FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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<tr><td>In the Matter of

HAL J. SHAFFER,

Individually and as an
Institution-affiliated party of

interState Net Bank (currently ISN Bank)
Cherry Hill, New Jersey

(Insured State Nonmember Bank)</td><td>)
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)</td><td>DECISION AND ORDER
TO PROHIBIT FROM
FURTHER PARTICIPATION
AND ASSESSMENT OF CIVIL
MONEY PENALTIES

FDIC-06-201e
FDIC-06-202k</td></tr>
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I. INTRODUCTION

This matter is before the Board of Directors ("Board") of the Federal Deposit Insurance Corporation ("FDIC") following the issuance on January 14, 2009, of a Recommended Decision on Summary Disposition ("Recommended Decision" or "R.D.") by Administrative Law Judge C. Richard Miserendino ("ALJ"). The ALJ recommended that Hal J. Shaffer ("Respondent") be subject to an order of prohibition pursuant to section 8(e) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1818(e), and assessed a civil money penalty ("CMP") pursuant to section 8(i) of the FDI Act, 12 U.S.C. § 1818(i). For the reasons discussed below, the Board adopts in full and affirms the Recommended Decision and issues an Order of Prohibition and a $50,000 CMP assessment against Respondent.

II. PROCEDURAL BACKGROUND

The FDIC initiated this action on June 8, 2007, when it issued against Respondent a Notice of Intention to Prohibit from Further Participation and Notice of Assessment of

Civil Money Penalty, Findings of Fact, Conclusions of Law, Order to Pay, and Notice of Hearing ("Notice"). Respondent, was the founder, and at all times pertinent to the charges in the Notice, chairman of the board of directors, chief executive officer ("CEO"), director and president of *inter*State Net Bank, Cherry Hill, New Jersey ("Bank"), and was an institution-affiliated party pursuant to 12 U.S.C. § 1813(u). Notice ¶¶ 3,5; R.D. at 3. Respondent remained in those positions until he was forced to resign on October 27, 2004. Notice ¶ 3.

The Notice charged Respondent with engaging and participating in violations of law, unsafe and unsound banking practices, and breaches of fiduciary duty. The Notice also alleged that Respondent demonstrated personal dishonesty and willful or continuing disregard for the safety and soundness of the Bank and that, as a result of his conduct, he received a financial benefit in excess of $460,000. Notice ¶¶ 10-88. The Notice included an Order to Pay directing that Respondent pay a $50,000 CMP.

Specifically, the Notice charged that Respondent, from June 2004 through October 2004, engaged in a series of uncollected funds activity or check-kiting, for the benefit of his law firm, Shaffer and Scerni LLC ("S&S"). Respondent owned 95 percent of S&S and controlled virtually all of its affairs. Respondent's check-kiting violated insider and executive officer lending restrictions of Regulation O of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 215 ("Regulation O"), and the Bank's commercial credit policy. Notice ¶¶ 10-45. The Notice further charged that Respondent arranged and received proceeds from two transactions (the Toll Loan and the Salema Loan) without the Bank board's notice or approval also in violation of Regulation O. Notice ¶¶ 46-76. On July 25, 2007, Respondent filed an Answer to the Notice. R.D.

at 1. On August 9, 2007, a scheduling order was issued and a hearing was set initially for April 2008.[1]

Following discovery, FDIC Enforcement Counsel ("Enforcement Counsel"), on May 27, 2008, filed, pursuant to section 308.29 of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.29, a motion for summary disposition and an accompanying statement of facts ("SOF") for an order of prohibition and a motion for partial summary disposition on the issue of liability for payment of a CMP (motion for summary disposition) reserving the question of the appropriate amount of the penalty for a hearing as required under 12 U.S.C. § 1818(i)(2)(G). The SOF accompanying the motion for summary disposition was supported by declarations and exhibits. Because Respondent did not submit a response to the motion for summary disposition, the SOF submitted by Enforcement Counsel is undisputed. R.D. at 2.

While the motion for summary disposition was pending, the ALJ postponed the hearing on the merits and on September 4, 2008, issued an order scheduling a hearing to determine the amount, if any, of a CMP to be assessed under section 8(i) of the FDI Act. A prehearing order followed on September 8, 2008, with instructions regarding exhibits and witnesses for the CMP hearing. On October 30, 2008, a hearing was held in Philadelphia to determine the amount of CMP to be assessed. Thereafter, on January 14, 2009, the ALJ issued his Recommended Decision. Neither party filed exceptions.

III. FACTUAL OVERVIEW

Because the ALJ provided a detailed and well-reasoned opinion replete with citations to the record in support of his conclusions, the Board finds it unnecessary to

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[1]A revised scheduling order was issued on January 31, 2008, extending the discovery deadline until April 30, 2008 and setting the hearing for August 4, 2008.

reiterate in full the contents of the Recommended Decision. The discussion below, however, provides a brief overview of Respondent's misconduct as alleged in the Notice, corroborated by testimonial and documentary evidence supporting Enforcement Counsel's undisputed SOF, and recounted in the Recommended Decision.[2]

A. The Toll Loan

In 2001, Respondent hired his friend Richard Toll ("Toll") as a consultant to the Bank and made a $35,000 personal loan to him. In 2002, when Respondent asked Toll to repay the loan, Toll was able to pay him only $10,000. In order to get repaid in full, Respondent arranged through an employee in the Bank's commercial credit department for the Bank to make a $50,000 loan to Toll. In arranging the loan, Respondent told the Bank employee that Toll needed half of the funds to pay off an existing $25,000 loan from the Bank and falsely stated that Toll needed the additional $25,000 for a new business venture. On June 12, 2002, the Bank made the $50,000 extension of credit to Toll. Once Toll received the loan proceeds, he used approximately half to pay off the existing loan and the next day deposited the remaining funds in his personal checking account at Sterling Bank. Toll then issued to Respondent a $25,000 check dated June 14, 2002. Respondent endorsed the check and deposited it into an S&S account at Commerce Bank. Respondent never informed the Bank's board of directors that he or any of his related interests received proceeds from the Toll Loan. R.D. at 4-5; SOF ¶¶ 44-60.

[2] The SOF includes detailed citations to the record in this case which consists of pleadings, deposition transcripts, exhibits, and declarations. The SOF is incorporated into the Recommended Decision (R.D. at 2, n.2) which the Board adopts in full. In the interest of efficiency, the Board, when referring herein to the SOF, cites only to the numbered paragraphs in the SOF ("SOF ¶ _") rather than to the underlying supporting records.

B. The Salema Loan

In early 2004, Respondent arranged a loan for another one of his friends, Joseph Salema ("Salema"), who also served as a consultant to the Bank, so that Salema could buy Bank stock from Respondent. On January 28, 2004, Respondent verbally approved a $100,000 unsecured line of credit with extremely favorable interest terms from the Bank to Salema. That same day, Salema signed a promissory note with the Bank and received the $100,000 proceeds which he promptly deposited in a newly opened checking account at the Bank. Salema then gave Respondent a check for $84,000 drawn on the new account at the Bank, and Respondent deposited the check in his personal account at Commerce Bank. Soon afterwards, Respondent transferred some of his Bank stock to Salema. Respondent never advised the Bank's board of directors that he had approved an unsecured loan to Salema and that the proceeds of the loan were used to buy Respondent's Bank stock. R.D. at 5; SOF ¶¶ 61-71.

C. The Check-Kiting Scheme

In 2004, after S&S began to experience serious cash flow problems directly attributable to Respondent, he orchestrated and carried out a check-kiting scheme in an effort to keep the law firm afloat. On repeated occasions between June and October 2004,[3] Respondent directed an S&S employee to write checks drawn on S&S's operating account at Commercial Bank in excess of funds available in that account and then to exchange those checks for cashier's checks from the Bank payable to S&S. Once he received the cashier's checks, Respondent endorsed them and instructed S&S's employee

[3] At one point the Recommended Decision refers to check-kiting activity occurring between June-October 2008. R.D. at 7. Because Respondent left the Bank on October 27, 2004, S&S dissolved shortly afterwards, and it is clear from the SOF and the supporting documentation that this activity occurred between June-October 2004, the Board concludes that the reference in the Recommended Decision to 2008 was an inadvertent error and should instead read "between June-October 2004."

to deposit them in the S&S operating account. At various points during this period, Respondent also instructed an S&S employee to wire transfer tens of thousands of dollars to the law firm's payroll processing company to cover payroll checks and related expenses when in fact S&S's operating account had insufficient funds to make payroll. In some instances, funds from the Bank cashier's checks issued on the uncollected funds from S&S's operating account were deposited in Respondent's personal account. All told, Respondent's check-kiting activity occurred on a dozen occasions, resulting in the issuance of Bank cashier checks totaling $352,000. This activity continued until Respondent was asked to resign from the Bank in late October 2004. R.D. at 5-8; SOF ¶¶ 10-43.

IV. LEGAL ANALYSIS

A. Summary Judgment is Appropriate.

The ALJ correctly concluded that Enforcement Counsel was entitled to summary judgment because (1) no genuine issues of material fact were in dispute as all allegations of fact were deemed admitted because Respondent did not, pursuant to section 308.29(b) of the FDIC's Rule of Practice, 12 C.F.R. § 308.29(b), respond to Enforcement Counsel's undisputed pleaded facts; and (2) the undisputed facts sufficiently demonstrate the elements for a prohibition order and the statutory requirements for assessing a CMP. R.D. at 8, 14-15.

B. A Prohibition is Warranted.

As noted in the Recommended Decision, Enforcement Counsel -- to meet its burden in a prohibition action -- must show that respondents engaged in prohibited conduct (misconduct), the effect of which was to cause the Bank to suffer financial loss or damage, to prejudice or potentially prejudice the Bank's depositors, or to provide financial gain or other benefit to the Respondent (effects). Enforcement Counsel must also demonstrate that such misconduct evidences personal dishonesty or a willful or continuing disregard for the safety and soundness of the Bank (culpability). 12 U.S.C. § 1818(e)(1); R.D. 8-9; s*ee, e.g., In the Matter of Ramon M. Candelaria*, 1997 WL 211341, at *3 (FDIC); *In the Matter of Leuthe*, 1998 WL 438323, at *11 (FDIC), *aff'd*, 194 F. 3d 174 (D.C. Cir. 1999). As discussed below, the Board finds that Respondent's activities during the pertinent time period overwhelmingly satisfy the three standards necessary to impose a prohibition.

Misconduct

Misconduct under section 8(e) encompasses violations of law and regulation as well as participation in activity deemed to be unsafe and unsound banking practice or in breach of a party's fiduciary duty. 12 U.S.C. § 1818(e)(1)(A). The record clearly establishes Respondents' misconduct: multiple violations of law, unsafe and unsound practices and breaches fiduciary duty.

The FDIC has interpreted "violations of law" as including violations of state lending or credit concentration restrictions as well as credit extended in violation of Regulation O. *See In the Matter of Charles Watts*, 2002 WL 31259465, at *6 (FDIC); In *the Matter of Roque de la Fuente*, 2004 WL 614659, at *3. Regulation O governs the permissible lending relationships between a financial institution and its executive officers, directors, principal shareholders and their related interests. Regulation O prohibits a bank from making an extension of credit to one of the above-described categories of persons and related interests unless the extension of credit falls within limits permitted by the regulations. As the chairman, CEO and president of the Bank, Respondent was an insider under Regulation O. 12 C.F.R. § 215.2(h).

Respondent's multiple violations of Regulation O are well established by the record. First, in violation of sections 215.5(d) and 215.6 of Regulation O, Respondent, without disclosing his interest to the Bank's board of directors, arranged the Toll loan so that Toll could pay off the debt he owed him. R.D. at 13. Respondent violated these same provisions of Regulation O by initiating the Salema loan so that Salema could purchase his Bank stock. R.D. at 14. In connection with the Salema loan, Respondent also violated section 215.4(a)(1) by arranging for Salema to receive a preferential interest rate on his unsecured loan. R.D. at 13-14.

Respondent's check-kiting activity also violated these provisions of Regulation O. As the ALJ noted, the Bank cashier's checks issued at his direction were the equivalent of unsecured, undocumented, interest-free loans to his law firm in violation of section 215.4(a)(1) of Regulation O. R.D. at 10. Moreover, by directly or indirectly depositing the proceeds of the Bank cashier's checks into his personal account at Commerce Bank, Respondent violated sections 215.5(d) and 215.6 of Regulation O. R.D. at 10-11.

In addition to Respondent's misconduct in the form of Regulation O violations, his involvement in the check-kiting scheme amounted to unsafe and unsound practices which also demonstrate misconduct under section 8(e). *See, e.g., De La Fuente v. FDIC*, 332 F.3d 1208, 1222, 1224 (9th Cir. 2003); *Simpson v. Office of Thrift Supervision*, 29 F.3d 1418, 1425 (9th Cir. 1994) (An unsafe practice is "one which is contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds and that it is a practice which has a reasonably direct effect on an association's financial soundness."). *See also Landry v. FDIC*, 204 F.3d 1125, 1138 (D.C. Cir. 2000), *cert. denied*, 531 U. S. 924 (2000); *Van Dyke v. Board of Governors of the Fed. Reserve Sys.,* 876 F.2d 1377, 1380 (8th Cir. 1989). By repeatedly causing the Bank to issue cashier's checks on uncollected funds drawn on S&S's operating account at another bank, Respondent exposed the Bank to abnormal risk, particularly because S&S was in such dire financial condition. R.D. at 11.

By engaging in the check-kiting activity, Respondent committed a serious breach of his fiduciary duties to the Bank and its depositors which also constituted misconduct under section 8(e). *See, e.g., Seidman v. Office of Thrift Supervision*, 37 F.3d 911 at 935, n.34 ("A fiduciary's duty of candor is encompassed within the duty of loyalty. The duty of candor requires corporate fiduciaries to disclose all material relevant to corporate decisions from which they may derive a personal benefit."); *Candelaria,* 1997 WL 211341, at * 5; *De La Fuente v. FDIC*, 332 F.3d at 1222.

Moreover, as the Ninth Circuit observed in *Hoffman v. FDIC*, self-dealing breaches of fiduciary duties by bank officials are inherently unsafe and unsound practices. 912 F.2d 1172, 1174 (9th Cir. 1990). In this case, Respondent, taking advantage of his top management position at the Bank, engaged in the check-kiting scheme which clearly put his own interests ahead of the interest of the Bank. Such conduct is a classic example of self-dealing. *Id.; see also First National Bank of Lamarque v. Smith*, 610 F. 2d 1258, 1265 (5th Cir. 1980); *Independent Bankers Ass'n of America v. Heimann*, 613 F. 2d 1164, 1168 (D.C. Cir. 1979), *cert. denied,* 449 U.S. 823 (1980).

Effects

The record also establishes satisfaction of the "effects" test. As a direct result of the Regulation O violations, Respondent and his related interests received a substantial financial benefit. R.D. 12, 14; SOF 319-401. A loan made in violation of law to an institution-affiliated party or his related interest, like those to Respondent, has been held to be a benefit in and of itself. *See Leuthe,* 1998 WL 438323, at *15 (FDIC)*; In the Matter of Wayne Lowe*, 1990 WL 711070, at *8 (FDIC), *aff'd*, 958 F.2d at 1536. Thus, the loans to Toll and to Salema and each of the twelve check-kiting transactions resulted in a gain or benefit to Respondent for purposes of section 8(e). Specifically, Respondent received $25,000 from the Toll loan proceeds, $84,000 as a result of the Salema loan in exchange for his Bank stock, and a series of interest free loans totaling $352,000 from the Bank cashier's checks which he used to prop up his sinking law firm and deposit into his personal bank account. R.D. at 4-5, 7; SOF ¶¶ 38, 56, 70. As we noted in *Leuthe*, "[i]t has been a substantial benefit to Respondent to be able to go repeatedly to the till for funds, without ever giving a thought to lending limit restrictions, approval requirements, collateral requirements, reporting requirements and other statutory and regulatory requirements created to protect depositors from just these abuses." 1998 WL 438323, at *17.

Culpability

The term "personal dishonesty" as it is used in 12 U.S.C. § 1818(e)(1) has been held to mean "a disposition to lie, cheat, defraud, misrepresent, or deceive. It also includes a lack of straightforwardness and a lack of integrity." In *the Matter of Allan Hutensky*, 994 WL 812351, at *26 (FDIC), *aff'd,* 82 F.3d 1234 (2nd Cir. 1996). The

Board finds the record laden with instances of Respondents' deceitful behavior. On a dozen occasions, Respondent caused checks to be drawn on the S&S account in exchange for Bank cashiers' checks when he knew that the S&S account had insufficient funds to cover the checks. SOF ¶¶ 21-34. In eight of those instances, he also wired funds in amounts between $45,000 and $53,000 to cover payroll expenses at S&S knowing full well that the amounts of the wire transfers far exceeded S&S's account balance. SOF, *Id.* and ¶ 37. Moreover, Respondent never disclosed his financial interest in either the Toll loan or the Salema loan to anyone at the Bank and deliberately lied to the Bank's employee when he said Toll needed the loan proceeds for a new business venture. R.D. 4-5; SOF ¶ 51-52, 67.

The Board finds too that Respondent's conduct demonstrates "willful or continuing disregard." Although proof of either willful or continuing disregard is enough to meet the culpability threshold for purposes of section 8(e) of the FDI Act, in this case Respondent's conduct was sufficiently egregious to meet both tests. *See, e.g., Brickner v. FDIC,* 747 F. 2d 1198, 1202-03 (8th Cir. 1984). "'Willful disregard' means 'deliberate conduct which exposed the bank to abnormal risk of loss or harm contrary to prudent banking practices.'" *De La Fuente v. FDIC,* 332 F.3d at 1223, *quoting Grubb v. FDIC*, 34 F.3d 956, 961-62 (10th Cir. 1994). Respondent took deliberate steps – including knowingly causing insufficiently funded checks to be issued and misrepresenting or failing to disclose facts to the Bank to conceal his related interests – and, in so doing, benefited from the Regulation O violations. Respondent, a Bank chairman, officer and director, as well as an attorney, knew very well that his activities were illegal but "turned a blind eye" to the Bank's interests so that he could pursue his own agenda. *See*

Cavallari v. OCC, 57 F.3d 137, 145 (2nd Cir. 1995). *See also De La Fuente v. FDIC,* 332 F.3d at 1226-27 ("We also cannot help but note that De La Fuente's use of [the bank] as his personal piggy bank was in shocking disregard of sound banking practices and the law to the detriment of depositors, shareholders, and the public.").

"Continuing disregard" refers to that conduct which is voluntarily engaged in over time, with heedless indifference to the possible consequences. *Grubb v. FDIC*, 34 F.3d at 962; *In the Matter of Henry P. Massey*, 1993 WL 853749, at *21 (FDIC); *In the Matter of Constance C. Cirino*, 2000 WL 1131919, at *51-52 (FDIC). For nearly three years, beginning in early 2002 when he first initiated the Toll loan and continuing until he was asked to resign from the Bank in October 2004, Respondent deliberately violated Regulation O. *See, e.g., In the Matter of Ramon M. Candelaria*, 1997 WL 211341, at *6 (FDIC) ("continuing disregard" found by two nominee loans over a period of six months); *In the Matter of Frank E. Jameson*, 1990 WL 711218, at *8 (FDIC), *aff'd*, 931 F.2d 290 (5th Cir. 1991) (two incidents of falsifying loan records to hide self-serving transactions occurring within three months held to be "continuing disregard"). In fact, Respondent's deceitful activities intensified as time went on culminating in the check-kiting scheme which occurred a dozen times over a four month period in 2004 until he was required to resign from the Bank.

C. The CMP Assessment is Appropriate.

One of the statutory tools provided to the FDIC to make certain that bank directors comply with their fiduciary obligations is the imposition of CMPs for their violations of law or regulation. *See Lowe v. FDIC*, 958 F.2d 1526 (8th Cir. 1992). Pursuant to section 8(i)(2)(A) of the FDI Act, 12 U.S.C. § 1818(i)(2)(A), the FDIC has authority to impose CMPs by tiers in terms of the severity of the penalty or gravity of the offense. In this case, the Board finds that based on the Respondent's knowing and repeated violations of Regulation O, an assessment of a CMP against Respondent is appropriate. The pertinent factors are briefly analyzed below.

Statutory Threshold

Enforcement Counsel sought a second tier CMP against Respondent which, as noted in *Leuthe,* is a remedy which requires two elements of proof: "first, 'misconduct,' *i.e.*, either a violation of any law or regulation or final order, or breach of a fiduciary duty, or recklessly engaging in an unsafe or unsound practice in connection with the Bank, 12 U.S.C. § 1818(i)(2)(B)(i); and second, 'effects,' *i.e.*, either a pattern of misconduct, or conduct which caused or was likely to cause more than minimal loss to the institution, or which resulted in a gain or benefit to the Respondent. 12 U.S.C. § 1818(i)(2(B)(ii). 1998 WL 438323, at *13-14. As set forth in the Recommended Decision, and in the discussion above related to the prohibition action, the statutory requirements for a second tier CMP have been proven.

The Evidentiary Hearing on the CMP

Before assessing a CMP, the FDIC, pursuant to section 8(i)(2)(G) of the FDI Act, 12 U.S.C. §§ 1818(i)(2)(G), and section 308.132(b) of the FDIC's Rules of Practice and Procedure, 12 C.F.R. § 308.132(b), must consider, as mitigating factors, the financial resources and good faith of the Respondent, the gravity of the violations, Respondent's history of previous violations, and other matters as justice may require.

Thus, to determine the amount of penalty to be assessed, the ALJ, on October 30, 2008, conducted a hearing to take evidence on the mitigating factors and in connection with the 13-factor analysis found in the Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies, 63 Fed. Reg. 30,226 (June 3, 1998). (Interagency Policy).[4] On behalf of Enforcement Counsel, FDIC Assistant Regional Director Edwin Lloyd testified that after reviewing the entire record in this case and unaudited financial statements provided by Respondent, he believed that a $50,000 CMP was appropriate. He noted, however, that given the nature of the check-kiting violations, the assessment could have been much substantially higher. R.D. at 16.

Looking first to the size of Respondent's financial resources, Lloyd concluded, based on the financial statements, that Respondent is insolvent. Lloyd also testified that Respondent lacked good faith because he was personally dishonest in arranging the Toll loan and in carrying out the check-kiting scheme. With respect to the gravity of the offenses, Lloyd testified that although Respondent did not cause a loss to the Bank, he did place the Bank at great risk particularly because his law firm was in such a precarious

[4] The 13 factors contained in the Interagency Policy are:

1. Whether the violation was committed with a disregard for the law or the consequences to the institution;
2. The frequency or recurrence of the violations and the length of time the violation has been outstanding;
3. The continuation of the violation after the Respondent became aware of it;
4. Failure to cooperate with the agency in effecting an early resolution of the problem;
5. Evidence of concealment of the violation or its voluntary disclosure;
6. Threat of or actual loss or other harm to the institution;
7. Evidence that participants or their associates received financial or other gain; or benefit or preferential treatment as a result of the violation;
8. Evidence of restitution by the participants in the violation;
9. A history of similar violations;
10. Previous criticism of the institution for a similar violation;
11. The presence or absence of a compliance program and its effectiveness;
12. The tendency to create unsafe or unsound banking practices or a breach of fiduciary duty; and
13. The existence of agreements, commitments, or orders to prevent the violations.

financial position. Regarding the applicable mitigating factors set forth in the Interagency Policy, Lloyd concluded, among other things, that Respondent intentionally violated banking regulations and breached his fiduciary duties as the Bank's chairman and president. Lloyd also opined that Respondent and his law firm benefited as a result of his illegal activities. R.D. 16-18.

Respondent, testifying on his own behalf at the CMP hearing, stated that he has not practiced law for years, that he sold his house and remaining Bank stock to pay off debts, and that his car was repossessed. Although Respondent did not deny that he directed the check-kiting scheme, he claimed that he had tried to protect the Bank by instructing another Bank officer to place a hold on S&S's two attorney-client trust fund accounts at the Bank. R.D. 18-19.

Following the hearing, the ALJ determined that Respondent has been insolvent since 2005. He did not, however, find plausible Respondent's explanation that he had tried to shield the Bank from the potential peril posed by his conduct and concluded that Respondent had not done anything to safeguard the Bank. The ALJ also found that given the nature, frequency, and statutory standards for amounts of CMP assessments, and after consideration of all mitigating factors, a CMP of $50,000 was appropriate. R.D. at 19.

The Amount Assessed is Appropriate and Consistent with Policy Goals

A CMP serves two basic policy goals—(1) to adequately sanction an offender, and (2) to create a deterrent to others who may consider engaging in improper activities. *See* Interagency Policy; *Leuthe*, 1998 WL 438323, at * 14. The Interagency Policy also advises that in cases where the wrongdoer has economically benefited from his misconduct, removal of the economic gain may be insufficient by itself to promote the statutory goals behind CMP assessments.

In this case, the Board agrees with the ALJ's conclusion that a CMP far in excess of the $50,000 would have been justified based on the frequency and duration of the misconduct. The FDI Act authorizes a second tier CMP in the amount of $25,000 per day for each day that the violations exist. *See* 12 U.S.C. 1818(i)(2)(B). However, Enforcement Counsel did not file an exception to the amount assessed and has, in fact, from the inception of this proceeding sought a $50,000 CMP. Notice ¶ 90. Moreover, the Board accepts the ALJ's determination that Respondent is insolvent. Thus, after considering the complete record, the Board finds that the ALJ evaluated the pertinent factors as required by law and reasonably concluded that the CMP assessment sought was appropriate. As such, the Board finds that the $50,000 CMP imposed will adequately achieve the goals of the statute.

V. CONCLUSION

After a thorough review of the record in this proceeding, and for the reasons set forth above, the Board finds that an Order of Prohibition and the Assessment of a CMP in the amount of $50,000 are warranted against the Respondent. A hearing in this case was not necessary to render a decision on Respondent's liability because all of the underlying allegations included in the SOF have been admitted by virtue of Respondent's failure to respond to Enforcement Counsel's motion for summary disposition and are fully supported by the testimonial and documentary evidence submitted by Enforcement Counsel. The fully admitted charges and the ALJ's findings following the October 30, 2008, CMP hearing are wholly sufficient to sustain an Order of Prohibition and the Assessment of a $50,000 CMP.

In this case, the record plainly shows that, Respondent, on repeated occasions, ignored the law and his obligations with respect to his operation of the Bank. Instead, in a clear abuse of his role as chairman, CEO and president of the Bank and in violation of law, Respondent - acting in his own self-interest and to prop up his failing business - exposed the Bank and its depositors to serious risk. In view of Respondent's repeated transgressions and serious breach of his fiduciary duties, the Board is persuaded that he should be permanently barred from the banking industry. Moreover, in light of the entire record, the Board finds the CMP imposed to be an appropriate amount and one which is consistent with the statute's intended effects.

Based on the foregoing, the Board affirms the Recommended Decision of the ALJ and adopts in full the conclusions of law and SOF incorporated therein; and issues the following Orders implementing its Decision.

ORDER TO PROHIBIT

The Board of the FDIC, having considered the entire record of this proceeding and finding that Respondent Hal J. Shaffer, formerly the chairman of the board of directors, director, chief executive officer, and president of the Bank, engaged in violations of law, unsafe or unsound banking practices and breaches of his fiduciary duties resulting in a personal benefit to him, and that his actions involved personal dishonesty and willful and continuing disregard for the safety and soundness of the Bank, hereby ORDERS and DECREES that:

1. Hal J. Shaffer shall not participate in any manner in any conduct of the affairs of any insured depository institution, agency or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).
2. Hal J. Shaffer shall not solicit, procure, transfer, attempt to transfer, vote, or attempt to vote any proxy, consent or authorization with respect to any voting rights in any financial institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).
3. Hal J. Shaffer shall not violate any voting agreement with respect to any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).
4. Hal J. Shaffer shall not vote for a director, or serve or act as an institution-affiliated party, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), of any insured depository institution, agency, or organization enumerated in section 8(e)(7)(A) of the FDI Act, 12 U.S.C.

§ 1818(e)(7)(A), without the prior written consent of the FDIC and the appropriate federal financial institutions regulatory agency, as that term is defined in section 8(e)(7)(D) of the FDI Act, 12 U.S.C. § 1818(e)(7)(D).

5. This ORDER shall be effective thirty (30) days from the date of its issuance.

ORDER TO PAY CIVIL MONEY PENALTY

The Board, having considered the entire record in this proceeding, and taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of Respondent, the gravity of the violations and such other matters as justice may require, hereby ORDERS and DECREES that:

1. A civil money penalty is assessed against Hal J. Shaffer in the amount of $50,000 pursuant to 12 U.S.C. § 1818(i).
2. This ORDER shall be effective and the penalty shall be final and payable thirty (30) days from the date of its issuance.

The provisions of these ORDERS will remain effective and in force except to the extent that, and until such time as, any provision of these ORDERS shall have been modified, terminated, suspended, or set aside by the FDIC.

IT IS FURTHER ORDERED that copies of this Decision and Orders shall be served on Hal J. Shaffer, Enforcement Counsel, the ALJ, and the Commissioner of the New Jersey Department of Banking and Insurance.

By direction of the Board of Directors.

Dated at Washington, D.C. this 23rd day of April, 2009.

/s/

Robert E. Feldman
Executive Secretary

(SEAL)