal participation, obstruction of the OCC's examination, misapplication of bank funds, and bank fraud. Their criminal trials are now scheduled for July 2004. *United States v. Damian Sinclair, Susan Wintermute and Clarence Stevens* (W.D. Mo. November 20, 2003) (superceding indictment).

*Prohibition, restitution, and civil money penalties entered against two bank officers who violated lending limit and made nominee loans.* In January 2003, the OCC prevailed before an administrative law judge in its litigated removal, restitution, and civil money penalty case against two former senior officers of a California community bank. The OCC alleged that the two officers violated legal lending limit laws and regulations and engaged in unsafe or unsound practices, leading to significant losses for the bank. After a full hearing on the record, and significant post-hearing briefing and reply, the administrative law judge issued a decision recommending orders of prohibition, restitution, and significant civil money penalties. The respondents objected to these recommendations to the Comptroller of the Currency as to civil money penalties and restitution, and to the Board of Governors of the Federal Reserve System as to prohibition. In September 2003, the Comptroller of the Currency upheld the findings of fact of the administrative law judge, ordered restitution of \$232,000, and assessed civil money penalties against the two officers of \$20,000 and \$35,000, respectively. In October 2003, the Board of Governors of the Federal Reserve System upheld the recommendation of the administrative law judge to ban each former officer from the business of banking. The former officers have now appealed the final decisions to the U. S. Court of Appeals for the Ninth Circuit. *In the Matter of Susan Diehl McCarthy*, Enforcement Action No. 2000-40 (September 2, 2003, for CMP and restitution; October 15, 2003, for prohibition); *In the Matter of Eugene Ulrich*, Enforcement Action No. 2000-40 (September 2, 2003, for CMP and restitution; October 15, 2003, for prohibition).

*Fine and prohibition against banker engaged in self-dealing.* In August 2003, the OCC issued a consent prohibition and \$100,000 civil money penalty order against the former president of a California community bank. He participated in a scheme to have the bank make a \$1.2 million loan to a customer who then paid debts owed to the bank president and his son. *In the Matter of Andrew Rossi*, Enforcement Action No. 2003-80 (August 1, 2003).

## E. 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 En-

## SPECIAL SUPERVISION AND ENFORCEMENT ACTIVITIES

forcement program, the OCC secured 11 consent prohibition orders against institution-affiliated parties between July 1 and December 31, 2003. One 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 107 former bank employees who were convicted of crimes of dishonesty, informing them that under federal law they are prohibited from working again in a federally insured depository institution.