UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-20404-CR-MOORE(s)(s)
18 U.S.C. § 371
18 U.S.C. § 1001(a)(2)
18 U.S.C. § 1343
18 U.S.C. § 1344
18 U.S.C. § 1505
18 U.S.C. § 1517
18 U.S.C. § 2
15 U.S.C. § 78j(b)
15 U.S.C. § 78ff(a)
15 U.S.C. § 78m(a)
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

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MAG. SEC.
SEP - 6 2005
CLARENCE MADDOX
CLERK U.S. DIST. CT.
S.D. OF FLA. MIAMI

UNITED STATES OF AMERICA

v.

EDUARDO A. MASFERRER,
JOHN M. R. JACOBS, and
FREDERIC Z. HALLER,
a/k/a "Rick Haller,"

Defendants.
_____/

SECOND SUPERSEDING INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At times material to this Second Superseding Indictment:

Hamilton Bancorp

1. Hamilton Bancorp, Inc. (hereinafter "Hamilton Bancorp" or "the company") was a publicly-held company with its principal place of business in Miami-Dade County, Florida. Hamilton Bancorp also functioned as both a "depository institution holding company," as that term is defined in Section 3(w)(1) of the Federal Deposit Insurance Act, and a "financial institution"

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within the meaning of Title 18, United States Code, Sections 20(6), 1343, 1344, and 3293. Hamilton Bancorp conducted its operations principally through its wholly-owned subsidiary, Hamilton Bank, N.A. (hereinafter "Hamilton Bank" or "the Bank").

2. In March 1997, Hamilton Bancorp conducted an initial public offering ("IPO") of certain securities. These securities consisted of shares of Hamilton Bancorp's common stock which the company was proposing to issue and sell to the public through its IPO. In addition, Hamilton Bancorp sought to allow for the subsequent trading of its stock by its shareholders through government-regulated securities exchanges and stock markets.

3. In order to issue and sell its common stock to the public, and to permit its trading upon exchanges in the stock market, Hamilton Bancorp was required by federal law to "register" its securities with the United States Securities and Exchange Commission ("SEC"). Once registered, Hamilton Bancorp's common stock was listed upon the National Association of Securities Dealers Automated Quotation ("NASDAQ") National Market System under the symbol "HABK." The NASDAQ is an electronic securities market system administered by the National Association of Securities Dealers.

4. As a publicly-held company, Hamilton Bancorp was subject to the regulatory oversight of the SEC. The SEC was an agency of the United States government charged by law with the responsibility of enforcing federal securities laws, protecting investors, and preserving honest and efficient markets in the buying and selling of securities, including the common stock of publicly-traded companies.

5. Within the SEC's regulatory and enforcement responsibilities and powers was the authority to require publicly-held companies, such as Hamilton Bancorp, to periodically disclose meaningful financial and other information to the SEC and, thereby, to the public at large. Disclosures of this nature were required by federal law in order to provide a common pool of knowledge for all investors to use, thus enabling investors to make informed judgments as to whether a publicly-held company's securities amounted to a worthwhile and prudent investment.

6. In fulfilling the aforementioned financial disclosure obligations, federal law required Hamilton Bancorp, as well as all other publicly-held companies, to submit certain reports containing detailed financial data and other pertinent information to the SEC. This information was submitted primarily through two types of report submissions referred to as Forms "10-Q" and "10-K." These same reporting forms, which were submitted to the SEC by all publicly-held companies, were also made available to the public by the SEC through internet access. Moreover, as set forth in subsequent portions of this Second Superseding Indictment, these same public filings, or pertinent portions of the financial data contained therein, were also widely disseminated by Hamilton Bancorp in connection with the company's efforts to encourage the purchase of its stock by investors and thereby to enhance the market value of its stock.

7. On Form 10-Q, Hamilton Bancorp was required to provide financial information and data three times each year, which corresponded to each of the year's first three quarterly periods, those being, the first (January - March), second (April - June), and third (July - September) quarters. On Form 10-K, Hamilton Bancorp was required to provide the fiscal year-end results of its operations and financial condition, as well as other pertinent information and financial data, concerning the twelve-month period represented by the calendar year which had just passed. In addition, quarter-end information and financial data for the fourth financial quarter of the year (pertaining to the months of October - December), which was the only quarter not made the subject of its own separate Form 10-Q requirement, was also incorporated into Form 10-K.

8. Federal law required the information and financial data supplied by Hamilton Bancorp in its 10-Q and 10-K reports to be both fairly reported, truthful, and consistent with the actual underlying facts upon which the reported financial data and information had been based. Federal law also required the accounting treatments used in the preparation and compilation of the financial statements, financial data, and other information contained in Forms 10-Q and 10-K to be in accordance with Generally Accepted Accounting Principles ("GAAP"). This required information and financial data included such matters as Hamilton Bancorp's quarterly and annual

earnings (*i.e.* profit), losses, retained earnings, and its overall financial condition, as reflected in certain incorporated financial statements and balance sheets, which were applicable as of the end of each such annual and/or quarterly reporting period.

9. In addition to its public SEC filings, Hamilton Bancorp also was required by federal law to make and keep books, records, and accounts within the company that accurately and fairly reflected its financial operations and the "transactions and dispositions of its assets," including any such transactions and dispositions which affected the information set forth in its 10-Q and 10-K reports. Moreover, Hamilton Bancorp was further required by federal law to devise and maintain its own system of internal accounting controls which would reasonably assure that these objectives were satisfied, and that the company's financial statements had been prepared in conformity with GAAP.

10. In order to ensure the accuracy, truthfulness, and integrity of their SEC report submissions, federal law also required publicly-held companies, such as Hamilton Bancorp, to undergo an annual audit by an independent auditor to ensure that the company's financial information and data was prepared and reported fairly and truthfully in accordance with GAAP. Deloitte & Touche LLP ("Deloitte & Touche"), a national accounting firm, conducted quarterly reviews, as well as an independent audit, of Hamilton Bancorp's quarterly and year-end financial data and information regarding the company's financial operations and financial condition. The data and information thus reviewed included, among other items, the potential contents of Hamilton Bancorp's Forms10-Q and 10-K reports, which the company provided to Deloitte & Touche for the independent auditor's review prior to the official submission of each such form to the SEC. Moreover, in supplying this information, Hamilton Bancorp, on each such occasion, confirmed and represented to Deloitte & Touche, in an SEC-required document commonly referred to as a "representation letter," that the information supplied by the company was truthful, fairly reported, and in accordance with GAAP.

11. As part of its regulatory and enforcement authority, the SEC was also authorized by federal law, in accordance with Title 15, United States Code, Section 78u, to conduct formal investigative proceedings concerning activities over which the SEC had enforcement powers and regulatory oversight. This investigative authority empowered the SEC to seek formal recorded testimony, under oath, of individuals during the course of such formal investigations.

Hamilton Bank

12. Hamilton Bank (also referred to herein as "the Bank"), a wholly-owned subsidiary of Hamilton Bancorp, was a national bank and an "insured depository institution," as that term is defined in Section 3(c)(2) of the Federal Deposit Insurance Act. Hamilton Bank was also a "financial institution" within the meaning of Title 18, United States Code, Sections 20(1), 1343, 1344, and 3293. Hamilton Bank had 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 agency of the United States, which was established by an Act of Congress to protect depositors by insuring deposits held by its member banks.

13. As a national bank, Hamilton Bank was subject to the regulation and supervision of 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 nation's banking system. Moreover, in furtherance of its regulatory and enforcement powers and responsibilities, the OCC reviewed, approved, and issued charters authorizing the operation of all national banks, including Hamilton Bank.

14. Federal law also required all national banks, including Hamilton Bank, to submit to periodic examinations by the OCC, which examinations were conducted through the OCC's staff of national bank examiners. These examinations included a review of Hamilton Bank's operations, as well as its books, records, and accounts, with respect to, among other matters, the Bank's individual assets (*i.e.* the loans in its loan portfolio and other investments). This review included examinations of the details and circumstances surrounding the purchase, acquisition, sale, or transfer

of such assets, as well as the Bank's characterization and accounting treatment of any transactions involving such assets. These same bank examinations also addressed the adequacy of loan loss reserves available to the Bank as protection against losses arising from the non-performance and/or default of any portion of the Bank's loan portfolio.

15. Each national bank, including Hamilton Bank, was also required by federal law to provide its records and financial data to the OCC and its national bank examiners, as well as oral or written responses to requests for information by national bank examiners, both during these periodic examinations and upon other necessary occasions. This information was required to be provided so as to ensure that Hamilton 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 and regulatory requirements.

16. In furtherance of pertinent financial disclosure obligations, each national bank, including Hamilton Bank, was required, in accordance with Title 12, United States Code, Section 161, to submit to the FDIC and the OCC, upon a quarterly basis, a "Consolidated Report of Condition and Income" (commonly referred to as a "Call Report"). This report submission contained financial information, data, and statements regarding matters similar to those addressed within the Forms10-Q and 10-K filed by publicly-held companies with the SEC. Moreover, each such Call Report was required by federal law to contain a declaration, signed by an officer designated by the Bank's Board of Directors, as well as three Board members, declaring that the report was examined by them and, to the best of their knowledge and belief, was true, correct, and in conformance with regulatory requirements. These same Call Reports were submitted by Hamilton Bank, and all other national banks, through electronic delivery to a contractor retained by the FDIC. Once received, these reports would subsequently be disseminated and made available to the FDIC and the OCC, as well as made available to the public at large.

17. In addition to its bank examination authority, federal law conveyed upon the OCC certain additional regulatory and enforcement powers, including the authority to initiate and conduct

"cease and desist" proceedings, in accordance with Title 12, United States Code, Sections 1818(b), as well as formal investigative proceedings, as specified in Title 12, United States Code, Sections 481, 1818(n), and 1820(c). With respect to each of these proceedings, federal law also empowered the OCC with the legal authority to seek formal recorded testimony, under oath, of individuals.

The Defendants

18. **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. In addition, defendant **MASFERRER** owned more than 800,000 shares of Hamilton Bancorp stock and options to purchase additional shares. He also controlled trust accounts at PaineWebber (currently known as UBS/Paine Webber) which held approximately 300,000 shares of Hamilton Bancorp stock ("the Trust Accounts").

19. **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 and beneficially owned more than 10,000 shares of Hamilton Bancorp stock, and options to purchase additional shares.

20. **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** was an advisor to the Board of Directors of Hamilton Bancorp. He was also a Managing Director of Morgan Grenfell & Company, Ltd. ("Morgan Grenfell"), an investment banking firm with offices in New York and London, England.

Co-Conspirator

21. 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. Bernace beneficially owned more than 150,000 shares of Hamilton Bancorp stock and options to purchase additional shares.

Executive Officers' Bonuses and Compensation

22. The compensation provided to **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace was closely linked to Hamilton Bancorp's corporate

performance and the market price of its common stock.

23. As part of its compensation to executives and employees, Hamilton Bancorp distributed annual "bonuses." Yearly bonus payments to **EDUARDO A. MASFERRER** consisted of up to 5% of Hamilton Bancorp's pre-tax net income, after the deduction of loan loss provisions, for each calendar year period addressed in its SEC Form10-K reports, and up to 6% in a bonus "pool" to be shared among a number of other Executive Officers and employees including, **JOHN M. R. JACOBS** and Juan Carlos Bernace.

24. **EDUARDO A. MASFERRER, JOHN M. R. JACOBS,** and Juan Carlos Bernace 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

25. Hamilton Bancorp, like many publicly traded companies, provided securities analysts and the investing public with predictions in the form of earnings estimates and other "guidance" regarding its anticipated earnings for the upcoming quarterly and annual reporting periods. Securities analysts relied, at least in part, upon such guidance to determine their own published estimates of Hamilton Bancorp's expected performance. These earnings estimates or analyst expectations were routinely followed by the investing public. Thus, if a publicly traded company such as Hamilton Bancorp announced earnings estimates that failed to meet or exceed analysts' expectations, the price of that company's common stock generally declined in market value.

26. Hamilton Bancorp periodically announced its purported financial performance to securities analysts and the investing public through, among other things, press releases and conference calls, which usually occurred in close proximity to the close of each reporting period and/or the dates upon which Hamilton Bancorp would submit its Forms10-Q and/or 10-K for the period in question. Among the financial data Hamilton Bancorp included in these press releases and conference calls were the purported results of Hamilton Bancorp's end-of quarter and/or end-of-year operations and financial condition, including public statements concerning its purported retained earnings, net income, and losses for such periods.

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

27. After becoming a publicly-held and publicly-traded 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 per share as reflected upon the NASDAQ.

28. As part of its rapid growth, Hamilton Bank significantly increased its asset base, including its loan portfolio and other investments. Between about May 1997 and about June 1998, Hamilton Bank acquired approximately $20 million worth of loans, in the form of certain debt instruments (debt securities), which were capable of being sold, prior to their maturity dates, to other banks, should Hamilton Bank have elected to make such a pre-maturity sale. These loans originally had been made to certain Russian banks and, in one instance, to a municipal government of Russia, by a syndication process which was conducted through certain foreign banks. During this time period, Hamilton Bank participated in these loan syndications and acquired the following Russian debt instruments ("the Russian loans") for the "par" values set forth below ("par" meaning the original face value of each such loan acquired by Hamilton Bank):

(a) City of Moscow Loan for its original par or face value of $6,000,000;

(b) Gazprombank Loan for its original par or face value of $5,000,000;

(c) Vneshtorgbank Loan for its orignial par or face value of $1,500,000; and

(d) Mezhcombank Loan for its original par or face value of $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.

29. During the spring and summer of 1998, **EDUARDO A. MASFERRER**, Juan Carlos Bernace, and others decided to raise additional capital for Hamilton Bancorp through another offering of Hamilton Bancorp's securities to the public in order to sustain Hamilton Bancorp's and Hamilton Bank's rapid growth.

Problematic Russian Economy and Decision to Sell Russian Assets

30. By the late spring of 1998, the Russian economy and its financial markets had begun to significantly decline, causing a worldwide alarm. As widely reported by the worldwide financial media, the Russian banking system was perceived by a large number of Russian investment specialists and economists specializing in Russia to be in imminent danger of collapsing. Consequently, Russian debt instruments, including loans made to Russian banks and other Russian public and private entities, were, at this time, being sold and trading within secondary markets for amounts substantially below their face or original values (below their respective "par" values). The valuation and trading of debt instruments in applicable markets at amounts below their original face or par values was commonly referred to in the worldwide financial community by the phrase "trading at a discount."

31. Due to the worsening state of the Russian economy, the OCC and its national bank examiners directed Hamilton Bank to increase its loan loss reserves in an amount equal to 25% of most of the Bank's outstanding Russian loan portfolio, and to make allowances for such increased reserves when computing the Bank's reported financial data for the third financial quarter (September 30, 1998.). Depending upon the adequacy of the Bank's loan loss reserves, this additional reserve requirement, as determined by OCC bank examiners, would have resulted in a

reduction in the Bank's reported pre-tax net income for the forthcoming quarter.

32. Commencing in the late summer of 1998, in large part due to the worsening economic situation in Russia, executive officers of Hamilton Bancorp, including **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS**, as well as Juan Carlos Bernace, and members of the Board of Directors of Hamilton Bancorp, discussed their concerns about the potential worsening negative impact of having the Russian loans (debt instruments) on Hamilton bank's books. Shortly thereafter, **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS** , as well as Juan Carlos Bernace, determined that they would seek the immediate sale of most of Hamilton Bank's Russian loans upon a secondary market basis, and prior to each such debt instrument's normally scheduled maturity date.

Accounting Requirements: Financial Accounting Standards Board Statement 125

33. GAAP required that any asset, such as a loan, debt instrument, or security, which was subsequently sold by its owner after its original acquisition (*i.e.* upon a secondary basis), must be valued and recorded by the seller at the asset's "fair" value at time of sale, and in consideration of market conditions prevailing at the time. Thus, the selling party was required to account for the market value (market price) of the asset then in effect at the time of its sale. This accounting requirement is contained in Financial Accounting Standards Board ("FASB") Statement No. 125 ("FASB 125") - "Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities" - June 1996.

34. GAAP also required that FASB 125 "fair value" accounting treatment apply in the case of any asset exchange or "swap." In an asset "swap" or exchange, the seller of an asset (or set of assets) actually conducts a broader multi-part transaction with the other "counter" party in which the seller must also obligate itself to concurrently purchase, as an agreed pre-condition of the sale, a different asset (or set of assets) from the counter party in exchange. In such cases, due to the relatedness of the transactions which make up each part of this overall *quid pro quo* arrangement, *both* the asset(s) being sold *and* the asset(s) being purchased must be valued in such a way as to

account for their respective "fair" values (market prices) at the time in which they were exchanged or swapped.

Adjusted Price Trading/Swapping

35. "Adjusted price trading" or "adjusted price swapping," which also was known as "ratio swapping," was a type of asset exchange or swap. In an adjusted price swap, the initial seller (referred to in this description as "Party A") would sell an asset or a set of assets (*i.e.* loans, debt instruments or securities) at a purposefully inflated value to the purchasing counter party ("Party B" in this example). This would result in an overpayment ("overtrade") by Party B to which Party A would not have been entitled in a conventional "arms length" sale transaction. However, as a pre-condition or *quid pro quo* arrangement between the parties in an adjusted price swap, Party B would, in a related transaction, concurrently sell another asset (or another set of assets) at a purposefully inflated value back to Party A, resulting in an overpayment by Party A, as well. In this manner, the overpayment(s) by Party A would serve to offset the overpayment(s) made by Party B.

36. The purpose of the adjusted price swap, from Party A's perspective, was to sell, and successfully remove from its books and records, particular problematic assets of depressed or declining value (*i.e.* assets heavily discounted from "par" value and/or in potential danger of default), for an amount appearing in Party A's asset sales records to be equivalent to the price which Party A had originally paid to acquire the asset (*i.e.* par or face value). This would convey the false impression that Party A's problematic asset(s) had been removed successfully, and that Party A had realized no loss as a consequence of the sale of the asset(s). In reality, realized losses (consisting of Party A's required overpayments to party B) had, in fact, been experienced by Party A as a direct consequence of this sale. However, in an adjusted price swap, these losses would be concealed by Party A's failure to disclose, in pertinent sales records, that it had actually conducted the sale of its problematic asset(s) as part of an overall asset "swap," and that the "swap" had included a related loss-generating transaction in which Party A purchased asset(s) from Party B at intentionally inflated prices in order to make the sale of its problematic asset possible.

37. The OCC considered adjusted price trading/swapping as an unacceptable and unsuitable banking practice.

38. Hamilton Bank acknowledged in its January 20, 1998 revised internal Lending and Investment Manual that adjusted price trading with respect to monetary instruments was considered "unsuitable." Accordingly, Hamilton Bank announced, in this same manual provision, 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

39. In or around September1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace, with the assistance of **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** caused Hamilton Bank to sell the City of Moscow loan, purportedly at its par or original face value, for $6,000,000, to West Merchant Bank, despite the negative state of Russian markets and the Russian economy. However, this sale was related to, conditioned upon, and conducted in exchange for, Hamilton Bank's purchase from West Merchant Bank, through another entity, Morgan Grenfell, of: (a) Hong Kong and Shanghai Banking Corporation and (b) Standard Chartered Bank notes (subordinated debt instruments), each of which Hamilton Bank purportedly purchased from West Merchant Bank at their respective par or face values, for amounts totaling $15,000,000. According to market data available at the time, these same non-Russian debt instruments were trading at a discount below their par values.

40. In or around September 1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace, with the assistance of **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** caused Hamilton Bank to sell back the Gazprombank loan, purportedly at its par or original face value, for $5,000,000, to West Merchant Bank, despite the negative state of Russian markets and the Russian economy. However, this sale was related to, conditioned upon, and conducted in exchange for, Hamilton Bank's purchase from West Merchant Bank, through Morgan Grenfell, of

four Latin American debt instruments which purportedly were purchased at their respective par or face values, for an amount totaling $19,049,000. According to market data available at the time, these same Latin American debt instruments were trading at a discount below their par values.

41. In or around September 1998, **EDUARDO A. MASFERRER , JOHN M. R. JACOBS**, and Juan Carlos Bernace, with the assistance of **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** caused Hamilton Bank to sell back the Vneshtorgbank loan, purportedly at its par or original face value, for $1,500,000, to West Merchant Bank, despite the negative state of Russian markets and the Russian economy. However, this sale was related to, conditioned upon, and conducted in exchange for, Hamilton Bank's purchase from West Merchant Bank, through Morgan Grenfell, of two Latin American debt instruments, purportedly purchased at their respective par or face values, for an amount totaling $5,500,000. According to market data available at the time, these same Latin American debt instruments were trading at a discount below their par values.

42. In or around September 1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace, caused Hamilton Bank to sell back the Mezhcombank loan, purportedly at its par or face value, for $7,500,000, to Standard Bank, despite the negative state of Russian markets and the Russian economy. However, this sale was related to, conditioned upon, and conducted in exchange for, Hamilton Bank's purchase from Standard Bank, of eleven Latin American debt instruments, including trade notes of a Mexican iron company, Altos Hornos de Mexico, S.A. De C.V. ("AHMSA"), purportedly purchased at their respective par or face values, for an amount totaling $54,410,000. According to market data available at the time, these same Latin American debt instruments were trading at a discount below their par values. Moreover, at the time of this sale, Mezhcombank was in severe financial distress.

43. In or around September 1999, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace, caused Hamilton Bank to sell the AHMSA trade notes, purportedly at their par or face values, for $5,000,000, back to West LB (formerly known as West Merchant Bank). However, this sale was related to, conditioned upon, and conducted in exchange

for, Hamilton Bank's purchase from West LB of six Latin American debt instruments, purportedly at their respective par or face values, for an amount totaling $30,250,000. According to market data available at the time, these same Latin American debt instruments were trading at a discount below their par values. Moreover, at the time of the transaction, AHMSA was also in severe financial distress.

OCC's Examination and Investigation

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

45. The OCC examiners observed that, in the fall of 1998, as recorded in Hamilton Bank's books and records, Hamilton Bank purportedly had sold its Russian loans at par (face or original value), and purportedly paid par for Latin American and non-Russian debt instruments (which were purchased from the same banks that had bought the Russian loans), despite the fact that such debt instruments were believed by the examiners to be trading at a discount at this time. Similarly, OCC bank examiners noticed that, in September 1999, Hamilton Bank had, as recorded in its books and records, also sold its AHMSA trade notes, purportedly at par (face or original value) and purportedly paid par for other Latin American securities in secondary market transactions, again, despite applicable discount in the market.

46. In or around September 1999, through December, 2000, the OCC reviewed whether these asset purchases and sales were properly recorded at "fair" value, as required by FASB 125, in Hamilton Bank's books and records, and questioned whether Hamilton Bank's September 1998 transactions involving the sale of its Russian loans were tied or related to the Bank's purchases of various Latin American and non-Russian securities from West Merchant Bank, through Morgan Grenfell, as well as Standard Bank. This inquiry was conducted by the OCC to determine whether Hamilton Bank's asset sales and purchases with West Merchant Bank, and with Standard Bank,

amounted to related transactions, such as exchanges or swaps, which would require "fair" valuation treatment for both the assets sold, *as well as* the assets purchased.

47. In or around September 1999, the OCC examiners also questioned whether Hamilton Bank's September 1999 transactions involving the sale of its AHMSA trade notes to West LB were tied or related to the purchase by Hamilton Bank from West LB of various other Latin American securities, such that they amounted to related exchange or swap transactions which would, likewise, require "fair" valuation treatment for both the assets sold and the assets purchased.

Hamilton Bancorp's Restatement of Earnings Results

48. In December 2000, Hamilton Bancorp publicly acknowledged, in various amended reports (commonly referred to as "restatements"), which were then filed in order to correct previously filed Forms 10-Q and 10-K, that Hamilton Bank's 1998 Russian loan sales and the 1999 AHMSA trade notes sales were, in fact, related transactions, amounting to "exchange transaction(s) in accordance with FAS No. 125." Hamilton Bancorp further acknowledged in these restatements that it had incorrectly classified "the purchases of the securities and the sales of the loans as separate unrelated transactions . . . with no gain or loss being recognized." Accordingly, Hamilton Bancorp restated its earnings results for the periods in question, in order to properly take into account the Bank's overpayments for the non-Russian assets which it had purchased as a conditional part of these swaps, as well as the resulting realized losses (amounting to these overpayments), which losses arose from the sales of its Russian loans and its AHMSA notes. In so doing, Hamilton Bancorp filed with the SEC amended quarterly Form 10-Q reports for the periods ended March 31, 1999, June 30, 1999, and September 30, 1999. Hamilton Bancorp also filed with the SEC an amended annual Form 10-K report for the year ended December 31,1998.

49. The restatement of its earnings results for the year 1998 showed that Hamilton Bancorp, when taking into account the transactions giving rise to the sale of the Russian debt instruments as exchanges or swaps, realized a multi-million dollar pre-tax loss resulting from its sale of the Russian loans in September 1998.

50. Based upon Hamilton Bank's restated earnings results, and utilizing the Bank's pre-tax annual net income bonus calculation formula, **EDUARDO A. MASFERRER's** "bonus" for the year ending December 31, 1998 would have been significantly less than the $1,103,591 amount which actually had been paid to **MASFFERRER**. In similar fashion, **JOHN M.R. JACOB's** "bonus," as well as Juan Carlos Bernace's "bonus" were, in view of the restated earnings figures, derived from a bonus pool which was based upon inflated earnings figures.

Formal Investigative Proceedings by OCC and SEC

51. On or about June 29, 2000, the OCC commenced a formal investigative proceeding with regard to the affairs and transactions of Hamilton Bank, its directors, officers, employees, agents, and other affiliated parties concerning the sale of the Bank's Russian loans in 1998 and the sale of its AHMSA trade notes in 1999. The agency order initiating the investigation provided that the representatives of the Comptroller of the Currency conducting the investigation would have the authority to take testimony of witnesses under oath.

52. On or about July 12, 2001, in accordance with an agency order issued that same day, the SEC commenced a formal investigation proceeding with regard to the activities of Hamilton Bancorp which also concerned the sale of the Bank's Russian loans in 1998 and the sale of its AHMSA trade notes in 1999. This same administrative order provided that representatives of the SEC conducting the investigation would have the authority to take testimony of witnesses under oath.

53. On or about January 11, 2002, Hamilton Bank closed and ceased operating.

COUNT 1

Conspiracy
(18 U.S.C. § 371)

1. Paragraphs 1 through 53 of the General Allegations section of this Second Superseding 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
JOHN M. R. JACOBS,
and
FREDERIC Z. HALLER,
a/k/a "Rick Haller,"

did willfully, that is, with the specific intent to further the unlawful purpose, and knowingly, combine, conspire, confederate and agree with each other, and with Juan Carlos Bernace, to defraud the United States by impeding, obstructing, impairing and defeating the lawful functions of the OCC, in its oversight and regulation of Hamilton Bank, and by impeding, obstructing, impairing and defeating the SEC, in its oversight and regulation of Hamilton Bancorp, and to commit certain offenses against the United States, namely:

a. to knowingly, and with intent to defraud, 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 and artifice, which affected a financial institution, that is, Hamilton Bank and Hamilton Bancorp, in violation of Title 18, United States Code, Section 1343;

b. to knowingly, and with intent to defraud, execute a scheme and artifice employing material falsehoods to defraud financial institutions, that is, Hamilton Bank and Hamilton Bancorp, and to obtain any of the money, funds, assets, and property, owned by, and under the custody and control of said financial institutions, by means of materially false and fraudulent

pretenses, representations, and promises, in violation of Title 18, United States Code, Section 1344;

c. 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 in contravention of certain rules and regulations prescribed by the SEC by means of: (a) employing a device, scheme and artifice to defraud; (b) making untrue statements of material facts and omitting 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) engaging 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;

d. to knowingly, willfully, and unlawfully make and cause to be made statements in reports and documents required to be filed with the Securities and Exchange Commission 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;

e. to knowingly, willfully, and unlawfully, directly and indirectly (a) make and cause to be made materially false and misleading statements to accountants; 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), and Title 17, Code of Federal Regulations, Section 240.13b2-2;

f. to knowingly and willfully make false entries in the books, reports and statements of a financial institution, that is, Hamilton Bank, with the intent to deceive the Office of the Comptroller of the Currency and its national bank examiners, in violation of Title 18, United States Code, Section 1005;

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

h. to knowingly and willfully make materially false, fictitious, and fraudulent statements and representations in matters within the jurisdiction of the Office of the Comptroller of the Currency and its national bank examiners and the Securities and Exchange Commission, agencies of the executive branch of the government of the United States, in violation of Title 18, United States Code, Section 1001(a)(2);

i. to knowingly and willfully falsify, conceal, and cover up, by trick, scheme, and device, material facts, concerning which there was an affirmative duty to disclose, which material facts concerned matters within the jurisdiction of the Office of the Comptroller of the Currency and the Securities and Exchange Commission, agencies of the executive branch of the government of the United States, in violation of Title 18, United States Code, Section 1001(a)(1); and

j. to knowingly and corruptly influence, obstruct, and impede, and endeavor to influence, obstruct, and impede, the due and proper administration of the law under which pending proceedings were being had before the Office of the Comptroller of the Currency and the United States Securities and Exchange Commission, agencies of the United States, in violation of Title 18, United States Code, Section 1505.

PURPOSE OF THE CONSPIRACY

3. The purpose of the conspiracy was: (1) to sell and remove certain of Hamilton Bank's problematic Russian loans from the Bank's books, records, and recorded assets, through a process which would serve to conceal any financial losses which would, and did, come about as a consequence of the sale of these same Russian loans in or around September, 1998, and to engage in a similar process with regard to the AHMSA trade notes in 1999, and thereby; (2) fraudulently inflate Hamilton Bank's and Hamilton Bancorp's reported income, results of operations, and financial condition, as recorded in Hamilton Bank's and Hamilton Bancorp's own books and records, and eventually set forth in publicly filed reports to the FDIC, OCC and the SEC, as well as communications with the investing public; and (3) to conceal such activities from detection by the OCC, the SEC, and the public. These purposes would also enable **EDUARDO A. MASFERRER** to: (a) unjustly enrich and benefit himself through higher bonuses, which bonuses would be calculated upon the basis of this same fraudulently recorded and reported data, and (b) fraudulently influence investors to purchase Hamilton Bancorp's stock, thereby maintaining and enhancing the market value and capital appreciation of Hamilton Bancorp stock, in general, and **EDUARDO A. MASFERRER's, JOHN M. R. JACOB's,** and Juan Carlos Bernace's Hamilton Bancorp shares in particular.

MANNER AND MEANS OF THE CONSPIRACY

The manner and means by which **EDUARDO A. MASFERRER, JOHN M. R. JACOBS, FREDERIC Z. HALLER, a/k/a "Rick Haller,"** and Juan Carlos Bernace (hereinafter collectively referred to as the "co-conspirators") sought to accomplish the objects and purpose of the conspiracy included, among others, the following:

4. Several of the co-conspirators would familiarize themselves with the various accounting requirements governing asset sales and asset purchases, as well as the accounting requirements which would be applicable in the event that certain asset sales and asset purchases were ever determined to be related to one another for accounting purposes (*i.e.* as in the case of asset

swap transactions).

5. Several of the co-conspirators would contact several of the foreign banks (counter parties) that sold Hamilton Bank the Russian loans to attempt to re-sell those loans back to these banks.

6. Several of the co-conspirators would sell the Russian loans to foreign banks purportedly at the prices for which Hamilton Bank had originally purchased the loans (*i.e.* at "par" value), even though the loans were then known by the co-conspirators to be trading at substantial discounts (that is, the fair value of these loans at the time of their sale was substantially less than the loans' original "par" values), in order for Hamilton Bank to avoid showing any realized losses arising as a consequence of the sale of these Russian loans.

7. Several of the co-conspirators would, in transactions related to the sale of the Bank's Russian loans, agree to purchase, and did purchase, Latin American and other non-Russian debt instruments, as a pre-condition to the Russian loan sales, from the same foreign banks which had purchased Hamilton Bank's Russian loans.

8. Several of the co-conspirators, in conducting these same purchases of Latin American and other non-Russian debt instruments, would further engage in adjusted price swapping by paying prices known by them to be higher than the"market" values of such securities, in order to offset the overpayments made by the foreign banks for the purchases of Hamilton Bank's Russian loans.

9. Several of the co-conspirators, in conducting these swap transactions, would discuss the Latin American and other non-Russian securities' respective discount rates (*i.e.* extent to which these securities were trading in markets at amounts below par) so that they could structure the sale of the Russian loans to appear as though they had been sold at par.

10. The co-conspirators would cause Hamilton Bank to overpay multi-million dollar amounts to West Merchant Bank and Standard Bank for Latin American and other non-Russian debt instruments in order to enable the Bank to claim that the Russian loans had been sold for par value, thus concealing the multi-million dollar losses realized with regard to the Bank's sales of the

Russian loans.

11. The co-conspirators would conceal the true nature of these asset swaps or exchanges by concealing the relationship and relatedness concerning the Bank's sales of its Russian loans to the Bank's concurrent purchase of assets from the same foreign banks to which the Bank had sold its Russian loans, and by falsely claiming that such transactions were not related to one another.

12. The co-conspirators would conceal losses arising from the sale of the Russian loans by fraudulently causing Hamilton Bank to record inflated sales prices on its books and records concerning the purported amount which the Bank had received for the sale of these loans. These sales prices would be fraudulent on account of the co-conspirator's causing the Bank not to take into account the required overpayments which the Bank would make in connection with its related asset purchases from the same foreign banks which had purchased the Bank's Russian Loans.

13. Several of the co-conspirators would cause entries to be made in Hamilton Bank's books and records which would reflect that the Bank had succeeded in selling these problematic assets before the end of the third quarter of 1998, at which time, the Bank would otherwise have been required to take into account additional loan loss reserves regarding these same loans. These same entries would fraudulently reflect that the Bank had sold these loans for the same amounts which the Bank had originally paid for the loans, thus resulting in no loss to the Bank as a result of their subsequent sale.

14. The co-conspirators would cause Hamilton Bank and Hamilton Bancorp to report fraudulently inflated earnings for the third quarter ended September 30, 1998, in the company's Form 10-Q report for that quarter and the Bank's call report for the same quarter, as well as the fourth quarter call report and the company's year-ending December 31, 1998 Form 10-K report, by omitting to record, concealing, and not taking into account losses realized as a consequence of the sale of the Russian loans.

15. Several of the co-conspirators would conceal from Deloitte & Touche, Hamilton Bank's and Hamilton Bancorp's independent auditor, the losses realized as a consequence of the

sales of the Russian loans and, in so doing, conceal the relatedness of the sales of the Bank's Russian loans to the Bank's concurrent asset purchase transactions with the same foreign banks which had purchased Hamilton Bank's Russian loans.

16. Several of the co-conspirators would promote the purchase of Hamilton Bancorp's shares by investors through the stock market, by providing fraudulently inflated earnings results and other fraudulent financial information to investors, securities analysts, and media outlets, which did not take into account losses realized from the sale of the Bank's Russian loans.

17. Several of the co-conspirators would engage in a swap transaction with West LB in 1999, whereby they would sell Hamilton Bank's AHMSA notes at prices higher than their market values and, in a related transaction, as part of an overall adjusted price swap of assets, would buy Latin American securities from West LB at prices known to be higher than the fair values of those securities.

18. Several of the co-conspirators, in conducting these adjusted price swap transactions, would discuss the discount amounts of the AHMSA notes and Latin American securities (*i.e.* the extent to which they were trading in markets at amounts below par) so that they could structure the sale of the AHMSA notes to appear as though they had been sold at par.

19. The co-conspirators would cause Hamilton Bank to overpay multi-million dollar amounts to West LB for the Latin American securities in order to cover-up multi-million dollar losses realized with regard to the Bank's sale of its AHMSA notes.

20. Several of the co-conspirators would conceal losses realized as a consequence of Hamilton Bank's sale of the AHMSA trade notes in 1999 by fraudulently causing Hamilton Bank to record inflated sales prices on its books and records, which did not take into account the overpayments made by Hamilton Bank as a precondition in connection with the Bank's related asset purchase transactions from the same foreign bank (West LB) which had purchased Hamilton Bank's AHMSA trade notes.

21. Several of the co-conspirators would cause Hamilton Bank and Hamilton Bancorp to report fraudulently inflated earnings for the third quarter ended September 30, 1999 in the company's Form 10-Q and the Bank's Call Report for that quarter, by omitting to record, concealing, and not taking into account losses realized as a consequence of the sale of the AHMSA notes.

22. Several of the co-conspirators would cause Hamilton Bank to pay each of them excessive year-end bonuses that were based upon fraudulently inflated earnings results for the year 1998, which earnings results were inflated due to Hamilton Bancorp's failure to disclose losses realized as a consequence of the sale of Hamilton Bank's Russian loans.

23. Several of the co-conspirators would cause false press releases and information to be provided to securities analysts and the public at large with respect to Hamilton Bancorp's earnings.

24. Several of the co-conspirators would make false representations and statements to OCC national bank examiners and other OCC representatives, as well as representatives of the SEC, and cause others to make such false representations, during the course of OCC bank examinations and during official proceedings conducted by both the OCC and the SEC, designed to obstruct said proceedings, in which it would be claimed falsely that the sale of one of Hamilton Bank's Russian loans in 1998 to Standard Bank was not a transaction related to the Bank's purchase of Latin American and non-Russian securities from Standard Bank.

25. Several of the co-conspirators would make false representations and statements to OCC national bank examiners and other OCC representatives, as well as representatives of the SEC, and cause others to make such false representations, during the course of OCC bank examinations and during official proceedings conducted by the OCC and the SEC, designed to obstruct said proceedings, in which it would be claimed falsely that the transactions concerning the sales of certain of Hamilton Bank's Russian loans in 1998 to West Merchant Bank (through Morgan Grenfell) were not transactions related to the Bank's purchase of Latin American and non-Russian

securities from West Merchant Bank (through Morgan Grenfell).

26. Several of the co-conspirators would make false representations and statements to OCC national bank examiners and other OCC representatives, as well as representatives of the SEC, and cause others to make such false representations, during the course of OCC bank examinations and during official proceedings conducted by the OCC and the SEC, designed to obstruct said proceedings, in which it would be claimed falsely that the transaction concerning the sale of Hamilton Bank's AHMSA notes in 1999 to West LB (formerly West Merchant Bank) was not a transaction related to the Bank's purchase of Latin American and non-Russian securities from West LB.

OVERT ACTS

In furtherance of the conspiracy and to achieve the objects and purposes 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. Counts Two through Twenty of this Second Superseding Indictment are each realleged herein as individual Overt Acts and are incorporated herein as if set forth in full.

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, JOHN M. R. JACOBS**, and Juan Carlos Bernace discussed a swap involving the sale of Hamilton Bank's Russians 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 swap with West Merchant Bank.

5. In or around September 1998, **EDUARDO A. MASFERRER** and **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** discussed using Morgan Grenfell as an intermediary to a swap deal

between Hamilton Bank and West Merchant Bank.

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

7. 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 swap deal with Standard Bank.

8. In or around September 1998, Juan Carlos Bernace discussed various Latin American securities that Hamilton Bank could purchase in a swap deal with Standard Bank.

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

10. 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.

11. 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."

12. 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 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..."

13. On or about September 16, 1998, **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** in a recorded conversation, discussed **EDUARDO A. MASFERRER**'s desire for Morgan Grenfell to be an intermediary in a swap deal between Hamilton Bank and West Merchant Bank, referring to these transactions as "a swap against some of the shitty loans," and that "he [**EDUARDO A. MASFERRER**] doesn't want to be seen doing it."

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

15. On or about September 17, 1998, **FREDERIC Z. HALLER, a/k/a "Rick Haller,"** in a recorded conversation, stated that Hamilton Bank was "doing a swap but they're trying to separate out the two transactions. They don't want the two transactions to appear to be [a] swap on their books."

16. On or about September 17, 1998, **JOHN M. R. JACOBS**, in a recorded conversation, discussed Hamilton Bank's interest in concealing its swap deal with West Merchant Bank and "how we set up the paper trail."

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

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

19. On or about September 23, 1998, **EDUARDO A. MASFERRER**, **JOHN M. R. JACOBS**, and Juan Carlos Bernace 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.

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

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

22. On or about September 24, 1998, **JOHN M. R. JACOBS** and Juan Carlos Bernace, in a recorded conversation, discussed engaging in another swap deal involving certain Latin American securities.

23. 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.

24. 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.

25. 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.

26. On or about September 28, 1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace 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.

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

28. On or about September 30, 1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace 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.

29. On or about September 30, 1998, **EDUARDO A. MASFERRER**, **JOHN M. R. JACOBS**, and Juan Carlos Bernace 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.

30. 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.

31. On or about September 30, 1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS,** and Juan Carlos Bernace 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.

32. 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...."

33. 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.

34. 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.

35. On or about November 14, 1998, **JOHN M. R. JACOBS** and Juan Carlos Bernace 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."

36. 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.

37. 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.

38. On or about December 22, 1998, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace 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.

39. On or about December 28, 1998, **JOHN M. R. JACOBS** and Juan Carlos Bernace 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, JOHN M. R. JACOBS**, and Juan Carlos Bernace 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 an $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, **JOHN M. R. JACOBS** and Juan Carlos Bernace 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, **JOHN M. R. JACOBS** and Juan Carlos Bernace 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 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."

48. On or about July 27, 1999, **EDUARDO A. MASFERRER**, **JOHN M. R. JACOBS** and Juan Carlos Bernace met with representatives of Fidelity Management and Research Co., Inc.

in Boston, Massachusetts and falsely represented the financial condition of Hamilton Bancorp to induce Fidelity Investments to purchase Hamilton Bancorp stock.

49. On or about August 13, 1999, **JOHN M. R. JACOBS** and Juan Carlos Bernace 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."

50. 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.

51. 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).

52. 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 swap involving the AHMSA trade notes.

53. 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."

54. 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.

55. On or about September 10, 1999, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS** and Juan Carlos Bernace 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.

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

57. 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.

58. 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.

59. On or about November 5, 1999, **JOHN M. R. JACOBS** and Juan Carlos Bernace 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."

60. 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.

61. On or about November 17, 1999, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS**, and Juan Carlos Bernace, 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.

62. 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.

63. In or around December 1999, **EDUARDO A. MASFERRER, JOHN M. R. JACOBS** and Juan Carlos Bernace 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.

64. 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.

65. 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.

66. 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.

67. 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 were independent of one another.

68. 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 swap transaction.

69. On or about May 14, 2002, 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 swap.

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

COUNTS 2-4

Wire Fraud
(Investor/Shareholder Communications)
18 U.S.C. §§ 1343 and 2

1. Paragraphs 1 through 53 of the General Allegations section of this Second Superseding 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 and
JOHN M. R. JACOBS,

together with Juan Carlos Bernace, did knowingly, and with intent to defraud, 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 the pretenses, representations and promises were false and fraudulent when made.

THE SCHEME AND ARTIFICE

3. Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference as a description of the scheme and artifice, as well as a description of the materially false and fraudulent pretenses, representations and promises, and omissions of material fact, by means of which the scheme and artifice was conducted.

PURPOSE OF THE SCHEME AND ARTIFICE

4. The purpose of the scheme and artifice was to: (1) to sell and remove certain problematic Russian loans from the records, books, and recorded assets of Hamilton Bancorp's wholly-owned subsidiary, Hamilton Bank, through a process which would serve to conceal any financial losses which would, and did, come about as a consequence of the sale of these same Russian loans in or around September, 1998, and to engage in a similar process with regard to the AHMSA trade notes in 1999, and thereby; (2) fraudulently inflate Hamilton Bank's and Hamilton Bancorp's reported income, results of operations, and financial condition, as recorded in Hamilton Bank's and Hamilton Bancorp's own books and records, and eventually set forth in publicly filed

reports to the FDIC, OCC and the SEC, as well as communications with the investing public; and (3) to conceal such activities from detection by the OCC, the SEC and the public. This reported fraudulent financial data would enable **EDUARDO A. MASFERRER, JOHN M. R. JACOBS,** and Juan Carlos Bernace to defraud and fraudulently influence potential investors and existing Hamilton Bancorp shareholders to purchase Hamilton Bancorp's common stock and other securities, by direct communication with said investors and shareholders, and through others, thereby maintaining and enhancing the market value and capital appreciation of Hamilton Bancorp stock, in general, and their own Hamilton Bancorp shares, in particular.

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, certain writings, signs, and signals, as more particularly described in each Count below. Moreover, the aforesaid scheme and artifice, as well as each use of wires for the purpose of executing said scheme and artifice, as set forth in each Count below, did affect Hamilton Bank and Hamilton Bancorp, each of which were a "financial institution," as that term is defined in Title 18, United States Code, Sections 20, 1343 and 3293.

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
2	October 21, 1998	The transmission of an October 21, 1998 Hamilton Bancorp press release by facsimile from Hamilton Bank in Miami, Florida to PR Newswire, the contents of which were subsequently disseminated by PR Newswire, by means of wire communications in interstate commerce, to recipients outside the State of Florida.

COUNT	APPROX. DATE	DESCRIPTION OF WIRE COMMUNICATION
3	January 20, 1999	The transmission of a January 20, 1999 Hamilton Bancorp press release by facsimile from Hamilton Bank in Miami, Florida to PR Newswire, the contents of which were subsequently disseminated by PR Newswire, by means of wire communications in interstate commerce, to recipients outside the State of Florida.
4	October 20, 1999	The transmission of an October 20, 1999 Hamilton Bancorp press release by facsimile from Hamilton Bank in Miami, Florida to PR Newswire, the contents of which were subsequently disseminated by PR Newswire, by means of wire communications in interstate commerce, to recipients outside the State of Florida.

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

COUNTS 5-10

Scheme to Defraud Financial Institutions - Hamilton Bank and Hamilton Bancorp (Financial Reporting to the OCC and SEC) 18 U.S.C. §§ 1344 and 2

1. Paragraphs 1 through 53 of the General Allegations section of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. On or about the dates specified in paragraph 5 below, and as to each Count enumerated therein, in Miami-Dade County, in the Southern District of Florida, the defendants,

EDUARDO A. MASFERRER
and
JOHN M. R. JACOBS,

together with Juan Carlos Bernace, did knowingly, and with intent to defraud, execute, and attempt to execute, and cause the execution of, a scheme and artifice to defraud financial institutions, that is, Hamilton Bank and Hamilton Bancorp, which scheme and artifice employed material falsehood.

THE SCHEME AND ARTIFICE

3. Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference as a description of the scheme and artifice, as well as a description of the material falsehoods through which the scheme and artifice was conducted.

PURPOSE OF THE SCHEME AND ARTIFICE

4. The purpose of the scheme and artifice was to: (1) to sell and remove certain problematic Russian loans from the records, books, and recorded assets of Hamilton Bancorp's wholly-owned subsidiary, Hamilton Bank, through a process which would serve to conceal any financial losses which would, and did, come about as a consequence of the sale of these same Russian loans in or around September, 1998, and to engage in a similar process with regard to the AHMSA trade notes in 1999, and thereby; (2) fraudulently inflate Hamilton Bank's and Hamilton Bancorp's reported income, results of operations, and financial condition, as recorded in Hamilton Bank's and Hamilton Bancorp's own books and records, and eventually set forth in certain of Hamilton Bank's financial reporting submissions to the FDIC and OCC, and also set forth in certain of Hamilton Bancorp's financial reporting submissions to the SEC, each of which reports are identified with respect to the applicable Count enumerated below.

EXECUTION OF THE SCHEME AND ARTIFICE

5. On or about the dates specified as to each Count below, the defendants did execute the scheme and artifice, and did cause said scheme and artifice to be executed, as more particularly described in each Count set forth below:

COUNT	APPROX. DATE	DESCRIPTION OF EXECUTION
5	October 20, 1998	Submission to the FDIC/OCC by Hamilton Bank of its Call Report concerning the period ending September 30, 1998.
6	November 16, 1998	Submission to the SEC by Hamilton Bancorp of its Form 10-Q concerning the third quarter ended September 30, 1998.
7	January 29, 1999	Submission to the FDIC/OCC by Hamilton Bank of its Call Report concerning the period ending December 31, 1998.
8	March 30, 1999	Submission to the SEC by Hamilton Bancorp of its Form10-K concerning the year ended December 31, 1998.
9	October 29, 1999	Submission to the FDIC/OCC by Hamilton Bank of its Call Report concerning the period ending September 30, 1999.
10	November 10, 1999	Submission to the SEC by Hamilton Bancorp of its Form 10-Q concerning the third quarter ended September 30, 1999.

All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNTS 11-12

Scheme to Obtain Money by False Pretenses from a Financial Institution - Hamilton Bank (Bonus Disbursements)
18 U.S.C. §§ 1344 and 2

1. Paragraphs 1 through 53 of the General Allegations section of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. On or about the dates specified in paragraph 5 below, and as to each Count enumerated therein, in Miami-Dade County, in the Southern District of Florida, the defendant,

EDUARDO A. MASFERRER,

together with Juan Carlos Bernace, did knowingly execute, and attempt to execute, and cause the execution of, a scheme and artifice to obtain money and funds owned by, and under the custody and control of, Hamilton Bank and Hamilton Bancorp by means of false and fraudulent pretenses and promises relating to a material fact.

THE SCHEME AND ARTIFICE

3. Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference as a description of the scheme and artifice.

PURPOSE OF THE SCHEME AND ARTIFICE

4. The purpose of the scheme and artifice was to:(1) to sell and remove certain problematic Russian loans from the records, books, and recorded assets of Hamilton Bancorp's wholly-owned subsidiary, Hamilton Bank, through a process which would serve to conceal any financial losses which would, and did, come about as a consequence of the sale of these same Russian loans in or around September, 1998, and to engage in a similar process with regard to the AHMSA trade notes in 1999, and thereby; (2) fraudulently inflate the recorded and reported pre-tax net income of Hamilton Bank and its holding company, Hamilton Bancorp; and, thereby, (3) enable **EDUARDO A. MASFERRER** to unjustly enrich and benefit himself by obtaining money and funds in the form of purported annual "bonus" disbursements from Hamilton Bank, which bonus disbursements would be calculated as a percentage of this same fraudulently inflated pre-tax net

income data, and were, in fact, so calculated, thus resulting in defendant **MASFERRER's** eventual receipt of money and funds from Hamilton Bank, to which defendant **MASFERRER** was not entitled, by means of materially false and fraudulent pretenses and representations.

EXECUTION OF THE SCHEME AND ARTIFICE

5. On or about the dates specified as to each Count below, the defendant, for the purpose of executing the aforesaid scheme and artifice, did commit the below-listed acts in execution of the scheme and artifice, and did cause said acts to be committed, as more particularly described in each Count set forth below:

COUNT	APPROX. DATE	DESCRIPTION OF EXECUTION
11	December 22, 1998	Disbursement by Hamilton Bank of $1,081,600 as a purported 1998 bonus payment for **EDUARDO MASFERRER.**
12	January 8, 1999	Disbursement by Hamilton Bank of an additional $21,991 as remaining purported 1998 bonus payment for **EDUARDO MASFERRER.**

All in violation of Title 18, United States Code, Sections 1344 and 2.

COUNT 13

Securities Fraud
(Fidelity Management and Research Co., Inc.)
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 53 of the General Allegations section of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference as a description of the manipulative and deceptive devices and contrivances, as well as the device, scheme and artifices to defraud, used and employed by defendants **EDUARDO A. MASFERRER** and **JOHN M. R. JACOBS**, with Juan Carlos Bernace, in contravention of Title 17, Code of Federal Regulations, Section 240.10b-5.

3. Between on or about July 23, 1999 and August 3, 1999, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

EDUARDO A. MASFERRER
and
JOHN M. R. JACOBS,

together with Juan Carlos Bernace, did knowingly, willfully, and unlawfully, directly and indirectly, 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 by: (a) employing a device, scheme, and artifice to defraud; (b) making and causing Hamilton Bancorp to make untrue statements of material facts, and omitting to state, and causing Hamilton Bancorp to 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) engaging 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 securities, that is, the purchase of certain shares of Hamilton Bancorp common stock by Fidelity Management and Research Co., Inc., in that the defendants disseminated, and caused the dissemination of, materially false and misleading

financial information, which also omitted to state material facts, to Fidelity Management and Research Co., Inc., which information concerned Hamilton Bancorp's financial condition, including the company's net income and retained earnings for 1998, and was also set forth upon Hamilton Bancorp's Form 10-K for 1998 and filed with the SEC on or about March 30, 1999,

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 14-15

False Submissions to the SEC
(1998 Form 10-K and 3rd Quarter 1999 Form 10-Q)
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 53 of the General Allegations section of this Superseding Indictment and Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference.

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

EDUARDO A. MASFERRER
and
JOHN M. R. JACOBS,

did 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 that, **EDUARDO A. MASFERRER**, and **JOHN M. R. JACOBS**, together with Juan Carlos Bernace, 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
14	March 31, 1999	Hamilton Bancorp's Form 10-K for the fiscal year ended December 31, 1998

COUNT	APPROX. DATE OF FILING WITH THE SEC	DESCRIPTION OF FALSE FILING WITH THE SEC
15	November 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.

COUNT 16

Obstruction of Examination of Financial Institution
(1999 OCC Bank Examination - Hamilton Bank)
18 U.S.C. §§ 1517 and 2

1. Paragraphs 1 through 53 of the General Allegations section of this Superseding Indictment and Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. From in or around September 1999, to on or about November 1999, in Miami-Dade County, in the Southern District of Florida, the defendants,

EDUARDO A. MASFERRER
and
JOHN M. R. JACOBS,

together with Juan Carlos Bernace, did knowingly and corruptly obstruct and attempt to obstruct, and cause the obstruction of, an examination of a financial institution, Hamilton Bank, by the Office of the Comptroller of the Currency of the United States Department of the Treasury ("OCC"), an agency of the United States with jurisdiction to conduct an examination of such financial institution, in that they provided, and caused to be provided, materially false and misleading statements to OCC bank examiners regarding the true nature of Hamilton Bank's September 1998 transactions involving the sale of certain of Hamilton Bank's Russian loans to West Merchant Bank and the sale of certain other Russian Loans to Standard Bank, which sales were related to the purchases by Hamilton Bank from West Merchant Bank, and from Standard Bank, of various non-Russian securities, in that, they falsely stated to said bank examiners, and caused to be stated, that Hamilton Bank's Russian loan sales transactions with West Merchant Bank and with Standard Bank were separate and not related to the non-Russian securities purchase transactions conducted with each of these banks.

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

COUNT 17

Making a Materially False Statement to Government Agency
(1999 OCC Bank Examination - Hamilton Bank)
18 U.S.C. §§ 1001(a)(2) and 2

1. Paragraphs 1 through 53 of the General Allegations section of this Superseding Indictment and Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. From in or around September 1999, to on or about November 1999, in Miami-Dade County, in the Southern District of Florida, the defendants,

EDUARDO A. MASFERRER
and
JOHN M. R. JACOBS,

together with Juan Carlos Bernace, in a matter within the jurisdiction of the executive branch of the Government of the United States, that is, the Office of the Comptroller of the Currency of the United States Department of the Treasury ("OCC"), did knowingly and willfully make and cause to be made a materially false, fictitious, and fraudulent statement and representation, in that the defendants stated, and caused to be stated, to examiners of the OCC, during an annual examination of Hamilton Bank, that Hamilton Bank's September 1998 transactions involving the sale of certain of its Russian loans, some to West Merchant Bank and others to Standard Bank, in exchange for the purchases by Hamilton Bank from West Merchant Bank and from Standard Bank of various non-Russian securities were transactions in which the sales and purchases were separate and not related to each other, when, in truth and in fact, and as the defendants then and there well knew, the said sales and purchases were related transactions.

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

COUNT 18

Obstruction of Agency Proceedings
(OCC Investigation - Sworn Statement)
18 U.S.C. § 1505

1. Paragraphs 1 through 53 of the General Allegations section of this Superseding Indictment and Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. On or about November 30, 2000, in Miami-Dade County, in the Southern District of Florida, the defendant,

EDUARDO A. MASFERRER,

did knowingly and corruptly, that is, acting with an improper purpose, by means of making false and misleading statements, and withholding and concealing information, influence, obstruct and impede, and did endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding was being held before the Office of the Comptroller of the Currency of the United States Department of the Treasury ("OCC"), an agency of the United States, in that, during the course of a sworn statement given by the defendant in connection with a formal OCC investigation proceeding into the affairs of Hamilton Bank, the defendant falsely stated that: (a) Hamilton Bank's sale of certain of its Russian loans to West Merchant Bank in 1998 were not related to, nor conditioned upon, Hamilton Bank's purchase of certain non-Russian debt instruments from West Merchant Bank in 1998, and (b) Hamilton Bank's sale of another Russian loan to Standard Bank in 1998 was not related to, nor conditioned upon, Hamilton Bank's purchase of certain non-Russian debt instruments from Standard Bank in 1998.

In violation of Title 18, United States Code, Section 1505.

COUNT 19

Obstruction of Formal Agency Proceedings
(OCC Investigation - Sworn Statement)
18 U.S.C. § 1505

1. Paragraphs 1 through 53 of the General Allegations section of this Superseding Indictment and Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. On or about October 25, 2000, in Miami-Dade County, in the Southern District of Florida, the defendant,

JOHN M. R. JACOBS,

did knowingly and corruptly, that is, acting with an improper purpose, by means of making false and misleading statements, and withholding and concealing information, influence, obstruct and impede, and did endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding was being held before the Office of the Comptroller of the Currency of the United States Department of the Treasury ("OCC"), an agency of the United States, in that, during the course of a sworn statement given by the defendant in connection with a formal OCC investigation proceeding into the affairs of Hamilton Bank, the defendant falsely stated that: (a) Hamilton Bank's sale of certain of its Russian loans to West Merchant Bank in 1998 were not related to, nor conditioned upon, Hamilton Bank's purchase of certain non-Russian debt instruments from West Merchant Bank in 1998, and (b) Hamilton Bank's sale of another Russian loan to Standard Bank in 1998 was not related to, nor conditioned upon, Hamilton Bank's purchase of certain non-Russian debt instruments from Standard Bank in 1998.

In violation of Title 18, United States Code, Section 1505.

COUNT 20

Obstruction of Formal Agency Proceedings
(SEC Investigation - Sworn Statement)
18 U.S.C. § 1505

1. Paragraphs 1 through 53 of the General Allegations section of this Superseding Indictment and Paragraphs 4 through 26 of Count 1 of this Second Superseding Indictment are realleged and incorporated herein by reference.

2. On or about April 30, 2002, in Miami-Dade County, in the Southern District of Florida, the defendant,

JOHN M. R. JACOBS,

did knowingly and corruptly, that is, acting with an improper purpose, by means of making false and misleading statements, and withholding and concealing information, influence, obstruct and impede, and did endeavor to influence, obstruct and impede, the due and proper administration of the law under which a pending proceeding was being held before the United States Securities and Exchange Commission ("SEC"), an agency of the United States, in that, during the course of a sworn statement given by the defendant in connection with a formal SEC investigation proceeding into the affairs of Hamilton Bancorp, the defendant falsely stated that: (a) Hamilton Bank's sale of certain of its Russian loans to West Merchant Bank in 1998 were not related to, nor conditioned upon, Hamilton Bank's purchase of certain non-Russian debt instruments from West Merchant Bank in 1998, and (b) Hamilton Bank's sale of another Russian loan to Standard Bank in 1998 was not related to, nor conditioned upon, Hamilton Bank's purchase of certain non-Russian debt instruments from Standard Bank in 1998.

In violation of Title 18, United States Code, Section 1505.

FORFEITURE

1. The allegations contained in Counts 1 through 12 of this Superseding 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, or of any violation of or conspiracy to violate Title 18, United States Code, Section 1344, 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, f/k/a PaineWebber.

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

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

PETER B. OUTERBRIDGE
ASSISTANT UNITED STATES ATTORNEY

BENJAMIN G. GREENBERG
ASSISTANT UNITED STATES ATTORNEY

ANDREW K. LEVI
ASSISTANT UNITED STATES ATTORNEY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA

vs.

EDUARDO A. MASFERRER, et al.,

Defendants.
_____/

CASE NO. 04-20404-CR-Moore(s)(s)

CERTIFICATE OF TRIAL ATTORNEY*

Superseding Case Information:

New Defendant(s) Yes ____ No X
Number of New Defendants 0
Total number of counts 20

Court Division: (Select One)

X Miami ____ Key West
____ FTL ____ WPB ____ FTP

I do hereby certify that:

1. I have carefully considered the allegations of the indictment, the number of defendants, the number of probable witnesses and the legal complexities of the Indictment/Information attached hereto.

2. I am aware that the information supplied on this statement will be relied upon by the Judges of this Court in setting their calendars and scheduling criminal trials under the mandate of the Speedy Trial Act, Title 28 U.S.C. Section 3161.

3. Interpreter: (Yes or No) No
List language and/or dialect ____

4. This case will take 28 days for the parties to try.

5. Please check appropriate category and type of offense listed below:

	(Check only one)		(Check only one)	
I	0 to 5 days	____	Petty	____
II	6 to 10 days	____	Minor	____
III	11 to 20 days	____	Misdem.	____
IV	21 to 60 days	X	Felony	X
V	61 days and over	____		

6. Has this case been previously filed in this District Court? (Yes or No) Yes

If yes: Original & 1st Superseding Indictment 04-20404-CR-KING & 04-20404-CR-KING(s)
Transfer of Case

(Attach copy of dispositive order)
Has a complaint been filed in this matter? (Yes or No) No
If yes:
Magistrate Case No. ____
Related Miscellaneous numbers: ____
Defendant(s) in federal custody as of ____
Defendant(s) in state custody as of ____
Rule 20 from the ____ District of ____
Is this a potential death penalty case? (Yes or No) No

7. Does this case originate from a matter pending in the U.S. Attorney's Office prior to April 1, 2003? X Yes ____ No

8. Does this case originate from a matter pending in the U. S. Attorney's Office prior to April 1, 1999? ____ Yes X No
If yes, was it pending in the Central Region? ____ Yes ____ No

9. Does this case originate from a matter pending in the Northern Region of the U.S. Attorney's Office prior to October 14, 2003? ____ Yes X No

10. Does this case originate from a matter pending in the Narcotics Section (Miami) prior to May 18, 2003? ____ Yes X No

PETER OUTERBRIDGE
ASSISTANT UNITED STATES ATTORNEY
Florida Bar No. 0289914

*Penalty Sheet(s) attached

REV.1/14/04

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET

Defendant's Name: **EDUARDO A. MASFERRER** Case No. 04-20404-CR-Moore(s)(s)

Count # 1:	Conspiracy 18 U.S.C. § 371
*Max. Penalty:	5 years of imprisonment
Counts # 2-4:	Wire Fraud Affecting a Financial Institution 18 U.S.C. §§ 1343 and 2
*Max. Penalty:	30 years of imprisonment
Counts # 5-12:	Bank Fraud 18 U.S.C. §§ 1344 and 2
*Max. Penalty:	30 years of imprisonment
Count # 13:	Securities Fraud 15 U.S.C. §§ 78j(b) and 78ff(a); 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2
*Max. Penalty:	10 years of imprisonment

Counts # 14-15:	False Statements to S.E.C. 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
*Max. Penalty:	10 years of imprisonment
Count # 16:	Obstruction of Examination of Financial Institution 18 U.S.C. §§ 1517 and 2
*Max. Penalty:	5 years of imprisonment
Count # 17:	Making a Materially False Statement to Government Agency 18 U.S.C. §§ 1001(a)(2) and 2
*Max. Penalty:	5 years of imprisonment
Count # 18:	Obstruction of Agency Proceedings 18 U.S.C. § 1505
*Max. Penalty:	5 years of imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET

Defendant's Name: **JOHN M. R. JACOBS** Case No. 04-20404-CR-Moore(s)(s)

Count # 1:	Conspiracy 18 U.S.C. § 371
*Max. Penalty:	5 years of imprisonment
Counts # 2-4:	Wire Fraud Affecting a Financial Institution 18 U.S.C. §§ 1343 and 2
*Max. Penalty:	30 years of imprisonment
Counts # 5-10:	Bank Fraud 18 U.S.C. §§ 1344 and 2
*Max. Penalty:	30 years of imprisonment
Count # 13:	Securities Fraud 15 U.S.C. §§ 78j(b) and 78ff(a); 17 C.F.R. § 240.10b-5, and 18 U.S.C. § 2
*Max. Penalty:	10 years of imprisonment

Counts # 14-15:	False Statements to S.E.C. 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
*Max. Penalty:	10 years of imprisonment
Count # 16:	Obstruction of Examination of Financial Institution 18 U.S.C. §§ 1517 and 2
*Max. Penalty:	5 years of imprisonment
Count # 17:	Making a Materially False Statement to Government Agency 18 U.S.C. §§ 1001(a)(2) and 2
*Max. Penalty:	5 years of imprisonment
Counts # 19-20:	Obstruction of Agency Proceedings 18 U.S.C. § 1505
*Max. Penalty:	5 years of imprisonment

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
PENALTY SHEET

Defendant's Name: **FREDERIC Z. HALLER, a/k/a " Rick Haller"** Case No. 04-20404-CR-Moore(s)(s)

oore(s)(s)

Count # 1: Conspiracy

18 U.S.C. § 371

*Max. Penalty: 5 years of imprisonment

Count # :

*Max. Penalty:

Counts # :

*Max. Penalty:

Counts # :

*Max. Penalty:

***Refers only to possible term of incarceration, does not include possible fines, restitution, special assessments, parole terms, or forfeitures that may be applicable.**

REV. 12/12/96

FORM DBD-34
JUN. 85

Federal Grand Jury
Indictment Number
04-804 ECS 0023

Case No. 04-20404-CR-MOORE/GARBER(s)(s)

UNITED STATES DISTRICT COURT

SOUTHERN *District of* *FLORIDA*

THE UNITED STATES OF AMERICA

vs.

EDUARDO A. MASFERRER,
JOHN M.R. JACOBS,
and
FREDERIC Z. HALLER, a/k/a "Rick Haller,"
Defendants.

INDICTMENT

IN VIOLATION OF:

18 U.S.C. § 371
18 U.S.C. § 1001(a)(2)
18 U.S.C. § 1343
18 U.S.C. § 1344
18 U.S.C. § 1505
18 U.S.C. § 1517
18 U.S.C. § 2
15 U.S.C. § 78j(b)
15 U.S.C. § 78ff(a)
15 U.S.C. § 78m(a)
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

A true bill.

Foreman

FGJ (04-804) MIA

Filed in open court this ~~6th~~ *day, of* ~~September~~ *A.D. 20 05*

Clerk

Bail, $ _____