UNITED STATES OF AMERICA
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC

In the Matter of	)	
Adam L. Benarroch,	)	
Institution-Affiliated Party of Midwest Bank and Trust, Elmwood, Illinois	)	Docket No. 09-052-I-E

RECOMMENDED DECISION ON SUMMARY DISPOSITION

Statement of the Case

On April 14, 2009, the Board of Governors of the Federal Reserve System (the "Board") issued a Notice upon Respondent Adam L. Benarroch (the "Respondent"), a former Assistant Vice President of Midwest Bank and Trust (the "Bank"). The Notice, issued pursuant to Section 8(e) of the Federal Deposit Insurance Act, seeks an order prohibiting Respondent from further participation in the affairs of any depository institution or organization as provided in 12 U.S.C. § 1818(e)(7)(A).

After several extensions, Respondent Benarroch appeared *pro se* and filed his Answer. Respondent's Answer does not deny the specific allegations of the Notice. Rather, it concedes that the Respondent made certain "bad decisions while employed at Midwest Bank and Trust Company," and claims that he operated "under tremendous pressure to close loan transactions" as his year-end bonus depended on loan volume. Respondent claims he lacked the assistance necessary in his previous position to

adequately perform his duties, and offers apologies "for putting the bank in jeopardy" through the various loan transactions at issue here.

Respondent concludes his Answer by asking for a "2nd chance" in the banking industry short of a permanent ban, and proposes certain limitations and restrictions on permitted activities – limitations short of prohibition -- that would enable him to continue a career in the industry.

On September 16, 2009, Board Enforcement Counsel moved for summary disposition of the proceeding contending that no genuine issue of material fact exists such that that the Board is entitled to the relief sought in the Notice. On October 7, 2009, Respondent replied to the summary disposition motion again offering apologies for his actions, while conceding the factual assertions set forth in the evidentiary exhibits submitted in support of the dispositive motion. Respondent also offered further details concerning his personal, professional, and family situation, which he submits in mitigation to the offenses he otherwise admits. He asks that these matters be taken into consideration when fashioning a final decision, and repeats that publicity of this proceeding apparently resulted in his recent termination from another financial institution at which he was employed.

With no material facts in dispute, the only remaining question is whether the evidence presented by Enforcement Counsel supports an Order prohibiting the Respondent from further participation in the industry as provided in Section 8(e) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818(e). For the reasons below, I find and conclude that the statutory elements of prohibition are established on the record, and I recommend that the Board enter a final Order prohibiting the participation of

Respondent, Adam L. Benarroch, without prior regulatory approval, in any financial institution or organization described in 12 U.S.C. § 1818(e)(7)(A).

I. *Summary of the Facts*[1]

In September 2003, Respondent Benarroch was hired as an Assistant Vice President and commercial lender of Midwest Bank and Trust, a position he held until he was suspended (and later terminated) on May 12, 2004. His suspension and ultimate termination were a result of the several improper transactions at issue here.

In his capacity as commercial loan officer, Respondent originated and processed commercial loans, with authority to approve secured loans up to $75,000. (FRB Exh. 2.) In March of 2004, Respondent's approval authority was increased to $100,000. (FRB Exh. 3.) Loans in excess of Respondent's individual approval authority required committee approval as set forth below.

The Bank's formal loan policy established two separate committees, and required that these committees approve loans that exceeded an individual's approval authority. (FRB Exhs. 4 and 5.) Specifically, the bank's junior loan committee (referred to as the Officer's Loan Committee) could approve secured loans up to $600,000, and the bank's senior loan committee (referred to as the Director's Loan Committee) could approve loans in excess of $600,000[2].

For each approved loan, the committee would generate a document memorializing the terms, conditions, and approval of the loan. These documents were then relied upon by the Bank's Loan Operations Department in closing and funding the various loans. The Bank likewise maintained a formal written policy governing the issuance of

[1] The complete Findings of Fact is appended hereto as Appendix "A" and incorporated by reference herein.
[2] In March 2004, the junior loan committee's approval authority was increased to $2.5 million.

commitment letters. (FRB Exh. 6.) Specifically, the policy provided that "any letter from the Bank stating the Bank's willingness to advance funds to a named borrower" can only be issued "under the signature of the loan officer and cosigned by the President or Regional Senior Lender or their nominees." (FRB Exh. 6.) The policy acknowledged and recognized the legal obligation arising out of a commitment letter, and imposed heightened requirements on their issuance.

A. The Events Leading to Respondent's Termination and Investigation

On January 21, 2004, the Bank's junior loan committee met and approved a $3.15 million loan to Customer H, which loan was to close in early May of 2004. (FRB Exh. 67.) Respondent Benarroch was the loan officer responsible for this particular credit and in such capacity processed the loan documents and prepared to finalize the loan for closing.

The approval of the loan to Customer H was contingent upon verification by the Bank's outside counsel that the Bank's interest was adequately secured and that the loan documents were properly prepared. FRB Exh. 67. On May 11, 2004, Respondent Benarroch began an email exchange with the Bank's Assistant Vice-President for Loan Documentation. (FRB Exh. 68.) In the first email, sent at 10:37 a.m. that morning, Respondent represented that he had spoken to Bank counsel, who requested for review copies of documents pertaining to the loan to Customer H . (FRB Exh. 68 at 1.) In truth, no such conversation ever took place.

At 10:47 a.m., Respondent sent a second email to the Assistant Vice-President for Loan Administration informing her that he was negotiating counsel's fee for the review of the loan and that he was planning to fax loan documents to counsel for review. (FRB

Exh. 68 at 2.) As with the previous representation, no such conversations or negotiations with outside counsel had occurred.

At 10:55 a.m., Respondent sent a third email to the Assistant Vice-President for Loan Administration confirming that the documents pertaining to the Bank's loan to Customer H had been sent to counsel and that Respondent expected the review to be completed that afternoon. (FRB Exh. 68 at 3.). Again, no such conversation or exchange of documents with counsel took place.

At 11:55 a.m., Respondent sent a fourth email to the Assistant Vice-President for Loan Administration representing that counsel would be faxing a memorandum to the Bank "indicating the changes/suggestions for the loan documents." (FRB Exh. 68 at 4.) Again, no such conversation with counsel took place.

At 12:35 p.m., Respondent sent a fifth email to the Assistant Vice-President for Loan Documentation reconfirming that the legal review would be completed by the end of the day. At 12:59 p.m., he sent a sixth email to confirm that the Bank would not process the loan without legal review of the Bank's security interest. (FRB Exh. 68 at 5 and 6.)

Following this series of emails, Respondent fabricated and forged three documents, purporting to be memoranda from the Bank's outside counsel, concerning the sufficiency of the loan documentation pertaining to Customer H. Respondent forwarded the forged memoranda to the Assistant Vice President for Loan Documentation in an effort to close and fund the loan to Customer H. (FRB Exh. 69.)

The following day, May 12, 2004, the Bank's Executive Vice-President and Senior Vice-President for lending confronted Respondent with the memoranda written in

the name of the Bank's outside counsel. Respondent admitted in this meeting that he drafted the memoranda, and explained that he did so in an effort to expedite the closing of the loan. Later that day Respondent was suspended from his position with the Bank, and an internal investigation was opened into Respondent's lending portfolio.

The Bank's Senior Vice President for Lending, David Natzke, conducted the inquiry into Respondent's loan files. (FRB Exh. 1.) During his review, Vice-President Natzke uncovered multiple forgeries, fabrications, and discrepancies involving 14 separate loan files processed by Respondent. Several of the loan approval documents contained forged signatures and/or initials of the various loan committee members and Bank directors, while several others had signatures that were taped or stapled to the document, making it appear as though they had been properly signed.

On May 21, 2004, Vice President Natzke met with Respondent Benarroch, and confronted him with the various documents containing the forged, taped, and stapled signatures. (FRB Exh. 1.) Respondent admitted in the meeting that he had in fact falsified the various documents uncovered during the investigation. His employment with the Bank was immediately terminated.

B. The 14 loan transactions

The specific forgeries, fabrications, and other discrepancies discovered with respect to the 14 loan transactions are as follows.

Loan Number 1

On October 8, 2003, the Bank's junior loan committee approved a secured commercial mortgage loan in the amount of $405,000 to Customer A. (FRB Exh. 7.)

The terms of the loan as approved called for a 5 year repayment period with a variable interest rate calculated at the Bank's base rate plus 1.5 percent and a 5.5 percent floor.

On December 5, 2003, after the committee had approved the above terms, Respondent Benarroch drafted a memorandum to the Credit File, lowering the interest rate on the loan to "base plus 1.00% with a floor of 5.00%." (FRB Exh. 8.) Respondent's memorandum also sought to extend the maturity date of the loan from 5 to 7 years. (FRB Exh. 8.) Respondent claims in the memorandum that the lower interest rate and extended maturity were needed as a result of a competing offer the customer received from another financial institution.

Respondent then wrote on the memorandum the words "okay," the date "12/5/2003," and forged the initials of the Bank's Regional Vice-President onto the memorandum making it appear as though the changes had been properly authorized by the junior loan committee when, in fact, they had not. Respondent forwarded this forged memorandum, along with the rest of the credit file, to the Bank's Loan Operations Department, where the loan was processed and funded at the reduced rate and extended maturity. As a result of his actions, the Bank was exposed to additional risk on the loan and was deprived of more than $2,700 in interest income.

Assuming Respondent changed the terms of the loan for the legitimate reasons set forth in the memorandum (to match a competing offer by another bank), his failure to re-submit the modified terms to the appropriate committee for reconsideration, combined with his outright forgery and misrepresentation on the document cannot be considered appropriate conduct under any circumstances.

Loan Number 2

On October 28, 2003, the Bank's senior loan committee approved a $2.25 million secured loan to Customers B and C. (FRB Exh. 11.) Without authority, and without informing anyone at the Bank, Respondent sent Customers B and C a Commitment Letter on October 30, 2003, indicating the Bank's approval. (FRB Exh. 12.) In the Commitment Letter, which did not properly preserve certain of the Bank's rights with respect to the loan, and which was not co-signed by one of the appropriate Bank officers, the Respondent committed the Bank to the terms set forth in his unauthorized letter.

On December 17, 2003, the Bank's junior loan committee met to review and discuss, among other things, an unfavorable appraisal of the property securing the loan to Customers B and C. (FRB Exh. 13.) The committee unanimously voted to reduce the loan by $46,000 because of the appraised value, and was unaware that Respondent had issued the commitment letter at the original, unauthorized, terms. The vote by the junior loan committee was approved by the senior loan committee on December 18, 2003, which issued a written approval of the loan in the amount of $2.204 million. (FRB Exh. 14.)

Sometime after the modified approval, Respondent manually changed the loan amount contained in the approval document, by crossing out the approved amount and writing in the higher amount promised in his unauthorized commitment letter. Respondent then wrote the word "okay" next to the handwritten change, and forged the initials of the Bank's Regional Vice-President on the top of the document to make it appear as though the change had been authorized and approved by the committee, when it had not. Respondent forwarded the forged document to the Bank's Loan Operations

department, where the loan was funded at the higher, unapproved amount. (FRB Exh. 15.)

Loan Number 3

On October 8, 2003, the Bank's junior loan committee approved a secured loan of $185,000 to Customer D. (FRB Exh. 17.) Thereafter, on November 11, 2003, Respondent drafted a memorandum addressed to the junior loan committee requesting "an additional $225,000" for the Bank's loan to Customer D and "for the amortization schedule to be increased from 15 to 20 years." (FRB Exh. 18.) The Respondent forged the initials of the Bank's Regional Vice-President on the top of the document to make it appear as though the changes to the Bank's loan had been properly authorized when, in fact, they had not.

Respondent forwarded the forged document to the Bank's Loan Operations department where it was relied upon to fund the loan. As a result of Respondent's conduct in connection with this loan, the Bank was exposed to an additional $225,000 in potential losses that had not been reviewed and approved by the appropriate authority.

Loan Number 4

On November 26, 2003, the Bank's junior loan committee met and approved a secured loan of $625,000 to Customer E. (FRB Exh. 21.) Following the committee meeting, Respondent Benarroch fabricated a document purporting to be from the Bank's junior loan committee, which showed an increase in the loan amount to $649,000. (FRB Exh. 22.) Respondent forged the names of the Bank's Regional Vice-President and Secretary of the junior loan committee on the top of the document to make it appear as if the committee had approved the $24,000 increase.

Respondent forwarded the forged document to the Bank's Loan Operations department, where it was relied upon in order to fund the loan at the increased, unapproved amount. As a result of the Respondent's conduct in connection with this loan, the Bank was exposed to an additional $24,000 in potential losses that had not been reviewed and approved by the appropriate authority.

Loan Numbers 5 and 6

On January 14, 2004, the Bank's junior loan committee approved a $1.65 million secured commercial loan to Customer F. (FRB Exh. 25.) The Bank's senior loan committee likewise approved the loan on January 27, 2004. (FRB Exh. 26.) The minutes of both committees reflect that the loan was approved for a 5-year term at a rate of base plus 1.5 percent, with a 5.5 percent floor, and included a discount fee of $14,125 (.25 percent) and a documentation fee of $250.

Following the meeting of the junior loan committee, Respondent fabricated a document, purportedly from the junior loan committee, showing approval of the loan to Customer F in the higher amount of $1.8 million, at a lower interest rate of 5 percent fixed, with no discount fee. (FRB Exh. 27.) Respondent forged the initials of the Bank's Regional Vice-President on the top of the document to make it appear as if the committee had approved the $150,000 increase, lower interest rate, and eliminated fee. (FRB Exh. 27.)

Likewise following the meeting of the senior loan committee, Respondent similarly fabricated another document, purportedly from the senior loan committee, showing approval of the same terms as those listed in the fabricated approval of the junior loan committee. (FRB Exh. 28.) The Respondent "cut and pasted" the signatures

of the Bank's directors to the end of the fabricated document to make it appear as if the senior loan committee had authorized the terms provided in the document.

On March 25, 2004, Respondent issued a memorandum to the senior loan committee, citing to the fabricated January 27th loan approval, requesting that the Bank's $1.8 million loan to Customer F be divided into three separate notes of (1) $800,000, (2) $500,000 and (3) $500,000 respectively. (FRB Exh. 29.) On May 10, 2004, the Bank funded two promissory notes in the amount of $800,000 and $500,000 respectively at a fixed interest rate of 5 percent. (FRB Exh. 30-31.) As a result of Respondent's conduct with respect to these two loans, the Bank was deprived of $4,125 in fees and $29,989 in interest income.

Loans Number 7 and 8

On January 21, 2004, the Bank's junior loan committee approved two secured loans totaling $809,000 to Customer G. (FRB Exh. 33.) According to the minutes of the meeting, the first loan in the amount of $664,000 was for a 5-year term at a variable rate of base, plus 1.5 percent (with a 5.5 percent floor) and included a documentation fee of $250 and a loan fee of $1,660. The second loan of $145,000 was similarly approved for a 5 year term, at a variable rate of base plus 1.5 percent (with a 5.5 percent floor), with a document fee of $250. (FRB Exh. 33.)

Sometime after the meeting, Respondent fabricated a document, purportedly from the Bank's junior loan committee, which showed that the committee had approved two loans to Customer G in increased amounts of $665,000 and $150,000, respectively. The fabricated document indicated that the higher loans were approved at a lower interest rate of base plus 1 percent (with a 5 percent floor); that the repayment period was extended

until 7 years; and that no loan fee was assessed with respect to the first loan. (FRB Exh. 34.)

Respondent again forged the initials of Bank's Regional Vice-President and the Bank's Senior Vice-President for Lending onto the fabricated document, making it appear as if the committee had approved the new terms of the loan, when in fact, the committee had not. The fabricated document was relied upon by the Bank's Loan Operations Department in extending the loans based on the altered terms at the lower rates and longer repayment periods. The result of Respondent's actions in connection with these loans was to expose the Bank to additional risk and to deprive the Bank of fees totaling $1,660.

Loan Number 9

On January 21, 2004, the Bank's junior loan committee also approved a secured loan in the amount of $600,000 to Customer H. (FRB Exh. 39.) As approved, the loan was to be extended for a 5-year term, at a variable rate of interest of base, plus 1.5 percent, including a loan fee of $1,200.

At some point following the committee meeting, Respondent fabricated a document, purporting to be from the junior loan committee which showed committee approval of the loan at a fixed interest rate of 5 percent, with a longer repayment period of 7 years, and with no loan fee. (FRB Exh. 40.) The Respondent forged at the top of this document the initials of the Bank's Regional Vice-President and the Bank's Senior Vice-President for Lending, making it appear as though the committee had approved the less favorable loan terms, when in fact, it had not.

The forged document was relied upon by the Bank's Loan Operations Department in funding the less favorable loan, which deprived the Bank of $1,500 in fees and at least $57,000 in interest.

Loan Number 10

On February 11, 2004, the Bank's junior loan committee approved a secured loan of $2.2 million to Customer I. (FRB Exh. 43.) On February 24, 2004, the Bank's senior loan committee reviewed and approved the loan on the same terms – namely, a 5-year term, at a fixed interest rate of 6 percent, with a loan fee of $11,000, and a documentation fee of $250. (FRB Exh. 44.)

At some point following the committee meetings, Respondent fabricated a document, purportedly from the junior loan committee, which showed that the committee had approved the loan to Customer I in an increased amount of $2.25 million, at a lower interest rate of 5 percent, and with an increased repayment period of 7 years. The fabricated document eliminated the $11,000 loan fee. (FRB Exh. 45.) Respondent forged the initials of the Bank's Regional Vice-President and the Bank's Senior Vice-President for Lending on the top of the document to make it appear as though the committee had approved the altered terms, when in fact, the committee had not.

Respondent also fabricated a second document in connection with this loan, purportedly from the senior loan committee, showing that committee's approval of the same altered terms set forth in the forged memorandum of the junior loan committee. (FRB Exh. 46.) The Respondent "cut and pasted" the signatures of the Bank's directors at the end of the document, making it appear as if the same terms had been approved by the senior loan committee, when in fact, they had not.

Respondent forwarded the forged documents to the Bank's Operations Department, who relied on the documents to process and fund the altered loan to Customer I. As a result of the Respondent's alteration of these loan terms, the Bank was exposed to an additional risk of loss of $25,000, and was deprived of $11,000 in fees and more than $158,000 in interest income.

Loan Number 11

On February 24, 2004, the Bank's senior loan committee approved an $871,250 letter of credit to Customer J. (FRB Exh. 49.) The terms and conditions of the approved credit provided for a loan fee of 1.5 percent ($13,068.75), and a document fee of $250.

Following the senior loan committee meeting, Respondent fabricated a document purportedly from the senior loan committee, showing that the committee had approved a credit line to Customer J for a loan fee of only .25 percent ($2,178.13) and a document fee of only $75. Respondent "cut and pasted" the signatures of the Bank's directors onto the document making it appear as though the committee had approved the altered terms, when, in fact, it had not.

Based on Respondent's actions, the Bank funded the letter of credit at the reduced terms, and was deprived of $11,965.62 in fees.

Loan Number 12

On February 24, 2004, the Bank's senior loan committee considered the refinancing of a $1.46 million secured loan the Bank had previously made to Customer K. (FRB Exh. 54.) Under the refinancing, the amount of the Bank's loan to Customer K was to be reduced to $1.38 million and the principal debtor on the loan was to be changed from Customer K to an investment company wholly owned by Customer K. The interest

rate on the new loan was to remain the same (6 percent fixed). The senior loan committee approved the refinancing proposal, the terms of which were memorialized on a loan approval document signed by six of the Bank's directors. (FRB Exh. 54.)

Unbeknownst to the Bank's loan committees, Respondent had issued a commitment letter to Customer K three months earlier, on November 6, 2003, which letter stated that the interest rate on the refinanced loan would be reduced and capped at 4.75 percent. (FRB Exh. 55.) Contrary to the Bank's policy, the Respondent issued the commitment letter over his own signature and did not obtain the co-signature of the President or Regional Senior Lender.

The Bank first learned of the unauthorized cap in July 2004, when the borrower's attorney called to complain that the loan rate had risen above 4.75 percent. (FRB Exh. 56.) The Bank also learned that the Respondent failed to secure the title changes on the collateral securing the loan to Customer K. As a result of the Respondent's actions with respect to the loan, the Bank was forced to honor the commitments made in the unauthorized letter, and was subsequently deprived of more than $109,000 in interest.

Loan Number 13

On March 10, 2004, Respondent fabricated a document, purportedly from the Bank's junior loan committee, which showed that the committee had approved a secured loan of $200,000 to Customer L. (FRB Exh. 59.) In truth, Customer L's loan was never presented to the loan committee and Respondent instead forged the initials of the Bank's Regional President and Regional Senior Lender on the top of the document to make it appear as though the loan to Customer L had been approved.

As a result of the fabricated loan approval, the loan was originated on May 6, 2004. (FRB Exh. 60.) Customer L thereafter defaulted on the loan, and on April 27, 2006, the loan was partially charged off as loss in the amount of $109,926. (FRB Exh. 61.) As a result of Respondent's conduct in connection with the loan to Customer L, the Bank suffered loss based on the borrower's failure to repay more than $109,926.

Loan Number 14

On March 10, 2004, the Bank's junior loan committee met and approved a $625,000 secured loan to Customer M. (FRB Exh. 62.) Following the meeting, the Respondent fabricated two documents, purportedly from the junior and senior loan committees, which increased the amount of the Bank's loan to $700,000, lowered the interest rate from 5.25 percent to 5 percent (fixed), and extended the term of the loan from five to seven years. (FRB Exh. 63.)

Respondent forged the initials of the Bank's Regional Senior Lender on the top of the document purporting to be from the junior loan committee to make it appear as if the altered terms had been approved by the committee. (FRB Exh. 63.) Likewise, Respondent "cut and pasted" the signatures of the six Bank directors at the end of the document purporting to be from the senior loan committee to make it appear as if the altered terms had been approved by that committee. (FRB Exh. 64.)

As a result of Respondent's fabrication of the above documents, the loan was thereafter originated in the altered amount of $700,000 instead of the approved amount of $625,000. As a result of the Respondent's conduct, the Bank was exposed to additional risk of loss in the amount of $75,000, deprived of the .25 basis points in interest, as well as the ability to use the funds for other legitimate bank purposes.

II. *Analysis and Findings*

Section 8(e) of the FDI Act provides that the Board may enter a final order to prohibit an institution-affiliated party ("IAP") from further participating in the affairs of any insured depository institution where the Board determines that such party has, directly or indirectly: (i) violated any law or regulation; (ii) engaged or participated in any unsafe or unsound practice; or (iii) committed or engaged in any act, omission, or practice which constitutes a beach of such party's fiduciary duty. 12 U.S.C. § 1818(e)(1)(A).

Section 8(e) further requires the Board to demonstrate that, by reason of the violation, practice, or breach: (i) the bank has suffered or probably will suffer financial loss or other damage; (ii) the interests of the bank's depositors have been or could be prejudiced; or that (iii) the IAP has received financial gain or other benefit by reason of such act. 12 U.S.C. § 1818(e)(1)(B). The Board must also show that the violation, practice, or breach: (i) involves personal dishonesty on the part of the IAP; or (ii) demonstrates willful or continuing disregard for the safety and soundness of the bank.

A. Misconduct

The misconduct required under section 8(e) encompasses violations of law and regulation, unsafe or unsound banking practices, or breach of fiduciary duty to the institution. The record here provides multiple examples of the required misconduct satisfying this element of the prohibition statute.

First, the record shows that Respondent Benarroch created "false entries" in the books and records of the Bank in violation of 18 U.S.C. § 1005, a criminal statute. Section 1005 provides in pertinent part as follows: "[w]hoever makes any false entry in

any book, report, or statement of [a Federal Reserve member] bank … with intent to injure or defraud such bank … or to deceive any officer of such bank … shall be fined not more than $1,000,000 or imprisoned not more that 30 years, or both … ." *Id.*

Respondent violated 18 U.S.C. §1005 when he, without authority, altered the terms of the loan approval documents at issue here by fabricating the documents and forging the initials and signatures of various bank officials with the intent of causing the documents to be relied upon by other bank officers in closing and funding the various loans. Each document forged or fabricated by Respondent in connection with the various loans constitutes a "false entry" within the meaning of 18 U.S.C. § 1005, and provides the "misconduct" required for a prohibition order under Section 8(e) of the FDI Act.

In addition to violating the false records statute, Respondent's fabrication of the various loan approval documents also constitutes an unsafe or unsound banking practice. See *In the Matter of Ramon M. Candelaria, Sunwest Bank of Santa Fe, New Mexico,* FDIC 95-62e, http://www.fdic.gov/bank/individual/enforcement/5242.html, *aff'd* 1998 U.S. App. LEXIS 1444 (10th Cir. 1998) (falsification of loan records is unsafe or unsound practice); citing *In the Matter of Frank E. Jameson*, 2 FDIC Enf. Dec. ¶5154A (1990), *aff'd, Jameson v. Federal Deposit Insurance Corporation*, 931 F2d 290 (5th Cir. 1991). Repeatedly falsifying and forging loan documents, issuing unauthorized commitment letters, and fabricating legal opinions by outside counsel are clearly "actions contrary to generally accepted standards of prudent operations," and constitute unsafe or unsound practices. *See* Financial Institutions Supervisory and Insurance Act of 1966: Hearings on S. 3158 and S. 3695 Before the House Comm. on Banking and Currency, 89th Cong., 2d Sess. 50 (1966), 112 Cong. Rec. 26, 474 (1966).

Finally, by engaging in the misconduct described above, Respondent committed an obvious breach of his fiduciary duties of care and loyalty to the bank.

> Service as a director or officer of a federally insured depository institution represents an important business assignment that carries with it commensurate duties and responsibilities. *Citation omitted*. Directors and officers of banks have obligations to discharge these duties, similar to the responsibilities owed by directors and officers of other business corporations. These duties include those of care and loyalty.
>
> The duty of care requires bank directors and officers to act as prudent and diligent business persons in conducting the affairs of the bank. The duty of loyalty generally prohibits them from putting their personal or business interests above the interests of the bank, and requires them to administer the affairs of the bank with candor, personal honesty, and integrity.

Candelaria, *supra*, citing *In the Matter of Ronald Grubb,* FDIC Enf. Dec. and Orders ¶5181 at A-2030 (1992), J. Villa, *Bank Directors' Officers' and Lawyers' Civil Liabilities*, §1.02 (Aspen, 1994).

In the case at hand, Respondent Benarroch violated his duty of care by the repeated circumvention of proper review and approval of the various loans at issue. His conduct departs markedly from that expected of a reasonably prudent bank officer, who would act more carefully and diligently in securing proper loan approval.

He violated his duty of loyalty by placing his personal interests ahead of the Bank by expediting and increasing loan volume to enhance his personal bonus; his duty of candor was violated through the various forgeries, fabrications, and misrepresentations perpetrated upon the Bank. Respondent's conduct here very clearly establishes a breach of his fiduciary duty of loyalty and candor, and represents a gross departure from the conduct expected of a reasonably careful and prudent loan officer.

B. Effects

To satisfy the second element of Section 8(e), the Board must find a certain negative "effect" of the Respondent's misconduct, namely, that (i) the Bank has suffered or probably will suffer financial loss or other damage; that (ii) the interest of the Bank or its depositors have been or could be prejudiced; and that (iii) the Respondent received financial gain or other benefit. 12 U.S.C. § 1818(e)(1)(B).

The undisputed facts here show that, by reason of Respondent's misconduct, the Bank suffered actual financial loss exceeding $460,925, including the loss of principal of $109,000 on Loan Number 13, which loan the Bank made in reliance on Respondent's fabricated loan approval; the loss of $326,700 in interest income as a result of the various deductions improperly authorized by Respondent; and the loss of $25,225 in fees. The record additionally shows that the Bank repeatedly lost the business opportunity on the many loans which Respondent altered in order to facilitate his personal gain through an annual bonus. The record clearly demonstrates the necessary effect of Respondent's actions to support the "effects" element of the prohibition statute.

C. Culpability

The third and final element of prohibition under Section 8(e) requires a finding by the Board that Respondent's actions demonstrate personal dishonesty, or a willful and continuing disregard for the safety and soundness of the Bank. 12 U.S.C. § 1818(e)(1)(C). The undisputed (in fact admitted) evidence demonstrates that Respondent repeatedly forged the signatures and initials of various Bank officers, and "cut and pasted" the signatures of various Bank directors onto documents with the intent to

mislead Bank officials into believing that loans had been approved under certain terms, when, in fact, they had not.

Additionally the Respondent fabricated and presented false legal memoranda, purportedly from the Bank's outside counsel, when, in fact, counsel had rendered no such opinions. Respondent's actions were a deliberate attempt to deceive Bank officials into believing the loans had been independently reviewed and approved for legal sufficiency, when, in fact, they had not.

The Respondent's conduct obviously rises to the level of personal dishonesty, as it demonstrates the requisite "disposition to lie, cheat, or defraud; untrustworthiness; … misrepresentation of facts and deliberate deception by pretense and stealth… ." *Van Dyke v. Board of Governors of the Federal Reserve System*, 876 F.2d 1379 (8th Cir. 1989). The misrepresentations, the deception, the alteration, the fabrication – this level of culpability clearly establishes Respondent's unfitness to serve in the banking industry.

Respondent's acts also satisfy the "willful and continuing disregard" standard of the culpability element. His conduct was "willful" in that he knowingly, intentionally, and consciously altered loan documents for the admitted purpose of facilitating loans without proper approval. He admitted that he falsified legal memoranda to expedite loan closing, and does not deny that he intentionally and deliberately issued the unauthorized commitment letters that exposed the Bank to heightened risk.

So too does his conduct demonstrate a "continuing disregard" for the safety and soundness of the Bank. Over a period of eight months, Respondent altered the terms of at least 14 loans totaling $8.6 million, issued two unauthorized commitments letters totaling $3.71 million, and fabricated three legal memoranda in his attempts to rush the funding of

a $3.15 million loan. His actions are "continuing" in that they are not simply a single or isolated occurrence, but rather, represent a continuing series of repeated actions, all of which were committed "over time with heedless indifference to the prospective consequences." *Grubb v. Federal Deposit Insurance Corporation*, 34 F.3d 956, 962 (10th Cir. 1994).

D. Respondent's Claims and Defenses

As indicated above, Respondent Benarroch does not dispute the factual assertions set forth in the Notice or dispositive motion. In his opposition, he does repeat the claim that inappropriate communications on the part of Enforcement Counsel concerning the allegations here led to his dismissal from another financial institution. Respondent questions the propriety of such publicity, and claims his employment at Southport Bank had been satisfactory and posed no risk to that institution.

In previous argument concerning this issue, Enforcement Counsel reiterated the public nature of these proceedings, and pointed out the regulatory responsibility (and Congressional mandate) to make public the allegations at issue. There is nothing to suggest that Enforcement Counsel communicated any privileged, protected, or confidential information to the FDIC, or that any improper disclosure took place. Rather, from all appearances, the only information conveyed to this regulator concerned the public allegations at issue here, and nothing in Respondent's claim or argument on this issue alters the ultimate question of whether Respondent's conduct while employed at Midwest Bank and Trust warrants his prohibition from further participation in the industry.

Nor do Respondent's arguments or questions of the date set forth in the Declaration of Stephen M. Karaba at FRB Exh. No. 1 in any way alter the ultimate decision in this matter. Rather, it appears Respondent may be confused about the year in which Mr. Karaba was interviewed at the Federal Reserve Bank of Chicago, and his claim raises no genuine issue of material fact that would otherwise overcome summary disposition as a matter of law.

Accordingly, for the reasons set forth above, the FRB's motion for summary disposition is GRANTED. It is recommended that the proposed order attached hereto in Appendix "B" be issued prohibiting the participation of Respondent, Adam L. Benarroch, without prior regulatory approval, in any financial institution or organization described in 12 U.S.C. § 1818(e)(7)(A).

CONCLUSIONS OF LAW

1. Midwest Bank and Trust is, and at all times pertinent to the allegations in this proceeding was, an insured state bank and member of the Federal Reserve System within the meaning of Section 3(q)(2) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. § 1813(q)(2).

2. The Respondent, Adam L. Bennaroch, was an institution-affiliated party of the Bank, as defined in Section 3(u) of the FDI Act, 12 U.S.C. §1813(u), whose employment with the Bank was terminated on May 12, 2004.

3. The Respondent is subject to the jurisdiction of the Board of Governors of the Federal Reserve System as provided by Section 3(q)(2) of the Act, 12 U.S.C. §1813(q)(2).

4. By reason of the Respondent's acts, omissions and practices as fully described in the foregoing findings, the Respondent has violated law and regulations as recited herein.

5. By reason of the Respondent's acts, omissions and practices as described in the foregoing findings, the Respondent has engaged in unsafe or unsound banking practices within the meaning of Section 8(e)(1)(A)(ii), 12 U.S.C. § 1818(e)(1)(A)(ii).

6. By reason of the Respondent's acts, omissions, and practices as fully described in the foregoing findings, the Respondent has breached his fiduciary duties as an officer of the Bank within the meaning of Section 8(e)(1)(A)(iii), 12 U.S.C. § 1818(e)(1)(A)(iii).

7. By reason of the Respondent's acts, omissions, and practices as fully described in the foregoing findings, the Bank has suffered financial loss or other damage, and Respondent has received financial gain or other benefit within the meaning of section 8(e)(1)(B)(iii), 12 U.S.C. § 1818(e)(1)(B)(iii).

8. The Respondent's acts, omissions, and practices as fully described in the foregoing findings, demonstrate his personal dishonesty and his willful and continuing disregard for the safety or soundness of the Bank within the meaning of section (8)(e)(1)(C)(i) and (ii), 12 U.S.C. § 1818(e)(1)(C)(i) and (ii).

9. Based on the foregoing findings, the Respondent has violated 8(e)(1) of the Act, 12 U.S.C. § 1818(e)(1), and is subject to the imposition of an order prohibiting his future participation in the affairs of a federally insured financial institution.

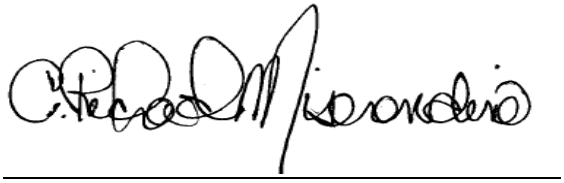
Recommended Order

Pursuant to the provisions of section 8 (e) of the Federal Deposit Insurance Act, 12 U.S.C. § 1818 (e), the undersigned recommends that the proposed order attached

hereto as Appendix "B" be issued (1) prohibiting the Respondent, Adam L. Benarroch, from future participation in the affairs of federally insured financial institutions.

SO ORDERED.

Dated: October 29, 2009



C. Richard Miserendino
Administrative Law Judge

APPENDIX "A"

FINDINGS OF FACT

1. From September 2003 to May 2004, Respondent Adam L. Benarroch was employed as an Assistant Vice-President and commercial lender of Midwest Bank and Trust, a state-member bank of the Federal Reserve System. Benarroch Ans. at 3.

2. At all relevant times, for each loan the Bank approved, the appropriate loan committee would generate a document separate from the minutes memorializing the terms and conditions of the loan. FRB Exh. 4 at 10503; FRB Exh. 5 at 10504; Declarations of Stephen A. Karaba at ¶ 4 ("Karaba Decl."); Declaration of David M. Natzke at ¶ 3 ("Natzke Decl."). As evidence of the loan approval, the documents were signed by the appropriate representative(s) of each committee. Karaba Decl. at ¶ 6; Natzke Decl. at ¶ 5. Loan approvals generated by the bank's junior loan committee were signed by the Regional President, or the Senior Vice President of Commercial lending if the Regional President was unavailable. Karaba Decl. at ¶ 6; Natzke Decl at ¶ 5. Loan approvals generated by the senior loan committee were signed by the directors of the Bank and the members of the senior loan committee then present at the meeting. Natzke Decl. at ¶ 5. These approvals were relied on by the Bank's Loan Operations Department in preparing the closing documents for the loan. Natzke Decl at ¶ 5.

3. At all relevant times, the Bank also maintained a policy governing commitment letters, which stated that "any letter from the Bank stating the Bank's willingness to advance funds to a named borrower" can only be issued "under the signature of the loan officer and cosigned by the President or Regional Senior Lender or their nominees." FRB Exh. 6 at 10518.

4. The following loan documents contain the signatures or initials of the Bank's Senior Vice-President of Commercial Lending, the Bank's Regional President, or both, that were forged by Respondent –

> FRB Exh. 18 -- Memorandum from Adam L. Benarroch to Credit file dated November 11, 2003 (Bates No. BOG-AB-00739; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 22 -- Officer's Loan Committee approval document dated November 26, 2003 (Bates No. BOG-AB-10448; Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 8 -- Memorandum from Adam L. Benarroch to Credit file dated December 5, 2003 (Bates No. BOG-AB-02991; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 14 -- Director's Loan Committee approval document dated December 18, 2003 (Bates No. BOG-AB-07697; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 40 -- Officer's Loan Committee approval document dated January 14, 2004 (Bates No. BOG-AB-11186; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 27 -- Officer's Loan Committee approval document dated January 14, 2004 (Bates No. BOG-AB-02029; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 34 -- Officer's Loan Committee approval document dated January 21, 2004 (Bates No. BOG-AB-01955; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 45 -- Officer's Loan Committee approval document dated February 11, 2004 (Bates No. BOG-AB-03906; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 63 -- Officer's Loan Committee approval document dated March 10, 2004 (Bates No. BOG-AB-05787; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)
>
> FRB Exh. 59 -- Officer's Loan Committee approval document dated March 10, 2004 (Bates No. BOG-AB-10441; *See also* Karaba Decl. at ¶ 7; Natzke Decl. at ¶ 9)

5. The following documents contain signatures of Bank officials that were taped, pasted, or stapled on to the document by Respondent –

> FRB Exh. 28 -- Director's Loan Committee approval document dated January 27, 2004 (Bates No. BOG-AB-2027; *See also* Natzke Decl. at ¶ 9)
>
> FRB Exh. 46 -- Director's Loan Committee approval document dated February 24, 2004 (Bates No. BOG-AB-3902; *See also* Natzke Decl. at ¶ 9)
>
> FRB Exh. 51 -- Director's Loan Committee approval document dated February 25, 2004 (Bates No. BOG-AB-10473; *See also* Natzke Decl. at ¶ 9)
>
> FRB Exh. 64 -- Director's Loan Committee approval document dated March 23, 2004 (Bates No. BOG-AB-5783; *See also* Natzke Decl. at ¶ 9)

6. The following commitment letters were issued by Respondent, without proper authorization, in violation of the Bank's commitment policy –

> FRB Exh. 12 -- Commitment Letter to Customers B and C dated October 30, 2003 (Bates No. BOG-AB-8607; *See also* Natzke Decl. at ¶ 9;)
>
> FRB Exh. 55 -- Commitment Letter to Customer K dated November 6, 2003 (Bates No. BOG-AB-11809; *See also* Natzke Decl. at ¶ 9.)

7. The forged documents and unauthorized commitment letters described above were used by Benarroch to alter the terms of at least 14 different loans, as follows –

Loan 1/Customer A – On December 5, 2003, Benarroch altered the terms of the loan by drafting a memorandum addressed to the Bank's files, which decreased the variable interest rate on the loan by .5 percent; decreased the interest rate floor on the loan by .5 percent; and increased the repayment period by two years. Karaba Decl. at ¶ 7; FRB Exh. 8 at 02991; and Benarroch Ans. (failure to deny Notice at ¶ 8). The altered

terms resulted in a loss to the bank of more than $2,700 in interest. Benarroch Ans. (failure to deny Notice at ¶ 9).

Loan 2/Customers B & C – On October 30, 2003, Benarroch sent an unauthorized commitment letter to Customers B and C informing them that the Bank had approved a loan for them in the amount of $2.25 million. FRB Exh. 12 at 8607; Benarroch Ans. (failure to deny Notice at ¶ 10). On October 17, 2003, after receiving an unfavorable appraisal of the property that would be used to secure the loan, the junior loan committee voted to reduce the loan amount by $46,000. FRB Exh. 13 at 10456; Benarroch Ans. (failure to deny Notice at ¶ 11). Benarroch altered the terms of the loan by issuing a forged approval document that matched the higher loan amount provided in his unauthorized commitment letter. FRB Exh. 14 at 7697; Benarroch Ans. (failure to deny Notice at ¶ 12). The altered terms resulted in additional risk exposure and a loss of business opportunity to the bank. Benarroch Ans. (failure to deny Notice at ¶ 13).

Loan 3/Customer D – On November 11, 2003, Benarroch altered the terms of the loan by falsifying the bank's approval on a memorandum to the Bank's junior loan committee, which increased the amount of the loan by $225,000 and lengthened the amortization period by 5 years. FRB Exh. 18 at 739; Benarroch Ans. (failure to deny Notice at ¶ 15). The altered terms resulted in additional risk exposure and a loss of business opportunity to the bank. Benarroch Ans. (failure to deny Notice at ¶ 16).

Loan 4/Customer E – On or about November 26, 2003, Benarroch altered the terms of the loan by fabricating a document, purportedly from the Bank's junior loan committee, which increased the loan amount by $24,000. FRB Exh. 22 at 1448; Benarroch Ans. (failure to deny Notice at ¶ 18). The altered terms resulted in additional

risk exposure and a loss of business opportunity to the bank. Benarroch Ans. (failure to deny Notice at ¶ 19).

Loans 5 & 6/Customer F – In or around January 2004, Benarroch altered the terms of the loan by falsifying a loan approval document, which increased the amount of the loan by $150,000; lowered the interest rate from a variable rate of 1.5 percent above the Bank's base rate to a fixed rate of 5 percent; and eliminated $4,125 in fees. FRB Exh. 27 at 2029; Benarroch Ans. (failure to deny Notice at ¶ 21). The altered terms resulted in a loss to the Bank of $4,125 in fees and $29,989 in interest.

Loans 7 & 8/Customer G – On or about January 21, 2004, Benarroch altered the terms of these two loans by fabricating a document, purportedly from the Bank's junior loan committee, which increased the loan amounts by $1,000 and $5,000 respectively; lowered the interest rate on both loans to base plus 1 percent (with a 5 percent floor); lengthened the repayment period by 2 years; and eliminated the $1,660 loan fee for the first loan. FRB Exh. 34 at 1955; Benarroch Ans. (failure to deny Notice at ¶ 24). The altered terms resulted in additional risk exposure and a loss of business opportunity to the bank, as well as $1,660 in lost fees. Benarroch Ans. (failure to deny Notice at ¶ 25).

Loan 9/Customer H – On or about January 21, 2004, Benarroch altered the terms of the loan by fabricating a document, purportedly from the Bank's junior loan committee, which changed the interest rate from a floating rate of base plus 1.5 percent (with a 5 percent floor) to a fixed rate of 5 percent; lengthened the repayment period by 2 years; and eliminated the loan fee of $1,200. FRB Exh. 40 at 11186; Benarroch Ans. (failure to deny Notice at ¶ 26). The altered terms resulted in a loss to the Bank of $1,200 in fees and at least $57,000 in interest. Benarroch Ans. (failure to deny Notice at ¶ 27).

Loan 10/Customer I – In or around February 2004, Benarroch altered the loan terms by fabricating two documents, purportedly from the Bank's junior and senior loan committee, respectively, which increased the loan amount by $50,000; lowered the interest rate by 1 percent; and eliminated loan fees totaling $11,000. FRB Exh. 45 at 3906; Benarroch Ans. (failure to deny ¶¶ 29-30). As a result of Benarroch's conduct, the bank was exposed to an additional risk of loss, and deprived of $11,000 in fees and $158,000 in interest. Benarroch Ans. (failure to deny Notice at ¶ 31).

Loan 11/Customer J – On or about February 24, 2004, Benarroch altered the terms of the loan by fabricating a document, purportedly from the Bank's senior loan committee, which reduced the fees on the loan by $11,000. FRB Exh. 51 at 10473; Benarroch Ans. (failure to deny Notice at ¶ 32). The altered terms resulted in a loss to the Bank of $11,000 in fees. Benarroch Ans. (failure to deny Notice at ¶ 34).

Loan 12/Customer K – In July 2004, an attorney for Customer K called the Bank to complain that the interest rate on the loan had risen above 4.75 percent. FRB Exh. 56 at 4770; Benarroch Ans. (failure to deny Notice at ¶ 38). Unbeknownst to the Bank, Benarroch had issued an unauthorized commitment letter to Customer K more than one-year earlier, in November 2003, when the loan to Customer K was originally made, which stated that the interest rate on the refinanced loan would be capped at 4.75 percent. FRB Exh. 55 at 11809; Benarroch Ans. (failure to deny Notice at ¶ 37). The unauthorized commitment letter resulted in a loss to the Bank of more than $109,000 in interest when the Bank was forced to re-issue a promissory note containing the rate Benarroch had provided to the customer. FRB Exh. 57 at 11091; Benarroch Ans. (failure to deny Notice at ¶ 38).

Loan 13/Customer L – On March 10, 2004, Benarroch fabricated a document, purportedly from the Bank's junior loan committee, which showed that the committee had approved a secured loan of $200,000 to Customer L. FRB Exh. 59 at 10441; Benarroch Ans. (failure to deny Notice at ¶ 39). As a result of the forged document, the Bank made a $200,000 loan to Customer L on May 6, 2004, and suffered a loss of $109,000 when the borrower failed to repay the loan. FRB Exh. 61 at 11064; Benarroch Ans. (failure to deny Notice at ¶ 40).

Loan 14/Customer M – On or about March 10, 2004, Benarroch altered the terms of the loan by fabricating two documents, purportedly from the junior and senior loan committees, respectively, which increased the amount of the Bank's loan by $75,000; lowered the interest rate by .25 percent; and extended the repayment period by 2 years. FRB Exh. 63 at 05787; FRB Exh. 64 at 05783; Benarroch Ans. (failure to deny Notice ¶¶ 41, 42). The altered terms resulted in additional risk exposure and a loss of business opportunity to bank. Benarroch Ans. (failure to deny Notice at ¶ 43).

8. Benarroch also fabricated the following legal memoranda, purportedly from the Bank's attorney, in order to proceed with the loan closing for one of his customers –

> FRB Exh. 69 -- Memorandum from Bank Counsel, dated May 11, 2004, discussing revisions to Customer H's loan documentation (Bates No. BOG-AB-10488; *See also* Natzke Decl. at ¶ 9)
>
> FRB Exh. 69 -- Memorandum from Bank Counsel, dated May 11, 2004, discussing maximum amount of Customer H's loan (Bates No. BOG-AB-10489; *See also* Natzke Decl. at ¶ 9)
>
> FRB Exh. 69 -- Memorandum from Bank Counsel, dated May 11, 2004, approving loan documentation for Customer H's loan (Bates No. BOG-AB-10490; *See also* Natzke Decl. at ¶ 9)

9. Benarroch forged documents discussed above to increase the volume and amount of the loans he generated for the Bank, which would in turn increase the value of his year-end bonus. (Benarroch Ans. p. 3).

APPENDIX B

UNITED STATES OF AMERICA
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, DC

In the Matter of	)	
	)	
Adam L. Benarroch,	)	
	)	Docket No. 09-052-I-E
Institution-Affiliated Party of	)	
Midwest Bank and Trust,	)	
Elmwood, Illinois	)	
	)	

PROPOSED ORDER OF PROHIBITION

Pursuant to section 8(e) of the Federal Deposit Insurance Act, 12 U.S.C. 1818(e), it is hereby ORDERED, that:

1. Adam L. Benarroch shall not participate in any manner in the 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 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); and

2. Adam L. Benarroch 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 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); and

3. Adam L. Benarroch 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 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); and

4. Adam L. Benarroch 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), or 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 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).

This ORDER will become effective thirty (30) days from the date of its issuance.

The provisions of this ORDER will remain effective and in force except in the event that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the Board of Governors of the Federal Reserve System.

IT IS SO ORDERED.

Dated at Washington, DC, this _____ day of _____, 2009

_____
Board of Governors
Federal Reserve System

CERTIFICATE OF SERVICE

On October 29, 2009, I served the complete Record of the Administrative Proceeding, along with the Recommended Decision on Summary Disposition with attached Appendices A and B, and the Index of the Administrative Record, by electronic medium, upon:

Jennifer J. Johnson
Secretary of the Board
Board of Governors of the
Federal Reserve System
Washington, DC 20551
Jennifer.j.Johnson@frb.gov

And a copy of the Recommended Decision on Summary Disposition and Index of the Administrative Record upon:

Stephen H. Meyer, Esq.
Assistant General Counsel
Jason A. Gonzalez, Esq.
Board of Governors of the
Federal Reserve System
Washington, DC 20551
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