

# FEDERAL RESERVE press release



For immediate release

February 3, 1998

The Federal Reserve Board today announced that it has settled the administrative proceedings against Clark M. Clifford and Robert A. Altman, with their consent, brought by the Board in connection with the Bank of Credit and Commerce International affair.

Copies of the Board's action against Clifford and Altman and the amended notice initiating proceedings against them are attached.

Clifford and Altman served as directors of Credit and Commerce American Holdings, N.V., Netherlands Antilles, formerly a bank holding company, and its subsidiary, First American Bankshares, Inc., Washington, D.C., and as counsel to BCCI.

Without admitting any of the Board's allegations in its amended notice, Clifford and Altman have agreed to pay approximately \$5 million in compensation by transferring their interest in the majority of their shares of CCAH for the ultimate benefit of the innocent depositors and creditors of BCCI.

As part of the settlement, Altman has also agreed not to participate in the banking industry without the prior approval

of the Board. The Board dismissed its prohibition action against Clifford because of his advanced age and ill health.

Attachments

UNITED STATES OF AMERICA  
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

In the Matter of	)	
CLARK M. CLIFFORD	)	Docket Nos. 92-080-E-I1
	)	92-080-B-I1
ROBERT A. ALTMAN	)	92-080-E-I2
	)	92-080-B-I2
Institution-Affiliated	)	92-080-CMP-I1
Parties of Credit and	)	92-080-CMP-I2
Commerce American Holdings,	)	
N.V., Netherlands Antilles,	)	Second Amended Notice of
a registered bank holding	)	Intent to Prohibit Issued
company	)	Pursuant to Section 8(e) of
	)	the Federal Deposit
	)	Insurance Act, as Amended,
	)	Notice of Charges and of
	)	Hearing Issued Pursuant to
	)	Section 8(b) of the Federal
	)	Deposit Insurance Act, as
	)	Amended, and Notice of
	)	Assessment of Civil Money
	)	Penalties Pursuant to
	)	Section 8(i) of the Federal
	)	Deposit Insurance Act, as
	)	Amended

SUMMARY OF CHARGES

The Board of Governors of the Federal Reserve System  
(the "Board of Governors" or the "Board") is of the opinion that:

A. Clark M. Clifford ("Clifford") and Robert A. Altman ("Altman"), as directors of Credit and Commerce American Holdings, N.V., Netherlands Antilles ("CCAH") and First American Bankshares, Inc., Washington, D.C. ("First American"), registered bank holding companies, and as counsel for the Bank of Credit and Commerce International, S.A., Luxembourg, and related entities ("BCCI"), participated in and aided and abetted BCCI's violations of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841 et seq.) (the "BHC Act"), in connection with BCCI's illegal acquisition of control of the voting shares of CCAH through various actions set out in this Notice.

B. Clifford and Altman violated the Board's order approving the acquisition by CCAH of First American by causing CCAH to borrow from BCCI to acquire First American shares and exceed the level of acquisition debt permitted by the Board's order.

C. Altman violated the BHC Act by participating in and aiding and abetting BCCI's violation of the BHC Act in connection with BCCI's acquisition and retention of control of the National Bank of Georgia ("NBG") when he structured an aspect of the transaction by which CCAH acquired NBG to conceal BCCI's role in the transaction from the Federal Reserve.

D. Clifford and Altman engaged in breaches of fiduciary duty to CCAH, its shareholders, and First American by accepting compensation from BCCI in the form of preferential loans and profit on their purchase of stock of CCAH in 1986 and 1987 for performance of their duties to CCAH and its subsidiaries.

E. Clifford and Altman engaged in breaches of fiduciary duty to CCAH, its shareholders, and First American by failing to disclose material information regarding the acquisition of NBG, including information regarding BCCI's role in the transaction and the risks to CCAH.

F. Altman made false statements to the Board in connection with the Board's investigation of the BCCI matter, including statements concealing his and Clifford's financial arrangements with BCCI.

Accordingly, the Board of Governors hereby institutes these proceedings:

(I) for the purpose of determining whether an appropriate order permanently barring Clifford and Altman from participating in any manner in the affairs of a United States depository institution or depository institution holding company should be issued against each of them under the provisions of section 8(e) of the Federal Deposit Insurance Act, as amended (the "FDI Act") (12 U.S.C. 1818(e));

(II) for the purpose of determining whether an appropriate order to cease and desist should be issued requiring Clifford and Altman to cease and desist from unsafe and unsound practices and violations of law and regulation, and to take other affirmative action, including payment of the Board's investigatory costs and transfer of their CCAH shares and the profit thereon to CCAH, pursuant to the provisions of section 8(b) of the FDI Act (12 U.S.C. 1818(b)); and

(III) for the purpose of assessing civil money penalties against Clifford and Altman pursuant to the provisions of section 8(i) of the FDI Act (12 U.S.C. § 1818(i)) and section 8(b) of the BHC Act (12 U.S.C. § 1847(b)).

In support of this Notice, the Board of Governors alleges the following:

#### **JURISDICTION**

1. Clifford was, at all times pertinent to the charges set forth below, a director of CCAH and its direct and indirect subsidiaries, Credit and Commerce American Investments, B.V., Amsterdam, Netherlands ("CCAI"), and First American Corporation, Washington, D.C. ("FAC"), and chairman of First American Bankshares, Inc., Washington, D.C. ("First American"), all of which are bank holding companies within the meaning of the BHC Act.

2. Clifford was, at certain times pertinent to the charges set forth below, an attorney for CCAH, CCAI, FAC, and First American.

3. By reason of the positions he held as director of and attorney for CCAH and its subsidiaries, Clifford was at all times pertinent hereto an institution-affiliated party of CCAH and its subsidiary holding companies, as defined for the purpose of this Notice by sections 3(u) and 8(b)(3) and (4) of the FDI Act (12 U.S.C. 1813(u) and 1818(b)(3) and (4)). As an institution-affiliated party, Clifford is subject to the removal and prohibition provisions of the FDI Act (12 U.S.C. 1818(e)).

4. Clifford was, at certain times pertinent to the charges set forth below, an attorney and agent for BCCI, a foreign bank within the meaning of section 8 of the FDI Act (12 U.S.C. 1818).

5. Altman was, at all times pertinent to the charges set forth below, a director of CCAH, CCAI, FAC, and First American, and president of FAC.

6. Altman was, at certain times pertinent to the charges set forth below, an attorney for CCAH, CCAI, FAC, and First American.

7. By reason of the positions he held as director, officer, and attorney, Altman was at all times pertinent hereto an institution-affiliated party of CCAH and its subsidiary holding companies, and is subject to the removal and prohibition provisions of the FDI Act.

8. Altman was, at certain times pertinent to the charges set forth below, an attorney and agent for BCCI, a foreign bank within the meaning of section 8 of the FDI Act.

#### **FACTUAL ALLEGATIONS**

##### **Background**

9. On July 29, 1991, the Board of Governors issued a Notice of Assessment of a Civil Money Penalty against BCCI Holdings, S.A. Luxembourg ("BCCI Holdings"), Bank of Credit and Commerce International S.A., Luxembourg ("BCCI S.A."), Bank of Credit and Commerce International (Overseas), George Town, Cayman Islands ("BCCI Overseas"), International Credit and Investment Company (Overseas), George Town, Cayman Islands ("ICIC Overseas") (BCCI Holdings, BCCI S.A., BCCI Overseas, and ICIC Overseas are collectively referred to herein as "BCCI"), and related parties (the "BCCI Notice"). The BCCI Notice charged that BCCI had illegally acquired control of more than 25 percent of the shares of CCAH and of the National Bank of Georgia ("NBG") without prior Board approval through the use of nominee shareholders.

10. BCCI was founded in 1972 by Agha Hasan Abedi ("Abedi"), Swaleh Naqvi ("Naqvi"), and others. Abedi represented to various shareholders and regulatory authorities that he intended BCCI to be a major international bank with offices world-wide. Abedi was president of BCCI until at least February 1988; Naqvi was chief executive officer of BCCI through October 1990.

11. BCCI includes various foreign banks. On July 5, 1991, the relevant foreign supervisors took action to secure control of the assets of the foreign banks. By order of the appropriate courts, the foreign banks were subsequently put into liquidation.

12. On December 19, 1991, BCCI pleaded guilty to criminal charges brought by the United States and the State of New York by means of a Superseding Information in Crim. No. 91-0655 (JHG) and Grand Jury Indictment No. 8090/91, respectively. The charges to which BCCI pleaded guilty included the charge that:

between on or about 1983 and on or about 1989, on several occasions, the BCCI Group acquired ownership of CCAH stock through various means, including, among other things, financing and directing the purchase of stock by others, pursuant to various agreements or arrangements, such as pledge agreements, memoranda of deposits and powers of attorney, whereby actual control of the stock would be transferred to the BCCI Group and ICIC Overseas, and the BCCI Group and ICIC

Overseas would have no recourse against the personal assets of the purported buyer.

## I. THE ACQUISITION OF CCAH BY BCCI

### The Applications Before the Board of Governors

13. In 1978, Clifford and Altman were partners in the Washington, D.C. law firm of Clifford, Glass, McIlwaine & Finney, subsequently known as Clifford & Warnke. By the fall of 1978, a group of investors selected by BCCI and represented by Clifford and Altman had plans to acquire through a tender offer all shares of Financial General Bankshares, Inc., Washington, D.C. ("Financial General"), a multistate bank holding company. In order to facilitate the acquisition of the shares of Financial General, CCAH and CCAI were formed in 1978. CCAI would own all the shares of Financial General, and CCAH would own all the shares of CCAI. On October 19, 1978, Altman, on behalf of CCAH and CCAI, filed an application (the "Application") with the Board for prior approval under the BHC Act for CCAH and CCAI to become bank holding companies by acquiring all the voting shares of Financial General. The Board dismissed the Application on February 16, 1979 because Maryland law did not permit a hostile takeover of a bank holding company.

14. In July 1980, the BCCI investor group reached an agreement with the management of Financial General under which Financial General agreed to drop its opposition to the

acquisition of the company by the BCCI investors. Following execution of that agreement in July 1980, Clifford met in London with Abedi, who asked Clifford to lead CCAH upon its acquisition of Financial General. Although Clifford had no expertise concerning banking, he accepted the position offered by Abedi.

15. The July 1980 agreement between the BCCI investors and the Financial General management eliminated the obstacle to the Board's consideration of CCAH's application to acquire Financial General. Accordingly, on October 3, 1980, Altman resubmitted the Application on behalf of CCAH and CCAI.

16. On December 5, 1980, Altman wrote to Naqvi to inform him of the Board's acceptance of the Application for processing. Altman stated: "I am interested in learning the progress of efforts to obtain the needed loans for the Investors."

17. Clifford and Altman made numerous representations to the Board and other regulatory authorities in an effort to have the Application approved. These representations concerned issues that were material to the Application, including the lack of financial or other involvement by BCCI in the acquisition or operations of Financial General or the subsidiary banks after the acquisition, and the financial burdens to be assumed by the

Applicants. The Board relied on all of these representations in approving the Application.

18. In the Application, CCAH and CCAI represented that they would incur no more than \$50 million in debt to acquire Financial General shares pursuant to the proposed tender offer. On June 15, 1981, Altman wrote to the Board of Governors making an explicit commitment that "any increase in the proposed \$50 million acquisition debt to be incurred by the Applicants for purposes of the tender offer for the common shares would constitute a material change in the Application and, therefore, would require express action by the Board." The applicants created a wholly-owned subsidiary of CCAI, FGB Holding Corporation ("FGBHC"), to act as borrower for the acquisition debt. FGBHC joined in the CCAH and CCAI application to the Board for prior approval to acquire Financial General.

19. On April 6, 1981, Abedi and Naqvi accompanied Altman and a bank regulatory lawyer ("Regulatory Attorney") to Paris to negotiate the terms of a loan to FGBHC from Banque Arabe et Internationale D'Investissement ("BAII") to finance the acquisition of Financial General shares.

20. On August 25, 1981, the Board of Governors, based on the entire record, including the representations and commitments of the applicants made through their counsel,

Clifford and Altman, issued an order approving the applications of CCAH, CCAI, and FGBHC to become bank holding companies by acquiring Financial General. The order was expressly conditioned on CCAH's commitment "not to incur more than \$50 million acquisition debt for the proposed acquisition without prior Board approval."

Consummation of the Acquisition

21. On or around March 2, 1982, FGBHC entered into a loan agreement with BAI (the "BAI loan") pursuant to which FGBHC borrowed \$50 million to fund its acquisition of Financial General shares. As discussed in the BCCI Notice, BCCI indirectly guaranteed this loan. As of April 16, 1982, the transaction was completed.

22. Upon completion of the acquisition, Clifford became a director of CCAH, CCAI, and FGBHC, and chairman of the board of Financial General. Clifford chose the remaining members of the CCAH board, which consisted of his law partner, Altman, among others.

23. Upon completion of the acquisition, Altman became director and secretary of CCAH and CCAI, director and president of FGBHC, and a director of Financial General.

24. In August 1982, Financial General changed its name to First American Bankshares, Inc. ("First American"), and FGBHC changed its name to First American Corporation ("FAC").

25. Clifford and Altman were the effective senior management of First American, involved in a variety of decisions from personnel to architectural design. Altman discussed virtually everything about the company with Clifford.

26. During the period August 1982 through July 5, 1991, BCCI and CCAH were affiliates within the meaning of section 23A of the Federal Reserve Act (12 U.S.C. 371c) in that holders of at least 25 percent of BCCI shares held at least 25 percent of CCAH shares.

The \$4.8 Million Loan and Repayment of Acquisition Expenses

27. On or around May 13, 1982, CCAI received \$2.5 million from BCCI or ICIC Overseas to permit it to pay interest on the BAI loan. On or around July 19, 1982, an additional \$2.3 million was received from BCCI or ICIC Overseas, also for interest payments on the BAI loan. Instead of seeking Federal Reserve approval for this needed additional indebtedness, Clifford and Altman caused CCAH to violate the commitment that no more than \$50 million in debt would be incurred by CCAH and its subsidiaries for the acquisition of Financial General shares, and

that BCCI and its affiliates would not fund the CCAH acquisition of Financial General.

28. On July 29, 1982, and August 9, 1982, CCAH's accountants, Ernst & Whinney Nederland ("E&W"), wrote to BCCI and Altman concerning the \$4.8 million in new funds. The letters discussed the \$4.8 million based on the assumption that the funds were a capital contribution by a new investor.

29. On September 20, 1982, BCCI wrote to E&W and to J.W. Eddie Moret ("Moret") of Equity Trust Company, N.V., CCAH's resident manager in the Netherlands Antilles. The letter stated that the \$4.8 million "will be treated as a short-term subordinated loan from the shareholders of CCAH."

30. On February 15, 1983, Altman informed Moret that the "exclusive lender" of the \$4.8 million loans received on May 13 and July 19, 1982 was Kamal Adham ("Adham"), a named shareholder of CCAH.

31. On or about February 24, 1983, Altman, on behalf of CCAH, executed a Loan Agreement declaring that CCAH had received a loan from Adham of \$4.8 million.

II. ACQUISITION OF THE NATIONAL BANK OF GEORGIA BY CCAH

A. Background

32. In 1975, Bertram Lance ("Lance") acquired an interest in NBG (since renamed the First American Bank of Georgia, N.A.). In 1977, Lance, after experiencing financial difficulties, determined that it was necessary to sell his shares of NBG. During this same time period, he was retained by Abedi to advise BCCI on banking investments in the United States. Through this relationship, Lance arranged for his shares of NBG to be sold to Ghaith Pharaon, a Saudi Arabian businessman, principal shareholder of BCCI, and friend of Abedi. Lance was represented in this transaction by Clifford and Altman. Lance, in turn, introduced Clifford and Altman to Abedi. Pharaon borrowed from BCCI the purchase price paid to Lance for the NBG shares. Pharaon subsequently purchased the remaining shares of NBG from other shareholders, again obtaining loans from BCCI to do so.

33. As set forth in paragraphs 179-200 of the BCCI Notice, BCCI and NBG had a close association during the years in which NBG was nominally owned by Pharaon. NBG's employees included a number of former BCCI employees, including Tariq Jamil ("T. Jamil"), Asif Mujtaba ("Mujtaba"), and Mehdi Raza. Some NBG personnel regularly attended BCCI conferences, at BCCI's expense. NBG also adopted BCCI's management style and hexagonal logo, and

revised its business orientation from a retail bank to an international bank.

34. In 1983, Altman became aware of the extremely close relationship between BCCI and NBG during the period of Pharaon's purported ownership. In February 1983, Altman, along with a number of NBG officers, attended a BCCI-sponsored conference in New York, the purpose of which was to accelerate the adoption by NBG of BCCI's corporate culture. Following the BCCI presentation, William W. Batastini ("Batastini"), executive vice president of NBG, gave public remarks at which he expressed his happiness at being part of the BCCI family. Batastini and other NBG personnel also attended BCCI's annual conference in Athens in March 1983, at which Batastini gave a similar address. Altman was present for both speeches.

35. Pharaon's wholly-owned company, Interedec (Georgia), N.V. ("Interedec"), held the shares of NBG through a holding company, NBG Financial Corporation ("NBGFC"). Pharaon executed a Memorandum of Deposit dated January 1, 1985, with BCCI under which all of the outstanding shares of NBGFC were deposited with BCCI as collateral for certain credit facilities extended by BCCI to Pharaon, and to companies owned and controlled by him. Paragraph 17 of the Memorandum of Deposit provided that "BCC or its nominees may exercise . . . in respect of the Securities or any of them any voting rights as if BCC or its nominees were a

sole beneficial owner thereof." To the extent it had not already acquired control of the shares of NBGFC, BCCI, by reason of this Memorandum of Deposit, acquired control over all of the outstanding shares of NBGFC by January 1, 1985.

36. In November 1985, Saudi Research and Development Company, or REDEC, a company owned by Pharaon, announced that it was experiencing financial difficulties, which could lead to a default on syndicated borrowings by Pharaon in excess of \$200 million. This announcement caused Pharaon's creditors to consider various options, including the attachment of assets owned by Pharaon. The shares of NBGFC were one highly visible Pharaon asset.

37. BCCI itself was a major creditor of Pharaon and the REDEC announcement caused BCCI's auditors, Price Waterhouse, to scrutinize more closely Pharaon's relationship with BCCI. Price Waterhouse criticized BCCI's credit exposure to Pharaon, and urged that it be reduced. REDEC's financial difficulties, and its substantial lending from BCCI, were widely reported in the financial press and were known to Clifford and Altman in the spring of 1986.

38. Because BCCI secretly owned and controlled NBG and its shares, an attachment of those assets by Pharaon's creditors threatened BCCI with a substantial financial loss. In addition,

BCCI was under pressure from its auditors to remove from its books non-earning assets such as the outstanding loans to Pharaon, and replace them with earning assets. BCCI thus had an incentive to cause NBG to be sold to another BCCI nominee, one that would not be subject to levying creditors. In addition, BCCI had an incentive to replace its secret and possibly defective security interest in the NBGFC shares with a new credit that would be properly secured.

**B. Decision to Acquire NBG at BCCI's Direction**

39. As early as September 1985, prior to REDEC's public announcement regarding its financial predicament, BCCI began to plan the sale of NBG to CCAH. In September 1985, Altman met with NBG's president, Roy P.M. Carlson ("Carlson"), Guy Freeman, its chief financial officer, and Batastini to inquire about a possible acquisition. At the time of these discussions, the BHC Act and Georgia law did not permit the acquisition of a Georgia bank by a bank holding company, such as CCAH, with substantial deposits outside the area defined by Georgia law as the "Southern Region."

**Setting the Terms of the Transaction**

40. In October 1985, Altman asked A. Vincent Scoffone ("Scoffone"), Treasurer of First American, to conduct a preliminary evaluation of NBG for the purpose of determining a purchase price. In a memorandum to Altman dated October 22,

1985, Scoffone reported that of 185 bank purchases nationwide within the previous 12 months, 122 were for stock and 63 were for cash. He noted that the ratio of purchase price to book value for the purchases of Georgia banks ranged from 0.90 to 5.28, with an average purchase price of 2.24 times book value. Based on the information provided to him by Altman and other publicly available information, Scoffone estimated that NBG's tangible net worth, which he assumed to be roughly equal to its book value, was approximately \$80 million, and that, on that basis, "a realistic price to be paid for NBG would range from \$120 million to \$180 million." This price corresponds to between 1.5 times and 2.25 times book value, based on a book value of \$80 million. Scoffone cautioned, however, that "no review has been performed on the quality of the asset base. Such a review is mandatory before any real meaningful analysis can be made regarding the tangible net worth of NBG."

41. Abedi decided that CCAH would acquire NBG. Shortly thereafter, Altman contacted the law firm that served as CCAH's regulatory counsel ("Regulatory Counsel") to begin the legal work that needed to precede the acquisition. Regulatory Counsel attempted unsuccessfully to convince Board staff that CCAH should be permitted to purchase NBG notwithstanding the Georgia law problems.

42. In February 1986, Robert Stevens, the president of First American, wrote a memorandum concerning long-range planning to First American's executive committee. In the memorandum, Stevens pointed out that banks were then selling for high multiples of book value, mostly through deals involving an exchange of stock. Noting that First American was privately owned and could not engage in a stock-for-stock transaction, Stevens advised that the company focus its expansion efforts on non-bank organizations that were then selling for smaller multiples of book value. This advice was ignored by Altman in his subsequent purchase of NBG on behalf of First American.

43. In early May 1986, Altman attended BCCI's annual conference in Luxembourg. On May 7, 1986, shortly after Altman's return from the annual conference, Scoffone prepared a second memorandum for Altman, at Altman's request, analyzing the potential acquisition of NBG by First American.

44. Scoffone's May 7 memorandum identified NBG's total shareholders' equity, book value, and tangible net worth as \$93.9 million. As with his memorandum of October 22, 1985, Scoffone reached this conclusion without the benefit of any due diligence or examination of asset quality or other factors that could affect the value of NBG. Moreover, the memorandum provided no explanation for the abrupt increase in book value over the \$80 million figure used in Scoffone's October 22, 1985 memorandum.

In fact, much of the increase was the result of a loan from Pharaon to NBGFC that was contributed as capital to NBG. The subsequent forgiveness of this loan led to a further increase in the purchase price of NBGFC.

45. Independent of Scoffone, in February of 1986, the firm of Keefe, Bruyette & Woods ("Keefe Bruyette") had conducted an evaluation of NBGFC in order to value the portion of NBGFC owned by Pharaoh Holdings Limited, a company controlled by Pharaon. In preparing his memorandum of May 7, 1986, Scoffone did not have access to, or the benefit of the February 20, 1986, report of Keefe Bruyette estimating NBG's value as between \$130 and \$144 million.

46. The May 7 memorandum analyzed recent sales of comparable banks, noting that the median purchase price for deals in the preceding 12 months was 1.62 times book value. For NBG, Scoffone noted, this would mean a purchase price of \$152 million. Scoffone went on, however, that the median price of banks in Georgia, Florida and South Carolina was 2.11 times book value. He concluded without further elaboration that "a fair purchase price for NBG would approximate 2.25x book value" or \$211 million. Scoffone suggested a transaction consisting of \$160 million in cash and \$51 million in CCAH stock, and concluded that "this transaction would be highly beneficial to the present owner

of NBG. The bank would be sold at a significant premium over both the national and local median sales prices."

Negotiations and Early Drafts

47. Altman was the sole representative of First American to negotiate the terms of the acquisition transaction. Neither Robert Stevens, the president of First American, nor the First American board of directors had any involvement in the acquisition or in structuring the transaction. Moreover, Altman never dealt directly with Pharaon throughout the course of his negotiations for NBG.

48. On May 8, 1986, Altman wrote to Naqvi concerning the NBG acquisition, enclosing Scoffone's May 7, 1986 memorandum. In his letter, Altman expressed the hope that the purchase price could be in the range of \$160 to \$175 million, noting that "we are nearing the point at which this purchase is too expensive." Altman noted that a portion of the purchase price would be borrowed, and suggested that BCCI would be an appropriate source for the borrowed funds. Altman observed that in view of the competing offer for NBG from North Carolina National Bank ("NCNB"), "it becomes increasingly important to conclude this matter one way or the other," and expressed his expectation that Naqvi would "forward this information to Mr. Abedi."

49. On May 14, 1986, Altman discussed with Batastini, who was then visiting BCCI's London headquarters, the terms and structure of a purchase of NBG by CCAH. They agreed to a purchase price of \$205 million, of which \$80 million would be paid up front for an option to purchase, and \$125 million would be paid upon consummation of the transaction. On May 15, 1986, Batastini sent Altman a draft option agreement for the acquisition of NBG by CCAH that reflected these terms.

50. The agreement drafted by Batastini provided that CCAH would pay the option fee of \$80 million, and that Pharaon would pledge his shares of NBGFC to CCAH to secure repayment of the option fee in the event the transaction did not materialize. The proposed option agreement also allowed Pharaon to pledge the shares of NBGFC as collateral for new borrowings from BCCI up to \$140 million -- \$15 million more than the option exercise price. These new borrowings by Pharaon would be secured by the same shares of NBGFC that Pharaon would pledge to secure repayment of the option fee to CCAH in the event that the option could not be exercised.

51. The acquisition of NBG by CCAH required prior approval by the Board of Governors under the BHC Act. Altman believed that the Board of Governors would not approve the application if it learned of BCCI's involvement in the transaction, and that a full explanation of BCCI's role might

lead to a Federal Reserve investigation into the relationship between BCCI and CCAH. Altman, knowing of BCCI's role in the transaction, therefore took affirmative steps to conceal BCCI's involvement in the sale of NBG to CCAH from the Board of Governors.

52. In early June 1986, Altman informed Regulatory Attorney that First American intended to obtain an option to buy NBG. Altman described the transaction to Regulatory Attorney as one in which CCAH would pay \$75 million for an option out of a total purchase price of \$205 million, and Pharaon would borrow the remainder of the purchase price from BCCI. Regulatory Attorney advised that the amount of borrowing by Pharaon secured by his NBGFC shares should not exceed the exercise price of \$130 million. He also advised that Pharaon should obtain his loan elsewhere than at BCCI, since BCCI's involvement in the original acquisition of Financial General had raised regulatory questions and led to delay. Altman replied that Pharaon was a major shareholder of BCCI and would get his loan from BCCI if he wanted to.

53. Under the direction of Regulatory Attorney, Regulatory Counsel prepared a memorandum discussing the legal ramifications of the transaction. Regulatory Counsel's memorandum discussed a transaction whereby CCAH would purchase an option to buy NBG, BCCI would simultaneously lend Pharaon the

exercise price under the option agreement, and Pharaon would place his stock of NBG in an escrow account with BCCI as collateral for the option and the loan, respectively. According to the memorandum, as soon as CCAH was legally permitted to acquire NBG, CCAH would exercise the option by paying down Pharaon's indebtedness to BCCI and acquiring all of the shares of NBG.

54. Regulatory Counsel's memorandum explained that the Board of Governors has serious concerns about so-called "stake-out" arrangements by which a company agrees to acquire a bank at some future time and obtains certain rights over that bank in the interim. The memorandum explained that the Board had recently promulgated a Policy Statement on Nonvoting Equity Investments in order to set forth guidelines concerning such stake-out transactions that would ensure that the acquiring company would not obtain control of the acquisition target prior to Board approval. The memorandum pointed out that the Board's concerns could have an effect on the structure of the proposed transaction, noting that "[t]he proposed structure may focus unwelcome attention on the relationship between CCAH and BCCI and raise questions as to whether BCCI has acquired control of NBG." Later, in a discussion of the control issues raised by a BCCI security interest in the NBG shares, the memorandum noted: "A bigger problem, however, arising from BCCI's involvement in the transaction is that it might focus closer attention on the

relationship between CCAH and BCCI. An argument could be made perhaps that CCAH and BCCI are acting together and/or as principal and agent."

55. Shortly after Regulatory Counsel's memorandum was delivered, Altman sent a memorandum to Naqvi identical in all respects to Regulatory Counsel's memorandum, but without attribution to Regulatory Counsel, and Clifford sent a copy to Abedi. In his June 17, 1986, cover letter, Clifford cautioned Abedi that the enclosed memorandum "will give you some idea of the difficulties and complexities facing us."

56. In mid-June, 1986, Altman informed Regulatory Attorney that Altman wanted the option and loan transactions to close by the end of June. Altman also insisted that Regulatory Counsel draft loan documents for the loan agreement between BCCI and Pharaon. Regulatory Counsel billed CCAH for the legal work involved in drafting the BCCI-Pharaon loan documents. Altman acted as counsel for BCCI in connection with BCCI's loan to Pharaon.

57. On June 20, 1986, Regulatory Counsel prepared a draft of an option agreement under which the shares of NBGFC would be held by an escrow agent to secure Pharaon's obligation to repay CCAH the option fee in the event that the option was not exercised. BCCI was identified in that draft as the escrow

agent. Regulatory Counsel's advice to Altman, however, was that BCCI should not act as be the escrow agent because it would be have conflicting interests with respect to the escrowed shares: its role as a trusted intermediary between Pharaon and CCAH would be compromised by its self-interest in protecting its own security interest in the NBGFC shares.

**C. Concealment of BCCI's Role from the Board**

Provision of Early Drafts to the Board

58. On June 25 and June 27, 1986, Regulatory Counsel, on behalf of CCAH, provided the Board of Governors with drafts of the option agreement in order to gain the Board's assurance that the proposed transaction did not violate the stake-out guidelines and that CCAH would not, as a result of the option, obtain control over NBG. Neither Regulatory Counsel's cover letter to the Board nor the enclosed draft option agreements included any discussion of a simultaneous loan and a pledge of shares as collateral for the loan between BCCI and Pharaon. In addition, although the option agreements provided to the Board mentioned the existence of an escrow agent to hold the NBGFC shares, they did not identify BCCI as the escrow agent or include a draft of an escrow agreement. In the letter accompanying the first draft option agreement, it was represented to the Board that "Interedec will retain all voting rights with respect to the Shares." Altman received copies of the Regulatory Counsel letters and draft option agreements provided to the Board.

59. In late June and early July, 1986, Altman also directed Regulatory Counsel to prepare a "back-up option" to permit an unidentified shareholder of CCAH to acquire NBG in the event CCAH was unable to do so.

60. On or about July 10, 1986, Regulatory Counsel attorneys working on the NBG transaction on behalf of CCAH learned from Altman and a partner of his at Clifford & Warnke ("C&W Partner") that Pharaon's shares of NBGFC were already pledged to BCCI pursuant to the January 1, 1985 Memorandum of Deposit. In response to questions posed by Regulatory Counsel, Imran Imam ("Imam"), an officer in BCCI's central support office in London, informed C&W Partner on August 11, 1986, that Pharaon had secured a line of credit of \$80 million with the NBGFC shares, and noted that Altman already had a copy of the Memorandum of Deposit. C&W Partner provided this information to Regulatory Counsel. Later, Altman provided a copy of the Memorandum of Deposit to Regulatory Counsel. Altman had not previously informed Regulatory Counsel of the existence of the Memorandum of Deposit. Regulatory Counsel attorneys thought it highly significant that the NBGFC shares were subject to an existing security agreement, and believed that the prior security agreement had to be addressed in order to protect CCAH from any consequences of that prior pledge.

61. On August 4, 1986, Regulatory Attorney became so concerned about various aspects of the NBG option transaction that he took the unusual step of writing to Altman about them. Regulatory Attorney's letter pointed out that: (1) the payment of \$80 million for an option to purchase shares put CCAH at risk; (2) under the Federal Reserve's policy concerning stake-outs, CCAH could have no control over NBG until the acquisition was consummated and thus could take no steps to assure that NBG was properly managed and maintained its value in the period from the payment of the \$80 million option fee to the exercise of the option; (3) the option agreement contained no provision for renegotiating the exercise price in the event that the value of NBG declined prior to exercise of the option; (4) it would be necessary to obtain legal opinions regarding the validity of Pharaon's ownership of NBG; (5) there was no assurance that CCAH would be able to recover its \$80 million option fee in the event that it chose not to exercise its option; and (6) the back-up option may be deemed by the Federal Reserve to be contrary to the Federal Reserve's control provisions. Regulatory Attorney sent a copy of his letter to C&W Partner.

62. When he received the letter from Regulatory Attorney, Altman demanded that Regulatory Attorney immediately come to Altman's office. In a brief and hostile meeting, Altman handed back to Regulatory Attorney both the original of Regulatory Attorney's letter and the copy Regulatory Attorney had

sent to C&W Partner. Altman warned Regulatory Attorney that if he ever wrote a similar letter again, Regulatory Attorney would no longer represent CCAH.

63. On September 4, 1986, Altman provided Naqvi with draft documents relating to the option and loan transaction for Naqvi's review. The documents consisted of drafts of: an option agreement, a loan agreement, a subordination agreement, an unconditional guaranty, and a single pledge agreement relating to both the option and the loan. The agreements identified BCCI as the pledge agent. In his cover letter to Naqvi, Altman stated that the agreements assume that there is no debt secured by the NBG shares "except as may be later authorized with respect to the BCCI loan to Dr. Pharaon." At that time, Altman was already aware of the Pharaon debt to BCCI secured by the NBGFC shares.

64. The documents Altman sent to Naqvi also included a "back-up option" to be granted by Pharaon to an unnamed holder. Altman's letter to Naqvi explained that pursuant to that document, "one or more of the individual shareholders of CCAH would be in a position to acquire NBGFC at the same purchase price in the event that CCAH is unable to do so within the 18 month period available under the main option."

65. On October 15, 1986, Regulatory Counsel forwarded to the Board a document described as the "latest draft option

agreement" being contemplated between CCAH and Pharaon. The document did not reveal that BCCI was to act as the pledge agent that was to hold the NBGFC shares, and Regulatory Counsel's letter did not include a copy of the pledge agreement that would have revealed the planned existence of the simultaneous loan to Pharaon from BCCI. Nor did the materials disclose that BCCI had a pre-existing pledge of all NBGFC stock and voting rights as a result of the January 1, 1985 Memorandum of Deposit, or the fact that the parties were contemplating a back-up option arrangement pursuant to which the NBG shares would be placed with a CCAH shareholder until such time as it was legal for CCAH to acquire NBG.

66. As of June 1986, Altman and representatives of Pharaon had agreed to a price of \$205 million for NBG. The same price was reflected in the draft option agreement provided to the Board of Governors on October 15, 1986. Although there was no longer any pressure from a competing bid from NCNB, Altman subsequently agreed to increase the purchase price to \$220 million, allowing Pharaon to borrow \$140 million as provided in the original draft agreement prepared in May 1986 by Batastini. Of the \$15 million increase, \$10 million was explained by reference to the forgiveness by Pharaon of a \$10 million note owing to him by NBGFC. The \$10 million had, however, previously been contributed to the capital of NBG, and was thus already reflected in NBG's tangible net worth as of the end of the first

quarter of 1986 on which Scoffone had calculated the purchase price. The remaining \$5 million was purportedly a result of the payment by Pharaon of a note payable to NBGFC. The payment of this note did not change the value of NBGFC at all, and should not have resulted in a price increase.

The October 23, 1986 Option Agreement

67. On October 23, 1986, all parties executed various agreements to effectuate the planned acquisition of NBG by CCAH, except Altman on CCAH's behalf. These agreements included: (1) an option agreement between Pharaon and CCAH under which CCAH would pay an option fee of \$80 million on or before November 3, 1986, and would pay an exercise price of \$140 million as soon as its acquisition of NBG became legally permissible; (2) a loan agreement between Pharaon and BCCI, whereby BCCI would lend Pharaon \$140 million at the time CCAH acquired an option to purchase NBG, secured by another pledge of shares of NBG to BCCI; and (3) a single, unified pledge agreement whereby Pharaon would pledge the shares of NBG to BCCI's New York Agency, as pledge agent, to secure his obligations under the option agreement and under the loan agreement. The option agreement dated as of October 23 identified the New York Agency of BCCI as the pledge agent.

68. On November 4, 1986, Pharaon's Paris counsel wrote to Altman to demand payment under the October 23 documentation.

On or about November 4, 1986, Imam informed Pharaon that CCAH would not pay the \$80 million required under the October 23 option agreement. Imam stated that CCAH needed additional legal opinions that its acquisition of NBG would be beyond the reach of Pharaon's creditors.

Separating the "Integrated Transaction"

69. In or around October 1986, Altman and C&W Partner became concerned that the documents as then drafted in connection with the NBG option agreement would reveal to the Board BCCI's extensive participation in the transaction. On October 16, 1986, C&W Partner called Regulatory Attorney to ask whether, under the transaction as then contemplated, the BCCI loan to Pharaon would become known to the Federal Reserve. Regulatory Attorney advised that it would, because the transaction documents would be part of the eventual application to the Board for prior approval to acquire NBG, and because those documents would be part of the records of CCAH available to the Board in any Board inspection of the bank holding company. C&W Partner then asked whether that would still be true if the documents were separated so that there were separate pledge agreements for the Pharaon loan from BCCI and the option agreement. Regulatory Attorney advised that so long as the loan to Pharaon and the option agreement were part of the same transaction, the documents would be available to the Federal Reserve.

70. On November 20, 1986, Altman met in London with Imam and a BCCI attorney to discuss the NBG transaction. In a memorandum memorializing that meeting, the BCCI attorney wrote:

Mr. Altman stated that because the Federal Reserve will see the Pledge Agreement they will see the references to the Loan Agreement and BCCI SA and will therefore want to see the Loan Agreement. By seeing all the documents, they would most likely arrive at an adverse conclusion.

Altman suggested that a better way to have structured the agreements would have been for the Option and Pledge Agreements to have been executed and then perhaps 60 days later, a Loan Agreement signed and an addendum [sic] made to the Pledge Agreement to make BCCI a party to the Pledge Agreement. . . .

[The BCCI attorney] would contact [C&W Partner] of Mr. Altman's office and appraise [sic] him of the above. [C&W Partner] would prepare the fresh Pledge Agreement on the above facts. A Closing Date should be agreed by all the parties, Mr. Altman suggested 11.12.86 [December 11, 1986] in New York. Mr. Altman would discuss the above with Mr. Naqvi and if he is agreeable, Dr. Pharaon would be approached.

71. The BCCI attorney's memorandum also recounted discussions among Altman, Imam and the BCCI attorney regarding the back-up option. The BCCI attorney wrote:

Mr. Altman commented on his concern that the "Back-Up Option" had not been executed by "Holder", consideration should be given as to who would execute the "Back-Up Option." Mr. Altman's concern was based on the fact that at present, endeavors were being made to change Georgia law to allow CCAH to buy the shares of NBGFC . . . if Georgia law cannot be changed that the BackUp Option would be relied upon as an individual can buy the shares of NBGFC.

72. In a memorandum to Naqvi dated December 4, 1986, the BCCI attorney again memorialized the discussions underlying the decision to separate the loan to Pharaon, and its related pledge, from the option agreement and its pledge. In that memorandum, the BCCI attorney said:

[t]he reason for having two Pledge Agreements is that Mr. R. Altman feels that in the previous Pledge Agreement, the references to "Loan Agreement" would have given the Federal Reserve cause to see the "Loan Agreement" and possibly decide that an "integrated transaction" was being entered into. Whereas now, with the two Pledge Agreements, the Federal Reserve will only see the Option Pledge, which contains no reference to the "Loan Agreement."

73. As suggested by Altman in the November 20 meeting with the BCCI attorney, a set of documents was prepared for closing of the option agreement on December 11, 1986. The pledge agreement prepared in connection with that closing related only to Pharaon's pledge to CCAH, and did not refer to the loan from or pledge to BCCI.

74. On December 18, 1986, CCAH, Pharaon and BCCI's New York Agency executed an option agreement and a related pledge agreement whereby Pharaon's NBGFC shares were pledged to BCCI as pledge agent, and Altman directed payment to Pharaon's account at BCCI of the option fee of \$80 million.

75. On December 23, 1986, the BCCI attorney prepared another memorandum to Naqvi that conveyed the substance of meetings the BCCI attorney had with Altman and lawyers for CCAH in Washington, D.C. between December 18 and 20. The BCCI attorney stated that the Option Agreement and related Pledge Agreement had been signed on December 18. His memorandum continued:

After consultation with Mr. Altman and [Regulatory Counsel], they advised that the Loan Agreement and Pledge Agreement be signed and dated in mid-January or early February 1987, as by then a reasonable period will have elapsed since signing the Option and the "integrated transaction" argument would not be successful. Accordingly, . . . tentatively a closing date of January 22, 1987 has been set.

76. On January 29, 1987, Pharaon executed a Promissory Note to BCCI for \$140 million and executed a second Pledge Agreement with BCCI whereby Pharaon again pledged his NBGFC shares to BCCI as collateral for the loan. These documents were never provided to the Board in connection with CCAH's acquisition of NBG.

77. As finally executed, the Option Agreement and the first pledge agreement contained no mention of BCCI's related loan to Pharaon. Thus, the original transaction, consisting of an option, related loan agreement, and unified pledge agreement, was restructured and documented to appear as two transactions, all for the purpose of avoiding Federal Reserve scrutiny.

The Subordination Agreement

78. Among the documents prepared by Regulatory Counsel for CCAH in connection with the option agreement was a subordination agreement pursuant to which BCCI was to subordinate its security interest in the NBGFC shares to CCAH's interest. The subordination agreement provided a means for CCAH to obtain some protection over BCCI's interest in the NBGFC shares. On December 18, 1986, Altman executed the subordination agreement on behalf of CCAH. BCCI, however, did not execute the subordination agreement at that time. Thus, if Pharaon had defaulted in his obligation to repay the option fee, CCAH could have found itself unable to realize on its security interest in the NBGFC shares in view of BCCI's prior security interest in the same shares.

79. Following the closing meeting on December 18, 1986, Regulatory Counsel brought to Altman's attention the fact that the subordination agreement had not been executed by BCCI, and pointed out the dangers involved in disbursing the option fee in the absence of the protection provided by the subordination agreement. Despite this advice, Altman ordered the disbursal of the option fee. Altman also indicated that he would see to it that BCCI executed the subordination agreement. On several occasions, Regulatory Counsel reminded Altman that he needed to obtain the signed subordination agreement from BCCI. He never did so. As a result, CCAH was put at risk and BCCI was placed in

a preferred position in connection with the pledges of the NBGFC shares.

80. On June 4, 1991, Altman gave sworn testimony to the Board of Governors. In that testimony, Altman falsely stated that he was not responsible for seeing to it that BCCI executed the subordination agreement.

81. At the time of the closing of the option agreement, the NBGFC shares were held in BCCI's offices in London pursuant to the Memorandum of Deposit, and BCCI proposed to keep them there rather than at the New York offices of the Pledge Agent. Regulatory Counsel advised against this arrangement as it posed certain risks to CCAH. Nevertheless, at Altman's direction, Regulatory Counsel prepared documentation under which BCCI's New York Agency appointed BCCI in London as its sub-agent under the pledge agreement to permit the NBGFC shares to be held in London until completion of BCCI's year-end audit. These documents were never signed at the closing.

82. In February 1987, Regulatory Counsel prepared for Altman's signature a letter to the BCCI attorney regarding the location of the NBGFC shares. The letter recounted that CCAH had agreed that the shares could remain in London temporarily, but that it was CCAH's strong preference to have them returned to the United States. Altman never sent the proposed letter.

83. Following execution of the agreements among BCCI, CCAH, and Pharaon, Imam became concerned that BCCI's auditors could uncover Pharaon's January 1985 Memorandum of Deposit of the NBGFC shares, and could conclude that Pharaon had misrepresented his debt position to CCAH. Thus, on March 18, 1987, Imam wrote to Naqvi that "we require a letter from CCAH dated 18 December 1986 addressed to BCCI S.A., expressing their knowledge of the pledge created on 1 January 1985 and confirming their consent to the continuation of the pledge." Imam's memorandum noted that copies of the January 1985 pledge documents "are available with Mr. Altman." On March 19, 1987, Imam conveyed his concern to Altman.

84. The following day, Altman telecopied a letter to Imam, backdated to December 18, 1986, that contained the requested consent. The letter expressly acknowledged and consented to "the pledge to BCCI S.A. of NBG Financial Corporation shares under the Memorandum of Deposit" dated January 1, 1985. The consent was conditioned upon the understanding that after December 18, 1986, the total amount of Pharaon's indebtedness to BCCI would not exceed \$140 million. The consent letter thus eliminated CCAH's priority with respect to Pharaon's pledge of NBGFC shares to CCAH as of December 18, 1986.

85. Also in March 1987, BCCI and Clifford & Warnke attorneys drafted a side agreement between BCCI and CCAH pursuant

to which BCCI guaranteed payment of Pharaon's obligations under the option agreement with CCAH in the event that CCAH decided not to exercise its option. The agreement, signed by Imam on behalf of BCCI and Altman on behalf of CCAH, was backdated to January 29, 1987, the day of the BCCI loan of \$140 million to Pharaon. This guarantee was never provided to the Board.

86. On March 13, 1987, Georgia law was amended to permit the acquisition of NBG by CCAH.

**D. The Due Diligence Review**

87. In the spring of 1987, First American undertook its due diligence of NBG. Unlike a normal due diligence review, conducted in order to determine the price to be paid for a company, this review was ordered by Altman to determine what First American had acquired.

88. The First American review recounted that NBG had paid a fee of \$475,000 to BCCI "related to the development of the CCAH option."

89. First American compared NBG's operating performance to that of its peer group banks. This review showed that as of the spring of 1987, NBG was at or near the bottom of its peer group on a wide variety of measures, including, among others, return on average assets, return on average equity,

margin on earning assets, non-interest expense, percentage of non-performing loans, and primary capital to average assets.

90. First American's review also revealed the extraordinary expense and unusual history of NBGFC's assumption from Interedec of a 15-year master lease on NBG's expensive new headquarters building. Altman was informed that Pharaon was a partner in the original partnership that built the new headquarters building, and injected himself into the building process, adding at least \$5 million to the cost of the building (which was built by a company of which Pharaon was a 20-percent shareholder). In 1984, Pharaon determined to sell the building to a real estate limited partnership in order to raise needed cash. The purchase and sale agreement, consummated on June 10, 1985, provided for a large above-market cash payment for the building, in return for a 15-year master lease for the building "at a rent level well above market." During the course of the negotiation of the sale, Pharaon attempted to make NBGFC agree to assume the master lease, but the company refused. Instead, NBGFC agreed to reclaim its \$5 million investment in the building without profit, and received a note from Pharaon for that amount. Later, however, in connection with Pharaon's negotiations to sell NBG in the spring of 1986, the assumption of the master lease was effectively forced on NBGFC despite NBGFC's "underst[anding] that assuming the master lease would be a very bad deal for NBG," and would add millions of dollars in costs to NBGFC.

91. Altman was also informed that the cash flow deficit resulting from the assumption of the master lease would be between \$28 million and \$30 million over the 15-year life of the lease, and that the assumption by NBGFC of the master lease, though effective as of May 11, 1986, was not formally documented until December 29, 1986, eleven days after the signing of the option agreement. Altman was advised that "the cash shortfall may represent a significant burden on NBGFC's profitability, representing from 9% to 12% on its average net income over the next five years." Finally, Altman was advised that the option agreement of December 18, 1986 recounted cash as the only form of consideration paid for NBG, and did not mention the assumption of the master lease as separate consideration.

**E. The Application to Acquire NBG**

92. On April 22, 1987, CCAH, CCAI, FAC, and First American filed an application with the Board of Governors to acquire NBGFC and NBG. Altman signed the application on behalf of the applicants, and provided the factual basis of the application to the lawyers who prepared it. The application contained no mention of BCCI's involvement in the transaction, of Clifford & Warnke's simultaneous representation of both CCAH and BCCI in the transaction, or of Clifford's and Altman's personal interest, as described below, in consummating a transaction that would benefit BCCI.

93. The application stated that Pharaon had control of 100 percent of the shares of NBGFC. The application did not disclose the existence of Pharaon's pledge of the NBGFC shares to BCCI under the January 29, 1987 pledge agreement, or the existence of the Memorandum of Deposit under which BCCI had the power to vote the NBGFC shares.

94. In connection with the application, the Federal Reserve Bank of Richmond wrote to Regulatory Counsel, asking to be informed "as to the source" of the funds used to acquire NBGFC. On May 18, 1987, based on information provided by Altman, the attorney responded to the Reserve Bank as follows:

In July 1986, Applicants raised \$150 million in equity capital through a rights offering to the existing shareholders of CCAH, of which \$80 million was applied to the purchase of NBGFC. All such new right shares of CCAH were paid for in cash. Less than 5% of this equity capital infusion represented borrowings by shareholders secured by a pledge of shares and no debt was incurred by CCAH.

On May 19, 1987, Altman sent a copy of this correspondence to Naqvi, noting that "we have prepared a response" to the Federal Reserve's questions. In fact, Altman was aware that he and Clifford had themselves had borrowed \$14,940,272 -- or approximately 10 percent of the \$150 million raised in the rights offering -- from BCCI to purchase CCAH shares in the 1986 rights offering, and that they pledged their CCAH stock to secure the loan from BCCI.

95. On the basis of the record before it, including the representations contained in the application, the Board approved CCAH's application to acquire NBG on June 26, 1987.

96. On August 19, 1987, CCAH transferred the option to purchase NBGFC to First American. First American exercised the option on August 19, 1987, in accordance with the option agreement, and the option exercise price of \$140 million plus interest, was transferred to BCCI.

97. With respect to First American's acquisition of NBG, Clifford and Altman provided legal counsel to BCCI, and thereby acted as BCCI's agents. As such, Clifford and Altman had fiduciary duties of loyalty to BCCI that required them to place BCCI's interests above the interests of themselves or unaffiliated business enterprises.

98. The acquisition of NBGFC created a serious drain on the financial health of First American, due in great measure to the acceptance of the assignment of the onerous master lease on the NBG headquarters building. In 1992, First American transferred NBG to another of its subsidiaries at a fair market value of only \$90 million -- \$130 million less than it had paid for the bank only five years earlier. In addition, First American paid approximately \$12 million to get out of the obligations of the master lease.

### III. CLIFFORD'S AND ALTMAN'S STOCK PURCHASES AND SALES

99. Clifford and Altman determined early in their involvement with CCAH that they would not seek large salaries as a result of their work for the company and its subsidiaries. Rather, as an alternative means of compensation, Clifford and Altman desired to be compensated through the acquisition of stock of CCAH and the eventual sale of that stock at a profit. Accordingly, Clifford asked for and received a salary of only \$50,000 per year from CCAH. Altman received no salary for his positions at CCAH and its subsidiaries.

100. Clifford and Altman sought out the services of a law firm ("Transaction Counsel") to draft documentation which they would use to effectuate an acquisition of CCAH shares. Early drafts of these documents contained provisions whereby CCAH itself agreed to issue shares to Clifford and Altman. However, neither Clifford nor Altman ever approached the CCAH board or the CCAH shareholders to suggest a stock dividend plan or some other method of their acquiring or receiving CCAH stock from CCAH directly, for services rendered to CCAH.

101. In accordance with their plan to receive CCAH shares as compensation, Clifford and Altman met with Abedi and Naqvi, on more than one occasion, prior to the 1986 rights offering and proposed to Abedi that in lieu of any meaningful salary for managing CCAH and its subsidiaries, they be given CCAH

shares that when sold would yield a profit of \$3 million and \$1.5 million, respectively. Abedi, under pressure from Clifford and Altman, acquiesced and agreed to this proposal.

102. It was determined that Clifford and Altman would acquire CCAH shares as the result of a rights offering to be conducted in July 1986. BCCI was to arrange for waivers of rights shares by existing shareholders, in order to ensure the availability of CCAH shares for Clifford and Altman. Clifford and Altman would acquire these shares at the preferential rights offering price.

103. Despite their substantial personal financial resources, Clifford and Altman each determined to borrow the entire amount needed to purchase their respective shares of CCAH. While Clifford and Altman initially requested that financing be provided by BCCI, Naqvi insisted that they look elsewhere, because BCCI was under pressure from its auditors to reduce the amount of BCCI financing secured by CCAH shares.

104. Naqvi suggested that Clifford and Altman approach BAI for the financing, the bank that had previously lent money to FAC in connection with the acquisition of Financial General. Altman, on behalf of himself and Clifford, entered into discussions with Nicholas D.R. Bradshaw ("Bradshaw"), an employee of BAI. During the course of these discussions, Bradshaw

informed Altman that BAI was not comfortable making the loans to Clifford and Altman based solely on the shares of CCAH as collateral, even with full recourse to the borrowers. For this reason, Bradshaw had discussed with Altman the idea of Clifford and Altman securing agreements, known as "put" agreements, that would guaranty the future sale of their CCAH shares at a pre-arranged purchase price.

105. As a result of the discussions between Altman and Bradshaw, a subsequent draft of the documents related to the impending acquisition of CCAH shares by Clifford and Altman, dated June 19, 1986, provided Clifford and Altman with the right to require Adham to purchase their shares, with BCCI obligated to purchase them if Adham failed to do so. These documents were drafted even though neither Clifford nor Altman ever discussed with Adham their intentions to have Adham obligated to buy their CCAH shares.

106. In a letter dated July 10, 1986, Altman forwarded to Transaction Counsel a copy of draft loan documents prepared by BAI. Prior to providing the draft loan documents to Transaction Counsel, however, Altman added non-recourse provisions to the draft loan documents. Such provisions, if accepted by BAI, would limit BAI's recourse in the event of default to the CCAH shares securing the loan, and would eliminate personal liability on the part of Clifford or Altman. Transaction Counsel forwarded

the draft documents, with the non-recourse provisions that had been prepared by Altman, to BAI.

107. Clifford and Altman had arranged with BCCI that they would purchase their shares at book value, the same preferential price granted to existing shareholders of CCAH. However, at least as early as July 17, 1986, Altman was aware, based on information provided to Altman by Naqvi, that a transaction was planned in the near future in which 30 percent of CCAH shares would be sold in three phases for \$6094 per share. On that date, Naqvi telecopied to Altman a short portion of a contract for Altman's legal review. The material provided to Altman revealed that an unnamed company was to arrange for the sale to unnamed investors a total of 30 percent of the shares of CCAH in three stages. The first of these stages was to involve the transfer of 22,152 shares, or 9.9 percent of CCAH shares, at a price of \$6094 per share.

108. The Articles of Incorporation of CCAH did not require that waived shares be sold to non-shareholders at the same price as those acquired by existing shareholders pursuant to the existing shareholders' preference rights. This practice had never occurred in connection with any CCAH rights offering prior to the 1986 rights offering.

109. In order to provide waived shares for Clifford and Altman to acquire in the 1986 rights offering, BCCI arranged for a named CCAH shareholder, Mashriq Holding Company ("Mashriq"), to waive its rights to acquire 6742 shares of CCAH in the rights offering held on July 25, 1986. Mashriq thus waived its right to acquire those shares at the rights offering price of \$2216 on July 25, 1986, although one day earlier it had purchased shares of CCAH from existing CCAH shareholders at a price of \$4044.20 per share. Pursuant to the 1986 rights offering, on July 25, 1986 Clifford acquired 4495 of Mashriq's waived shares, and Altman acquired the remaining 2247 shares, each at the rights offering price.

110. As of July 25, 1986, the day of the 1986 rights offering, BCCI transferred to the CCAH share subscription account all funds necessary for a full subscription of all rights offering shares. This included nearly \$15 million for Clifford's and Altman's purchase of CCAH shares in the rights offering, even though Clifford and Altman had not yet obtained a loan from BAI, BCCI, or any other financial institution, for the purchase of the shares of CCAH.

111. On July 29, 1986, Mashriq sold 22,152 shares of CCAH -- the number recounted in the July 17, 1986, telecopy to Altman -- to five holding companies beneficially owned by Khalid

bin Mahfouz at a price of \$6094 per share. This amounted to a sale of 9.9 percent of the outstanding shares of CCAH.

112. By a letter dated July 30, 1986, Altman was informed by Bradshaw that BAI could not make the loans to Clifford and Altman based on the terms being sought by them. Specifically, Bradshaw stated that there had never been any discussions with regard to non-recourse loans and that it would not be possible for BAI to limit its recourse just to the shares of CCAH.

113. Subsequent to BAI's refusal to provide loans for the acquisition of the CCAH shares, Clifford and Altman requested, and Naqvi agreed, that BCCI would provide all of the funding for the CCAH shares already in the possession of Clifford and Altman. Naqvi agreed to Clifford's and Altman's request that the loans be non-recourse as to the borrowers, the only recourse being to the CCAH shares that would secure the loans. Naqvi also agreed that the interest rate for the loans be at the London Interbank Loan Rate ("Libor") with no margin above Libor. These loan terms were more favorable to Clifford and Altman than those that would ordinarily apply in comparable, arms-length transactions. Specifically, under the proposed loans that had been offered by BAI, Clifford and Altman would only have been able to borrow up to \$5 million per year for two years at a rate of 1.25 percent over Libor.

114. Subsequent to receiving the loans from BCCI, and after Clifford and Altman already had the shares of CCAH in their possession, Altman prepared two sets of loan documents, one for himself and one for Clifford, and sent these documents, already executed by Clifford and Altman, to Naqvi. The documents consisted of typed promissory notes (the "Typed Notes") and pledge agreements. In Altman's transmittal of the documents to Naqvi he stated that the documents "confirm the loan of funds" and "reflect an approach to the transaction that should be acceptable." Altman's transmittal also noted that Clifford and Altman, although preferring to obtain all of the financing from BCCI, remained ready to obtain a portion of the financing from other sources, but that to do so they would require an executed "Put Agreement," as BAI had required, so that the investment could be readily liquidated at a set price. Under the proposed Put Agreement that accompanied the documents, Adham would be obligated to purchase Clifford's and Altman's shares at a price identified in the Put Agreements, and BCCI would guaranty Adham's performance. Thus, even if Clifford and Altman had obtained financing for their stock purchase from another financial institution, that financing would have provided that BCCI would ultimately be responsible for liquidating Clifford's and Altman's investment at a substantial profit.

115. Among the provisions of the Typed Notes prepared by Altman were provisions that: specifically identified the CCAH

shares as collateral for the loan; entitled BCCI, the lender, to recourse only against the shares of CCAH with no recourse against the borrower personally; and stated the intention of the parties to refinance the loan at its maturity. Similarly, the Share Pledge Agreement prepared by Altman contained a non-recourse provision that provided for recourse only against the shares of CCAH with no recourse against the borrower personally.

116. During this time period, BCCI's auditors had begun to express concern over the amount of credit BCCI had extended that was secured by CCAH shares. As of August 1986, BCCI's advance of funds for the purchase of Clifford's and Altman's CCAH shares from the 1986 rights offering was reflected on the books of BCCI as a single, unsecured loan to Clifford and Altman jointly that bore an interest rate of 2 percent over Libor. These terms differed significantly from the more favorable terms Clifford and Altman had agreed to with BCCI and which were contained in the documentation that Altman had prepared. In late October 1986, pursuant to an audit of BCCI, Clifford and Altman received a request for confirmation of a single loan to them from BCCI. The audit request asked Clifford and Altman to confirm that their loan balance as of September 30, 1986, was \$15,193,245. Based on the initial loan amount of \$14,940,272 as of July 25, 1986, the balance stated in the request for confirmation was calculated at the approximate rate of 2 percent above the 3-month Libor rate in effect during the

relevant period. This rate was consistent with the rate of interest that had been approved by the BCCI Central Credit Committee and the rate of interest appearing on the books of BCCI in connection with the loan to Clifford and Altman.

117. After receiving the request for confirmation, Altman complained to Naqvi that the interest rate identified on the confirmation was well above the interest rate that had been agreed to between them. Naqvi assured Altman that he and Clifford were not responsible for the interest, because of their previous agreement, and that this confirmation was necessary for audit purposes. Despite their agreement that the applicable interest rate was Libor with no margin, Clifford and Altman signed the confirmation request, confirming that the information stated therein was accurate. While Clifford and Altman knew that the CCAH shares were collateral for the loan and that neither Clifford nor Altman had any personal obligation to repay the loan, they failed to identify these factors when they confirmed the audit confirmation request. Moreover, although the request for confirmation stated that the completed confirmation should be returned directly to BCCI's auditors, Clifford and Altman returned the signed confirmation to Naqvi at BCCI.

118. In the latter part of 1986, Imam was gathering documentation for the audit of BCCI and determined that, although he had prepared internal BCCI documentation for the loan to

Clifford and Altman, he had not seen an executed promissory note from either Clifford or Altman. He therefore completed a standard, one page, BCCI printed form promissory note ("Printed Note") for each of Clifford and Altman. Imam gave the Printed Notes to Naqvi to have them executed by Clifford and Altman respectively. Naqvi, in discussions with Altman, explained that the Printed Notes were the type of documents that were usually presented to the auditors and that, in the case of Clifford and Altman, the Printed Notes would be provided to the auditors. The Printed Notes made no reference that: the loans were non-recourse to Clifford and Altman; the CCAH shares were collateral for the loans; or the interest rate for the loans was at the preferential rate of Libor with no margin.

119. Notwithstanding the fact that Clifford and Altman had already prepared and executed Typed Notes for the loans to purchase the CCAH shares, Clifford and Altman proceeded to execute the Printed Notes. By means of an undated memorandum to Naqvi, Altman forwarded the executed Printed Notes to BCCI, along with transmittal letters signed by Clifford and Altman respectively and dated July 25, 1986. The memorandum and the transmittal letters stated that the Printed Notes would serve as exhibits to the Typed Notes, although the Typed Notes contain no reference to an exhibit. Although the transmittal letters stated that "notwithstanding any provision in the printed note to the contrary, in any and all instances where there is a conflict

between the provisions of the typed note and the provisions of the printed note, including, without limitation, provisions concerning the term of the note, source of repayment, and collateral, the typed note shall in all respects govern and control," both the Printed Notes and the Typed Notes existed simultaneously, with neither being terminated upon the execution of the other.

120. Naqvi was concerned about the disparity between the Typed Notes, with their provisions regarding collateral and non-recourse arrangements, and the books of BCCI relating to the loan to Clifford and Altman, which showed the loan as unsecured. Therefore, Naqvi instructed Altman to remove the collateral, non-recourse, and refinancing provisions from the documents that Altman had prepared and put the provisions in a separate letter to BCCI.

121. Accordingly, Altman, on behalf of himself and Clifford, prepared revised Typed Notes and revised share pledge agreements that made no mention of the collateral, the non-recourse nature of the loans, or the refinancing provisions. Additionally, Altman prepared "side" letters to BCCI regarding the loans. In these side letters, BCCI agreed to change the basic terms set forth in the revised Typed Notes and revised share pledge agreements in two critical respects. First, BCCI agreed that:

"notwithstanding any provision of the Note or Pledge Agreement (or any other document relating to the loan by the undersigned to BCCI) to the contrary, it is understood and agreed that the undersigned shall not be obligated personally to repay to BCCI the loan principal or any interest accrued thereon[, and that] BCCI shall be limited solely to the undersigned's interest in the CCAH shares and any proceeds thereof to repay the loan and interest thereon . . . ."

Second, in place of the proposed Put Agreements, the side letters provided that whenever Clifford or Altman wished to sell their shares, "BCCI shall arrange for the sale of said CCAH shares to . . . interested buyers in such manner, amount, and at such prices as BCCI and [Clifford or Altman] shall mutually determine." The revised Typed Notes, revised pledge agreements, and side letters were executed by Clifford and Altman and transmitted to BCCI.

122. At the time that Clifford and Altman had already received the CCAH shares and, therefore, had already received the financing from BCCI, no documentation had been signed by Clifford or Altman evidencing their promise to repay BCCI's loans. Although all three of the the notes subsequently signed by Clifford and Altman and the side letters accompanying the revised Typed Notes were all dated July 25, 1986, none of these documents was prepared or executed, by either party, until well after that date.

123. The BCCI auditors were never provided with the Typed Notes (either in their original or revised form), the transmittal letter for the Printed Notes which provided that the Typed Notes' terms were controlling notwithstanding the terms of the Printed Notes, the Pledge Agreements, or the side letters providing that the loans to Clifford and Altman were non-recourse. The auditors, who had criticized BCCI's level of CCAH-secured lending, were shown only documentation suggesting that the loans to Clifford and Altman were unsecured, and made according to standard documentation used by BCCI, using an interest rate of 2 percent above the 3-month Libor rate. By signing the Printed Notes whose terms were not operative to the extent that they conflicted with the Typed Notes, and by arranging for different terms to be effective evidenced only by side letters, Clifford and Altman participated in BCCI's false description of the loans to its auditors.

124. Clifford and Altman failed to disclose to the other directors of CCAH, Messrs. Symington and Quesada, the following material facts in connection with the CCAH board's approval of the sale of waived CCAH shares to new purchasers:

- that Clifford and Altman intended to purchase shares of CCAH at the 1986 rights offering,
- that Clifford and Altman intended that the purchase be at book value rather than at a market price,
- that other sales of CCAH stock, outside the rights offering, but in the same time period as the rights offering, were planned at much higher prices,

-- that Clifford and Altman were financing their purchases by means of non-recourse, preferential-rate loans from BCCI secured by their CCAH shares,

-- that BCCI had agreed to arrange for the subsequent repurchase of their shares at a price to be agreed upon between Clifford and Altman and BCCI, and

-- that Clifford and Altman were simultaneously involved in the acquisition, on behalf of CCAH, of NBG from BCCI's customer, shareholder and debtor, Pharaon, in a transaction that would be beneficial to BCCI, a client of Clifford & Warnke.

125. Each of the CCAH directors signed a Consent in Lieu of Directors' Meeting, dated "as of July 25, 1986," relating to the 1986 rights offering of the same date. These Consents, and the resolution accompanying them (also dated as of July 25, 1986), were not prepared or sent to the CCAH directors until February or March 1987, at least seven months after Clifford and Altman acquired their shares of CCAH. The consent forms evidenced the director's consent to a corporate resolution referred to in the consent. The consent and the resolution were prepared by Clifford & Warnke. Despite the fact that Clifford and Altman had a direct personal interest in the resolution, they did not abstain from voting in favor of it. Thus, they did nothing to put their fellow directors on notice that they had a personal interest in the resolution being approved.

126. The resolution itself was designed to conceal that Clifford and Altman would be the individuals purchasing some of the waived shares at book value. The resolution recited only that written confirmations had been received from existing

shareholders accepting or waiving their preemptive rights to the newly-issued shares, and that "written confirmations have been received from persons who have agreed to purchase the waived Shares" at the rights offering price of \$2216 per share.

(emphasis added) Thus, the resolution did not identify Clifford or Altman as the persons who had agreed to purchase the waived shares, did not make reference to the financial arrangements between BCCI and Clifford and Altman with respect to their purchase of CCAH shares, and did not reveal that there was a nonshareholder who was apparently willing to pay \$6094 per share for up to 30 percent of CCAH. Moreover, the other directors did not see copies of letters sent by Clifford and Altman to "the Directors" of CCAH accepting the shares waived by Mashriq.

127. At no time did Clifford or Altman disclose to CCAH's board of directors their financial arrangements with BCCI in connection with their stock purchases. Nor did they reveal those financial arrangements to Regulatory Counsel, despite Regulatory Counsel's involvement as counsel to CCAH at the time the loans were obtained.

128. In June 1987, at a meeting with Abedi and Naqvi in London, Clifford and Altman each insisted on making an interest payment on their respective loans from BCCI. Subsequent to the meeting, in a telephone conversation with Imam, Altman reiterated his insistence on paying interest on the loans. As

set forth in the side letters related to the loans, dated July 25, 1986, interest payments were not required at this time. However, as a result of their insistence, Naqvi instructed Imam to calculate the interest due on their loans and provided the information to Altman. Imam calculated the interest rate at what he determined to be Libor, notwithstanding Clifford's and Altman's signed loan confirmation effectively confirming a substantially higher rate.

129. In August 1987, Clifford and Altman participated in a rights offering as shareholders of CCAH. Again, they obtained loans from BCCI at Libor with no margin for the full amount of the cost of the shares they acquired, and pledged the shares to BCCI as collateral for the loans. In addition, Clifford and Altman again executed promissory notes identical in all material respects to the revised Typed Notes relating to their 1986 loans, and side letters with BCCI making the loans non-recourse, providing that Clifford and Altman were not obligated to pay principal or interest on the loans, and providing that BCCI would find a buyer for their shares at such time as they desired to sell at a price to be determined by BCCI and Clifford or Altman.

130. In or around November 1987, BCCI again sent audit confirmation requests to Clifford and Altman in connection with their loans. These requests identified the applicable rate on

the loans as 10.25 percent, considerably in excess of the Libor rate with no margin that Clifford and Altman had agreed, in their revised Typed Notes, to pay. The audit requests asked Clifford and Altman to confirm the correctness of the information by signing the confirmations, or to indicate the reasons for any disagreement, and to return them directly to BCCI's auditors. Despite this request, Clifford and Altman did nothing to alert BCCI's auditors that the auditors' understanding of the terms of Clifford's and Altman's loans was incorrect.

131. As a result of their initial acquisition in 1986 and the additional shares purchased in the 1987 rights offering, Clifford and Altman held 5446 and 2722 shares of CCAH, respectively, as of August 1987. All of these shares were pledged to BCCI.

132. Altman was aware that under Netherlands Antilles law, a security interest in shares is perfected by noting the pledge in the books and records of the issuer. As BCCI's attorney, Altman had a fiduciary duty to BCCI to ensure that its security interest in his and Clifford's shares was perfected. As Secretary of CCAH, Altman had the means of ensuring that BCCI's pledge was properly recorded in CCAH's books. Nonetheless, no pledge of shares by Clifford or Altman to BCCI was ever recorded in CCAH's books.

133. In a letter dated February 8, 1988, Clifford wrote to Naqvi to ask him to arrange a sale of some or all of Clifford's and Altman's CCAH stock.

134. In late February or early March 1988, Altman met in London with Naqvi to discuss, among other matters, the sale of Clifford's and Altman's CCAH shares. During the course of the meeting, Naqvi determined that the current value of CCAH was approximately 2.67 times the book value of CCAH. At or around that time, Altman agreed that he and Clifford would each pay a commission to BCCI out of the sale proceeds, so long as the commission did not affect their net profit.

135. At this same meeting, Naqvi instructed Imam to join Altman. Thereafter, Altman informed Imam that he and Clifford were selling a portion of their CCAH shares and that Abedi had previously promised Clifford a profit of \$3 million and Altman a profit of \$1.5 million. In accordance with the prior discussions between Naqvi and Altman, Altman instructed Imam to calculate the number of shares, the multiplier over the book value of CCAH, and the selling price per CCAH share necessary for Clifford and Altman to obtain the profit promised and to repay the loans used by Clifford and Altman to purchase all of their CCAH holdings.

136. In a subsequent conversation after Altman had returned to Washington, Altman instructed Imam that in addition to ensuring that the sale of Clifford's and Altman's shares of CCAH was sufficient to obtain the profits agreed to and to repay the BCCI loans, it would be necessary to ensure that the sale price was sufficient to recover any interest already paid to BCCI on the loans and any taxes that may accrue as the result of the sale of the CCAH shares. Altman instructed Imam not to disclose their conversations regarding the sale of the CCAH shares to anyone other than Naqvi.

137. In calculating the amount necessary to repay Clifford's and Altman's loans from BCCI, Imam utilized the loan balances stated on the books of BCCI, which calculated the interest rate at Libor plus 2 percent. Since the interest charges utilized Imam were based on an interest rate in excess of the interest rate that Clifford and Altman had agreed to, Altman insisted that the excess in the interest being charged be used for the payment of the commissions that Clifford and Altman had agreed to pay.

138. On or about March 20, 1988, Altman contacted Imam and dictated the contents of a letter that Altman instructed Imam to send to Clifford. The letter, which Imam subsequently prepared and dated March 21, 1988, stated that BCCI had found a purchaser who was willing to purchase up to 4800 shares of

Clifford's and Altman's CCAH holdings at a price of \$6800 per share. The letter further stated that it was expected that Clifford and Altman would be required to pay down their BCCI loans and that they would be required to pay a commission to BCCI for arranging the sale. After preparing the letter, as instructed by Altman, Imam transmitted the letter to Clifford and Altman.

139. By letter dated March 28, 1988, Clifford and Altman instructed Naqvi to proceed with the sale, for cash, of 4800 of their CCAH shares. Clifford and Altman further advised that they would repay their outstanding indebtedness to BCCI and that they would pay commissions to BCCI for arranging the sale of \$1.5 million and \$750,000, respectively, with such commissions being booked as income to BCCI.

140. On March 31, 1988, BCCI transmitted to Clifford and Altman \$21,760,000 and \$10,880,000, respectively, for their sale of 4800 shares of CCAH at \$6800 per share. This represents the highest price ever paid for CCAH shares in the history of the company. Out of the sale proceeds, and consistent with their agreement, on March 31, Clifford and Altman transferred to BCCI funds sufficient to repay, in their entirety, the loans from BCCI utilized by Clifford and Altman to purchase CCAH shares. The

commission that was ultimately charged to Clifford and Altman equalled the difference between the loan balances of Clifford and Altman carried on the books of BCCI (at an interest rate of Libor plus 2 percent) and the loan balances as the result of the agreement between Clifford and Altman and BCCI (at an interest rate of Libor). This resulted in no additional outlay of funds by Clifford or Altman.

141. According to a statement provided to the Committee on Banking, Finance, and Urban Affairs of the United States House of Representatives, Clifford and Altman netted approximately \$2.75 million and \$1.35 million, respectively, on their stock transactions, in addition to retaining their remaining shares of CCAH, 2246 shares for Clifford, and 1122 shares for Altman, free and clear of any liens or other obligations.

142. On February 12, 1991, in sworn testimony to the Board of Governors, Altman falsely stated that he did not know how the purchase price of \$6800 per share was arrived at, and that he did not discuss the matter with Imam.

143. In April 1988, Clifford and Altman entered into a Purchase and Sale Agreement with BCCI. Pursuant to the agreement, BCCI agreed that upon Clifford's or Altman's death BCCI would purchase any CCAH shares then owned by Clifford or

Altman for a price of \$2310 per share, calculated to be their average acquisition price for CCAH shares. This agreement amounted to a promise to pay Clifford \$5,188,260, and Altman \$2,591,820, for their CCAH shares upon their death, without any regard to the actual value of the shares at that time of either of their deaths. Neither Clifford nor Altman provided any consideration to BCCI in exchange for BCCI's obligation to purchase their CCAH shares. Nor did they disclose this agreement to other members of the CCAH board.

#### IV. THE DECEMBER 1989 INQUIRY

144. On December 13, 1989, a Board official ("Board Official") wrote to Altman concerning loans from BCCI to CCAH shareholders that might be secured by a pledge of CCAH stock. Board Official's letter requested "information on any loans extended to the original or subsequent investors, either directly or indirectly, by BCCI or any of its affiliated organizations."

145. Altman consulted Regulatory Attorney concerning the manner in which to respond to Board Official's request. Altman mentioned that there may have been loans to shareholders by BCCI that had been paid off, and indicated that he did not believe such loans should be of concern to the Federal Reserve. He did not mention to Regulatory Attorney that he and Clifford had been the recipients of non-recourse loans from BCCI for the purchase of CCAH shares and secured by those shares.

146. In his February 5, 1990 response, Altman wrote to Board Official that "we do not have access here to information regarding any financial arrangements that might exist between a shareholder of Credit and Commerce American Holding, N.V. and other financial institutions, including Bank of Credit and Commerce International, S.A. ('BCCI'). Based on our consultations with the resident managing director for [CCAH] in the Netherlands Antilles, we can only confirm that no pledge or security interest has ever been recorded on the Company's share register by any lender."

147. Altman's letter was false in that it failed to disclose that he and Clifford had existing financial arrangements with BCCI concerning the sale of their CCAH shares, both during their lifetimes and upon their deaths. Nor did Altman's letter disclose the fact that his and Clifford's shares of CCAH had been pledged to secure their loans from BCCI but that the pledge had not been recorded.

148. Altman's February 5 letter to Board Official attached a letter which, he wrote, he had "just received" from Naqvi concerning BCCI's loans to CCAH shareholders. The letter was carefully drafted to convey the false impression that, although some loans to CCAH shareholders were secured by CCAH shares, these loans had not been made for the purpose of

purchasing the CCAH shares. Altman or C&W Partner drafted the Naqvi letter and sent it to Naqvi for signature.

#### **VIOLATIONS OF LAW AND REGULATION**

##### **COUNT 1 Clifford and Altman Violated the BHC Act by Participating in BCCI's Acquisition of Control of CCAH in Violation of the BHC Act**

149. The Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(a)(1) and (2); 12 U.S.C. 1842(a)(1)), and Regulation Y (12 C.F.R. 225.11) make it unlawful, except with prior approval of the Board of Governors, for any action to be taken that causes any company to become a bank holding company. A company becomes a bank holding company if it owns or controls, directly or indirectly, or acting through one or more other persons, 25 percent or more of the voting shares of a bank.

150. As set forth in the BCCI Notice, BCCI violated the BHC Act by acquiring through nominees, 25 percent or more of the voting shares of CCAH without obtaining the prior approval of the Board.

151. Clifford and Altman participated in and aided and abetted BCCI's violation of the BHC Act, through and as evidenced by the following actions, among others:

- (a) Altman concealed from the Board of Governors BCCI's violation of the BHC Act by submitting, in February 1990, statements to the Board that he knew to be false and that concealed BCCI's relationship with CCAH shareholders;

- (b) Clifford and Altman allowed CCAH to be used by BCCI to transfer BCCI's control of NBG from BCCI's nominee, Pharaon, to CCAH in a transaction that would benefit BCCI and, at the request of BCCI, Altman subordinated the interests of CCAH to BCCI in that transaction;
- (c) Clifford and Altman entered into loan and repurchase arrangements with BCCI in connection with their purchases of CCAH shares in 1986 and 1987 that made their financial interests dependent on BCCI, which gave BCCI influence over their actions as the senior management of CCAH.

**COUNT 2 Clifford and Altman Violated the Board's Order Under the BHC Act that Approved CCAH's Acquisition of the First American Banks**

152. Clifford and Altman violated the Board's Order of August 25, 1981, approving the acquisition by CCAH of Financial General, by, among other means, arranging in May 1982 and July 1982 for CCAH to borrow funds to pay interest on CCAH's acquisition debt under the BAI loan in violation of the express conditions of the Order that acquisition financing would not exceed \$50 million.

**COUNT 3 Altman Violated the BHC Act by Participating in BCCI's Acquisition and Retention of Control of National Bank of Georgia in Violation of the BHC Act**

153. As set forth in paragraphs 179 through 200 of the BCCI Notice, BCCI acquired control of NBG from at least January 1, 1985 without obtaining the prior approval of the Board as required by the BHC Act.

154. Altman participated in and aided and abetted BCCI's violation of the BHC Act in connection with its illegal retention of control over NBG when he took affirmative steps, including the separation of the pledge of shares to CCAH from the pledge of shares to BCCI, to conceal from the Board the material fact that BCCI was to lend Pharaon the full amount of the purchase price for the NBG shares, less the amount of the option price to be paid by CCAH. At this time, Altman was aware that Pharaon was serving as a nominee for BCCI in acquiring another U.S. bank and that Pharaon had previously obtained loans from BCCI that were still secured by shares of NBG.

**COUNT 4 Clifford and Altman Breached Their Fiduciary Duties To CCAH, First American and CCAH Shareholders**

155. Clifford and Altman breached their fiduciary duty to CCAH and First American by accepting compensation for their duties to those companies from BCCI. BCCI provided such compensation by (a) arranging for Clifford and Altman to purchase stock at the 1986 rights offering at the price paid by existing shareholders rather than at a market price, (b) providing preferential-rate, non-recourse financing for Clifford's and Altman's stock purchases in 1986 and 1987, (c) arranging for the sale of a portion of Clifford's and Altman's stock in 1988 at a price that provided Clifford and Altman with the profit guaranteed to them by BCCI, and (d) agreeing to buy from Clifford and Altman any CCAH stock in their possession at the time of

their death, at a fixed price determined without regard to the value of the stock at that time.

156. Clifford and Altman breached their fiduciary duties to the board of directors and shareholders of CCAH and to the board of directors of First American, by preparing and distributing to CCAH shareholders an offering circular related to the 1987 rights offering and by providing information to the directors of CCAH and First American which failed to disclose all material information regarding the acquisition of NBG, including: that Clifford and Altman had financial arrangements with BCCI that could cause them to favor the interests of BCCI over those of CCAH and CCAH shareholders; and that Altman had subordinated the interests of CCAH as a secured party to those of BCCI and thus put CCAH at risk in connection with the NBG option transaction.

**COUNT 5      Altman Engaged in Violations of Law by Making False Statements to the Board**

157. Altman made the following false statements to the Board in violation of 18 U.S.C. 1001, when:

- (a) Between February and November of 1990, Altman informed the Board that he had no information concerning financial arrangements between shareholders of CCAH and any financial institution. These statements were false in that Altman was aware of the following financial arrangements between shareholders of CCAH and financial institutions, including BCCI:

- (i) Altman's and Clifford's repurchase agreement with BCCI whereby BCCI agreed to find a purchaser for their CCAH shares at a price acceptable to them and BCCI; and
- (ii) Altman's and Clifford's agreement with BCCI that BCCI would purchase any of their remaining shares upon their deaths.

(b) In April 1987, Altman caused Regulatory Counsel to submit to the Board of Governors, in connection with the application to acquire NBG, a statement that less than five percent of the \$150 million in capital raised in the 1986 rights offering represented borrowings by shareholders secured by a pledge of CCAH shares, when at the time, Altman was aware that he and Clifford had borrowed almost \$15 million from BCCI for their purchases of CCAH shares, and secured such borrowings with their CCAH shares.

(c) On February 12, 1991, and in June and July 1991, in sworn testimony to the Board, Altman stated that:

- (i) he was not responsible for obtaining the signature of BCCI to the subordination agreement in connection with the NBG option transaction; and
- (ii) he did not know how the sale price of \$6800 per share was arrived at in connection with the sale of his and Clifford's CCAH shares in March 1988, and that he never spoke to Imam about the issue of price.

#### **PROHIBITION ACTIONS AGAINST CLIFFORD AND ALTMAN**

##### **A. Clifford**

158. As set forth in this Notice, Clifford (a) violated the BHC Act and Regulation Y by participating in or aiding and abetting the violations of the BHC Act and

Regulation Y by BCCI set forth in Count 1 of this Notice; (b) violated a Board Order in violation of the BHC Act as set forth in Count 2 of this Notice; and (c) committed breaches of his fiduciary duties as set forth in Count 4 of this Notice.

159. By reason of the violations of law and regulation, unsafe and unsound practices, and breaches of fiduciary duty committed by Clifford set forth in this Notice, Clifford received financial gain or other benefit when: (a) Clifford was able to borrow the full purchase price of his shares of CCAH from BCCI on extremely favorable terms that included an agreement eliminating Clifford's personal liability for the loans; (b) Clifford was able to sell a portion of his CCAH shares for a profit of approximately \$6.5 million and retain the remainder of his shares free of liens and debt; and (c) Clifford benefitted from the legal fees charged to CCAH and its subsidiaries from 1982 through 1990. In addition, by reason of the violations and breaches of fiduciary duty, First American has suffered or will probably suffer financial loss or other damage in that the publicity attendant to BCCI's acquisition of control of CCAH which Clifford participated in has had a significant negative impact on First American. CCAH also suffered substantial financial loss by reason of the acquisition of NBG as alleged in Counts 1, 2 and 4 of this Notice.

160. The violations of law and regulation and the breaches of fiduciary duty committed by Clifford set forth in this Notice involve personal dishonesty on the part of Clifford, including violations of commitments made to the Board in order to obtain Board approval of the Application. In addition, the violations of law and regulation, the breaches of fiduciary duty, and the unsafe or unsound practices set forth in this Notice demonstrate a willful or continuing disregard for the safety or soundness of CCAH and its subsidiaries.

**B. Altman**

161. As set forth in this Notice, Altman (a) violated the BHC Act and Regulation Y by participating in or aiding and abetting the violations of the BHC Act and Regulation Y by BCCI set forth in Count 1 of this Notice; (b) violated a Board Order in violation of the BHC Act as set forth in Count 2 of this Notice; (c) violated the BHC Act and Regulation Y by participating in the violation of the BHC Act and Regulation Y by BCCI as set forth in Count 3 of this Notice; and (d) committed breaches of his fiduciary duties as set forth in Count 4 of this Notice.

162. By reason of the violations of law and regulation, unsafe and unsound practices, and breaches of fiduciary duty committed by Altman as set forth in this Notice, Altman received financial gain or other benefit when: (a) Altman

was able to borrow the full purchase price of his shares of CCAH from BCCI on extremely favorable terms that included an agreement eliminating Altman's personal liability for the loans; (b) Altman was able to sell a portion of his CCAH shares for a profit of approximately \$3.2 million and retain the remainder of his shares free of liens and debt, and (c) Altman benefitted from the legal fees charged to CCAH and its subsidiaries from 1982 through 1990. In addition, by reason of the violations and breaches of fiduciary duty, First American has suffered or will probably suffer financial loss or other damage in that the publicity attendant to BCCI's acquisition of control of CCAH which Altman participated in has had a significant negative impact on First American. CCAH also suffered substantial financial loss by reason of the acquisition of NBG as alleged in Counts 1, 2 and 4 of this Notice.

163. The violations of law and regulation and the breaches of fiduciary duty committed by Altman set forth in this Notice involve personal dishonesty on the part of Altman, including violations of commitments made to the Board in order to obtain Board approval of the Application, the willful concealment of the control of CCAH by BCCI and knowingly false statements made by Altman to the Board. In addition, the violations of law and regulation, the breaches of fiduciary duty, and the unsafe or unsound practices set forth in this Notice demonstrate a willful

and continuing disregard for the safety and soundness of CCAH and its subsidiaries.

164. Notice is hereby given that a hearing will be held at a time to be scheduled by an administrative law judge appointed by the Office of Financial Institution Adjudication ("OFIA"), at the offices of the Board of Governors, Washington, D.C., for the purpose of taking evidence on the charges specified in this Notice in order to determine whether an appropriate order should be issued under Section 8(e) of the FDI Act to prohibit the future participation of Clifford and Altman in the affairs of, inter alia, any insured depository institution or holding company thereof.

165. The hearing described above shall be combined with any other hearing to be held on the matters set forth in this Notice, including those concerning the issuance of cease and desist orders and civil money penalties.

#### CEASE AND DESIST ACTIONS

166. Notice is hereby given that a hearing will be held at a time to be scheduled by the administrative law judge appointed by OFIA, at the offices of the Board of Governors, Washington, D.C., for the purpose of taking evidence on the charges hereinbefore specified in order to determine whether an appropriate order should be issued under the FDI Act requiring

Clifford and Altman to cease and desist from the violations and unsafe and unsound banking practices herein specified and to take affirmative action to correct or remedy conditions resulting from their violations of law and unsafe or unsound practices pursuant to 12 U.S.C. §§ 1818(b)(1) and (b)(6)(A)-(F). Appropriate affirmative action may include the issuance of a cease and desist order:

(a) requiring payment to the Board for the expenses incurred in the investigation and prosecution of the matters alleged in this Notice, which shall be the joint and several liability of each of the Respondents;

(b) requiring each Respondent to cease and desist from any further violation of the BHC Act, the Control Act, or any other federal banking statute;

(c) requiring each Respondent to cease and desist from any further violation of any Board order;

(d) requiring Altman to cease and desist from any further making of false statements to the Board or any other Federal banking agency;

(e) requiring Clifford and Altman to dispose of their remaining shares of CCAH by transferring them without consideration to CCAH for cancellation or by assigning them to any other entity acceptable to the Board for the ultimate benefit of the innocent depositors and creditors of BCCI;

(f) requiring Clifford and Altman to pay to CCAH (or to such entity identified in subparagraph (e) hereof) the amount of

their after-tax profit on the sale of their CCAH stock in 1988; and

(g) such other relief as may be appropriate under the circumstances of this matter to redress the violations, breaches of duty and unsafe or unsound practices charged in this Notice.

167. The hearing described above shall be combined with any other hearings to be held on the matters set forth in this Notice, including those concerning the issuance of prohibition orders and civil money penalties.

#### **CIVIL MONEY PENALTY ACTIONS**

##### **A. Penalties Under the BHC Act**

168. The BHC Act, 12 U.S.C. 1847(b)(1), authorizes the assessment of a civil money penalty against any company that violates and any individual who participates in a violation of the BHC Act or any regulation or order issued pursuant thereto. Until an amendment that became effective on August 9, 1989, the BHC Act authorized civil money penalties in the amount of \$1000 per day for each day of violation; thereafter, the BHC Act authorizes civil money penalties of \$25,000 per day.

169. Clifford's and Altman's actions in participating and aiding and abetting BCCI's violation of the BHC Act, which commenced in 1982 when they permitted BCCI to exercise substantial control over CCAH and certain subsidiaries, and

continued until at least February 5, 1990, when Altman provided false and misleading information to the Board concerning BCCI's financial relationship with CCAH shareholders, was outstanding for at least 2592 days. Of these, at least 2413 were before and 179 were after August 9, 1989.

170. Clifford's and Altman's violation of the Board's Order of August 25, 1981, approving the acquisition of Financial General by CCAH, which commenced at least in April 1982 with the violation of the express condition that CCAH would not borrow more than \$50 million in acquisition financing, and continued through January 21, 1987 when the excessive loan was repaid, was outstanding for a period of at least 1727 days.

171. Accordingly, the maximum penalty that may be assessed against Respondents with respect to violations described in Counts 1 and 2 is at least \$8,615,000.

**B. Penalties under the FDI Act**

172. Section 8(i) of the FDI Act, 12 U.S.C. 1818(i), authorizes the assessment of a civil money penalty of \$25,000 against any institution-affiliated party who violates any law or regulation or condition imposed in writing, or breaches any fiduciary duty, which violation or breach is part of a pattern of misconduct or which conduct results in pecuniary gain or other benefit to such party.

173. Clifford's and Altman's breach of their fiduciary duty to CCAH, First American and CCAH's shareholders commenced July 1986 when they acquired shares of CCAH through secret transactions with BCCI. This breach was part of a pattern of misconduct and resulted in a pecuniary gain to Clifford and Altman in the form of their profit on the sale of a portion of their CCAH shares in 1988 and their retention of additional shares free of associated debt. The breach continued until July 5, 1991, when BCCI was closed and the secret put agreement among BCCI, Clifford and Altman effectively terminated. Accordingly, the maximum penalty that may be assessed against Clifford and Altman is \$18,460,000.

174. Altman's violations of 18 U.S.C. 1001 as alleged in Count 5 commenced on February 5, 1990, and continued through at least July 1991. These violations were outstanding for at least 512 days. Accordingly, the maximum penalty that may be assessed against Altman is \$12,800,000.

**C. Assessments**

175. After taking into account the size of Clifford's financial resources, his good faith, the gravity of the violations, the history of previous violations, and such other matters as justice may require, the Board of Governors hereby assesses against Clifford for the violations of the BHC Act and Regulation Y and breach of fiduciary duty set out in Counts 1, 2

and 4 of this Notice a civil money penalty in an amount that is determined to be the sum of (a) \$6,500,000, less any amount established by Clifford as having been paid as state or Federal taxes in connection with his sale of CCAH shares in 1988; and (b) the value of any shares of CCAH currently held by Clifford; provided, however, that the amount of this assessment will be reduced by any amounts paid, and the value of any shares transferred or assigned, voluntarily or pursuant to any order issued under section 8(b) of the FDI Act, by Clifford to CCAH or such entity identified in paragraph 166(e) hereof. Clifford shall forfeit and pay the penalties as hereinafter provided.

176. After taking into account the size of Altman's financial resources, his good faith, the gravity of the violations, the history of previous violations, and such other matters as justice may require, the Board of Governors hereby assesses against Altman for the violations of the BHC Act, Regulation Y, breach of fiduciary duty, and other laws set out in Counts 1, 2, 4, and 5 of this Notice a civil money penalty in an amount that is determined to be the sum of (a) \$3,200,000, less any amount established by Altman as having been paid as state or Federal taxes in connection with his sale of CCAH shares in 1988; and (b) the value of any shares of CCAH currently held by Altman; provided, however, that the amount of this assessment will be reduced by any amounts paid, and the value of any shares transferred or assigned, voluntarily or pursuant to any order

issued under section 8(b) of the FDI Act, by Altman to CCAH or such entity identified in paragraph 166(e) hereof. Altman shall forfeit and pay the penalties as hereinafter provided.

**D. Procedures Applicable to Civil Money Penalties**

177. The penalties set forth in this Notice are assessed by the Board of Governors pursuant to section 8(i) of the FDI Act and section 8(b) of the BHC Act, and the Board of Governors Rules of Practice for Hearings (12 C.F.R. Part 263) (the "Rules of Practice"). Remittance of the penalties set forth herein shall be made within 60 days of the date of this Notice, in immediately available funds, payable to the order of the Secretary of the Board of Governors, Washington, D.C. 20551, who shall make remittance of the same to the Treasury of the United States.

178. Notice is hereby given, pursuant to section 8(i)(2) of the FDI Act (12 U.S.C. 1818(i)(2)), made applicable to these proceedings by section 8(b)(2) of the BHC Act (12 U.S.C. 1847(b)(2)), that Clifford and Altman are afforded an opportunity for a formal hearing before the Board of Governors concerning these assessments. Any request by a Respondent for a hearing with regard to the civil money penalty proceedings against him must be filed with the Secretary of the Board of Governors, Washington, D.C. 20551, within 20 days after the issuance and service of this Notice on the Respondent.

179. The hearing described above shall be combined with the other hearings to be held on the matters set forth in this Notice, including those concerning the issuance of cease and desist and prohibition orders.

180. In the even that any Respondent subject to a civil money penalty assessment fails to request a hearing within the aforementioned 20 day period, that Respondent shall be deemed, pursuant to section 263.19(c)(2) of the Board's Rules of Practice, to have waived the right to a formal hearing, and this Notice shall, pursuant to section 8(i)(2) of the FDI Act, constitute a final and unappealable order, and may be referred for collection to the United States Department of Justice.

**PROCEDURES GENERALLY**

181. Each Respondent is hereby directed to file with OFIA, Washington, D.C. 20552, an answer to this Amended Notice no later than ten days after service hereof, as provided by section 263.20(a) of the Rules of Practice (12 CFR 263.20(a)). Pursuant to section 263.10(a) of the Rules of Practice (12 CFR 263.10(a)), any answer filed with OFIA shall be served on the Secretary of the Board. As provided in the Board's Rules (12 CFR 263.19(c)), the failure of any Respondent to file an answer as required by this Notice within the time provided herein shall constitute a waiver of that Respondent's right to appear and contest the allegations of this Notice. If no timely answer is filed, a

motion may be filed for entry of an order of default. Upon a finding that no good cause has been shown for the failure to file a timely answer, the administrative law judge shall file with the Board a recommended decision containing the findings and the relief sought by this Notice. Any final order issued by the Board based upon a Respondent's failure to answer is deemed to be an order issued by consent.

182. The hearing referred to above will be held before the administrative law judge appointed by the OFIA, and shall be conducted in accordance with the provisions of the FDI Act and the Rules of Practice. The hearing will be public, unless the Board of Governors shall determine that a public hearing would be contrary to the public interest.

183. With respect to his own proceeding, each Respondent may submit, within 20 days after the issuance and service of this Notice, to the Secretary of the Board of Governors a written statement detailing the reasons why the hearings described in this Notice should not be public. Failure to submit such a statement within the aforementioned period will be deemed a waiver of any interest the Respondent may have to a private hearing.

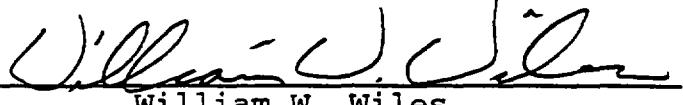
184. Authority is hereby delegated to the Secretary of the Board of Governors to designate the time and place and

presiding officer for any hearing that may be conducted on this Notice and to take any and all actions that the presiding officer would be authorized to take under the Rules of Practice with respect to this Notice and any hearing to be conducted hereon, until such time as a presiding officer shall be designated.

Dated at Washington, D.C., this 14<sup>th</sup> day of January, 1997.

BOARD OF GOVERNORS OF THE  
FEDERAL RESERVE SYSTEM

By:

  
William W. Wiles  
Secretary of the Board

Board of Governors of the  
Federal Reserve System  
Washington, DC 20551-0001

OFFICIAL BUSINESS

First Class