

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

In the Matter of	)	Docket Nos. 98-038-B-FHC
	)	98-038-B-I
	)	98-038-CMP-FHC
INCUS CO. LTD.	)	98-038-CMP-I
Tortola, British Virgin Islands)	)	98-038-E-I
)	
and)	
	)	Notice of Intent to Prohibit
CARLOS HANK RHON	)	Issued Pursuant to Section
	)	8(e) of the Federal Deposit
An Institution-Affiliated	)	Insurance Act, as Amended,
Party of Incus Co., Ltd.	)	("FDI Act"), Notice of Charges
and Laredo National	)	and of Hearing Issued Pursuant
Bancshares, Laredo, Texas.	)	to Section 8(b) of the FDI
	)	Act, and Notice of Assessment
	)	of Civil Money Penalties
	)	Pursuant to Sections 7(j) and
	)	8(i) of the FDI Act and
	)	Sections 8(b) and 8(d)
	)	of the Bank Holding Company
	)	Act, as Amended ("BHC Act")

The Board of Governors of the Federal Reserve System (the "Board of Governors") is of the opinion or has reasonable cause to believe that:

I. Incus Company, Ltd. ("Incus"), a registered bank holding company has violated the BHC Act, 12 U.S.C. § 1841 et seq.; 18 U.S.C. § 1001; and conditions imposed in writing by the Board of Governors in connection with the grant of an application or other request; and

II. Carlos Hank Rhon, an institution-affiliated party of Incus, Kline Co., Ltd. ("Kline"), formerly a registered bank holding company, and Laredo National Bancshares ("LNB"), a registered bank holding company, has violated the BHC Act, the Change in

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Bank Control Act, 12 U.S.C. § 1817(j) ("Control Act"); 18 U.S.C. § 1001; and conditions imposed in writing by the Board of Governors in connection with the grant of an application or other request.

Accordingly, the Board of Governors hereby institutes these proceedings:

(I) for the purpose of determining whether an appropriate order permanently barring Hank Rhon from participating in any manner in the affairs of a United States depository institution or depository institution holding company should be issued under the provisions of section 8(e) of 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 Incus and Hank Rhon to cease and desist from violations of law, and to take other affirmative action 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 Hank Rhon and Incus for violations of the BHC Act, pursuant to sections 8(b) and 8(d) of the BHC Act, 12 U.S.C. §§ 1847(b) & (d); subsection 16 of the Control Act, 12 U.S.C. § 1817(j)(16); and section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2).

In connection with this proceeding, the Board of Governors alleges as follows:

JURISDICTION

1. Incus is a corporation organized under the laws of the British Virgin Islands. Since at least March 3, 1994, Incus has been a bank holding company under the BHC Act, 12 U.S.C. § 1841 et seq., which controlled (together with Kline) a majority of the voting shares of LNB. Between December 31, 1991, and March 1994, Incus (together with Kline) was LNB's largest shareholder, controlling between 13.05 and 24.3 percent of LNB's voting shares. At all pertinent times, LNB has been a registered bank holding company under the BHC Act. At all pertinent times, LNB has controlled Laredo National Bank and, after 1991, South Texas National Bank, both of Laredo, Texas. Both Laredo National Bank and South Texas National Bank at all times pertinent to the charges herein, have been chartered and doing business as national banks, insured banks within the meaning of section 3(h) of the FDI Act, 12 U.S.C. § 1813(h), and banks within the meaning of section 2(c) of the BHC Act, 12 U.S.C. § 1841(c).
2. Kline was a corporation organized under the laws of the British Virgin Islands, and was a bank holding company under the BHC Act from March 1994 through February 1995, when it was merged into Incus.
3. From January 1991 through the present, Hank Rhon has been a director of LNB. From at least March 1994 through February 1995, Hank Rhon was a director of Kline and a controlling shareholder of Kline, through a trust of which he was the

settlor. Since at least December 1991, Hank Rhon has been a controlling shareholder of the single issued share of Incus. From February 1995 to the present, Hank Rhon has been a director of Incus. From at least March 1994 through February 1995, Hank Rhon was a director of Kline. In July 1991 and October 1993, Hank Rhon filed Notices of Change in Bank Control with the Board of Governors with respect to his indirect ownership and control of LNB through Kline and Incus. Accordingly, Hank Rhon has been an institution-affiliated party within the meaning of sections 3(u) and 8(b)(3) of the FDI Act, 12 U.S.C. §§ 1813(u), 1818 (b)(3), of LNB since January 1991, of Incus since March 3, 1994, and of Kline from March 3, 1994, through February 8, 1995.

FACTUAL ALLEGATIONS

BACKGROUND

4. In March 1990, LNB completed a reorganization and recapitalization by which most of its then existing shareholders were "cashed out" and replaced by new shareholders. The new shareholders were recruited from two sources. One was led by two Swiss private banks, Lombard, Odier & Cie. and Privat-Kredit Bank. The Swiss private banks held LNB shares to a limited extent for their own accounts, but primarily were nominees for individual clients from several European countries and Mexico (collectively, the "Swiss shareholders"). The identities of most of these clients were not disclosed to the Board. The other source

of new shareholders consisted of several wealthy Mexican nationals who were recruited by LNB's existing management and Pedro Cerisola, a Mexican national with prior experience as a Mexican banking executive. Cerisola recruited Hank Rhon, a well-known Mexican businessman. Hank Rhon acquired 35,000 LNB shares in the reorganization, representing approximately 4.19 percent of LNB's shares, through Kline, a shell company of which he was president and in which he held the sole beneficial interest.

5. In September 1990, Hank Rhon was selected to become a member of LNB's Board of Directors, subject to regulatory notification requirements. In November 1990, Cerisola was removed as chairman of the Board. In January 1991, Hank Rhon was selected to become chairman of LNB's Board of Directors.

**HANK RHON BECOMES LNB'S LARGEST SHAREHOLDER AND FILES
INITIAL CHANGE IN BANK CONTROL NOTICE**

6. In July 1991, Hank Rhon agreed to purchase the 74,000 LNB shares that Cerisola owned. Hank Rhon had caused Incus to be formed during this period in order to hold the shares of LNB he was acquiring from Cerisola.
7. With this acquisition, Hank Rhon would become LNB's largest shareholder with 13.09 percent of LNB's voting shares, thereby requiring the filing of a Notice of Change in Bank Control, under the Control Act, 12 U.S.C. § 1817(j), and implementing regulations, 12 C.F.R. § 225.41(b)(2)(ii).

8. On or about July 22, 1991, Hank Rhon filed a Notice of Change in Bank Control (the "July 1991 Notice") with the Federal Reserve Bank of Dallas ("FRB-Dallas"), which was acting pursuant to authority delegated by the Board.
9. In the July 1991 Notice, Hank Rhon represented that he was purchasing the 74,000 shares for \$7,400,000. In fact, Hank Rhon had entered into an unwritten side agreement with Cerisola to pay him an additional \$1.2 million plus a luxury automobile as part of the consideration for the transaction.
10. In the July 1991 Notice, Hank Rhon included a statement of business affiliations and a statement of assets and liabilities, as the Control Act requires. The submission failed to disclose as business affiliations at least five offshore personal investment or holding companies chartered in the British Virgin Islands and the Cayman Islands of which Hank Rhon was the beneficial or nominee owner (General Commodities Inv. Co., Ltd., Palenque, Ltd., Emptor Ltd., Toledo Co., Ltd. and Kiefer Corp.). The submission also failed to include the substantial assets (including equity securities) and liabilities of the offshore companies that Hank Rhon beneficially owned (General Commodities Inv. Co., Ltd., Palenque, Ltd., and Emptor Ltd.). In response to a direct written inquiry from the FRB-Dallas concerning whether Hank Rhon owned other personal investment companies, besides Kline and Incus, Hank Rhon represented that "Incus and Kline represent the only personal non-operating holding

companies established by [Hank Rhon] to hold any shares or other business assets," excepting "certain personal holding vehicles for non-business assets (e.g., residential real estate)." (emphasis in original)

11. In December 1991, the Board issued a Notice of Intent Not To Disapprove the July 1991 Notice. The Board relied on all of the representations Hank Rhon, Incus and Kline made in connection with the July 1991 Notice, and conditioned its determination on continued compliance with all of the commitments made by each of them, which the Board stated were conditions imposed in writing in connection with its findings and decision with respect to the July 1991 Notice.
12. Among those commitments, Kline and Incus committed that each of them would not directly or indirectly "acquire or retain shares [of LNB] that would cause the combined interest of Kline and Incus and their officers, directors and affiliates to equal or exceed 25 percent of the outstanding voting shares of [LNB]." Hank Rhon also committed that he would not sell or transfer more than five percent of any class of capital stock of Incus or Kline to any person without prior notice to the staff of the Board, and that neither Hank Rhon, nor Incus or Kline would sell more than five percent of LNB common stock to any person without prior notice to the staff of the Board. In addition, Hank Rhon committed that "Laredo [Bank] and LNB will not make extensions of

credit, either directly or indirectly, to any organization owned by [Hank Rhon]".

13. On December 23, 1991, Hank Rhon acquired Cerisola's shares and became LNB's largest shareholder through the holdings of Incus and Kline.

HANK RHON ACQUIRES LNB SHARES THROUGH NOMINEES ABOVE 25 PERCENT OF LNB

14. From 1991 through March 12, 1993, Hank Rhon acquired an additional 93,250 shares of LNB directly from 13 shareholders in a number of separate transactions. The share acquisitions were not recorded on LNB's share transaction register when the transactions actually occurred. Instead, on March 31, 1992, Incus became the registered owner of 9,750 LNB shares which had been acquired from Swiss shareholders in August 1991. On March 12, 1993, Incus became the registered owner of an additional 83,500 LNB shares which it had acquired at various unknown times during 1992 and 1993. At this point, in the aggregate, Incus and Kline were the registered owners of 24.3 percent of LNB's voting shares.
15. Also on March 12, 1993, 12,500 LNB shares, which represented an additional 1.5 percent of LNB's shares, were registered in the name of Agustin Lopez Morales, a director of Kline and longtime Hank family business associate who had acted as a nominee shareholder for Hank Rhon on other

occasions. Hank Rhon arranged and paid for the acquisition of the shares registered in Lopez Morales's name.

16. Hank Rhon arranged to have the shares purchased in the name of Lopez Morales after he realized that additional shares could not be acquired by him in his own name or in the names of Incus or Kline, because it would give him overt control of more than 25 percent of LNB's voting shares without prior Board approval as required by the commitment Hank Rhon, Incus and Kline had made to the Board. In arranging to have the shares purchased in the name of Lopez Morales, Hank Rhon had forgotten that Lopez Morales was a director of Kline, and therefore was also barred by the commitment from acquiring additional shares, even if Lopez Morales had held them on his own behalf. No Board approval was sought or received for this acquisition.
17. On June 17, 1993, 20,000 LNB shares representing an additional 2.4 percent of LNB's outstanding shares were also registered in the name of Agustin Lopez Morales. Hank Rhon again arranged for the acquisition of these shares and again paid for them. The shares were registered in the name of Agustin Lopez Morales for the same reasons as set forth above. No Board approval was sought or received for this acquisition.
18. On September 30, 1993, 10,000 LNB shares representing an additional approximately 1.2 percent of LNB's outstanding shares were registered in the name of Arturo Martinez de la

Mora, the general manager of various companies affiliated with or owned by Hank Rhon. Hank Rhon arranged the acquisition of these shares and paid for them. No Board approval was sought or received for this acquisition.

19. In March 1994, all of the shares registered in the name of Agustin Lopez Morales and a portion of the shares registered in the name of Arturo Martinez de la Mora were sold to a new shareholder of LNB. Hank Rhon approved the transaction and received all of the proceeds. In September 1995, the remaining shares that were registered in the name of Arturo Martinez de la Mora were sold to this same shareholder in another transaction which Hank Rhon approved. Hank Rhon also received all of the proceeds from this transaction.
20. Based on the facts set forth above, Agustin Lopez Morales and Arturo Martinez de la Mora held their shares as nominees for Hank Rhon.

***INCUS AND KLINE BECOME MAJORITY SHAREHOLDERS OF LNB BY
ACQUIRING SHARES FROM THE SWISS SHAREHOLDERS***

***LNB'S COMMITMENT TO REVEAL THE IDENTITIES OF THE
UNDISCLOSED SWISS SHAREHOLDERS OR REPLACE THEM WITH NEW
SHAREHOLDERS***

21. In December 1991, as a condition to the Board's approval of LNB's application to acquire South Texas National Bank, LNB made various representations and commitments to address the Board's supervisory concerns that Lombard, Odier, & Cie. and Privat-Kredit Bank were holding approximately 27 percent of LNB's shares as nominees for clients whose identities the

Swiss banks would not reveal to the Board. Specifically, LNB committed to replace any of the Swiss shareholders who declined to disclose their identities with investors who would disclose their identities and otherwise meet applicable regulatory and supervisory requirements. The Board understood that LNB would replace unidentified shareholders either by finding other suitable investors to purchase the subject shares or by redeeming their shares directly.

22. In August 1993, at the request of LNB, the Board modified the commitment so that only those unidentified shareholders who individually owned more than one percent of LNB's common stock had to disclose their identities or sell their shares. The revised commitment also required that the aggregate ownership interest of undisclosed LNB shareholders be reduced to less than 10 percent of LNB's outstanding shares. The deadline for compliance with the revised commitment was extended to October 1, 1993.
23. In August and September 1993, with Hank Rhon's active involvement, LNB made an offer to acquire the shares held by the four undisclosed customers of Lombard, Odier & Cie. and Privat-Kredit Bank who individually held more than one percent of LNB's shares. LNB had sufficient resources to redeem these shares, which aggregated approximately 11.7 percent of LNB's shares (on a partially diluted basis including certain convertible preferred stock). The

proposed transaction would have satisfied LNB's revised commitment to the Board.

24. Lombard, Odier & Cie. and Privat-Kredit Bank then informed LNB that the four shareholders to whom the commitment applied would not sell their shares unless all of the shares owned by the Swiss banks for their own accounts and for their clients were acquired simultaneously and at the same price. These shareholders included several whose identities had been disclosed to the Board previously, as well as undisclosed shareholders who individually held less than one percent of LNB's shares, neither of whose holdings were subject to the modified commitment.
25. LNB lacked enough excess capital to repurchase the stock held by the Swiss shareholders who were not subject to the commitment with the Board, as well as those who were subject to the modified commitment. Instead, in September 1993, Hank Rhon began negotiations to acquire the shares held by the Swiss shareholders that were not subject to the modified commitment. Hank Rhon approached other existing LNB shareholders to ascertain whether they were interested in increasing their investment in LNB, but none was willing to acquire the shares held by the Swiss shareholders.
26. Hank Rhon continued negotiations with the Swiss shareholders, proposing initially that the acquisition be made in the name of Interacciones Casa de Bolsa as nominee for several unrelated (and undisclosed) Mexican national

purchasers. Hank Rhon was the chairman of Interacciones, a Mexican brokerage firm, and of its parent holding company, Grupo Financiero Interacciones, S.A. de C.V. ("GFI"). Hank Rhon and his immediate family held a substantial proportion of the shares of GFI, and Hank Rhon had management control of GFI and its subsidiaries.

27. After the attorney for Lombard, Odier and Privat-Kredit Bank objected to the acquisition of shares by Interacciones as nominee for undisclosed purchasers, Hank Rhon substituted Incus as the party that would acquire the shares, and informed representatives of the Swiss shareholders that he would be the sole purchaser.
28. On October 1, 1993, LNB contracted to repurchase 93,468 shares of common stock (11.19 percent of the amount then outstanding) and 562 shares of convertible preferred stock (convertible into 0.58 percent of the common stock) from the Swiss shareholders who were subject to the modified commitment. At the same time, Incus agreed to purchase 270,782 shares of LNB common stock, and 1,876 shares of convertible preferred from the remaining Swiss shareholders. The price per common share for both transactions was \$170. After Incus's acquisition of these shares and including the reduction in total number of outstanding shares resulting from LNB's share repurchase, Incus and Kline would be the registered owners of a combined 64.7 percent of LNB's outstanding voting shares.

**FALSE STATEMENTS IN FILINGS FOR BOARD APPROVAL OF THE
ACQUISITION OF A MAJORITY OF LNB**

29. Under the Control Act and the commitments Hank Rhon made to the Board in 1991, Hank Rhon was required to secure prior Board approval to acquire the shares from the Swiss shareholders because, after the transaction, Hank Rhon, through Incus and Kline, would control more than 25 percent of LNB's shares. On October 13, 1993, Hank Rhon filed a Notice of Change in Bank Control (the "October 1993 Notice"), and Incus and Kline filed applications under section 3(a) of the BHC Act, 12 U.S.C. § 1842(a), with the FRB-Dallas with respect to Incus's proposed acquisition of LNB shares.
30. In the initial submissions, Hank Rhon, Incus and Kline represented that:
- a. Hank Rhon was the sole owner of Incus and Kline, and that no other person had any equity or beneficial interest in Incus or Kline;
 - b. only Hank Rhon, through Incus, was acquiring the shares involved in the proposed transaction;
 - c. Hank Rhon would fund Incus's purchase of LNB shares by depositing into an escrow account with Citibank, N.A. an appropriate number of shares of a peso-denominated mutual fund, and by subsequently paying for the acquisition with the mutual fund shares themselves, proceeds from the sale of those mutual fund shares, or

some combination of the mutual fund shares and proceeds derived from their sale; and

- d. following consummation of the proposed transaction, Hank Rhon "may reduce his holdings in LNB to not less than 51% of the outstanding common stock, but that he has not entered into any agreements to sell shares" and will comply with commitments he has made that would require Board approval if more than 5 percent of LNB's shares were sold.

31. On November 5, 1993, FRB-Dallas requested additional information and clarification of information submitted by Hank Rhon, Incus and Kline. In the letter, FRB-Dallas:

- a. requested information about certain financial transactions of Sociedad Industrial Hermes, S.A., de C.V. ("Grupo Hermes"), Hank Rhon's industrial conglomerate, including the payment of an extraordinary dividend made while Grupo Hermes subsidiaries were borrowing heavily. FRB-Dallas specifically asked whether debt incurred by Grupo Hermes indirectly provided the funding for the acquisition of LNB shares by Incus. The Reserve Bank also requested that Hank Rhon provide "documentation as to the source of the funds represented by the mutual funds that are to purchase the [LNB] stock as proposed;" and
- b. noted that the personal financial statement that Hank Rhon had submitted with the October 1993 Notice

appeared to be deficient in that, among other issues, it did not report ownership of assets such as liquid assets other than those under escrow for the proposed transactions, and other such assets and liabilities customarily included in personal financial statements. Accordingly, the Reserve Bank requested that Hank Rhon provide revised financial statements that "completely disclose [Hank Rhon's] assets, liabilities and cash flows."

32. On November 18, 1993, Hank Rhon, Incus and Kline submitted a response to the FRB-Dallas's November 5, 1993, requests for additional information and clarification:

- a. Hank Rhon represented that the transactions involving Grupo Hermes that FRB-Dallas questioned involved a dividend from the sale of an interest in a joint venture, and that the increase in Hermes's borrowings noted by the Reserve Bank was for the expanded working capital needs of Hermes Comercio Exterior, a trade finance subsidiary. Hank Rhon represented that the dividend was completely unrelated to the pending acquisition, and that he was not "incurring debt through [Hermes] to assist in financing the acquisition." Hank Rhon also represented that he obtained the funds for the purchase of the mutual fund shares [which he had represented were the source of funds for the acquisition] "from his general financial

resources, dividends, salary and other income and the divestment of other investment (rather than operating) assets over the past few years." Hank Rhon also submitted a letter from Citibank, dated November 18, 1993, confirming that the subject peso-denominated mutual fund shares had been deposited in escrow as of October 15, 1993;

- b. Hank Rhon asserted that certain assets were omitted from the personal financial statement presented initially because they were not subject to liabilities, were generally illiquid, and were not the financial basis upon which he was making the acquisition. Nevertheless, Hank Rhon submitted a revised financial statement. The revised statement added entries for various items of personal property, art, and a yacht, but omitted mention of at least five personal investment companies (Toledo Co., Ltd., Palenque, Emptor, Ocala Enterprises, and General Commodities) of which Hank Rhon was the beneficial or nominal owner, and failed to include the substantial assets (including equity securities) and liabilities of those companies of which he was the beneficial owner. Also in response to this inquiry from the Reserve Bank, Hank Rhon submitted, as of October 1, 1993, a list of related interests within the meaning of the Board's Regulation

O. This list also omitted mention of the personal investment companies set forth above.

33. Based on the initial submissions and the responses provided, on November 30, 1993, the Board accepted Incus's and Kline's BHC Act applications and Hank Rhon's October 1993 Notice.
34. On January 31, 1994, the Secretary of the Board, pursuant to delegated authority, approved Incus's and Kline's applications to become bank holding companies, and issued a determination not to disapprove the Notice of Change in Bank Control filed by Hank Rhon. In determining not to disapprove the October 1993 Notice, and to approve the BHC Act applications of Incus and Kline, the Board expressly relied upon all of the representations and commitments made by Hank Rhon, Incus and Kline. The Board further noted that the commitments were "conditions imposed in writing in connection with the granting of the approvals and notice." In addition, the Board's letter stated that the Reserve Bank should be consulted if the terms, conditions, or parties to the transaction were to change.
35. The written commitments Hank Rhon, Incus and Kline entered into included a commitment that "[n]one of the capital stock or debt of [Incus or Kline] and not more than 5% of the capital stock of [LNB] will be transferred or pledged to any person (other than Incus) without the prior approval of the Board or its staff...."

36. Another commitment required that Incus, Kline, Hank Rhon, each company Hank Rhon controlled and all of the insiders of these companies comply with the Board's Regulation O and Sections 23A and 23B of the Federal Reserve Act in all dealings with Laredo National Bank and South Texas National Bank.
37. On March 3, 1994, the pending transactions with the Swiss shareholders closed. The funds in the escrow account were transferred to the Swiss shareholders in exchange for their shares, and Incus and Kline became the registered owners of approximately 65 percent of LNB's common stock.
38. In February 1995, Kline was merged into Incus. At approximately the same time, LNB repurchased 70,000 shares from two of its shareholders, thereby raising Incus's percentage ownership of LNB's voting shares to approximately 70 percent. In 1998, LNB repurchased an additional 50,000 shares, raising Incus's ownership share to approximately 76 percent.

**HANK RHON'S UNDISCLOSED TRANSFERS OF INTERESTS IN THE
EQUITY OF INCUS AND KLINE, AND, INDIRECTLY, LNB**

39. As set forth more fully below, contrary to the representations made in the October 1993 Notice and Incus's and Kline's BHC Act applications and subsequent filings, Hank Rhon:
 - a. did not own all of Incus and Kline;

- b. did not plan to acquire all of the shares from the Swiss shareholders for himself;
- c. used sources of funds for the acquisition other than those identified in the filings; and
- d. entered into agreements to sell beneficial interests in Incus or Kline without approval of the Board or its staff.

As a consequence of these material misrepresentations, Incus and Kline obtained the Board's approval to become bank holding companies and Hank Rhon obtained a determination not to disapprove the Notice of Change in Bank Control that he submitted.

TRANSFER TO CARLOS HANK GONZALEZ, THE FATHER OF CARLOS HANK RHON

40. In the late spring or early summer of 1993, Carlos Hank Gonzalez ("Professor Hank"), the father of Carlos Hank Rhon and the then Secretary of Agriculture of Mexico, met in Mexico City with an official of Citibank, N.A. Also present was Agustin Lopez Morales, an accountant who handled Professor Hank's financial affairs and who, as set forth above, had nominally purchased shares of LNB shortly before. Professor Hank told the Citibank official that he wanted to acquire a \$20 million participation interest in LNB, using his funds at Citibank. Professor Hank was favorably impressed with his son's investment acumen and wanted to participate in LNB's fortunes with his son. The Citibank

official understood Professor Hank had decided to purchase a beneficial interest in LNB shares and wanted the Citibank official to make the payment arrangements.

41. At the time, there were two offshore companies with accounts at Citibank, Toledo Co., Ltd. and Ocala Enterprises, which were nominally owned by Hank Rhon or trusts of which he was the settlor, but which were actually vehicles for secretly holding offshore assets of Professor Hank, including debt and equity securities. These accounts also were vehicles for Professor Hank to make payments and satisfy financial obligations outside Mexico. Because of Professor Hank's prominence as a political figure and government official in Mexico, he could not as a practical matter be the registered owner of assets outside Mexico.
42. The Citibank official suggested that Toledo or Ocala leverage their assets by borrowing funds from Citibank to acquire the interest in LNB, rather than disposing of their investments. Professor Hank agreed to this proposal. Subsequently, the Citibank official and Lopez Morales reviewed the assets of Toledo and Ocala, which at the time were sufficient to collateralize only a \$10 million loan. Lopez Morales, who kept track of Professor Hank's investments and who was authorized to give instructions to Citibank regarding Toledo and Ocala, informed the Citibank official that additional funds would be sent to Toledo or Ocala in the coming months. In early September, Citibank

granted a \$10 million loan to Ocala, which was collateralized by the assets of Toledo.

43. Before Citibank granted the loan, the Citibank official spoke with Hank Rhon about the transaction. Hank Rhon was familiar with the proposed transaction and loan and instructed the Citibank official to send the proceeds to his personal account at Citibank in New York. In December 1993, the bulk of these funds were used by Hank Rhon to acquire a yacht.
44. In November 1993, Toledo's accounts at Citibank received a transfer of approximately \$8.2 million from Mexico, as Lopez Morales had promised. With these additional assets, and after the Citibank officials consulted with Lopez Morales, Citibank granted an additional loan of \$9 million to Toledo, secured by its now larger asset base. The Citibank official also received instructions from Hank Rhon on where to send the proceeds of this loan. Hank Rhon instructed that the proceeds be transferred to a London-based investment account at Citibank, which was in the name of Palenque, Ltd., an offshore company of which Hank Rhon was the beneficial owner.
45. In late January 1994, Toledo liquidated approximately \$1 million in peso-related investment securities and transferred the proceeds into a dollar-denominated investment. Citibank did not consider peso-denominated securities to have any loanable value, so the transfer of

assets into a dollar-based investment enabled Citibank to grant a loan for the final \$1 million of the \$20 million which Professor Hank had originally requested. The Citibank official again contacted Lopez Morales for authorization to make the loan and contacted Hank Rhon for instructions on where to send the proceeds of this loan. Pursuant to Hank Rhon's instructions, the Citibank official sent the proceeds to the same account of Palenque.

46. As a consequence of these \$20 million in transfers, Hank Rhon transferred to Professor Hank a beneficial ownership in Incus, Kline or both, and an indirect equity interest in the shares of LNB that Incus and Kline held. Inconsistent with these transactions, the October 1993 Notice and the BHC Act applications of Incus and Kline had represented that Hank Rhon was the sole owner of Incus and Kline. The \$20 million represented approximately 15 percent of the shares of LNB. The participants understood that this transaction would remain unwritten, and would not be recorded on the share transfer registers of LNB, Incus or Kline.
47. The transaction by which Professor Hank acquired an interest in Incus or Kline from Hank Rhon was not directly related to Hank Rhon's acquisition of LNB shares from the Swiss shareholders which was ongoing during the same period, and none of the funds Professor Hank transferred to Hank Rhon was used directly to acquire shares from the Swiss shareholders.

**HANK RHON'S RECRUITMENT OF HIDDEN INVESTORS TO
PARTICIPATE IN THE ACQUISITION OF SHARES OF LNB
FROM THE SWISS SHAREHOLDERS**

48. On October 13, 1993, the same day that the October 1993 Notice and the applications of Incus and Kline to become bank holding companies were filed with the Board, Hank Rhon chaired a meeting of GFI's board of directors. At the meeting, Hank Rhon announced that he was acquiring a majority interest in LNB "for the shareholders of GFI," and that he contemplated that there would be a "community of interest" between GFI and LNB.
49. At that meeting, Hank Rhon also invited the other members of GFI's board of directors to participate in his pending acquisition of LNB shares. At about the same time, Hank Rhon met individually with David Peñaloza Sandoval and Gabriel Alarcon Velazquez who, together with Hank Rhon, constituted the non-management members of the Executive Committee of GFI's board of directors. Hank Rhon specifically requested that Alarcon and Peñaloza participate with him in the pending acquisition of LNB shares, asking that they acquire a percentage interest in LNB approximating their percentage ownership of GFI.

ALARCON'S ACQUISITION

50. Alarcon is a wealthy Mexico City newspaper publisher and investor, who owned approximately eight percent of GFI's stock in October 1993. Alarcon agreed to participate with

Hank Rhon in the acquisition of LNB's stock at or shortly after the time of Hank Rhon's invitation. To fund his purchase, Alarcon requested that Laredo National Bank grant him a \$10 million loan. Laredo National Bank's management agreed to make the loan, and it was funded on November 19, 1993. Hank Rhon told Alarcon to send the funds to Citibank, N.A., where, upon Hank Rhon's instructions, the funds were placed in the escrow account established to hold the consideration for the shares that Incus had contracted to purchase from the Swiss shareholders. At the same time, Hank Rhon instructed Citibank to release back to him \$10 million worth of the peso-denominated mutual fund shares that he had represented to the Board would be the source of funds for the acquisition.

51. Alarcon and Hank Rhon agreed that Alarcon would acquire a beneficial interest in Incus, and, therefore, an indirect equity interest in LNB, when Incus completed the acquisition of LNB shares from the Swiss shareholders on March 3, 1994. The \$10 million Alarcon transferred to Citibank implemented that agreement. This amount purchased approximately eight percent of the shares of LNB, the approximate ownership percentage Alarcon had in GFI.

PEÑALOZA'S ACQUISITION

52. Peñaloza is the chief executive and, together with his wife, a majority shareholder of Grupo Tribasa, S.A., one of the largest construction companies in Mexico. GFI and Tribasa

also have had extensive business dealings together, with GFI subsidiaries underwriting substantial securities offerings of Tribasa.

53. Peñaloza was interested in participating in Hank Rhon's acquisition of LNB shares from the Swiss. Peñaloza, though, did not wish to use his own limited uncommitted liquid assets in the fall of 1993 to fund his participation in the purchase of LNB shares from the Swiss shareholders. Accordingly, Hank Rhon and Peñaloza agreed that Hank Rhon would advance Peñaloza the funds needed to participate in the purchase of LNB shares and that Peñaloza would repay the money over the next year.
54. On December 13 and 14, 1993, Hermes Comercio Exterior, a subsidiary of Grupo Hermes, which Hank Rhon owned and controlled, transferred the peso equivalent of \$21,161,845 to World Trading Corp., its British Virgin Islands-chartered subsidiary. World Trading, in turn, transferred \$21,161,845 to the Citibank escrow account that Incus had established to acquire the LNB shares from the Swiss shareholders.
55. Hermes Comercio Exterior booked the transfer to World Trading as a loan to its subsidiary, payable in four installments over the next year at 10 percent interest.
56. In February 1994, Grupo Tribasa successfully engaged in a secondary public offering of its shares in the United States and some of the shares held by Peñaloza and his wife, who

received more than \$100 million in proceeds from the offering.

57. After the public offering, Peñaloza repaid at least three of the four installments on the \$21,161,845 loan from Hermes Comercio Exterior to World Trading with funds transferred from accounts of Tribasa, and accounts beneficially owned by Peñaloza and his wife, on or about June 1, 1994, August 26 and 29, 1994, and November 28, 1994, through transfers to World Trading.
58. Peñaloza and Hank Rhon agreed that Peñaloza would acquire a beneficial interest in Incus, and, therefore, an indirect equity interest in LNB when Incus completed the acquisition of LNB shares from the Swiss shareholders on March 3, 1994, and that the \$21,161,845 purchased an indirect interest in approximately 16 percent of the shares of LNB, the approximate aggregate ownership percentage Peñaloza, his wife and Tribasa had in GFI in 1993.
59. Although Peñaloza acquired his interest in LNB when the transaction with the Swiss shareholders closed, the transaction was not documented at that time. By early March 1994, if not earlier, Peñaloza retained attorneys in New York to document the transaction and represent him with respect to securing regulatory approval for the interest in LNB which he had already acquired secretly. Peñaloza hired the same law firm that had represented Hank Rhon and Incus with respect to the acquisition of shares from the Swiss

shareholders, and had also represented Grupo Tribasa in its initial and secondary public offerings in September 1993 and February 1994.

60. The New York law firm drafted a stock purchase agreement between Peñaloza and Hank Rhon shortly after it was retained. The law firm was also informed by representatives of Peñaloza, Hank Rhon or both in 1994 that Peñaloza had already paid for the LNB shares that were the subject of the draft stock purchase agreement.
61. The stock purchase agreement prepared by the New York law firm, however, was not executed until 1996, and was dated as of January 15, 1996 (the "1996 Stock Purchase Agreement"). In that agreement, Penaloza ostensibly agreed to purchase 23.3 percent of Incus (which corresponds to approximately 16 percent of LNB's shares) for \$21,161,845, the same amount that had been transferred on December 14, 1993, into the Citibank escrow account for Incus's purchase of LNB shares from the Swiss shareholders, and the same amount as the loan that Peñaloza had repaid plus interest in 1994. The transaction was ostensibly to close following regulatory approval. The price per LNB share in the 1996 Stock Purchase Agreement was the same price that Incus paid to acquire the shares from the Swiss shareholders in early 1994.
62. Following the execution of the 1996 Stock Purchase Agreement, Hank Rhon and Peñaloza established an "escrow

account" at Laredo National Bank which purported to hold the \$21,161,845 in escrow, with Hank Rhon as escrow agent. In fact, the escrow account was a sham, designed to make it appear that Peñaloza's acquisition of an equity interest in Incus was pending the Board's approval, rather than completed, as it actually had been in 1993 and 1994.

63. The source of virtually all of the funds deposited into the escrow account was a \$21 million loan that Citibank had made to one of Hank Rhon's offshore personal investment companies and \$160,000 transferred from Hank Rhon's brokerage account at Interacciones. Documents were created at an offshore affiliate of Interacciones attempting to demonstrate that Hank Rhon had used the \$21,160,000 to purchase convertible debt securities issued by Tribasa from Peñaloza. However, Peñaloza never sold these securities to Hank Rhon and continued to claim ownership of them in legal documents submitted on his behalf, and in filings made by Tribasa with the Securities and Exchange Commission. In addition, after the escrow account was funded, Hank Rhon treated the funds in this "escrow" account as his own, transferring balances to and from his personal accounts at Laredo National Bank and at Interacciones.
64. In 1996, Hank Rhon informally informed FRB-Dallas that he contemplated the sale of an interest in Incus to Peñaloza, but did not reveal that the sale had been agreed to in 1993 and actually completed in 1994. No formal notification was

made or request for approval sought. In January 1997, shortly after Hank Rhon received a subpoena from the Board requesting documents relating to transactions between Peñaloza and Hank Rhon, Hank Rhon informed the Board and the FRB-Dallas that Peñaloza had decided not to go forward with the "pending" transaction, and provided information that the "escrow account" had been dissolved, with the funds transferred back to Peñaloza.

PEÑALOZA'S AND ALARCON'S PARTICIPATION IN LNB'S AFFAIRS

65. Shortly after Incus completed its acquisition of shares from the Swiss shareholders in March 1994, Hank Rhon, Peñaloza and Alarcon traveled together to meetings at Laredo National Bank. Beginning in July 1994, and continuing at least through October 1996, Peñaloza, Alarcon or both attended most of the meetings of the board of directors of LNB at the invitation of Hank Rhon. The meetings were held both in Mexico City and in Laredo, Texas. In addition, Alarcon and Peñaloza, their families and affiliates became substantial loan and deposit customers of Laredo National Bank.

EXTENSION OF CREDIT TO HANK RHON COMPANY BY LNB

66. In December 1992, Laredo National Bank lent \$3.5 million to Carlos Olimon Meraz, the brother-in-law of Hank Rhon. Hank Rhon was aware of Laredo National Bank's loan to Olimon at the time it was granted or shortly thereafter. Approximately \$3.4 million of the proceeds of this loan were

transferred to Palenque, Ltd., a company of which Hank Rhon was the beneficial owner. These loan proceeds were not used in a bona-fide transaction to acquire property, goods, or services from Palenque, Hank Rhon or from any of Hank Rhon's related interests. Accordingly, Laredo National Bank's loan to Olimon Meraz was an extension of credit to Palenque, Ltd., which was prohibited by the commitments Hank Rhon made to the Board in connection with the July 1991 Notice.

67. In January 1993, Laredo National Bank lent Olimon an additional \$1.5 million, and made other loans to him in 1994. In August 1994, the existing loans to Olimon with a balance of approximately \$5 million were refinanced, under the name of Olimex, S.A., as the borrower. Olimon represented that he was the owner of Olimex, a chain of automobile dealerships in Mexico. In 1995, that loan went into default, and Laredo National Bank wrote off at least \$2.8 million as a result at the time.

**FILING OF REPORTS WHICH FALSELY REPRESENTED THE
OWNERSHIP OF INCUS**

68. On March 31, 1995, Incus filed a Form FR Y-6 with the Board which represented that, as of December 31, 1994, Hank Rhon owned and controlled 100% of the common stock of Incus and listed no other persons as having had beneficial interests in five percent or more of Incus's voting stock.
69. On March 27, 1996 (amended April 25, 1996), Incus filed a Form FR Y-6 with the Board which represented that, as of

December 31, 1995, Hank Rhon owned and controlled 100% of the common stock of Incus, and listed no other persons as having had beneficial interests in five percent or more of Incus's voting stock.

70. On March 28, 1997, Incus filed a Form FR Y-6 with the Board which represented that, as of December 31, 1996, Hank Rhon owned and controlled 100% of the common stock of Incus, and listed no other persons as having had beneficial interests in five percent or more of Incus's voting stock.
71. The Form FR Y-6 reports filed on March 31, 1995, March 27, 1996, and March 28, 1997, were false in that they represented that Hank Rhon was the 100 percent owner of Incus, and failed to list Carlos Hank Gonzalez (father), Peñaloza or Alarcon as persons with a five percent or greater beneficial interests in Incus.

TRANSACTIONS INVOLVING LAREDO NATIONAL BANK AND GFI AND ITS SUBSIDIARIES

72. In 1995, GFI had two classes of voting common stock. Holders of Class A shares elected five members of GFI's board of directors. Holders of Class B shares elected four members of the board of directors.
73. From at least November 30, 1995 through December 28, 1995, Hank Rhon held 19.53 percent of GFI's Class A shares in an account in his own name. An additional 11.02 percent of the Class A shares were held in an account over which Hank Rhon had control, which was titled in the name of Graciela Hank

Gonzalez, the daughter of Carlos Hank Rhon. The shares in Graciela Hank Gonzalez's account were originally a "gift" from her father. The aggregate number of Class A shares of GFI controlled by Hank Rhon individually and through his daughter's account from November 30, 1995, through December 28, 1995, therefore exceeded 25 percent of the amount outstanding.

74. From at least November 30, 1995 through December 28, 1995, Hank Rhon held 13.3 percent of GFI's voting shares (Class A and Class B shares combined) in his own name, Gabriel Alarcon held 8.1 percent of GFI's voting shares (Class A and Class B shares combined) in his own name, David Peñaloza Sandoval held 5.4 percent of GFI's voting shares (Class A and Class B shares combined) in his own name. The aggregate number of GFI voting shares (Class A and Class B combined) controlled directly by Hank Rhon, Alarcon and Peñaloza from November 30, 1995 through December 28, 1995, therefore exceeded 25 percent of the amount outstanding.
75. In 1995, GFI was seriously undercapitalized, in large part due to the devaluation of the Mexican peso in December 1994, and the poor performance of investments by its subsidiaries. Mexican regulatory authorities required that GFI raise additional capital.
76. On or about December 15, 1995, GFI presented a proposed recapitalization plan to the Mexican regulatory authorities and to GFI shareholders. The proposed plan contemplated

that GFI would raise approximately \$40-43 million by issuing additional shares to those of its existing shareholders interested in participating in the recapitalization. At that time, only the Hank family, the Peñaloza family, and Gabriel Alarcon were identified as being willing to subscribe to significant amounts of additional shares. In addition, the plan also contemplated that Laredo National Bank would purchase a \$15 million convertible subordinated debenture issued by GFI to increase further GFI's regulatory capital. The Mexican regulators were informed that GFI contemplated that the Hank family's percentage ownership of GFI would be 33.4 percent after the recapitalization.

77. On December 19, 1995, Laredo National Bank approved three interrelated actions with respect to GFI's proposed recapitalization:

- a. Laredo National Bank approved the acquisition of a \$15 million convertible subordinated debenture to be issued by GFI as part of the recapitalization plan. In connection with this transaction, representatives of Laredo National Bank contacted FRB-Dallas and Board staff regarding certain technical regulatory issues involved with the proposed debenture purchase. These representatives informed the Board and FRB-Dallas that Hank Rhon owned only 15 percent of GFI. They did not disclose (a) that Hank Rhon controlled more than 25 percent of GFI's Class A shares, and (b) that Hank

Rhon, Peñaloza and Alarcon controlled more than 25 percent of GFI's Class A and Class B shares, or (c) that under the recapitalization, Hank Rhon would control more than 25 percent of GFI's total equity. To comply with certain regulatory requirements, Incus agreed to acquire from Laredo National Bank any GFI shares that Laredo National Bank obtained through conversion of the debenture;

- b. Laredo National Bank also approved the acquisition of \$1.7 million in GFI Class B shares to be issued in the recapitalization. Laredo National Bank received the rights to acquire these new Class B shares by foreclosing on the loan previously made to Olimex, S.A., which had been secured by shares of GFI;
 - c. Laredo National Bank also authorized the making of a \$2.9 million unsecured loan to Alarcon to enable Alarcon to purchase newly issued GFI shares as part of the recapitalization plan.
78. The recapitalization plan was implemented on December 28, 1995. Funds from Laredo National Bank constituted \$19.6 million of the approximate \$40 million increase in GFI's capital. The \$19.6 million represented more than 10 percent of Laredo National Bank's capital and surplus for purposes of section 23A of the Federal Reserve Act, 12 U.S.C. § 371c.
79. Hermes, which was more than 95 percent owned by Hank Rhon, also participated in the recapitalization by acquiring newly

issued shares of GFI, representing 31.4 percent of GFI's Class A shares and 11.6 percent of the Class B shares on a fully diluted basis.

80. Accordingly, pursuant to and following the recapitalization, Hank Rhon controlled more than 25 percent of the Class A and Class B shares of GFI, through accounts in his own name, and accounts which he controlled in the name of Hermes, in addition to the shares he controlled that were in the name of Graciela Hank Gonzalez.

VIOLATIONS OF LAW AND REGULATION

VIOLATIONS RELATING TO THE ACQUISITION OF MORE THAN 25 PERCENT OF THE VOTING SHARES WITHOUT PRIOR BOARD APPROVAL

COUNT 1

VIOLATIONS OF CHANGE IN BANK CONTROL ACT

81. The Control Act, 12 U.S.C. § 1817(j)(1) and Regulation Y, 12 C.F.R. §225.41(b)(1) (1993), require that any person acting directly or indirectly, or through or in concert with one or more persons give 60-days prior notice to the Board before acquiring voting securities of a bank holding company if, after the transaction, the acquiring person (or persons acting in concert) owns controls or holds with power to vote 25 percent or more of any class of voting securities of the bank holding company. Prior notice is required even if the acquiring party had previously given notice to acquire control of between 10 and 25 percent of a class of voting

securities of a bank holding company. 12 C.F.R.

§ 225.41(a)(2) (1993).

82. On or before March 12, 1993, Hank Rhon acquired indirect control, through Incus and Kline, of 24.3 percent of the outstanding common stock of LNB. On the same date, Hank Rhon acquired ownership or control of an additional 12,500 shares of LNB which were registered in the name of Lopez Morales, who was also a director of Kline. The additional 12,500 shares gave Hank Rhon indirect ownership or control of 26.8 percent of LNB's common stock.
83. On June 17, 1993, Hank Rhon acquired ownership or control of an additional 20,000 shares of LNB, which were also registered in the shareholder records of LNB in the name of Lopez Morales. The additional 20,000 shares gave Hank Rhon indirect ownership or control of 28.2 percent of LNB's common stock.
84. On September 30, 1993, Hank Rhon acquired ownership or control of an additional 10,000 shares of LNB which were registered in the name of a Martinez de la Mora. The additional 10,000 shares gave Hank indirect ownership or control of 29.4 percent of LNB's common stock.
85. Hank Rhon did not give the Board 60-days prior notice before acquiring control of the 12,500, 20,000, and 10,000 blocks of LNB shares set forth above, and thereby violated the Control Act.

86. The violations in Count 1 were outstanding for the period from March 12, 1993 at least until March 3, 1994.

COUNT 2

**VIOLATIONS OF COMMITMENTS MADE IN CONNECTION WITH THE
1991 CONTROL ACT NOTICE**

87. On December 20, 1991, the Board determined that it would not disapprove the 1991 Control Act Notice filed by Hank Rhon. The Board specifically conditioned its determination on continued compliance with all of the commitments made by Hank Rhon, Kline and Incus in connection with the Notice, which the Board stated were conditions imposed in writing in connection with its findings and decision with respect to the Control Act Notice.
88. Among those conditions, Kline and Incus committed that each of them would not directly or indirectly "acquire or retain shares [of LNB] that would cause the combined interest of Kline and Incus and their officers, directors and affiliates to equal or exceed 25 percent of the outstanding voting shares of [LNB]."
89. As set forth above in Paragraphs 82-85, after March 12, 1993, the combined holdings of LNB shares of Hank Rhon, through Incus and Kline, and of Lopez Morales who was a director of Kline, exceeded 25 percent of LNB's outstanding voting shares in violation of the commitment referred to Paragraph 88, above.

90. Hank Rhon participated in the violation of Incus's and Kline's commitment.
91. The violations set forth in Count 2 were outstanding from March 12, 1993 until March 3, 1994.

**VIOLATIONS RELATING TO THE TRANSFER OF AN
EQUITY INTEREST IN INCUS OR KLINE, AND,
INDIRECTLY, LNB, TO CARLOS HANK GONZALEZ (Father),
DAVID PEÑALOZA, AND GABRIEL ALARCON VELAZQUEZ.**

COUNT 3

CONTROL ACT VIOLATIONS

92. The Control Act, 12 U.S.C. § 1817(j)(1) and Regulation Y, 12 C.F.R. § 225.41(a)(1) (1993), prohibit any person, acting directly or indirectly or through or in concert with one or more persons, from acquiring control of a bank holding company without giving the Federal Reserve 60-days prior notice. Notice to the Federal Reserve requires, among other items:
 - a. information disclosing "the identity, personal history, business background and experience of each person by whom or on whose behalf the acquisition is to be made...." 12 U.S.C. § 1817(j)(6)(A);
 - b. "[t]he identity, source and amount of funds or other consideration used or to be used in making the acquisition, and, if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the

acquisition, a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with such persons." 12 U.S.C.

§ 1817(j)(6)(D);

- c. "a statement of assets and liabilities as of a date within 90 days of filing the notice, a brief income summary and a description of any subsequent material changes, subject to the authority of the Reserve Bank or the Board to require additional information."

12 C.F.R. § 225.43(a)(1); 12 U.S.C. § 1817(j)(6)(B).

93. As a consequence of the October 1, 1993, contracts entered into by the Swiss shareholders to sell their LNB shares to LNB and to Incus, Hank Rhon filed a Control Act Notice on October 13, 1993, with FRB-Dallas, and made subsequent submissions on October 29 and November 18, 1993, January 25, 1994, and January 28, 1994. In those submissions, Hank Rhon represented, as set forth in Paragraphs 30-32, above:

- a. that he was the sole owner of Incus and that no other person had any equity or beneficial interest in Incus;
- b. that he, alone, through Incus, his wholly-owned company was acquiring the shares from the Swiss shareholders;
- c. that he would fund Incus's purchase of shares of LNB from the Swiss shareholders with an appropriate number of shares of a peso-denominated mutual fund, proceeds from the sale of those shares, or some combination of

the mutual fund shares and the proceeds from their sale; and

- d. that following consummation of the proposed transaction, he "may reduce his holdings in LNB to not less than 51% of the outstanding common stock, but that he has not entered into any agreements to sell shares" and will comply with commitments he has made that would require Board approval if more than 5 percent of LNB's shares were sold.

94. The Board's January 31, 1994, decision not to disapprove the notice filed by Hank Rhon expressly relied on these representations.

95. Hank Rhon violated the Control Act because the representations described above were false, in that:

- a. in the summer of 1993, Hank Rhon agreed to and did sell an equity interest in Incus to his father, Carlos Hank Gonzalez, for \$20 million, as set forth above in Paragraphs 40-47;
- b. Incus would be acquiring shares of LNB from the Swiss shareholders on behalf of Peñaloza and Alarcon, as well as for Hank Rhon as set forth above in Paragraphs 48-65;
- c. the mutual fund shares or funds derived from their sale were not the source of funds for at least \$31,161,845 of the consideration paid by Incus to the Swiss

shareholders, as set forth above in Paragraphs 50, 54, and 57;

- d. as of the March 3, 1994, closing on the Swiss Buyout transaction, Hank Rhon had transferred an equity interest in Incus to his father, to Alarcon and to Peñaloza such that it reduced Hank Rhon's beneficial ownership in LNB common stock to below 51 percent.
- 96. Hank Rhon acted in concert with Professor Hank, Peñaloza, and Alarcon with respect to acquiring control of LNB pursuant the acquisition of shares from the Swiss shareholders.
- 97. The Federal Reserve was not given 60-days prior notice that Professor Hank, Peñaloza and Alarcon were acting in concert with Hank Rhon to acquire control of LNB, and the Board never was given the opportunity to disapprove such a notice.
- 98. Hank Rhon further violated the Control Act by participating with Professor Hank, Peñaloza, and Alarcon to acquire control of LNB.
- 99. The violations set forth above in Count 3 have continued from March 3, 1994 to the present.

COUNT 4

VIOLATIONS OF 18 U.S.C. § 1001 IN CONNECTION WITH THE APPLICATIONS FILED BY INCUS AND KLINE UNDER SECTION 3(a) OF THE BHC ACT, 12 U.S.C. § 1842(a).

- 100. 18 U.S.C. § 1001 (1988) provides that, whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies,

conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than five years or both.

101. Section 3(a) of the BHC Act, 12 U.S.C. § 1842(a), and Regulation Y, 12 C.F.R. § 225.11(a), requires prior Board approval for any action that causes a company to become a bank holding company. By virtue of the acquisition of LNB shares from the Swiss shareholders pursuant to the October 1, 1993 contracts, Incus (alone, and in conjunction with Kline) would acquire control of more than 25 percent of the voting shares of LNB, thereby becoming bank holding companies.
102. Pursuant to section 3(a) of the BHC Act, 12 U.S.C. § 1842(a) and Regulation Y, 12 C.F.R. §§ 225.14(a), Incus and Kline filed applications with the FRB-Dallas for prior Board approval to become bank holding companies by submitting completed forms FR Y-1F on or about October 13, 1993, and by making additional submissions pursuant to requests from the FRB-Dallas.
103. In the initial and subsequent filings, Incus and Kline made the following representations:

- a. that Hank Rhon was the sole owner of Incus and Kline and that no other person had any equity or beneficial interest in either Incus or Kline;
 - b. that Hank Rhon, alone, through Incus, his wholly-owned company was acquiring the shares from the Swiss shareholders;
 - c. that Hank Rhon would fund Incus's purchase of shares of LNB from the Swiss shareholders with an appropriate number of shares of a peso-denominated mutual fund, proceeds from the sale of those shares, or some combination of the mutual fund shares and the proceeds from their sale; and
 - d. that following consummation of the proposed transaction, Hank Rhon "may reduce his holdings in LNB to not less than 51% of the outstanding common stock, but that he has not entered into any agreements to sell shares" and will comply with commitments he has made that would require Board approval if more than 5 percent of LNB's shares were sold.
104. The Board's January 31, 1994, decision to approve the Incus and Kline applications expressly relied on these representations.
105. Incus and Kline violated 18 U.S.C. § 1001, because the representations described above were false, in that:
- a. in the summer of 1993, Hank Rhon agreed to and did sell an equity interest in Incus to his father, Carlos Hank

Gonzalez, for \$20 million, as set forth above in Paragraphs 40-47;

- b. Incus would be acquiring shares of LNB from the Swiss shareholders on behalf of Peñaloza and Alarcon, as well as for Hank Rhon as set forth above in Paragraphs 48-65;
 - c. the mutual fund shares or funds derived from their sale were not the source of funds for at least \$31,161,845 of the consideration paid by Incus to the Swiss shareholders, as set forth above in Paragraphs 50, 55, and 58;
 - d. as of the March 3, 1994, closing on the transaction buying out the interests of the Swiss shareholders in LNB, Hank Rhon had transferred an equity interest in Incus to his father, to Alarcon and to Peñaloza such that it reduced Hank Rhon's beneficial ownership in LNB common stock to below 51 percent.
106. Hank Rhon participated in Incus's and Kline's violations of 18 U.S.C. § 1001 (1988).
107. The violations set forth above in Count 4 have continued from March 3, 1994 to the present.

COUNT 5

**VIOLATIONS OF COMMITMENTS MADE IN CONNECTION WITH THE
1991 CONTROL ACT NOTICE**

108. On December 20, 1991, the Board determined that it would not disapprove the 1991 Control Act Notice filed by Hank Rhon.

The Board specifically conditioned its determination on continued compliance with all of the commitments made by Hank Rhon, Incus and Kline, which the Board stated were conditions imposed in writing in connection with its findings and decision with respect to the Control Act Notice.

109. Among those conditions, Hank Rhon committed that he would not sell or transfer more than 5 percent of any class of capital stock of Incus or Kline to any person without prior notice to the staff of the Board, and that neither Hank Rhon, nor Incus or Kline would sell more than 5 percent of [LNB] common stock to any person without prior notice to the staff of the Board.
110. Hank Rhon violated this commitment by virtue of the transfer completed between September 1993 and January 1994 of a \$20,000,000 equity interest in Incus, or Incus and Kline, to Professor Hank Gonzalez (father) as set forth in Paragraphs 40-47. Through this transaction, made without prior notice to the staff of Board, Hank Rhon transferred beneficial ownership of more than 5 percent of a class of common stock of Incus or Kline, and, indirectly, beneficial ownership of more than 5 percent of LNB's common stock.
111. The violations set forth in Count 5 continued from September 3, 1994 through the present.

COUNT 6

**VIOLATIONS OF COMMITMENTS RELATING TO OWNERSHIP AND
CONTROL MADE IN CONNECTION WITH THE OCTOBER 1993 NOTICE
AND INCUS & KLINE BHC APPLICATIONS**

112. In connection with the Board's processing of the October 1993 Notice and the BHC Act applications of Incus and Kline, Hank Rhon, Incus and Kline entered into written commitments stating that "[n]one of the capital stock or debt of [Incus or Kline] and not more than 5% of the capital stock of [LNB] will be transferred or pledged to any person (other than Incus) without the prior approval of the Board or its staff...."
113. In determining not to disapprove the October 1993 Notice, and to approve the BHC Act applications of Incus and Kline, the Board expressly relied upon these commitments, which were "conditions imposed in writing in connection with the granting of the approvals and notice."
114. Hank Rhon participated in violating this commitment by transferring to Peñaloza and Alarcon, without prior approval of the Board or its staff, beneficial interests in the capital stock of Incus or Kline, and, thereby indirectly transferred beneficial interests in more than five percent of the capital stock of LNB to Peñaloza and Alarcon, as set forth above in Paragraphs 48-65.
115. The violations in Count 6 have continued from March 3, 1994, to the present.

COUNT 7

FILING OF FALSE REPORTS

116. Section 5(c) of the BHC Act, 12 U.S.C. § 1844(c), and Regulation Y, 12 C.F.R. § 225.5(b), require bank holding companies to file an annual report with the Board (Form FR Y-6), which, among other things, requires disclosure of each beneficial shareholder holding five percent or more of any class of voting securities of the bank holding company, as well as disclosure of each person who holds options, warrants, or other securities or rights that can be converted into or exercised for voting securities aggregating five percent or more of any class of voting securities.
117. As set forth in Paragraph 67, on March 31, 1995, Incus filed a Form FR Y-6 with the Board which represented that, as of December 31, 1994, Hank Rhon owned and controlled 100% of the common stock of Incus and listed no other persons as having had beneficial interests in five percent or more of Incus's voting stock.
118. As set forth in Paragraph 68, on March 27, 1996 (amended April 25, 1996), Incus filed a Form FR Y-6 with the Board which represented that, as of December 31, 1995, Hank Rhon owned and controlled 100% of the common stock of Incus, and listed no other persons as having had beneficial interests in five percent or more of Incus's voting stock.

119. As set forth in Paragraph 69, on March 28, 1997, Incus filed a Form FR Y-6 with the Board which represented that, as of December 31, 1996, Hank Rhon owned and controlled 100% of the common stock of Incus, and listed no other persons as having had beneficial interests in five percent or more of Incus's voting stock.
120. As set forth in Paragraph 70, the Form FR Y-6 reports filed on March 31, 1995, March 27, 1996, and March 28, 1997, were false in that they represented that Hank Rhon was the 100 percent owner of Incus, and failed to list Carlos Hank Gonzalez (father), Peñaloza or Alarcon as persons with a five percent or greater beneficial interests in Incus.
121. As a consequence of these false reports, Incus violated section 5(c) of the BHC Act, 12 U.S.C. § 1844(c) and Regulation Y, 12 C.F.R. § 225.5(b). Hank Rhon participated in these violations.
122. The violations set forth in Count 7, have continued from March 31, 1995, March 27, 1996, and March 28, 1997, respectively.

**VIOLATIONS RELATING TO IMPROPER TRANSACTIONS BETWEEN LAREDO
NATIONAL BANK AND HANK-AFFILIATED COMPANIES**

COUNT 8

**VIOLATION OF COMMITMENT RELATING TO LOANS BENEFITTING
ORGANIZATION OWNED BY HANK RHON MADE IN CONNECTION WITH
THE JULY 1991 NOTICE**

123. On December 20, 1991, the Board determined that it would not disapprove the 1991 Control Act Notice filed by Hank Rhon. The Board specifically conditioned its determination on continued compliance with all of the commitments made in connections with the 1991 Control Act Notice, which the Board stated were conditions imposed in writing in connection with its findings and decision with respect to the Control Act Notice.
124. Among the commitments, Hank Rhon committed that "Laredo [Bank] and LNB would not make extensions of credit, either directly or indirectly, to any organization owned by [Hank Rhon]."
125. As set forth above in Paragraphs 71-72, Hank Rhon participated in violating this commitment by virtue of the receipt by Palenque, a company of which Hank Rhon was the sole beneficial owner, of approximately \$3.4 million of the proceeds of a loan Laredo National Bank made to Carlos Olimon in December 1992.
126. The violations set forth in Count 8 continued from December 11, 1992, through March 3, 1994.

COUNT 9

**VIOLATIONS OF COMMITMENTS RELATING TO AFFILIATE
TRANSACTIONS MADE IN CONNECTION WITH THE OCTOBER 1993
NOTICE AND INCUS & KLINE BHC APPLICATIONS**

127. In connection with the Board's processing of the October 1993 Notice and the BHC Act applications of Incus and Kline, Hank Rhon, Incus and Kline entered into a written commitment stating that:

[i]n all dealings with [Laredo National Bank],...the Hank Controlled Companies will comply with the requirements of Sections 23A and 23B of the Federal Reserve Act applicable to affiliates of [Laredo National Bank] [and no] Hank Controlled Company will request an extension of credit from [Laredo National Bank] ... in an amount exceeding the applicable limits on extensions of credit set forth in ... the Federal Reserve Act.

128. In determining not to disapprove the October 1993 Notice, and to approve the BHC Act applications of Incus and Kline, the Board expressly relied upon this commitment, and stated that it was a "condition[] imposed in writing in connection with the granting of the approvals and notice."

129. As of December 28, 1995, if not before, GFI was a Hank Controlled Company under the commitment set forth above, and an affiliate of Laredo National Bank, pursuant to subsection (b)(3) of section 23A of the Federal Reserve Act, 12 U.S.C. §371c(b)(3)(A)(i), as a result of any one or more of the following:

- a. Hank Rhon's ownership or control of Class A shares of GFI held in accounts in the names of Carlos Hank Rhon and Graciela Hank Gonzalez, Hank Rhon's daughter;
- b. the ownership or control of Class A and Class B shares of GFI held in accounts in the names of Carlos Hank Rhon, Gabriel Alarcon, and David Peñaloza Sandoval, or
- c. Hank Rhon's ownership or control of Class A and Class B shares of GFI held in accounts in the names of Carlos Hank Rhon and Hermes.

130. Each of the following transactions was a "covered transaction", as that term is defined in section 23A(a)(7) of the Federal Reserve Act, 12 U.S.C. § 371c(a)(7), between Laredo National Bank and GFI:

- a. Laredo National Bank's acquisition of a \$15 million subordinated debenture issued by GFI on December 28, 1995;
- b. Laredo National Bank's subscription to purchase newly issued Class B shares of GFI for \$1.7 million in December 28, 1995; and
- c. Laredo National Bank's loan of \$2.9 million to Gabriel Alarcon Velazquez on December 28, 1995, the proceeds of which were used by him to purchase newly issued shares of GFI.

131. The covered transactions set forth in Paragraph 130, above, in the aggregate, exceeded 10 percent of Laredo National

Bank's capital stock and surplus, and therefore violated section 23A(a) (1) (A) of the Federal Reserve Act, 12 U.S.C. § 371c(a), and the commitment set forth above.

132. The covered transactions set forth in Paragraphs 130 a. & c. were not secured by the collateral required under section 23A(c) of the Federal Reserve Act, 12 U.S.C. § 371c(c), and therefore violated section 23A(c) (1) of the Federal Reserve Act, 12 U.S.C. § 371c(c) (1), and the commitment set forth above.

133. Hank Rhon was aware of the transactions set forth in Paragraph 130.

134. Hank Rhon participated in the violations set forth in the commitments set forth in Paragraph 132 and 133.

135. The violations set forth in Paragraph 132 and 133 continued from December 28, 1995, through the present.

REQUESTED RELIEF

CEASE AND DESIST AND PROHIBITION ACTIONS

136. Notice is hereby given that a hearing will be held on February 12, 1999, at the Federal Reserve Bank of Dallas-Houston Branch, Houston, Texas for the purpose of taking evidence on the charges hereinbefore specified in order to determine:

- i. whether an appropriate order should be issued under section 8(e) of the FDI Act to prohibit the future participation of Hank Rhon in the affairs of, inter alia, any insured depository institution

or holding company thereof. As set forth above, by reason of the violations of law and regulation, and conditions imposed in writing by the Board in connection with the grant of applications and other requests, Hank Rhon received financial gain or other benefit, Laredo National Bank suffered financial loss or other damage; and the violations of law and conditions imposed in writing involved personal dishonesty on Hank Rhon's part; and

ii. whether appropriate orders to cease and desist should be issued under section 8(b) of the FDI Act to require Incus and Hank Rhon to cease and desist from the violations herein specified, and to take other affirmative action. Appropriate affirmative action may include the issuance of a cease and desist order:

- (1) requiring Incus and Hank Rhon to cease and desist from any further violations of any federal banking statute and regulation;
- (2) requiring Hank Rhon or Incus to divest any direct or indirect equity interest in LNB for which approval from the Board was obtained based on material false representations.

137. The hearing referred to above will be held before an administrative law judge to be appointed by the Office of Financial Institution Adjudication ("OFIA"), and shall be

conducted in accordance with the provisions of the FDI Act and the Board of Governors' Rules of Practice for Hearings (12 C.F.R. Part 263) (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. The hearing described above may, in the discretion of the Board of Governors, be combined with any other hearing to be held on the matters set forth in this Notice, including those concerning the issuance of civil monetary penalties.

CIVIL MONEY PENALTY ASSESSMENT ACTIONS

138. Sections 7(j)(16) and 8(i)(2) of the FDI Act (12 U.S.C. §§ 1817(j)(16) & 1818(i)(2), and sections 8(b) and 8(d) of the BHC Act, 12 U.S.C. §§ 1847(b) & (d) authorize the assessment of civil money penalties.
139. The violations set forth in Counts 1 and 3 permit the assessment of civil money penalties under 12 U.S.C. § 1817(j)(16)(C) in that Hank Rhon:
- a. violated the Control Act, 12 U.S.C. § 1817(j), and Regulation Y, 12 C.F.R. § 225.43(a)(1);
 - b. committed such violations knowingly; and
 - c. knowingly or recklessly caused a substantial pecuniary gain or other benefit to himself by reason of such violations.

140. The violations set forth in Counts 2, 5 and 6 permit the assessment of civil money penalties under 12 U.S.C.

§ 1818(i)(2)(C) in that Hank Rhon:

- a. violated conditions imposed in writing by the Board in connection with the grant of an application or other request;
- b. committed such violations knowingly; and
- c. knowingly or recklessly caused a substantial pecuniary gain or other benefit to himself by reason of such violations.

141. The violations set forth in Count 4 permit the assessment of civil money penalties under 12 U.S.C. § 1818(i)(2)(C) in that Hank Rhon and Incus:

- a. violated 18 U.S.C. § 1001;
- b. committed such violations knowingly; and
- c. knowingly or recklessly caused a substantial pecuniary gain or other benefit to Hank Rhon and Incus by reason of such violation.

142. The violations set forth in Count 7 with respect to Incus permit the assessment of civil money penalties under section 8(d)(3) of the BHC Act, 12 U.S.C. § 1847(d)(3) in that Incus knowingly or with reckless disregard for the accuracy of information in its Form FR Y-6 reports submitted false or misleading reports to the Board.

143. The violations set forth in Count 7 with respect to Hank Rhon permit the assessment of civil money penalties under

section 8(b)(1) of the BHC Act, 12 U.S.C. § 1847(b)(1) in that Hank Rhon participated in Incus's filing of false reports to the Board.

144. The violations set forth in Counts 8 and 9 permit the assessment of civil money penalties under 12 U.S.C.

§ 1818(i)(2)(B) in that:

- a. Hank Rhon violated conditions imposed in writing by the Board in connection with the grant of an application or other request;
- b. such violations were part of a pattern of misconduct or resulted in pecuniary gain or other benefit to Hank Rhon, and, with respect to Count 8, caused more than a minimal loss to Laredo National Bank.

145. After taking into account the size of Hank Rhon'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 a civil money penalty of \$10,000,000.00 against Hank Rhon for the violations set forth in this Notice. Hank Rhon shall forfeit and pay the penalty as hereinafter provided.

146. After taking into account the size of Incus's financial resources, its 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 a civil money penalty of:

- a. \$30,100,000; and
- b. An additional amount (not less than zero) calculated according to the following formula:

(P-B) times (286,985), where

P = the price per share realized by Incus on any sale or other disposition of any LNB shares, whether pursuant to a cease and desist order or otherwise;

B = the book value per share of LNB's voting shares as of September 30, 1998;

against Incus for the violations set forth in this Notice. Incus shall forfeit and pay the penalty as hereinafter provided.

147. The penalties set forth in Paragraphs 145 and 146, hereof, are assessed by the Board of Governors pursuant to section 8(i) of the FDI Act (12 U.S.C. § 1818(i)), and Subparts A and B of the Board of Governors' Rules of Practice.

Remittance of the penalties set forth herein shall be made within 30 days of the date of this Notice, in immediately available funds, payable to the order of the Secretary of the Board of Governors, Washington, DC 20551, who shall make remittance of the same to the Treasury of the United States.

148. Notice is hereby given, pursuant to section 8(i)(2) of the FDI Act and section 263.19 of the Board of Governors's Rules of Practice, that Hank Rhon and Incus are afforded an opportunity for a formal hearing before the Board of Governors concerning this assessment. As required by

section 263.19(a) of the Rules of Practice, a request for such a hearing must be filed with OFIA within 20 days after the issuance and service of this Notice. Pursuant to section 263.11(a) of the Rules of Practice, any request for a hearing filed with OFIA shall be served on the Secretary of the Board of Governors. A hearing, if requested, will be public unless the Board of Governors shall determine that a public hearing would be contrary to the public interest, and in all other respects will be conducted in compliance with the provisions of the FDI Act and the Board of Governor's Rules of Practice before an administrative law judge. The hearing described above may, in the discretion of the Board of Governors, be combined with any other hearing to be held on the matters set forth in this Notice, including those concerning the issuance of a cease and desist order.

149. In the event that any respondent shall fail 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 (12 C.F.R. § 263.19(c)(2)), 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 assessment order.

Procedures Generally

150. Except as set forth in Paragraph 151, hereof, Hank Rhon and Incus are hereby directed to file with OFIA, Washington, DC 20552, an answer to this Notice within 20 days of service of

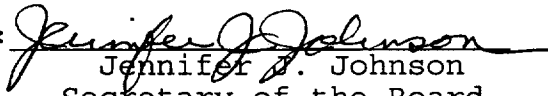
this Notice, as provided in section 263.19(a) of the Rules of Practice (12 C.F.R. § 263.19(a)). As provided in the Board's Rules of Practice (12 C.F.R. § 263.19(c)), the failure to file answers as required by this Notice within the time provided herein shall constitute a waiver of that respondent's rights to appear and contest the allegations of this Notice, and authorization for the presiding officer, upon motion of the Board of Governors, and without further proceedings, to find the facts to be as alleged in this Notice and to file with the Secretary of the Board of Governors a recommended decision containing such findings and appropriate conclusions. Any final order issued by the Board based upon a failure to answer is deemed to be an order issued by consent.

151. Hank Rhon and Incus may submit, within 20 days after the issuance and service of this Notice, to the Secretary of the Board of Governors, written statements detailing reasons why the hearings described should not be public. The failure to submit such a statement within the aforesaid period will be deemed a waiver of any interest they may have to a private hearing.
152. 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, DC, this 16th day of December, 1998.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

By: 
Jennifer L. Johnson
Secretary of the Board