

UNITED STATES OF AMERICA

BEFORE THE

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FLORIDA DEPARTMENT OF BANKING AND FINANCE

_____ )	Docket No. 01-016-B-SM
In the Matter of )	
GULF BANK )	Order to Cease and Desist
Miami, Florida )	Issued Upon Consent
_____ )	

WHEREAS, in recognition of the common goal of the Board of Governors of the Federal Reserve System (the “Board of Governors”), the Florida Department of Banking and Finance (the “Department”), and the Gulf Bank, Miami, Florida, (the “Bank”), a state chartered bank that is a member of the Federal Reserve System, to restore and maintain the financial soundness of the Bank, and to ensure the Bank’s compliance with all applicable federal and state laws, rules, and regulations, the Bank has consented to the issuance of this Cease and Desist Order (the “Order”).

WHEREAS, as the result of the identification of deficiencies in its operations, the Bank is taking steps to enhance and improve its policies and procedures for compliance with all applicable laws and regulations, including the Currency and Foreign Transactions Reporting Act (31 U.S.C. 5311 et seq.) and the regulations issued thereunder by the U.S. Department of the Treasury (31 C.F.R. 103.11 et seq.) (collectively referred to as the Bank Secrecy Act (the “BSA”)); Section 655.50, Fla. Stat. (2001); and the applicable provisions of Regulation H of the Board of Governors (12 C.F.R. 208.62 and 208.63);

WHEREAS, on Nov. 7, 2001, the board of directors of the Bank adopted a resolution authorizing and directing Salvador Bonilla-Mathe to enter into this Order on behalf of the Bank and consenting to compliance by the board of directors of the Bank and the Bank's institution-affiliated parties, as defined in section 3(u) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1813(u)) and Section 655.005(h) and (i), Fla. Stat. (2001), to comply with each and every provision of this Order; and waiving any and all rights that the Bank may have pursuant to 12 U.S.C. 1818 and Sections 120.68 and 655.003(2), Fla. Stat. (2001): to the issuance of a notice of charges and of hearing on any matter set forth in this Order; to a hearing for the purpose of taking evidence on any matters set forth in this Order; to judicial review of this Order; and to challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of this Order or any provision hereof.

NOW, THEREFORE, before the taking of any testimony or adjudication of, or finding on any issue of fact or law herein, and without this Order constituting an admission of any allegation made or implied by the Board of Governors or the Department, and solely for the purpose of settlement of this proceeding without protracted hearing or testimony and pursuant to the aforementioned regulations:

IT IS HEREBY ORDERED that the Bank and its institution-affiliated parties cease and desist and take affirmative action as follows:

## Management

1. (a) Within 90 days of this Order, the board of directors shall conduct a review of the functions and performance of the Bank's management and shall forward to the Federal Reserve Bank of Atlanta (the "Reserve Bank") and the Department a written report that includes findings, conclusions, and a description of specific actions that the board of directors proposes to take to strengthen the Bank's management. The primary purpose of the review shall be to assure the development of a management structure that is adequately staffed by qualified and trained personnel suitable to the Bank's needs. The review shall, at a minimum, address, consider, and include:

(i) an evaluation of each officer to determine whether the individual possesses the ability, experience, and other qualifications required to perform competently present and anticipated duties, including the ability to adhere to the Bank's established policies and procedures, restore and maintain the Bank to a safe and sound condition, and comply with the requirements of this Order;

(ii) a plan to recruit, hire, or appoint additional or replacement personnel with the requisite ability, experience, and other qualifications required to perform competently their assigned duties; and

(iii) the use of independent contractors in the performance of Bank operations, and appropriate contracts and documentation for such personnel.

(b) Within 180 days of this Order, and semi-annually thereafter, the board of directors shall review management's adherence to the Bank's established policies and procedures and shall prepare written findings and conclusions of this review, along with written descriptions of any management or operational changes that are to be made as a result of the

review. These written findings shall be included in the minutes of the board of directors' meetings.

2. Within 90 days of this Order, the Bank shall submit to the Reserve Bank and the Department a written plan providing for orderly management succession, particularly in all areas relating to compliance. The plan shall, at a minimum, identify the individual(s) at the Bank who are considered to have the potential for advancement or promotion, the area(s) in which such individual(s) may assume new duties or responsibilities or the position(s) to which they may be promoted, and the training to be provided the individual(s) to ensure adequate successor management.

3. During the term of this Order, or as otherwise required by law, the Bank shall comply with the provisions of section 32 of the FDI Act (12 U.S.C. 1831i); Subpart H of Regulation Y of the Board of Governors (12 C.F.R. Part 225, Subpart H); and Section 655.0385, Fla. Stat. (2001) with respect to the appointment of any new directors or the hiring or promotion of any senior executive officers as defined in Regulation O of the Board of Governors (12 C.F.R. Part 215) and Sections 655.005(f) and 655.948, Fla. Stat. (2001).

#### Capital and Dividends

4. Within <sup>60</sup>~~45~~ days of this Order, the Bank shall submit to the Reserve Bank and the Department an acceptable written plan to maintain sufficient capital at the Bank. The plan shall, at a minimum, address, consider, and include:



(a) The Bank's current and future capital requirements, including compliance with the Capital Adequacy Guidelines of the Board of Governors

(12 C.F.R. Part 208, App. A and B);

(b) any planned asset growth;

(c) the volume of adversely classified assets and the potential for additional asset quality problems at the Bank;

(d) the anticipated level of retained earnings of the Bank, with particular attention to maintaining adequate loan loss reserves and to the overhead costs associated with improving the Bank's BSA program as required by the provisions of this Order;

(e) the level and trend of both on- and off-balance sheet risks, including but not limited to the levels of operational, legal, and reputational risks; and

(f) the source and timing of additional funds to fulfill the future capital and allowance for loan and lease loss needs of the Bank.

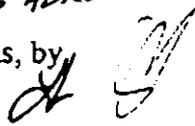
5. The Bank shall not declare or pay any dividends without the prior written approval of the Reserve Bank, the Department, and the Director of the Division of Banking Supervision and Regulation of the Board of Governors. Requests for approval shall be received by the Reserve Bank and the Department at least 30 days prior to the proposed dividend declaration date and shall contain, but not be limited to, current and projected information on earnings, cash flow, capital levels, and asset quality of the Bank.

## Loan Activities

6. Within 30 days of this Order, the Bank shall submit to the Reserve Bank and the Department acceptable written policies and procedures for review of the Bank's loan portfolio. The loan review procedures shall be designed to identify and categorize problem credits and to assess the overall quality of the Bank's loan portfolio and shall, at a minimum, address, consider, and include:

- (a) monitoring and reporting of past due loans; and
- (b) periodic reporting to the board of directors of the status of the loan reviews and the action(s) taken by management to improve the Bank's position on each loan adversely graded and/or on the watch list.

7. Within 60 days of this Order, the Bank shall take all steps necessary to correct the documentation and credit information deficiencies in the Bank's loan files listed in the report of examination of the bank dated June 7, 2001 (the "Report of Examination").

8. ~~Within 10 days of this Order, the Bank shall eliminate from its books, by charge-off or collection, all assets or portions of assets classified "loss" in the Report of Examination that have not been previously collected in full or charged off. Upon completion of these collections or charge-offs, the Bank shall immediately notify the Reserve Bank and the Department in writing that it has complied with this provision. Thereafter, the Bank shall, within 30 days from the receipt of any federal or state report of examination, charge off all assets classified "loss," unless otherwise approved in writing by the Reserve Bank.~~ <sup>CONFIRMS THAT IT HAS ALREADY</sup> ~~eliminated~~ from its books, by  charge-off or collection, all assets or portions of assets classified "loss" in the Report of Examination that have not been previously collected in full or charged off. ~~Upon completion of these collections or charge-offs, the Bank shall immediately notify the Reserve Bank and the Department in writing that it has complied with this provision. Thereafter,~~ the Bank shall, within 30 days from the receipt of any federal or state report of examination, charge off all assets classified "loss," unless otherwise approved in writing by the Reserve Bank.

9. Within 45 days of this Order, the Bank shall submit to the Reserve Bank and the Department acceptable written policies and procedures to monitor and control concentrations of credit. The policies and procedures shall, at a minimum, address, consider, and include:

- (a) methods used to identify assets or groups of assets or contingent claims with common risk elements that, in the aggregate, represent 25 percent or more of the Bank's tier 1 capital;
- (b) the establishment by the board of directors of acceptable limits on concentrations of credit;
- (c) monitoring procedures to control concentrations of credit; and
- (d) written monthly reporting of concentration levels to the board of directors, copies of which shall be retained for subsequent supervisory review.

#### **Asset/Liability Management**

10. Within 60 days of this Order, the Bank shall submit to the Reserve Bank and the Department acceptable written asset/liability management policies designed to improve the management of the Bank's liquidity and sensitivity to market risk.

- (a) The policies regarding liquidity shall, at a minimum, address, consider, and include the following: (i) appropriate standards for volume, mix and maturity of the Bank's loans, investments, core deposits, volatile deposits, off-balance sheet commitments, and alternative funding sources; (ii) meaningful liquidity targets and parameters; (iii) appropriate oversight and review by management and the board of directors; and (iv) an appropriate contingency funding plan.

(b) The policies regarding sensitivity to market risk shall, at a minimum, address, consider, and include the following: (i) identification of individuals responsible for measuring, monitoring, and controlling interest rate sensitivity; (ii) appropriate oversight and review by management and the board of directors; (iii) maintenance of documentation to support the validity and accuracy of assumptions used in measuring interest rate risk; (iv) parameters for controlling interest rate risk based on capital levels, earnings performance, and the risk tolerance of the Bank; and (v) action plans to reduce potential interest rate risk in the event that rate sensitivity results fall outside approved limits.

(c) The Bank's Asset/Liability Committee (the "ALCO") shall review, on a monthly basis, all asset/liability management decisions made by the Bank's management, paying particular attention to whether each decision was made in accordance with approved policies. All exceptions to the policies shall be documented by the ALCO as to the reason for the exceptions and the continuance of the exceptions, taking into account the Bank's overall goals and strategies. The ALCO shall maintain full and complete minutes of its actions and shall provide monthly written reports to the board of directors to enable the board to make informed decisions regarding the Bank's management of market risk and liquidity.

### **Strategic Plan and Budget**

11. (a) Within 60 days of this Order, the Bank shall submit to the Reserve Bank and the Department a written strategic plan and a budget for the Bank's proposed business activities for 2002. The plan shall, at a minimum, provide for or describe:

(i) management, lending, and operational objectives, given the condition of the Bank as reflected in the Report of Examination;

- (ii) an earnings improvement plan;
- (iii) the operating assumptions that form the bases for major projected income and expense components, and the sources and uses of new funds;
- (iv) financial performance objectives, including plans for asset growth, earnings, liquidity, and capital, supported by detailed quarterly and annual pro forma financial statements, including projected budgets, balance sheets and income statements; and
- (v) the establishment of a monthly review process to monitor the actual income and expenses of the Bank in comparison to budgetary projections.

(b) A strategic plan and a budget for each calendar year subsequent to 2002 shall be submitted to the Reserve Bank and the Department at least one month prior to the beginning of that calendar year. The board of directors shall each month review actual performance for that month in comparison to each month's budgetary projections and document analysis of significant variances.

### **Internal Controls**

12. Within 60 days of this Order, the Bank shall submit to the Reserve Bank and the Department acceptable written procedures designed to strengthen the Bank's internal controls and maintain the accuracy of the Bank's books and records. The procedures shall, at a minimum, address, consider, and include:

- (a) management information systems that ensure that appropriate management personnel receive timely and accurate reports necessary to effectively manage business risks and correct weaknesses and deficiencies;
- (b) appropriate segregation of duties;

- (c) guidelines and procedures for review and approval of all transactions between the Bank and its affiliates;
- (d) extending, approving, monitoring, and reporting, overdrafts and overdraft lines of credit;
- (e) procedures for verifying the legal authority of third party representatives of account holder to direct account activity;
- (f) reconciliations of general and subsidiary ledger accounts, and timely resolution of open items; and
- (g) corrective steps that address internal controls deficiencies noted in the Report of Examination.

13. The Bank shall ensure that all Consolidated Reports of Condition and Income are submitted or published by the Bank in a timely manner, that each Report accurately reflects the Bank's condition on the date for which it is submitted or published, and that all records indicating how Reports are prepared are maintained for subsequent supervisory review.

14. Within 60 days of this Order, the Bank shall submit to the Reserve Bank and the Department acceptable written policies and procedures designed to strengthen the electronic funds transfer function. The policies and procedures shall, at a minimum, address, consider, and include:

- (a) procedures for segregation of duties for processing, sending, reconciling, and reviewing wire transfers;

(b) security procedures, including but not limited to, timely call backs to authenticate telephoned, faxed or written funds transfer requests;

(c) a secure environment for electronic funds transfer codes and equipment, including access restrictions; and

(d) the establishment, maintenance, and monitoring of a wire transfer log of all funds transfers through the Bank.

15. The Bank shall maintain adequate records of the business interests of Bank affiliates (as defined in section 23A of the Federal Reserve Act) and Bank insiders and related interests (as defined in Regulation O of the Board of Governors).

#### **Audit**

16. (a) Within 60 days of this Order, the Bank shall review its present internal audit program to ensure that it is consistent with generally accepted auditing standards including, but not limited to, the scope and frequency of audits, follow-up procedures, and periodic scheduled reports to the board of directors.

(b) Within 90 days of this Order, the Bank shall submit to the Reserve Bank and the Department an acceptable written internal audit program designed to ensure that internal audits are conducted to verify implementation and compliance with policies, procedures, and controls established in connection with this Order.

(c) The Bank shall ensure that the Bank's external auditors have all information and records necessary to complete the Bank's external audit for the prior year and issue financial statements.

17. Within 60 days of this Order, the Bank shall submit to the Reserve Bank and the Department an acceptable written investment policy that shall, at a minimum, address, consider, and include:

(a) minimum documentation requirements for investments, including the review and analysis of prospectuses, pricing sources and credit ratings prior to and on a regular basis after the purchase of the investment;

(b) maintenance of records on the investment portfolio to ensure that reconciliations to source documents are completed at least monthly; and

(c) the establishment of reporting, review, and approval procedures to and by the board of directors.

#### **Bank Secrecy Act, Regulation H and OFAC Compliance**

18. The Bank and its institution-affiliated parties shall not, directly or indirectly, violate the BSA or any rules or regulations issued pursuant thereto, or the Florida Control of Money Laundering in Financial Institutions Act (Section 655.50, Fla. Stat. (2001)), and shall correct all BSA violations cited at previous examinations.

19. To assist the Bank to correct any existing violations of the BSA, the rules and regulations issued thereunder, Regulation H of the Board of Governors, and the regulations of the U.S. Department of the Treasury's Office of Foreign Asset Control ("OFAC") (31 C.F.R. 500 et seq.), and to develop policies and procedures designed to ensure future compliance with all applicable laws and regulations:

(a) Within 30 days of this Order, the Bank shall engage the services of a qualified independent firm (the "Consultant"), acceptable to the Reserve Bank and the Department, to conduct a comprehensive review of the Bank's anti-money laundering compliance and to make recommendations, as appropriate, for new policies and procedures to be implemented by the Bank. The comprehensive review shall include, at a minimum:

(i) a review of the Bank's policies and procedures for compliance with the BSA, Regulation H of the Board of Governors, OFAC rules and regulations, and subpoenas and administrative summonses;

(ii) a forensic review of account records from October 1, 1998, to the present to determine whether any suspicious activity involving accounts or transactions at, by, or through the Bank was properly identified and reported by the Bank in accordance with applicable regulations;

(iii) a forensic review of account records from October 1, 1998, to the present to evaluate compliance with the currency transaction reporting requirements of the BSA;

(iv) a forensic review of the accuracy and completeness of the Bank's responses to subpoenas and administrative summonses received since October 1, 1998; and

(v) a forensic review of internal controls and regulatory compliance since October 1, 1998 by all areas of the Bank's operations that were under the direct

responsibility of the former Vice President for Operations and BSA Officer of the Bank, WHICH SHALL BE COMPLETED, NOT WITHSTANDING ANY OTHER DEADLINES SET FORTH IN THIS ORDER, WITHIN 120 DAYS FROM THE DATE OF THE ENGAGEMENT OF THE CONSULTANT.

(b) Within 10 days of the engagement of the Consultant, but prior to the commencement of the review, the Bank shall submit to the Reserve Bank and the Department

for approval an engagement letter that delineates the scope of the review and the proposed resources to be dedicated to the review. The engagement letter shall specify that the review will be completed within a reasonable time period, which should not exceed 60 days. In addition, the engagement letter shall acknowledge that the Consultant shall have access to all documents and records necessary to conduct the review and that all information including, but not limited to, work papers, programs and procedures related to the review shall be provided to the Reserve Bank and the Department by the Consultant upon request.

(c), Upon completion of the review, a copy of the Consultant's report detailing the findings, conclusions, and recommendations from the review shall be provided to the Reserve Bank and the Department.

(d) Upon completion of the review, the Bank shall ensure that all transactions previously required to be reported have been reported in accordance with applicable regulations and guidelines.

20. Within 45 days of the completion of the Consultant's report required by paragraph 19 hereof, the Bank shall submit to the Reserve Bank and the Department an acceptable written plan designed to ensure compliance with all provisions of the BSA and applicable Florida law, including, but not limited to:

(a) recordkeeping and reporting requirements for currency transactions of over \$10,000 (31 C.F.R. 103.22 and Section 655.50(4), Fla. Stat. (2001));

(b) identification requirements related to the recordkeeping and reporting requirements for currency transactions of over \$10,000 (31 C.F.R. 103.28);

(c) currency transaction report exemption procedures

(31 C.F.R. 103.22 and Section 655.50(4), Fla. Stat. (2001)); and

(d) requirements for maintenance of a monetary instrument log (31 C.F.R. 29 and Section 655.50(4), Fla. Stat. (2001)).

21. Within 45 days of the completion of the Consultant's report required by paragraph 19 hereof, the Bank shall submit to the Reserve Bank and the Department an acceptable enhanced customer due diligence program. The program shall be designed to reasonably ensure the identification and timely, accurate and complete reporting of known or suspected criminal activity against or involving the Bank to law enforcement and supervisory authorities as required by the suspicious activity reporting provisions of Regulation H of the Board of Governors (12 C.F.R. 208.62). The enhanced customer due diligence program shall include:

(a) A risk focused assessment of the customer base of the Bank to:

- (i) identify the categories of customers whose transactions do not require monitoring because of the routine and usual nature of their banking activities; and
- (ii) determine the appropriate level of enhanced due diligence necessary for those categories of customers that the Bank has reason to believe pose a heightened risk of illicit activities at or through the Bank.

(b) For those customers whose transactions require enhanced due diligence, procedures to:

- (i) determine the appropriate documentation necessary to confirm the identity and business activities of the customer;

(ii) understand the normal and expected transactions of the customer; and

(iii) report suspicious activities in compliance with existing reporting requirements set forth in Regulation H of the Board of Governors (12 C.F.R. 208.62).

(c) Procedures to identify accounts that are involved in suspected significant illegal activity and, where appropriate, procedures for closing such accounts consistent with applicable law.

22. Within 45 days of the completion of the Consultant's report required by paragraph 19 hereof, the Bank shall submit to the Reserve Bank and the Department an acceptable internal BSA compliance program as required by Regulation H of the Board of Governors (12 C.F.R. 208.63). The program shall, at a minimum:

(a) establish a system of internal controls to ensure compliance with the BSA and the rules and regulations issued thereunder, including policies and procedures to detect and monitor transactions to ensure that they are not being conducted for illegitimate purposes and that there is full compliance with all applicable laws and regulations;

(b) provide for independent testing of compliance with the BSA and the rules and regulations issued thereunder and ensure that compliance audits are performed frequently, are fully documented, and are conducted with the appropriate segregation of duties;

(c) ensure that the Bank's BSA compliance program is managed by a qualified officer who shall have responsibility for all BSA compliance and related matters, including, without limitation, (i) the identification and timely, accurate and complete reporting to law enforcement and supervisory authorities of unusual or suspicious activity or known or

suspected criminal activity perpetrated against or involving the Bank, and (ii) monitoring the Bank's compliance and ensuring that full and complete corrective action is taken with respect to all previously identified violations and deficiencies; and

(d) provide appropriate training to all affected personnel, conducted by competent staff, which includes all relevant BSA and related requirements with a specific concentration on accurate recordkeeping, form completion and the detection and reporting of known or suspected criminal activity, and to ensure that the training is reviewed on a regular basis to ensure that all personnel have the most current and up to date information.

23. Within 45 days of the completion of the Consultant's report required by paragraph 19 hereof, the Bank shall submit to the Reserve Bank and the Department an acceptable written plan designed to ensure compliance with OFAC regulations, as well as any rules and guidelines issued or administered by OFAC. The plan shall include, at a minimum, procedures to ensure that customer transactions are processed in accordance with OFAC requirements and in accordance with a regularly updated list of entities and individuals whose transactions or assets are required to be blocked, frozen or monitored.

### **Consumer Protection**

24. Within 60 days of this Order, the Bank shall submit to the Reserve Bank and the Department acceptable written procedures to ensure compliance with the record retention and adverse action requirements of Regulation B of the Board of Governors (12 C.F.R. 202.9 and 202.12). The procedures shall address, consider and include: a system for retaining all related application information for the required time period; provisions for the periodic internal

review of such notifications and disclosures; and adequate documentation of results of internal reviews and retention of documentation for subsequent supervisory review.

### **Effect and Terms of Order**

25. The written plans, programs, policies, and procedures and the engagement letter required by paragraphs 4, 6, 9, 10, 12, 14, 16(b), 17, 19(b), 20, 21, 22, 23, and 24 hereof shall be submitted to the Reserve Bank and the Department for review and approval. Acceptable plans, programs, policies, and procedures and an acceptable engagement letter shall be submitted within the time periods set forth in this Order. The Bank shall adopt the approved plans, programs, policies, and procedures and the approved engagement letter within 10 days of approval by the Reserve Bank and the Department and then shall fully comply with them. During the term of this Order, the approved plans, programs, policies, and procedures and the engagement letter shall not be amended or rescinded without the prior written approval of the Reserve Bank and the Department.

26. Within 30 days after the end of each calendar quarter (December 31, March 31, June 30, and September 30) following the date of issuance of this Order, the Bank shall furnish a written progress report detailing the form and manner of all actions taken to secure compliance with this Order, and the results thereof, as well as management's responses to the audit reports on BSA prepared by internal or external auditors during the quarter, to the Reserve Bank and the Department.

27. All communications regarding this Order shall be sent to:

Salvador Bonilla-Mathe  
President and C.E.O.  
Gulf Bank  
3400 Coral Way  
Miami, Florida 33145

Marion P. Rivers  
Assistant Vice President  
Federal Reserve Bank of Atlanta  
1000 Peachtree Street N.E.  
Atlanta, Georgia 30309-4470

O. Alex Hager  
Director, Division of Banking  
Department of Banking and Finance  
101 E. Gaines Street, Suite 636  
Tallahassee, Florida 32399-0350

28. The provisions of this Order shall be binding on the Bank and each of its institution-affiliated parties in their capacities as such, and their successors and assigns.

29. Each provision of this Order shall remain effective and enforceable until stayed, modified, terminated, or suspended by the Board of Governors and the Department.

30. Notwithstanding any provision of this Order, the Reserve Bank and the Department may, in their discretion, grant written extensions of time to the Bank to comply with any provision of this Order.

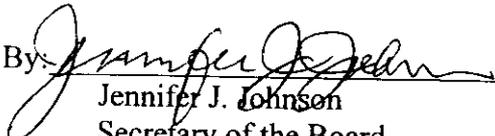
31. The provisions of this Order shall not bar, estop or otherwise prevent the Board of Governors, the Department or any other federal or state agency or department from taking any other action affecting the Bank or any of its current or former institution-affiliated parties.

BY ORDER of the Board of Governors of the Federal Reserve System and the Florida Department of Financial Institutions, effective this <sup>28<sup>th</sup></sup> day of November, 2001.

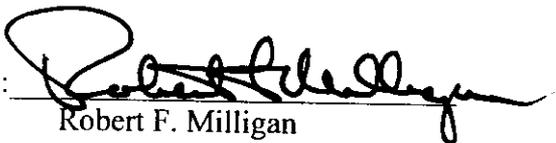
GULF BANK  
Miami, Florida

By: \_\_\_\_\_  
Salvador Bonilla-Mathe  
President and C.E.O.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By:   
Jennifer J. Johnson  
Secretary of the Board

FLORIDA DEPARTMENT OF  
BANKING AND FINANCE

By:   
Robert F. Milligan  
Comptroller