

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. _____

**18 U.S.C. § 1517
18 U.S.C. § 1343
18 U.S.C. § 1001(a)(2)
18 U.S.C. § 982(a)
18 U.S.C. § 371
18 U.S.C. § 2
15 U.S.C. § 78j(b)
15 U.S.C. § 78ff(a)
15 U.S.C. § 78m(a) and (b)
17 C.F.R. § 240.10b-5
17 C.F.R. § 240.12b-20
17 C.F.R. § 240.13a-1
17 C.F.R. § 240.13a-13
17 C.F.R. § 240.13b2-2**

UNITED STATES OF AMERICA

v.

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE, and
JOHN M. R. JACOBS,**

Defendants.

INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At times material to this Indictment:

Hamilton Bancorp

1. Hamilton Bancorp, Inc. (“Hamilton Bancorp”) was a publicly-held company with its principal place of business in Miami-Dade County, Florida. Hamilton Bancorp was a bank holding company and conducted operations principally through its wholly-owned subsidiary, Hamilton Bank, N.A. (“Hamilton Bank”). In March 1997, Hamilton Bancorp conducted an initial public offering

(“IPO”) of its common stock. Its common stock was thereafter listed on the NASDAQ National Market System, an electronic securities market system administered by the National Association of Securities Dealers, under the symbol of “HABK.”

2. As a publicly-held company, Hamilton Bancorp was regulated by the United States Securities and Exchange Commission (“SEC”). The SEC was an independent agency of the United States government which was charged by law with the responsibility of preserving honest and efficient markets in securities.

3. Federal law required publicly-held companies to submit various reports containing detailed financial data to the SEC, including quarterly reports on “Form 10-Q” and annual reports on “Form 10-K.” Publicly-traded companies were required to provide the fiscal year-end results of their operations and financial condition on Form 10-K. In addition, such companies were also required to provide the quarter-end results of their operations and financial condition on Form 10-Q. Federal law required this data to be truthful and consistent with the underlying facts and further required the accounting treatments used in these reports to be in accordance with Generally Accepted Accounting Principles (“GAAP”).

4. Federal law required publicly-held companies, including Hamilton Bancorp, to undergo an annual audit by an independent auditor to ensure that its financial data was prepared and reported in accordance with GAAP. Deloitte & Touche LLP (“Deloitte & Touche”), a national accounting firm, conducted quarterly reviews and an independent audit of Hamilton Bank’s and Hamilton Bancorp’s quarterly and year-end results of operations and financial condition.

Hamilton Bank

5. Hamilton Bank, a wholly-owned subsidiary of Hamilton Bancorp, was a national bank with its principal place of business in Miami-Dade County, Florida. The moneys on deposit with Hamilton Bank were insured by the Federal Deposit Insurance Corporation (“FDIC”), an independent agency of the United States established to protect depositors by insuring deposits held by its member banks.

6. As a national bank, Hamilton Bank was regulated by the Office of the Comptroller of the Currency (“OCC”) of the United States Department of the Treasury. The OCC was an agency of the United States government responsible for preserving the integrity of the banking system.

7. Federal law required all national banks, including Hamilton Bank, to submit to periodic examinations by the OCC. Federal law required each national bank to provide its financial data during periodic examinations to ensure that the bank’s data were accurately recorded on its books and records and that the bank’s lending and investment practices were in accordance with the OCC’s prescribed safe and sound banking practices.

8. On or about January 11, 2002, after determining that Hamilton Bank had operated in an unsafe and unsound manner, the OCC closed Hamilton Bank and appointed the FDIC as receiver for Hamilton Bank.

The Defendants

9. Defendant **EDUARDO A. MASFERRER** was Chairman of the Board of Directors, President, and Chief Executive Officer of Hamilton Bancorp. He was also Chairman of the Board of Directors and Chief Executive Officer of Hamilton Bank. He beneficially owned more than 800,000 shares of Hamilton Bancorp stock and options to purchase additional shares. He also controlled trust accounts with PaineWebber, which held approximately 300,000 shares of Hamilton Bancorp stock in 1998 (“the Trust accounts”).

10. Defendant **JUAN CARLOS BERNACE** was Executive Vice-President and a Director of Hamilton Bancorp. He was also President, Senior Lending Officer, and a Director of Hamilton Bank. He beneficially owned more than 150,000 shares of Hamilton Bancorp stock and options to purchase additional shares.

11. Defendant **JOHN M. R. JACOBS** was a Senior Vice-President and Chief Financial Officer of Hamilton Bancorp. He was also Senior Vice-President of Hamilton Bank. He beneficially owned more than 10,000 shares of Hamilton Bancorp stock and options to purchase additional shares.

Defendants' Compensation

12. The compensation provided to **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** was closely linked to Hamilton Bancorp's corporate performance and the market price of its common stock.

13. As part of its compensation to executives and employees, Hamilton Bancorp distributed up to 11% (5% to **EDUARDO A. MASFERRER** and 6% to other Executive Officers and other employees, including **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS**) of its pre-tax net income, after the deduction of loan loss provisions, for bonuses. Hamilton Bancorp also granted options to purchase shares of Hamilton Bancorp common stock at certain specified prices to its executives.

14. **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** received the following salaries, bonuses, and stock options in each of the years listed below:

Defendant	Year	Salary	Bonus	Stock Options (# of shares)
EDUARDO A. MASFERRER	1998	\$775,900	\$1,103,591	0
EDUARDO A. MASFERRER	1999	\$853,534	\$662,000	19,325
JUAN CARLOS BERNACE	1998	\$200,000	\$100,000	35,576
JUAN CARLOS BERNACE	1999	\$220,000	\$70,000	13,117
JOHN M. R. JACOBS	1998	\$140,000	\$80,000	10,000
JOHN M. R. JACOBS	1999	\$160,000	\$42,000	4,415

Communications with the Investing Public

15. Hamilton Bancorp provided the investing public with predictions of, or "guidance" regarding, its anticipated earnings for the upcoming reporting periods. Securities analysts and the investing public relied, at least in part, upon such guidance to determine their own estimates of

Hamilton Bancorp's expected performance. These earnings estimates or analyst expectations were followed by the investing public. Thus, if a company announced earnings that failed to meet or exceed analysts' expectations, the price of that company's common stock generally declined.

16. Hamilton Bancorp announced its financial performance to securities analysts and the investing public through, among other things, press releases and conference calls. Among the financial data Hamilton Bancorp included in these releases and conference calls were the results of its operations and its financial condition, including its retained earnings and net income and losses.

17. Securities analysts' consensus estimates predicted that Hamilton Bancorp would report strong earnings results for the third quarter of 1998, which ended September 30, 1998.

Hamilton Bancorp's Growth of Assets and Acquisition of Certain Russian Loans

18. After becoming a publicly-held company in March 1997, Hamilton Bancorp reported very rapid growth of assets to the investing public. As a result, by March 1998, the market price of Hamilton Bancorp's common stock had more than doubled from \$15.50 to more than \$32.00.

19. As part of its rapid growth, Hamilton Bank increased its loan portfolio significantly. Between about May 1997 and about June 1998, Hamilton Bank purchased approximately \$20 million worth of loans made to banks in Russia, as well as loans made to a municipal government of Russia. Hamilton Bank purchased for "par" value (face or original value) the following Russian loans ("the Russian loans"):

- (a) City of Moscow Loan for \$6,000,000;
- (b) Gazprombank Loan for \$5,000,000;
- (c) Vneshtorgbank Loan for \$1,500,000; and
- (d) Mezhcombank Loan for \$7,500,000.

Hamilton Bank purchased the City of Moscow, Gazprombank, and Vneshtorgbank loans from foreign banks, including West Merchant Bank Limited ("West Merchant Bank"). Hamilton Bank purchased the Mezhcombank loan from Standard Bank London Limited ("Standard Bank"), another foreign bank.

20. During the spring and summer of 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and others decided to raise additional capital through another offering of securities to the public in order to sustain Hamilton Bancorp's rapid growth.

21. By the summer of 1998, however, the Russian economy had declined dramatically, causing a worldwide alarm. The Russian banking system was in danger of collapsing, and thus, Russian assets, including loans to Russian banks and entities, were trading for substantially below their face or original value (par value).

22. In late summer of 1998, members of the Board of Directors of Hamilton Bancorp discussed their concerns about the potential negative impact of having the Russian loans on Hamilton Bank's books. A member of the Board of Directors discussed whether having the Russian loans on the books would adversely affect the market price of Hamilton Bancorp's common stock. The Board of Directors instructed the Hamilton Bank managers to seek the sale of the Russian loans.

Accounting Requirements: Financial Accounting Standards Board (FASB) Statement 125

23. Generally Accepted Accounting Principles required that any asset (loan or security) transferred be recorded at its fair market value on the date of the transfer (when bought or sold). Thus, a party selling or purchasing an asset would have to account for the current market value of each particular asset in its financial books at the time of the purchase or sale of the asset. This accounting requirement is contained in FASB Statement No. 125 ("FASB 125") - Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities - June 1996.

Adjusted Price Trading, a/k/a Swap Transactions

24. Adjusted price trading, which was also known as a "ratio swap," occurred when one party ("Party A") sold an asset (or a set of assets such as loans or securities) at an inflated value to a counter party ("Party B") and, as part of the same transaction, Party B sold to Party A another asset (or another set of assets) at an inflated value. The amount of the overpayments in a swap transaction were commonly based on the current discount of the assets sold by Party A. As such, the purpose of the swap, from Party A's perspective, was to sell particular assets while concealing the current discount or losses of the assets sold.

25. The OCC considered adjusted price trading or such a swap transaction as an “unsafe and unsound” practice.

26. Hamilton Bank advised in its January 20, 1998 revised internal lending and investment manual that adjusted price trading was considered “unsuitable.” Hamilton Bank announced that “under no conditions will the bank engage in adjusted trading” because “[s]uch transactions inappropriately defer the recognition of losses on the security sold and establish an excessive reported value for the newly acquired instrument.”

Hamilton Bank’s Sale of the Russian Loans and the AHMSA notes

27. In or around September 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell the City of Moscow loan purportedly at par, for \$6,000,000 or its face or original value, to West Merchant Bank in exchange for Hamilton Bank’s purchase, through another entity, Morgan Grenfell & Company, Ltd., (“Morgan Grenfell”), of (a) Hong Kong and Shanghai Banking Corporation and (b) Standard Chartered subordinated notes purportedly at par, for \$15,000,000 or their face or original value, from West Merchant Bank.

28. In or around September 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell back the Gazprombank loan purportedly at par, for \$5,000,000 or its face or original value, to West Merchant Bank in exchange for Hamilton Bank’s purchase, through Morgan Grenfell, of four Latin American securities purportedly at par, for \$19,049,000 or their face or original value, from West Merchant Bank.

29. In or around September 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell back the Vneshtorgbank loan purportedly at par, for \$1,500,000 or its face or original value, to West Merchant Bank in exchange for Hamilton Bank’s purchase, through Morgan Grenfell, of two Latin American securities purportedly at par, for \$5,500,000 or their face or original value, from West Merchant Bank.

30. In or around September 1998, **EDUARDO A. MASFERRER, JUAN CARLOS**

BERNACE, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell back the Mezhcombank loan purportedly at par, for \$7,500,000 or its face or original value, to Standard Bank in exchange for Hamilton Bank's purchase of eleven Latin American securities, including trade notes of a Mexican iron company, Altos Hornos de Mexico, S.A. De C.V. ("AHMSA"), purportedly at par, for a total of \$54,410,000 or their face or original value, from Standard Bank.

31. In or around September 1999, **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell the AHMSA trade notes purportedly at par, for \$5,000,000 or its face or original value to West LB (formerly known as West Merchant Bank) in exchange for Hamilton Bank's purchase from West LB of six Latin American securities purportedly at par, for \$30,250,000 or their face or original value. At the time of the transaction, AHMSA was in severe financial distress.

Hamilton Bancorp's Trust Preferred Securities Offering

32. In late December 1998, Hamilton Bancorp filed registration statements (Form S-3) with the SEC in connection with its sale to the public of additional securities which were known as a trust preferred offering. In late December 1998 to mid January 1999, Hamilton Bancorp undertook the registered securities offering and raised an additional \$12.7 million from investors.

OCC's Examination and Investigation

33. In or around September 1999, during the annual bank examination of Hamilton Bank, OCC bank examiners discovered links between Hamilton Bank's 1998 sale of the Russian loans and Hamilton Bank's purchase of Latin American and other non-Russian securities at or around the same time period.

34. The OCC examiners observed that Hamilton Bank had sold its Russian loans at par (face or original value) and paid par for Latin American and non-Russian securities in the secondary market in the fall of 1998. Similarly, OCC bank examiners noticed that in September 1999, Hamilton Bank had also sold its AHMSA trade notes at par (face or original value) and paid par for other Latin American securities in the secondary market.

35. In or around September 1999, the OCC examiners reviewed whether these

transactions were properly recorded at fair market value, as required by FASB 125, in Hamilton Bank's books and records, and questioned **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** whether Hamilton Bank's September 1998 transactions involving the sale of the Russian loans to West Merchant Bank and Standard Bank in exchange for the purchase by Hamilton Bank from West Merchant Bank and Standard Bank of various Latin American and non-Russian securities were related transactions.

36. In or around September 1999, the OCC examiners also questioned **JUAN CARLOS BERNACE** whether Hamilton Bank's September 1999 transactions involving the sale of its AHMSA trade notes to West LB in exchange for the purchase by Hamilton Bank from West LB of various other Latin American securities were related transactions. **JUAN CARLOS BERNACE** denied that there was any connection or relationship between said transactions.

Hamilton Bancorp's Restatement of Earnings Results

37. In December 2000, as a result of the OCC's examination and investigation, Hamilton Bancorp acknowledged that the 1998 Russian loan transactions were not properly accounted for in the company's books. Hamilton Bancorp restated its earnings results and filed with the SEC amended quarterly reports on Form 10-Q for periods ended March 31, 1999 and June 30, 1999. Hamilton Bancorp also filed with the SEC an amended annual report on Form 10-K for the year ended December 31, 1998.

38. The restatement of its earnings results for the fiscal year of 1998 showed that Hamilton Bancorp had a pre-tax loss of more than \$22 million resulting from its sale of the Russian loans in September 1998.

COUNT 1

(Conspiracy: 18 U.S.C. § 371)

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment are realleged and incorporated herein by reference.

2. From in or around September 1998, to in or around May 2002, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

did knowingly, willfully and unlawfully combine, conspire, confederate and agree with each other to commit certain offenses against the United States, namely:

a. to knowingly and willfully devise and intend to devise a scheme and artifice to defraud, and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises knowing that they were false and fraudulent when made, and transmitting and causing to be transmitted certain wire communications in interstate and foreign commerce for the purpose of executing the scheme, which affected a financial institution, in violation of Title 18, United States Code, Section 1343;

b. to knowingly, willfully, and unlawfully, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, directly and indirectly, use and employ manipulative and deceptive devices and contrivances in connection with the purchase and sale of Hamilton Bancorp securities, and did (a) employ a device, scheme and artifice to defraud; (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices and courses of business which would and did operate as a fraud and deceit upon others, in connection with the purchase and sale of said securities, in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a) and Title 17, Code of Federal Regulations, Section 240.10b-5;

c. to knowingly, willfully, and unlawfully make and cause to be made statements in reports and documents required to be filed with the SEC under the Securities Exchange Act of 1934, Title 15, United States Code, Section 78a *et seq.*, and the rules and regulations promulgated thereunder, which statements were false and misleading with respect to material facts, in violation

of Title 15, United States Code, Sections 78m(a) and 78ff(a) and Title 17, Code of Federal Regulations, Sections 240.12b-20, 240.13a-1, and 240.13a-13;

d. being directors and officers of Hamilton Bancorp, an issuer with a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, Title 15, United States Code, Section 78l, to knowingly, willfully, and unlawfully, directly and indirectly (a) make and cause to be made materially false and misleading statements; and (b) omit to state, and cause other persons to omit to state material facts necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to accountants in connection with (i) audits and examinations of the financial statements of Hamilton Bancorp; and (ii) the preparation and filing of documents and reports, required to be filed with the SEC pursuant to rules and regulations enacted by the SEC, in violation of Title 15, United States Code, Sections 78m(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.13b2-2;

e. to knowingly, willfully, and corruptly obstruct and attempt to obstruct an examination of a financial institution, Hamilton Bank, by the Office of the Comptroller of the Currency, an agency of the United States with jurisdiction to conduct an examination of such financial institution, in violation of Title 18, United States Code, Section 1517; and

f. to knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation to examiners of the Office of the Comptroller of the Currency, in a matter within the jurisdiction of the executive branch of the Government of the United States, in violation of Title 18, United States Code, Section 1001(a)(2).

PURPOSE OF THE CONSPIRACY

3. The purpose of the conspiracy was to conceal losses from the sale of the Russian loans in 1998 and the AHMSA trade notes in 1999 and, thereby, fraudulently inflate Hamilton Bancorp's reported results of operations and financial condition so that **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** (a) would unjustly enrich and benefit themselves through higher salaries, bonuses, stock options and by the capital

appreciation of their Hamilton Bancorp shares and (b) would facilitate Hamilton Bank's trust preferred securities offering.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which the defendants sought to accomplish the purpose of the conspiracy included, among others, the following:

4. Several of the defendants would familiarize themselves with the accounting requirements for swap transactions.

5. The defendants would contact several of the foreign banks that sold them the Russian loans to attempt to re-sell those loans back to them.

6. The defendants would sell the Russian loans at the prices for which they purchased them in order to avoid showing any losses.

7. The defendants would purchase Latin American and other non-Russian securities at prices higher than their market values in order to conceal the losses on the Russian loans.

8. The defendants would engage in swap transactions with foreign banks whereby they would sell the Russian loans at prices higher than their current market values and, in exchange, would buy Latin American and other non-Russian securities at prices higher than their current market values.

9. The defendants would discuss the discount amounts (ratios) of the Russian and Latin American and other non-Russian securities so that they could structure the sale of the Russian loans at par.

10. The defendants would overpay more than \$20 million to West Merchant Bank and Standard Bank for Latin American and other non-Russian securities in order to conceal losses of approximately \$20 million for the Russian loans.

11. The defendants would conceal their swap transactions with West Merchant Bank by using an intermediary, Morgan Grenfell, to disguise the related purchases and sales of securities between Hamilton Bank and West Merchant Bank.

12. The defendants would conceal losses on the Russian loans by fraudulently accounting for them at inflated prices on their books.

13. The defendants would cause false entries to be made to Hamilton Bank's books to eliminate all Russian loans from the Bank's books by September 30, 1998.

14. The defendants would report fraudulently inflated earnings for Hamilton Bank and Hamilton Bancorp for the quarters ended September 30, 1998 and December 31, 1998, which concealed losses associated with the sale of the Russian loans.

15. The defendants would attempt to facilitate a trust preferred securities offering for Hamilton Bancorp by providing to investment bankers fraudulently inflated earnings results.

16. The defendants would conceal from Hamilton Bank's and Hamilton Bancorp's independent auditor the losses associated with the Russian loans as well as the swap transactions.

17. The defendants would conceal losses associated with Hamilton Bank's purchase of the AHMSA trade notes in 1998 by selling these notes at the prices for which they originally recorded them in Hamilton Bank's books.

18. The defendants would purchase Latin American securities at prices higher than their current market values in order to cover-up the losses on the AHMSA notes.

19. The defendants would engage in a swap transaction with a foreign bank whereby they would sell the AHMSA notes at prices higher than their current market values and, in exchange, would buy Latin American securities at prices higher than their current market values.

20. The defendants would discuss the discount amounts (ratios) of the AHMSA notes and Latin American securities so that they could structure the sale of the AHMSA notes at par.

21. The defendants would overpay more than \$3.75 million to West LB for the Latin American securities in order to cover-up losses of approximately \$3.75 million for the AHMSA notes.

22. The defendants would conceal losses on the AHMSA notes by fraudulently accounting for them at inflated prices on their books.

23. The defendants would report fraudulently inflated earnings for Hamilton Bank and Hamilton Bancorp for the quarter ended September 30, 1999 through their concealment of losses associated with the sale of the AHMSA notes.

24. The defendants would cause Hamilton Bank to pay each of them excessive year-end bonuses that were based upon fraudulently inflated earnings results for the years 1998 and 1999.

25. The defendants would cause false press releases and information to be provided to securities analysts with respect to Hamilton Bancorp's earnings.

26. The defendants would conceal from the OCC their swap transactions involving the sale of the Russian loans and the AHMSA notes.

27. The defendants would cause the filing of false Form 10-Qs and a Form 10-K for Hamilton Bancorp with the SEC.

28. The defendants would conceal from the SEC their swap transactions involving the sale of the Russian loans.

OVERT ACTS

In furtherance of the conspiracy and to achieve the purpose and objects thereof, at least one of the co-conspirators committed or caused to be committed, in the Southern District of Florida and elsewhere, at least one of the following overt acts, among others:

1. In or around September 1998, **EDUARDO A. MASFERRER** directed **JOHN M. R. JACOBS** to sell Hamilton Bank's Russian loans (the City of Moscow, Gazprombank, Mezhscombank, and Vneshtorbank loans) at par value.

2. In or around September 1998, **JOHN M. R. JACOBS** discussed Hamilton Bank's desire to sell the Russian loans at par value with a banker at West Merchant Bank.

3. In or around September 1998, **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** discussed a ratio swap involving the sale of Hamilton Bank's Russian loans to West Merchant Bank in return for the purchase of certain Latin American securities from West Merchant Bank.

4. In or around September 1998, **EDUARDO A. MASFERRER** discussed with a banker at West Merchant Bank various securities that Hamilton Bank could purchase in a ratio swap with West Merchant Bank.

5. In or around September 1998, **JOHN M. R. JACOBS** discussed Hamilton Bank's interest in selling its Mezhcombank loan back to Standard Bank.

6. In or around September 1998, **EDUARDO A. MASFERRER** discussed with a banker at Standard Bank various Latin American securities that Hamilton Bank could purchase in a ratio swap deal with Standard Bank.

7. In or around September 1998, **JUAN CARLOS BERNACE** discussed various Latin American securities that Hamilton Bank could purchase in a ratio swap deal with Standard Bank.

8. In or around September 1998, **JOHN M. R. JACOBS** discussed engaging in a ratio swap deal that was to be completed before September 30, 1998.

9. On or about September 15, 1998, **JOHN M. R. JACOBS** discussed Hamilton Bank's interest in selling its Gazprombank loan with a banker in New York.

10. On or about September 15, 1998, **JOHN M. R. JACOBS** wrote a letter regarding Hamilton Bank's Gazprombank loan and asked about "ideas reference swap of above for Latin American risk."

11. On or about September 16, 1998, **EDUARDO A. MASFERRER**, in a recorded conversation, discussed his desire for Morgan Grenfell to serve as an intermediary in a ratio swap deal between Hamilton Bank and West Merchant Bank for the purpose of concealing the purchase side of the swap transaction, stating "I cannot buy them directly because ... I don't want to connect it with another deal..."

12. On or about September 17, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, discussed engaging in a ratio swap deal where Morgan Grenfell would act as a "flow through" and an "intermediary."

13. On or about September 17, 1998, **JOHN M. R. JACOBS**, in a recorded conversation,

discussed Hamilton Bank's interest in concealing its ratio swap deal with West Merchant Bank and "how we set up the paper trail."

14. On or about September 17, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, stated that while Hamilton Bank was engaging in a ratio swap deal with West Merchant Bank, Morgan Grenfell would appear as the "nominal seller."

15. On or about September 23, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, discussed falsely "back-dating" the trade date of the purchase side of a ratio swap deal with West Merchant Bank.

16. On or about September 23, 1998, **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell its City of Moscow loan purportedly for par value to West Merchant Bank in exchange for Hamilton Bank's purchase, through Morgan Grenfell, of (a) Hong Kong and Shanghai Banking Corporation and (b) Standard Chartered subordinated notes purportedly for par value from West Merchant Bank.

17. On or about September 23, 1998, **EDUARDO A. MASFERRER** and **JUAN CARLOS BERNACE**, in a recorded conversation, discussed engaging in another ratio swap deal using Morgan Grenfell as an intermediary to conceal another swap transaction between Hamilton Bank and West Merchant Bank.

18. On or about September 23, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, discussed purchasing Latin American securities in another ratio swap deal and acknowledged that "we know ... an overall value of them [assets]."

19. On or about September 24, 1998, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS**, in a recorded conversation, discussed engaging in another ratio swap deal involving certain Latin American securities.

20. On or about September 25, 1998, **EDUARDO A. MASFERRER**, in a recorded conversation, discussed his need to "get out of Russia" and the difficulties of selling the Mezhcombank loan.

21. On or about September 28, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, acknowledged that the only Russian loan left in Hamilton Bank's books was the Mezhcombank loan and that everything else had been swapped out.

22. On or about September 28, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, discussed not knowing the market value of the Mezhcombank loan and stated that he did not "know what kind of leveraged amount" existed for the Mezhcombank loan.

23. On or about September 28, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell back its Mezhcombank loan to Standard Bank purportedly for par value in exchange for Hamilton Bank's purchase from Standard Bank of eleven Latin American securities, including the trade notes of AHMSA, purportedly for par value.

24. On or about September 29, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, stated that Hamilton Bank needed to complete the ratio swap transaction by September 30, 1998 and that Hamilton Bank would do "whatever it takes."

25. On or about September 30, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell back its Gazprombank loan to West Merchant Bank purportedly for par value in exchange for Hamilton Bank's purchase from West Merchant Bank, through Morgan Grenfell, of four Latin American securities purportedly for par value.

26. On or about September 30, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell back its Vneshtorgbank loan to West Merchant Bank purportedly for par value in exchange for Hamilton Bank's purchase from West Merchant Bank, through Morgan Grenfell, of two Latin American securities purportedly for par value.

27. On or about September 30, 1998, **JUAN CARLOS BERNACE** prepared and submitted an internal memorandum directing an employee of Hamilton Bank to take the

Mezhcombank loan off Hamilton Bank's books through a series of fraudulent accounting entries.

28. On or about September 30, 1998, **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused an entry to be made in Hamilton Bank's books and records falsely reflecting that a short-term time deposit of \$7.5 million had been made to Standard Bank in order to inflate Hamilton Bank's assets for the quarter ended September 30, 1998.

29. On or about October 2, 1998, **JUAN CARLOS BERNACE** prepared and submitted a memorandum to the Board of Directors of Hamilton Bank advising that "[t]he bank was successful in selling the Russian loan obligations at 100% of their face value...."

30. On or about October 21, 1998, **EDUARDO A. MASFERRER** caused Hamilton Bancorp to issue a press release falsely announcing "record" net income of \$5.7 million for the quarter ended September 30, 1998.

31. On or about October 21, 1998, during a conference call with securities analysts, **EDUARDO A. MASFERRER** and **JUAN CARLOS BERNACE** falsely announced that Hamilton Bancorp's earnings results for the quarter ended September 30, 1998 had exceeded the analysts' estimates for said quarter.

32. On or about November 14, 1998, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** signed and submitted a "management representation letter" to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the quarter ended September 30, 1998, was "fairly presented in conformity with generally accepted accounting principles."

33. On or about November 16, 1998, **EDUARDO A. MASFERRER** and **JUAN CARLOS BERNACE** caused the preparation and filing with the SEC of a materially false Form 10-Q for Hamilton Bancorp for the quarter ended September 30, 1998.

34. On or about November 16, 1998, **EDUARDO A. MASFERRER** caused sales of approximately 3,000 shares of Hamilton Bancorp stock, generating proceeds of approximately \$80,687, from one of the Trust accounts.

35. On or about November 24, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** participated in an “organizational meeting” with investment bankers who were then serving as the underwriters for Hamilton Bancorp’s upcoming trust preferred securities offering.

36. On or about December 21, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** participated in a “due diligence” conference call with the investment bankers regarding Hamilton Bancorp’s upcoming trust preferred securities offering.

37. On or about December 22, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused the investment bankers to prepare and file with the SEC a materially false registration statement (Form S-3) and a prospectus for Hamilton Bancorp’s upcoming trust preferred securities offering.

38. During December 1998 and January 1999, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bancorp to fraudulently raise approximately \$12.7 million through a trust preferred securities offering to the investing public.

39. On or about December 28, 1998, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** prepared an internal memorandum to an employee of Hamilton Bank regarding the \$7.5 million “placement” with Standard Bank, wherein it was stated that there was no “placement” of funds.

40. On or about December 31, 1998, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to pay year-end bonuses to each other based upon its fraudulently reported earnings results for the year 1998, as follows: a \$1,081,600 bonus to **MASFERRER**; a \$100,000 bonus to **BERNACE**; and a \$80,000 bonus to **JACOBS**.

41. On or about January 20, 1999, **EDUARDO A. MASFERRER** caused Hamilton Bancorp to issue a press release announcing the purported results for fiscal year 1998, wherein he falsely stated that: “I am excited that we celebrated our 10th Anniversary with our best year ever.

1998 was another year of record earnings and strong financial performance. These results are encouraging in light of the global economic environment we are experiencing.”

42. On or about February 5, 1999, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** signed and submitted a “management representation letter” to Deloitte & Touche, Hamilton Bancorp’s independent auditor, which falsely represented, among other things, that Hamilton Bancorp’s financial information for the year ended December 31, 1998, was “fairly presented in conformity with generally accepted accounting principles.”

43. On or about March 30, 1999, **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS** signed and caused the filing with the SEC of Hamilton Bancorp’s materially false annual report on Form 10-K for the fiscal year ended December 31, 1998.

44. On or about April 21, 1999, **EDUARDO A. MASFERRER** caused Hamilton Bancorp to issue a press release announcing the Company’s “stellar” results for the first quarter of 1999, wherein he falsely stated that: “Hamilton achieved record earnings in the first quarter of 1999, the eighth consecutive record quarter since our IPO.”

45. On or about May 4, 1999, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** signed and submitted a “management representation letter” to Deloitte & Touche, Hamilton Bancorp’s independent auditor, which falsely represented, among other things, that Hamilton Bancorp’s financial information for the first quarter ended March 31, 1999, was “fairly presented in conformity with generally accepted accounting principles.”

46. On or about May 14, 1999, **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS** signed and caused the filing with the SEC of Hamilton Bancorp’s materially false quarterly report on Form 10-Q for the first quarter ended March 31, 1999.

47. On or about May 27, 1999, **EDUARDO A. MASFERRER** caused sales of approximately 12,000 shares of Hamilton Bancorp stock, generating proceeds of approximately \$288,641, from one of the Trust accounts.

48. On or about May 28, 1999, **EDUARDO A. MASFERRER** caused sales of

approximately 20,000 shares of Hamilton Bancorp stock, generating proceeds of approximately \$467,026, from one of the Trust accounts.

49. On or about July 21, 1999, **EDUARDO A. MASFERRER** caused Hamilton Bancorp to issue a press release announcing the Company's "record" results for the second quarter of 1999, wherein he falsely stated that: "Hamilton achieved record earnings in the second quarter of 1999, the ninth consecutive record quarter since our IPO."

50. On or about July 28, 1999, **EDUARDO A. MASFERRER**, **JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** met with representatives of Fidelity Investments in Boston, Massachusetts and falsely represented the financial condition of Hamilton Bancorp to induce Fidelity Investments to purchase Hamilton Bancorp stock.

51. On or about August 13, 1999, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** signed and submitted a "management representation letter" to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the second quarter ended June 30, 1999, were "fairly presented in conformity with generally accepted accounting principles."

52. On or about August 13, 1999, **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS** signed and caused the filing with the SEC of Hamilton Bancorp's materially false quarterly report on Form 10-Q for the second quarter ended June 30, 1999.

53. In or around late August 1999, **JOHN M. R. JACOBS** discussed the sale by Hamilton Bank of its AHMSA trade notes at par value (face or original value).

54. On or about August 26, 1999, **JOHN M. R. JACOBS** prepared an internal memorandum for **EDUARDO A. MASFERRER**, which was copied to **JUAN CARLOS BERNACE**, advising them of certain prices for various securities that a banker from West LB had provided for a ratio swap involving the AHMSA trade notes.

55. In or around September 1999, **JOHN M. R. JACOBS** caused a banker at West LB to send him, via facsimile, documents regarding "candidates for swap" and "swap candidates."

56. On or about September 9, 1999, **JOHN M. R. JACOBS** caused a banker at West LB to send him, via facsimile, documents regarding “ratios” for the swap deal involving Hamilton Bank’s sale of its AHMSA trade notes to West LB in exchange for its purchase from West LB of various Latin American securities.

57. On or about September 10, 1999, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to sell its AHMSA trade notes to West LB purportedly at par value in exchange for Hamilton Bank’s purchase from West LB of six Latin American securities purportedly at par value.

58. On or about September 20, 1999, **JOHN M. R. JACOBS** caused an employee at West LB to send him a confirmation letter regarding the ratio swap deal involving Hamilton Bank’s AHMSA trade notes.

59. On or about September 22, 1999, during the OCC’s annual examination of Hamilton Bank, **JUAN CARLOS BERNACE** falsely told the OCC bank examiners that there was no connection between the September 1998 sale of Hamilton Bank’s Russian loans and its purchase of the Latin American and other non-Russian securities.

60. On or about October 20, 1999, **EDUARDO A. MASFERRER** caused Hamilton Bancorp to issue a press release falsely announcing a net loss of only \$736,000 for the third quarter ended September 30, 1999.

61. On or about November 5, 1999, **JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** signed and submitted a “management representation letter” to Deloitte & Touche, Hamilton Bancorp’s independent auditor, which falsely represented, among other things, that Hamilton Bancorp’s financial information for the third quarter ended September 30, 1999, was “fairly presented in conformity with generally accepted accounting principles.”

62. On or about November 9, 1999, **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS** signed and caused the filing with the SEC of Hamilton Bancorp’s materially false quarterly report on Form 10-Q for the third quarter ended September 30, 1999.

63. On or about November 17, 1999, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS**, as part of the OCC's annual examination of Hamilton Bank, met with the OCC bank examiners to discuss Hamilton Bank's September 1998 sale of its Russian loans and its purchase of various Latin American and other non-Russian securities.

64. In or around November 1999, **JUAN CARLOS BERNACE**, during the OCC's annual examination of Hamilton Bank, falsely told the OCC bank examiners that there was no connection between Hamilton Bank's September 1999 sale of its AHMSA trade notes and its purchase of various Latin American securities.

65. In or around December 1999, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** met with an accountant from Deloitte & Touche, Hamilton Bancorp's independent auditor, to discuss Hamilton Bank's September 1998 sale of its Russian loans and its purchase of various Latin American and other non-Russian securities.

66. On or about December 31, 1999, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE**, and **JOHN M. R. JACOBS** caused Hamilton Bank to pay year-end bonuses to each other based upon its fraudulently reported earnings results for the year 1999, as follows: a \$662,000 bonus to **MASFERRER**; a \$70,000 bonus to **BERNACE**; and a \$42,000 bonus to **JACOBS**.

67. In or around February 2000, **JUAN CARLOS BERNACE** falsely told an accountant from Deloitte & Touche, Hamilton Bancorp's independent auditor, that Hamilton Bank's September 1998 sale of its Russian loans and its purchase of various Latin American and other non-Russian securities were separate and unrelated transactions.

68. On or about October 25, 2000, **JOHN M. R. JACOBS**, as part of an OCC investigation, falsely told an OCC official that Hamilton Bank's September 1998 sale of its Russian loans and its purchase of various Latin American and other non-Russian securities were two separate transactions and not an exchange or a swap transaction.

69. On or about October 26, 2000, **JUAN CARLOS BERNACE**, as part of an OCC investigation, falsely told an OCC official that Hamilton Bank's September 1998 sale of its Russian

loans and its purchase of various Latin American and other non-Russian securities were not conditioned upon each other and were not an exchange or a swap transaction.

70. On or about November 30, 2000, **EDUARDO A. MASFERRER**, as part of an OCC investigation, falsely told an OCC official that, as to Hamilton Bank's September 1998 sale of its Russian loans and its purchase of various Latin American and other non-Russian securities, "I repeat again that at the time of September 1998, the bank was selling Russian loans, the bank was increasing its exposure in Latin America, but that each transaction is independent."

71. On or about April 30, 2002, **JOHN M. R. JACOBS** falsely told an SEC official that Hamilton Bank's September 1998 sale of its Russian loans and its purchase of various Latin American and other non-Russian securities were not contingent on each other and not an exchange or a swap transaction.

72. On or about May 14, 2002, defendant **JUAN CARLOS BERNACE** falsely told an SEC official that Hamilton Bank's September 1999 sale of its AHMSA trade notes and its purchase of various Latin American securities was not a ratio swap.

All in violation of Title 18, United States Code, Section 371.

COUNTS 2-12

(Wire Fraud: 18 U.S.C. §§ 1343 and 2)

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment are realleged and incorporated herein by reference.

2. From in or around September 1998, to in or around May 2002, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

did knowingly and willfully devise and intend to devise a scheme and artifice to defraud and to obtain money and property from others by means of materially false and fraudulent pretenses, representations and promises, affecting a financial institution, knowing that the pretenses,

representations and promises were false and fraudulent when made.

PURPOSE OF THE SCHEME AND ARTIFICE

3. The purpose of the scheme and artifice was to conceal losses from the sale of the Russian loans in 1998 and the AHMSA trade notes in 1999 and, thereby, fraudulently inflate Hamilton Bancorp's reported results of operations and financial condition so that **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE** and **JOHN M. R. JACOBS** (a) would unjustly enrich and benefit themselves through higher salaries, bonuses, stock options and by the capital appreciation of their Hamilton Bancorp shares and (b) would facilitate Hamilton Bank's trust preferred securities offering.

4. Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference as a description of the scheme and artifice.

USE OF THE WIRES

5. On or about the dates specified as to each count below, the defendants, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property from others by means of materially false and fraudulent pretenses, representations and promises, did knowingly transmit and cause to be transmitted, by means of wire communications in interstate and foreign commerce, affecting a financial institution, certain writings, signs, and signals, as more particularly described in each count below:

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
2	Sept. 22, 1998	\$15,133,866.32 wire transfer from Hamilton Bank in Miami, Florida to the New York office of Morgan Grenfell (also known as Deutsche Morgan Grenfell & Company) for the purchase of two non-Russian securities
3	Sept. 24, 1998	\$23,000,000 wire transfer from Hamilton Bank in Miami, Florida to the New York office of Deutsche Morgan Grenfell & Company for the purchase of six Latin American securities

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
4	Sept. 28, 1998	\$1,928,145.83 wire transfer from Hamilton Bank in Miami, Florida to the New York office of Deutsche Morgan Grenfell & Company for the remaining balance in the purchase of six Latin American securities
5	Sept. 28, 1998	\$15,000,000 wire transfer from Hamilton Bank in Miami, Florida to the London, England office of Standard Bank for as a prepayment for the purchase of 11 Latin American securities
6	Sept. 29, 1998	\$25,822.91 wire transfer from Hamilton Bank in Miami, Florida to the New York office of Deutsche Morgan Grenfell & Company for the remaining interest on the purchase of six Latin American securities
7	Oct. 2, 1998	\$40,918,965.66 wire transfer from Hamilton Bank in Miami, Florida to the London, England office of Standard Bank for the remaining balance on the purchase of 11 Latin American securities
8	Sept. 10, 1999	\$12,000,000 wire transfer from Hamilton Bank in Miami, Florida to a bank in New York for the benefit of West LB for the purchase of three Latin American securities
9	Sept. 13, 1999	\$9,500,000 wire transfer from Hamilton Bank in Miami, Florida to a bank in New York for the benefit of West LB for the purchase of two Latin American securities
10	Sept. 13, 1999	\$500,215.42 wire transfer from Hamilton Bank in Miami, Florida to a bank in New York for the benefit of West LB to complete the purchase of the previously mentioned three Latin American securities referred to in Count 8
11	Sept. 17, 1999	\$8,250,000 wire transfer from Hamilton Bank in Miami, Florida to a bank in New York for the benefit of West LB for the purchase of two other Latin American securities

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
12	Sept. 21, 1999	\$661,335.77 wire transfer from Hamilton Bank in Miami, Florida to a bank in New York for the benefit of West LB to complete the purchase of the Latin American securities referred to in Counts 8 through 11

All in violation of Title 18, United States Code, Sections 1343 and 2.

COUNTS 13-17

**(Securities Fraud: 15 U.S.C. §§ 78j(b) and 78ff(a);
17 C.F.R. § 240.10b-5; and
18 U.S.C. § 2)**

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

did knowingly, willfully, and unlawfully, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, directly and indirectly, use and employ manipulative and deceptive devices and contrivances, in connection with the purchase and sale of Hamilton Bancorp securities, and did (a) employ a device, scheme, and artifice to defraud; (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices, and courses of business which would and did operate

as a fraud and deceit upon others, in connection with the purchase and sale of Hamilton Bancorp securities, as more particularly described in each count below:

COUNT	APPROX. DATE OF FILING WITH THE SEC	DESCRIPTION OF FRAUDULENT SEC REPORT
13	Nov. 16, 1998	Hamilton Bancorp's Form 10-Q for the third quarter ended September 30, 1998, containing materially false and misleading information concerning the Company's financial condition, including its net income and retained earnings
14	Mar. 31, 1999	Hamilton Bancorp's Form 10-K for the fiscal year ended December 31, 1998, containing materially false and misleading information concerning the Company's financial condition, including its net income and retained earnings
15	May 17, 1999	Hamilton Bancorp's Form 10-Q for the first quarter ended March 31, 1999, containing materially false and misleading information concerning the Company's financial condition, including its retained earnings
16	Aug. 16, 1999	Hamilton Bancorp's Form 10-Q for the second quarter ended June 30, 1999, containing materially false and misleading information concerning the Company's financial condition, including its retained earnings
17	Nov. 10, 1999	Hamilton Bancorp's Form 10-Q for the third quarter ended September 30, 1999, containing materially false and misleading information concerning the Company's financial condition, including its retained earnings

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS 18-22

**(False Filings with the SEC: 15 U.S.C. §§ 78m(a) and 78ff(a);
17 C.F.R. §§ 240.12b-20, 240.13a-1, 240.13a-13; and
18 U.S.C. § 2)**

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of this Indictment are realleged and incorporated herein by reference.

2. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

did knowingly, willfully, and unlawfully make and caused to be made statements in reports and documents required to be filed with the SEC under the Securities Exchange Act of 1934, Title 15, United States Code, Section 78a *et seq.*, and the rules and regulations promulgated thereunder, which statements were false and misleading with respect to material facts, in that, **EDUARDO A. MASFERRER, JUAN CARLOS BERNACE, and JOHN M. R. JACOBS** caused to be submitted in Miami-Dade County, Florida and Washington, D.C. the filings below to the SEC which included materially false financial statements:

COUNT	APPROX. DATE OF FILING WITH THE SEC	DESCRIPTION OF FALSE FILING WITH THE SEC
18	Nov. 16, 1998	Hamilton Bancorp's Form 10-Q for the third quarter ended September 30, 1998
19	Mar. 31, 1999	Hamilton Bancorp's Form 10-K for the fiscal year ended December 31, 1998
20	May 17, 1999	Hamilton Bancorp's Form 10-Q for the first quarter ended March 31, 1999
21	Aug. 16, 1999	Hamilton Bancorp's Form 10-Q for the second quarter ended June 30, 1999
22	Nov. 10, 1999	Hamilton Bancorp's Form 10-Q for the third quarter ended September 30, 1999

All in violation of Title 15, United States Code, Sections 78m(a) and 78ff(a); Title 17, Code of Federal Regulations, Sections 240.12b-20, 240.13a-1, and 240.13a-13; and Title 18, United States Code, Section 2.

COUNTS 23-27

**(False Statements to Accountants: 15 U.S.C. §§ 78m(b) and 78ff(a);
17 C.F.R. § 240.13b2-2; and 18 U.S.C. § 2)**

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

being directors and officers of Hamilton Bancorp, an issuer with a class of securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, Title 15, United States Code, Section 78l, did knowingly, willfully, and unlawfully, directly and indirectly (a) make and cause to be made materially false and misleading statements; and (b) omit to state, and cause other persons to omit to state material facts necessary in order to make the statements made, in light of the circumstances under which such statements were made, not misleading to an accountant in connection with (i) audits and examinations of the financial statements of Hamilton Bancorp; and (ii) the preparation and filing of documents and reports, required to be filed with the SEC pursuant to rules and regulations enacted by the SEC, as more particularly described in each count below:

COUNT	APPROX. DATE OF LETTER	DESCRIPTION OF MATERIALLY FALSE STATEMENTS TO ACCOUNTANTS
23	Nov. 14, 1998	Management representation letter to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the quarter ended September 30, 1998, was "fairly presented in conformity with generally accepted accounting principles"

COUNT	APPROX. DATE OF LETTER	DESCRIPTION OF MATERIALLY FALSE STATEMENTS TO ACCOUNTANTS
24	Feb. 5, 1999	Management representation letter to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the year ended December 31, 1998, was "fairly presented in conformity with generally accepted accounting principles"
25	May 4, 1999	Management representation letter to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the first quarter ended March 31, 1999, was "fairly presented in conformity with generally accepted accounting principles"
26	Aug. 13, 1999	Management representation letter to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the second quarter ended June 30, 1999, was "fairly presented in conformity with generally accepted accounting principles"
27	Nov. 5, 1999	Management representation letter to Deloitte & Touche, Hamilton Bancorp's independent auditor, which falsely represented, among other things, that Hamilton Bancorp's financial information for the third quarter ended September 30, 1999, was "fairly presented in conformity with generally accepted accounting principles"

All in violation of Title 15, United States Code, Sections 78m(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 17 C.F.R. § 240.13b2-2; and Title 18, United States Code, Section 2.

COUNT 28

(Obstruction of Examination of Financial Institution: 18 U.S.C. §§ 1517 and 2) (Examination concerning the 1998 sales of the Russian loans)

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. In or around November 1999, in Miami-Dade County, in the Southern District of Florida, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

did knowingly, willfully, and corruptly obstruct and attempt to obstruct an examination of a financial institution, Hamilton Bank, by the Office of the Comptroller of the Currency, an agency of the United States with jurisdiction to conduct an examination of such financial institution, in that they provided materially false and misleading statements regarding the true nature of Hamilton Bank's September 1998 transactions involving the sale of its Russian loans to West Merchant Bank and Standard Bank in exchange for the purchase by Hamilton Bank from West Merchant Bank and Standard Bank of various Latin American and non-Russian securities, in that, they falsely and fraudulently stated that the sale and purchase transactions were separate and not related to each other.

In violation of Title 18, United States Code, Sections 1517 and 2.

COUNT 29

**(Obstruction of Examination of Financial Institution: 18 U.S.C. § 1517)
(Examination concerning the 1999 sale of the AHMSA trade notes)**

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. In or around November 1999, in Miami-Dade County, in the Southern District of Florida, the defendant,

JUAN CARLOS BERNACE,

did knowingly, willfully, and corruptly obstruct and attempt to obstruct an examination of a financial institution, Hamilton Bank, by the OCC, an agency of the United States with jurisdiction to conduct an examination of such financial institution, in that he provided materially false and misleading statements regarding the true nature of Hamilton Bank's September 1999 transactions involving the

sale of its AHMSA trade notes to West LB in exchange for the purchase by Hamilton Bank from West LB of various other Latin American securities, in that, he falsely and fraudulently stated that the sale and purchase transactions were separate and not related to each other.

In violation of Title 18, United States Code, Section 1517.

COUNT 30

(Making a Materially False Statement: 18 U.S.C. §§ 1001(a)(2) and 2)

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. In or around November 1999, in Miami-Dade County, in the Southern District of Florida, the defendants,

**EDUARDO A. MASFERRER,
JUAN CARLOS BERNACE,
and
JOHN M. R. JACOBS,**

in a matter within the jurisdiction of the executive branch of the Government of the United States, that is, the OCC of the United States Department of the Treasury, did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, in that the defendants stated to examiners of the OCC, during an annual examination of Hamilton Bank, that Hamilton Bank's September 1998 transactions involving the sale of its Russian loans to West Merchant Bank and Standard Bank in exchange for the purchase by Hamilton Bank from West Merchant Bank and Standard Bank of various Latin American and non-Russian securities were separate transactions and not related to each other, when, in truth and in fact, and as the defendants then and there well knew, the said transactions were related transactions.

In violation of Title 18, United States Code, Sections 1001(a)(2) and 2.

COUNT 31

(Making a Materially False Statement: 18 U.S.C. § 1001(a)(2))

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. In or around November 1999, in Miami-Dade County, in the Southern District of Florida, the defendant,

JUAN CARLOS BERNACE,

in a matter within the jurisdiction of the executive branch of the Government of the United States, that is, the OCC of the United States Department of the Treasury, did knowingly and willfully make a materially false, fictitious, and fraudulent statement and representation, in that the defendant stated to examiners of the OCC, during an annual examination of Hamilton Bank, that Hamilton Bank's September 1999 transactions involving the sale of its AHMSA trade notes to West LB in exchange for the purchase by Hamilton Bank from West LB of various other Latin American securities were separate transactions and not related to each other, when, in truth and in fact, and as the defendant then and there well knew, the said transactions were related transactions.

In violation of Title 18, United States Code, Section 1001(a)(2).

COUNTS 32-42

**(Securities Fraud - Insider Trading: 15 U.S.C. §§ 78j(b) and 78ff(a);
17 C.F.R. § 240.10b-5; and 18 U.S.C. § 2)**

1. Paragraphs 1 through 38 of the General Allegations section of this Indictment and Paragraphs 4 through 28 of Count 1 of this Indictment are realleged and incorporated herein by reference.

2. As an officer and director of Hamilton Bancorp, **EDUARDO A. MASFERRER** owed fiduciary and other duties to Hamilton Bancorp and its shareholders to abstain from trading or causing to trade in Hamilton Bancorp stock while in possession of material non-public information concerning Hamilton Bancorp.

3. In breach of those duties and for his and his family's benefit, **EDUARDO A. MASFERRER** caused the sales of Hamilton Bancorp shares, as specified below, while in possession of material non-public information, that is, that Hamilton Bancorp's reported results of operations and financial condition had been fraudulently inflated.

4. On or about the dates specified as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendant,

EDUARDO A. MASFERRER,

did knowingly, willfully, and unlawfully, by the use of means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, directly and indirectly, use and employ manipulative and deceptive devices and contrivances, in connection with the purchases and sales of Hamilton Bancorp securities, and did (a) employ a device, scheme, and artifice to defraud; (b) make untrue statements of material facts and omit to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engage in acts, practices, and courses of business which would and did operate as a fraud and deceit upon others, in connection with the purchases and sales of Hamilton Bancorp securities, as more particularly described in each count below:

COUNT	APPROX. DATE OF SALE	INSIDER SECURITIES SALES
32	Aug. 9, 1999	Sale of approximately 2,500 shares of Hamilton Bancorp stock at \$26.375, generating proceeds of approximately \$65,436, from one of the Trust accounts
33	Aug. 9, 1999	Sale of approximately 2,500 shares of Hamilton Bancorp stock at \$26.375, generating proceeds of approximately \$65,441, from one of the Trust accounts
34	Aug. 9, 1999	Sale of approximately 10,000 shares of Hamilton Bancorp stock at \$26.4375, generating proceeds of approximately \$262,389, from one of the Trust accounts
35	Aug. 9, 1999	Sale of approximately 5,000 shares of Hamilton Bancorp stock at \$26.25, generating proceeds of approximately \$130,257, from one of the Trust accounts

COUNT	APPROX. DATE OF SALE	INSIDER SECURITIES SALES
36	Aug. 30, 1999	Sale of approximately 1,000 shares of Hamilton Bancorp stock at \$23.75, generating proceeds of approximately \$23,542, from one of the Trust accounts
37	Aug. 30, 1999	Sale of approximately 2,000 shares of Hamilton Bancorp stock at \$25.3125, generating proceeds of approximately \$50,217, from one of the Trust accounts
38	Aug. 30, 1999	Sale of approximately 2,000 shares of Hamilton Bancorp stock at \$24.875, generating proceeds of approximately \$49,343, from one of the Trust accounts
39	Aug. 30, 1999	Sale of approximately 3,500 shares of Hamilton Bancorp stock at \$24.00, generating proceeds of approximately \$83,288, from one of the Trust accounts
40	Aug. 31, 1999	Sale of approximately 1,000 shares of Hamilton Bancorp stock at \$24.0625, generating proceeds of approximately \$23,862, from one of the Trust accounts
41	Aug. 31, 1999	Sale of approximately 3,100 shares of Hamilton Bancorp stock at \$23.8750, generating proceeds of approximately \$73,404, from one of the Trust accounts
42	Aug. 31, 1999	Sale of approximately 5,000 shares of Hamilton Bancorp stock at \$23.750, generating proceeds of approximately \$117,769, from one of the Trust accounts

All in violation of Title 15, United States Code, Sections 78j(b) and 78ff(a); Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

FORFEITURE

1. The allegations contained in Counts 1 through 12 of this Indictment are realleged and hereby fully incorporated by reference for the purpose of alleging forfeiture to the United States of America, pursuant to Title 18, United States Code, Section 982.

2. Upon conviction of any violation of or conspiracy to violate Title 18, United States Code, Section 1343, affecting a financial institution, as charged in Counts 1 through 12, the defendant, **EDUARDO A. MASFERRER**, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 982(a)(2)(A), all property constituting, or derived from, proceeds the person obtained directly or indirectly, as a result of such violation, including but not limited to, the sum of approximately \$3,983,423, a portion of which is held in eight (8) Trust accounts (account numbers FL 12020/51088000687448; FL 12013/51088000687480; FL 12016/51088000687561; FL 12275/51088000689521; FL 12487/51088000690423; FL 12014/51088000801052; FL 12010/51088000801060; and FL 12018/51088000801078) held at UBS.

3. If any of the property described above, as a result of any act or omission by the defendant,

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred, or sold to, or deposited with a third person;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

the defendant shall forfeit to the United States any other property of the defendant, up to the value

of the above forfeitable property, pursuant to Title 21, United States Code, Section 853(p), as incorporated by Title 18, United States Code, Section 982(b).

A TRUE BILL

FOREPERSON

MARCOS DANIEL JIMENEZ
UNITED STATES ATTORNEY

RICHARD HONG
ASSISTANT UNITED STATES ATTORNEY

KURT R. ERSKINE
ASSISTANT UNITED STATES ATTORNEY