

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA**

**Case No.** \_\_\_\_\_

**UNITED STATES OF AMERICA**

**vs.**

**OCEAN BANK,**

**Defendant.**

\_\_\_\_\_ /

**DEFERRED PROSECUTION AGREEMENT**

Defendant Ocean Bank, a state of Florida chartered banking institution and wholly-owned subsidiary of Ocean Bankshares, Inc., a one-bank holding company, by and through its attorneys, Holland & Knight LLP and Podhurst Orseck P.A., pursuant to authority granted by its Board of Directors, and the United States Attorney's Office, Southern District of Florida ("United States") enter into this Deferred Prosecution Agreement (the "Agreement").

**Parties Bound By the Agreement**

1. This Agreement and all provisions set forth herein bind Ocean Bank and any of its branches, representative offices, successors, and assigns. If Ocean Bank's business operations are sold to a party or parties unaffiliated with Ocean Bank as of the date hereof, whether by sale of stock, merger, consolidation, sale of a significant portion of its assets, or other form of business combination, or otherwise undergo a direct or indirect change of control within the term of this Agreement, such party or parties shall be bound by this Agreement and all provisions set forth herein. Wherever the term "Ocean Bank" appears in this Agreement, it refers not only to Ocean Bank but also to all of its branches, representative offices, successors, and assigns. It is further understood that this Agreement and all provisions set forth herein are

binding on the United States, but specifically do not bind any other federal agencies, or any state or local authorities, although the United States will bring the cooperation of Ocean Bank and its compliance with its other obligations under this Agreement to the attention of federal, state, or local prosecuting offices or regulatory agencies if requested by Ocean Bank or its attorneys.

#### **The Charges**

2. Ocean Bank shall waive indictment and agree to the filing of a one (1) count Information in the United States District Court for the Southern District of Florida charging it with failing to maintain an anti-money laundering program, in violation of Title 31, United States Code, Sections 5318(h)(1) and 5322(b).

#### **Acceptance of Responsibility**

3. Ocean Bank accepts and acknowledges responsibility for its conduct and that of its employees as set forth in the Factual Statement attached hereto and incorporated by reference herein as Appendix A ("Factual Statement"), as evidenced by the Board of Director resolutions attached hereto as Appendix B ("Board Resolutions"). If the United States, pursuant to Paragraph 9 of this Agreement, initiates a prosecution that is deferred by this Agreement against Ocean Bank, Ocean Bank agrees that it will neither contest the admissibility of the Factual Statement or any other documents provided by Ocean Bank to the United States, nor contradict in any such proceeding the facts contained within the Factual Statement.

#### **Forfeiture and Fine**

4. The United States has determined that it could institute a criminal and/or civil forfeiture proceeding against certain funds that passed through certain accounts at Ocean Bank. Ocean Bank hereby acknowledges that more than \$10,988,136.00 was involved in transactions in accounts in violation of Title 18, United States Code, Sections 1956 and 1957,

and, therefore, at least some or all of the funds deposited in such accounts are subject to forfeiture to the United States pursuant to Title 18, United States Code, Sections 981 and 982. As such, Ocean Bank recognizes that the United States could institute a civil and/or criminal forfeiture action against those funds, and hereby agrees to settle and does settle any and all civil and criminal forfeiture claims presently held by the United States against those funds for the sum of \$10,988,136.00 (the "Forfeiture Amount"). Ocean Bank agrees that the funds paid to the United States by Ocean Bank pursuant to this Agreement shall be forfeited to the United States pursuant to Title 18, United States Code Section 981 and 982, and Ocean Bank releases any and all claims it may have to such funds. As of the date of the execution of this Agreement, Ocean Bank had not received funds through the Troubled Asset Relief Program ("TARP"). Accordingly, the funds used in the payment of the Forfeiture Amount will not include TARP funds. Ocean Bank shall pay the Forfeiture Amount within five business days from the entry of this Agreement pursuant to payment instructions as directed by the United States in its sole discretion.

#### **Deferral of Prosecution**

5. In consideration of Ocean Bank's remedial actions to date and its willingness to: (a) acknowledge responsibility for its conduct as detailed in the Factual Statement; (b) continue its cooperation with the United States; (c) demonstrate its future good conduct and compliance in all material aspects with the Bank Secrecy Act and all of its implementing regulations, including, but not limited to, the remedial actions specified in Paragraph 7 below; (d) fully comply with the Federal Deposit Insurance Corporation ("FDIC") Consent Orders (as defined in paragraph 7); and (e) settle any and all civil and criminal claims

currently held by the United States, its agencies, and representatives against the funds referred to above for the sum of \$10,988,136.00, the United States agrees as follows:

i. The United States shall recommend to the Court, pursuant to Title 18, United States Code, Section 3161(h)(2), that prosecution of Ocean Bank on the Information filed pursuant to Paragraph 2 be deferred for a period of twenty-four months (24) months. Ocean Bank shall consent to a motion, the contents to be agreed by the parties, to be filed by the United States with the Court promptly upon execution of this Agreement, pursuant to Title 18, United States Code, Section 3161(h)(2), in which the United States will present this Agreement to the Court and move for a continuance of all further criminal proceedings, including trial, for a period of twenty-four (24) months, for speedy trial exclusion of all time covered by such a continuance, and for approval by the Court of this deferred prosecution. Ocean Bank further agrees to waive and does hereby expressly waive any and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Southern District of Florida for the period that this Agreement is in effect; and

ii. The United States agrees that if the United States determines that Ocean Bank is in compliance in all material aspects with all of its obligations under this Agreement, then the United States, within thirty (30) days of the expiration of the twenty-four (24) month time period set forth in this paragraph, shall seek dismissal with prejudice of the Information filed against Ocean Bank pursuant to paragraph 2 and this Agreement shall expire and be of no further force or effect.

**Court Is Not Bound**

6. Ocean Bank and the United States understand that the Agreement to defer prosecution of Ocean Bank must be approved by the Court, in accordance with Title 18, United States Code, Section 3161(h)(2). Should the Court decline to approve a deferred prosecution for any reason, both the United States and Ocean Bank are released from any obligation imposed upon them by this Agreement and this Agreement shall be null and void.

**Cooperation**

7. Ocean Bank agrees to implement certain remedial measures designed to fully comply with the Bank Secrecy Act, and to abide by any orders and regulations of the Department of the Treasury, Financial Crimes Enforcement Network (“FinCEN”), the FDIC and the State of Florida Office of Financial Regulation (“OFR”), including those set forth in the FinCEN’s Consent Order, No. 2011-07, the FDIC’s Consent Order No. FDIC-11-207b and the OFR’s Consent Order, No. OFR 0834-FI-04/11 (the “FDIC Consent Orders”).

8. Ocean Bank agrees that in accordance with applicable laws, it shall provide to the United States, on request, any relevant document, electronic data, or other object concerning matters relating to this investigation in Ocean Bank's possession, custody, and/or control. Whenever such data is in electronic format, Ocean Bank shall provide access to such data and assistance in operating computer and other equipment as necessary to retrieve the data. This obligation shall not include production of materials covered by the attorney-client privilege or the work product doctrine or any other applicable privilege. Ocean Bank shall in all material aspects completely, fully, and timely comply with all the record-keeping and reporting requirements imposed upon it by the Bank Secrecy Act, Title 31, United States Code, Sections 5311 through 5332 and the Bank Secrecy Act implementing regulations, as well as the remedial

actions set forth in the FinCEN's Consent Order, No. 2011-07, the FDIC's Consent Order No. FDIC-11-207b and the OFR's Consent Order, No. OFR 0834-FI-04/11.

**Government Commitments**

9. In return for the full and truthful cooperation of and compliance by Ocean Bank and its successors with the terms and conditions of this Agreement, the United States agrees that it shall not seek to prosecute Ocean Bank (or its holding company, Ocean Bankshares, Inc.) or any of its branches or representative offices, or successors, or assigns for any act arising from: (1) the facts contained in, connected to, or involving the conduct described in the Factual Statement, or disclosed by Ocean Bank or otherwise uncovered in the course of these investigations; and, (2) other accounts that were the subject of grand jury subpoenas in the course of this investigation, unless, in the sole discretion of the United States, there is a willful and material breach of this Agreement. In the event of a breach resulting in the prosecution of Ocean Bank or a prosecution related to Ocean Bank's failure to maintain an effective anti-money laundering program, the United States may use any information provided by or on behalf of Ocean Bank to the United States or any investigative agency, whether prior to or subsequent to this Agreement, and/or any leads derived from such information, including the attached Factual Statement.

**Waiver of Rights**

10. Ocean Bank hereby further expressly agrees that any violations of the Bank Secrecy Act pursuant to 31 U.S.C. §§ 5318(h) and 5322(b) that were not time-barred by the applicable statute of limitations as of the date of this Agreement may, in the sole reasonable discretion of the United States, be charged against Ocean Bank within six (6) months of any breach of this Agreement notwithstanding the expiration of any applicable statute of limitations.

Ocean Bank also expressly waives any challenge to the venue or jurisdiction of the United States District Court for the Southern District of Florida.

**Breach of the Agreement**

11. If the United States determines that Ocean Bank has committed a willful and material breach of any provision of this Agreement, the United States shall provide written notice to Ocean Bank's counsel of the alleged breach and provide Ocean Bank with a 30-day period, or longer at the reasonable discretion of the United States, in which to make a presentation to the United States to demonstrate that no breach has occurred or, to the extent applicable, that the breach is not willful or material, or has been cured. The parties hereto expressly understand and agree that should Ocean Bank fail to make a presentation to the United States within such time period, it shall be presumed that Ocean Bank is in willful and material breach of this Agreement. The parties further understand and agree that the United States' exercise of reasonable discretion under this paragraph is not subject to review in any court or tribunal. In the event of a breach of this Agreement that results in a prosecution, such prosecution may be premised upon any information provided by or on behalf of Ocean Bank to the United States or any investigative agencies, whether prior to or subsequent to this Agreement, and/or any leads derived from such information, including the attached Factual Statement, unless otherwise agreed to by the United States and Ocean Bank in writing at the time the information was provided to the United States.

**Requirement to Obey the Law**

12. If the United States determines during the term of this Agreement that Ocean Bank has committed any federal or state crime commenced after signing this Agreement, Ocean Bank shall, in the sole discretion of the United States, thereafter be subject to prosecution

for any federal crimes of which the United States has knowledge, including but not limited to the conduct described in the Factual Statement. The discovery by the United States of any purely historical criminal conduct that did not take place during the term of this Agreement will not constitute a breach of this provision.

**Public Statements**

13. Ocean Bank expressly agrees that it shall not, through its attorneys, Board of Directors, agents, officers, or employees, make any public statement contradicting any statement of fact contained in the Factual Statement. Any such contradictory public statement by Ocean Bank, its successor in interest, its attorneys, Board of Directors, agents, officers, or employees shall constitute a breach of this Agreement, and Ocean Bank would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether any statement by any such person contradicting a fact contained in the Factual Statement will be imputed to Ocean Bank for the purpose of determining whether Ocean Bank has breached this Agreement shall be in the sole discretion of the United States. Upon the United States' notification to Ocean Bank of a public statement by any such person that in whole or in part contradicts a statement of fact contained in the Factual Statement, Ocean Bank may avoid breach of this Agreement by publicly repudiating such statement within two business days after notification by the United States. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by a governmental or private party against such individual. In addition, consistent with Ocean Bank's obligation not to contradict any fact contained in the Factual Statement, Ocean Bank may take good faith positions in litigation involving any person or entity not a party to this Agreement.



Nothing stated in this Agreement is intended to operate or shall operate as a waiver of Ocean Bank's rights under Federal Rule of Evidence 408.

**Additional Terms**

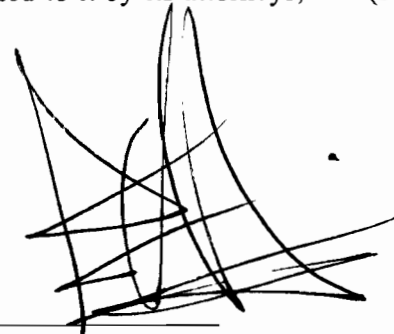
14. Ocean Bank and the United States agree that, upon acceptance by the Court, this Agreement and an Order deferring prosecution shall be publicly filed in the United States District Court for the Southern District of Florida.

15. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between Ocean Bank and the United States. No promises, agreements, or conditions shall be entered into and/or are binding upon Ocean Bank or the United States unless expressly set forth in writing, signed by the United States, Ocean Bank's attorneys, and a duly authorized representative of Ocean Bank. This Agreement supersedes any prior promises, agreements, or conditions between Ocean Bank and the United States.

**AGOSTINHO A. Acknowledgment of Ocean Bank**

I, MACEDO, the duly authorized representative of Ocean Bank, hereby expressly acknowledge the following: (1) that I have read this entire Agreement; (2) that I have had an opportunity to discuss this Agreement fully and freely with Ocean Bank's attorneys; (3) that Ocean Bank fully and completely understands each and every one of its terms; (4) that Ocean Bank is fully satisfied with the advice and representation provided to it by its attorneys; and (5) that Ocean Bank has signed this Agreement voluntarily.

OCEAN BANK



AUG. 11, 2011

DATE

By: Mr. Agostinho A. Macedo, President & CEO

**Counsel for Ocean Bank**

The undersigned are outside counsel for Ocean Bank. In connection with such representation, we acknowledge that: (1) we have discussed this Agreement with our client; (2) we have fully explained each one of its terms to our client; (3) we have fully answered each and every question put to us by our client regarding the Agreement; and (4) we believe our client completely understand all of the Agreement's terms.

HOLLAND & KNIGHT LLP

8/11/11  
DATE


Michael E. Garcia  
By: John Hogan  
Daniel Fridman  
Michael E. Garcia

PODHURST ORSECK P.A.

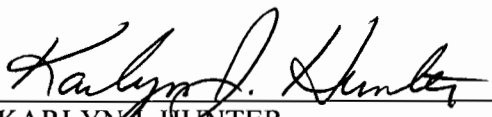
8/11/11  
DATE

Peter Prieto  
By: Peter Prieto

**On Behalf of the Government**

  
WIFREDO A. FERRER  
United States Attorney  
Southern District of Florida

8/12/11  
DATE

  
By: KARLYN J. HUNTER  
Assistant United States Attorney  
Southern District of Florida

## APPENDIX A

### FACTUAL STATEMENT

1. Ocean Bank is a Florida chartered banking institution and a wholly owned subsidiary of Ocean Bankshares, Inc., a one bank holding company. Ocean Bank has twenty-one (21) branches located throughout South Florida. As a state chartered bank, Ocean Bank is subject to oversight and regulation by the Federal Deposit Insurance Corporation (“FDIC”) and the Florida Office of Financial Regulation.
2. Congress enacted the Bank Secrecy Act, Title 31, United States Code, Sections 5311 et seq. (“BSA”), and its implementing regulations to address an increase in criminal money laundering activities utilizing financial institutions. Among other provisions, it requires domestic banks, insured banks and other financial institutions to maintain programs designed to detect and report suspicious activity that might be indicative of money laundering, terrorist financing and other financial crimes, and to maintain certain records and file reports related thereto that are especially useful in criminal, tax or regulatory investigations or proceedings.
3. Pursuant to Title 31, U.S.C. § 5318(h)(1) and 12 C.F.R. § 326.8, Ocean Bank was required to establish and maintain an anti-money laundering (“AML”) compliance program that, at a minimum: (a) provides internal policies, procedures, and controls designed to guard against money laundering; (b) provides for an individual or individuals to coordinate and monitor day-to-day compliance with the BSA and AML requirements; (c) provides for an ongoing employee training program; and (d) provides for independent testing for compliance conducted by bank personnel or an outside party.
4. Ocean Bank was also required, pursuant to 31 U.S.C. § 5318(g), 12 C.F.R. § 353 and 31 C.F.R. § 1020.320 (formerly 31 C.F.R. § 103.18), to file with the U.S. Department of Treasury a Suspicious Activity Report (“SAR”), in accordance with the form’s instructions, when Ocean Bank detected the type of activity described below. The requirement became effective on April 1, 1996. According to the form’s instructions, Ocean Bank was required to file a SAR with the Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”) for any transaction conducted or attempted by, at or through the bank, if it involved or aggregated at least \$5,000 in funds or other assets, and the bank knew, suspected or had reason to suspect that:
  - (i) The transaction involved funds derived from illegal activities or was intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any federal law or regulation or to avoid any transaction reporting requirement under federal law or regulation.

(ii) The transaction was designed to evade any requirements promulgated under the BSA.

(iii) The transaction had no business or apparent lawful purpose or was not the sort in which the particular customer would normally be expected to engage, and the bank knew of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

5. From as early as January 2001 through June 2010, Ocean Bank violated the anti-money laundering and suspicious activity reporting requirements of the BSA and its implementing regulations, which facilitated the laundering of narcotics proceeds through Ocean Bank. These violations were serious and systemic and allowed certain Ocean Bank accountholders to launder millions of dollars of narcotics proceeds through Ocean Bank accounts over an extended period of time while such accounts were being criminally investigated by the Department of Justice.
6. Investigators from the United States Attorney's Office for the Southern District of Florida ("USAO"), the U.S. Drug Enforcement Administration ("DEA") and the Internal Revenue Service, Criminal Investigation ("IRS") have identified five (5) accounts at Ocean Bank that were used to launder at least \$10,988,136.00 of drug proceeds from as early as March 2001 through August 2008 through accounts controlled by narcotics traffickers and/or narco-money launderers. Ocean Bank failed to notify law enforcement of any of the obvious indicia of money laundering occurring in these accounts, which were used by drug trafficking organizations to launder drug proceeds.
7. Deposits into three of these accounts consisted mainly of currency and wire transfers originating from Mexican Casas de Cambio ("CDCs") controlled by the Bernal-Palacios Organization. The Bernal-Palacios Organization used these CDCs to transfer their narcotics proceeds to different bank accounts around the world, including the three aforementioned accounts at Ocean Bank. The three accounts were used strictly as exchange accounts which utilized the Black Market Peso Exchange ("BMPE"), an underground financial system frequently used by drug traffickers. A fourth account was used by a Miami-area business to launder narcotics proceeds. The business accepted large amounts of currency from convicted drug traffickers and money launderers, which the business then deposited into its Ocean Bank account. Notwithstanding such large cash deposits and a wire transfer, which were inconsistent with the accountholder's wholesale business, Ocean Bank failed to perform enhanced due diligence and/or notify law enforcement of the suspicious activity in the account in a timely fashion. The last of the five accounts was used by a different Miami-area business to launder narcotics proceeds. The business maintained an operating account at Ocean Bank from October 1990 through at least December 2009, and that account received incoming wire transfers from several Mexican CDCs, which purported to be directed by customers of Ocean Bank's customer that sold goods in Mexico. The Mexican CDCs were in fact owned by international drug trafficking organizations that used the CDCs to launder their narcotics proceeds.

8. At least as early as 1996, federal regulators, the DEA and other prominent AML organizations notified the financial institution community of the increased money laundering risk presented by Mexican CDCs to the U.S. financial system. This is especially true for Ocean Bank, which is headquartered in Miami, Florida, because Miami, Florida has been designated as both a High Intensity Financial Crimes Area and a High Intensity Drug Trafficking Area.
9. Mexican CDCs do not operate in the same manner as banks operate in the United States. CDCs do not hold deposits or maintain checking accounts, savings accounts, or issue lines of credit. Nor do CDCs provide personal and/or commercial banking services. The main function of CDCs is to allow persons or businesses in Mexico to exchange or wire transfer the value of hard currency to bank accounts in the U.S. or other countries.
10. The nature of the CDC business allows money launderers the opportunity to move drug dollars that are in Mexico into CDCs and ultimately into the U.S. banking system. Once the drug dollars were placed into the CDCs, they were readily transferred into customer accounts maintained by Ocean Bank.
11. Ocean Bank has a high overall risk rating with regards to its BSA and AML program. This was due in part to the high percentage of international account holders and the high volume of international transactions. Notwithstanding its overall high risk rating, warnings from federal regulators, DEA and other prominent AML organizations about the aforementioned money laundering risks, Ocean Bank did not provide the necessary AML/BSA controls to mitigate the bank's high risk rating.
12. In sum, the investigation of Ocean Bank focused on the five accounts described above. In total, these five (5) accounts were used to launder \$10,988,136.00 in narcotics proceeds from March 2001 through August 2008.

**Summary of Suspicious Activity and Drug  
Money Laundering through the Five (5) Targeted Accounts**

13. During these investigations, law enforcement reviewed account documentation and transactional activity in the five (5) aforementioned accounts and found evidence, or "red flags" of suspicious transactional activity indicative of money laundering. Such transactional activities were not timely detected or reported by Ocean Bank. A representation of the suspicious transactions occurring in these accounts that should have alerted Ocean Bank to the money laundering activity occurring therein includes:
  - a. Unusual Currency Deposits: There were large currency deposits made into the accounts, in amounts ranging from \$10,000 to \$140,000, which were unsupported by the customers' business model. There were also instances of structured currency deposits in amounts less than \$10,000 designed to circumvent the currency reporting requirements. This activity was evident in the numerous transactions involving the accounts described in paragraph 7, above;

- b. Unusual Monetary Instrument Deposits: Thousands of money orders and travelers checks were deposited into the accounts in a fashion inconsistent with the expected use of such checks and money orders. Numerous money orders and travelers checks were sequentially numbered. There were deposits of a large number of money orders and travelers checks having similar signatures and handwriting. There were also large deposits of money orders and travelers checks payable to third parties. This activity was evident in the thousands of transactions involving the account described in paragraph 7, above;
  - c. Incoming Wire Transfers Originating from Mexican Casas de Cambio: There were hundreds of incoming wire transfers originating from Mexican CDCs in large round dollar amounts deposited into the selected accounts. For several of the subject accounts, Mexico was outside of the customer's stated geographic business market. There were also numerous instances in which multiple incoming wire transfers originating from the same Mexican CDC, from different senders, were received on the same day. This type of activity is commonly called layering, a money laundering technique used to disguise the source of the funds. This activity was evident in the numerous transactions involving the accounts described in paragraph 7, above;
  - d. Structured Wire Transfer Deposits: Numerous instances were noted where large round dollar amounts were sent from the same originator to the selected accounts through a series of structured wire transfers on the same or consecutive days.
  - e. Suspicious Wire Transfer Activity: Rapid movement of incoming and outgoing wire transfers in large round dollar amounts were noted in the selected accounts. There were many instances in which wire transfers, in increments of \$50,000 to \$100,000, were received and sent out of the same accounts for the same amounts on the same or consecutive days. This activity was evident in the numerous transactions involving the accounts described in paragraph 7, above; and,
  - f. No Business Operating Expenditures: Several of the selected accounts were business accounts that displayed none of the normal business operating expenditures one would expect to find. These business accounts had no disbursements for expenses such as rent, supplies, utilities or salaries indicating a lack of legitimate business activity. These accounts acted strictly as exchange accounts exhibiting BMPE type activity. This activity was evident in the numerous transactions involving the accounts described in paragraph 7, above.
14. In total, more than \$40 million in suspicious activities, spanning from 2001 through 2009, were identified in the five selected accounts, at least \$10,988,136 of which is known to be narcotics proceeds. Moreover, such activity involved more than \$100,000 in several 12-month periods between 2001 and 2009. Ocean Bank failed to report (or timely report) these suspicious transactions. An important purpose, if not the primary purpose, of a



BSA compliance program is to detect and prevent money laundering. Ocean Bank failed to identify and report these indicators of money laundering.

### **The BSA Investigation**

15. Recognizing these red flags, in 2008, the United States Attorney's Office for the Southern District of Florida, the IRS and DEA began investigating Ocean Bank's BSA compliance program. FinCEN subsequently joined the investigation. The Federal Deposit Insurance Corporation ("FDIC") conducted a parallel examination.
16. The investigation into this matter revealed that the serious and systemic deficiencies in Ocean Bank's BSA and AML program in critical areas required by the BSA and its implementing regulations, as amended by the PATRIOT Act of 2001, resulted in Ocean Bank's failure to identify, report and prevent the suspicious activity described above. These BSA and AML violations allowed certain Ocean Bank customers to launder millions of dollars in narcotics proceeds through Ocean Bank over an extended period of time.
17. At least since 2001, Ocean Bank failed to take appropriate steps to correct identified deficiencies in its BSA/AML program. In 2002, the FDIC and the Florida Office of Financial Regulation noted deficiencies in Ocean Bank's BSA and AML programs observed in 2001 and made recommendations to Ocean Bank with respect to addressing such deficiencies. The FDIC and the Florida Office of Financial Regulation's Quarterly Supervisory On-site review, which began in March 2004, noted a continuation of previously noted weaknesses and additional deficiencies including deficiencies in the BSA/AML systems, and a large volume of high-risk accounts which lacked the appropriate customer due diligence. These deficiencies were considered material. As a result, in 2004, the regulators recommended, and Ocean Bank adopted, a Corrective Program which is an informal enforcement action addressing weaknesses in Ocean Bank's BSA/AML program. The 2005 Regulatory On-site reviews noted some improvement in the BSA/AML area, including the engagement of outside expertise and a timetable for correction of noted deficiencies. The findings of the 2006 Regulatory On-site reviews, however, revealed that material deficiencies identified in the 2004 and 2005 reviews had not been fully corrected and that the BSA/AML program remained deficient. Therefore, in 2007, the FDIC and the Florida Office of Financial Regulation jointly issued a Cease and Desist Order to Ocean Bank in response to its serious chronic problems with its BSA/AML program and its failure to correct the problems previously identified. That Cease and Desist Order remained in effect until May 2011 when it was replaced with a modified Consent Order.
18. The investigation has determined significant failures in Ocean Bank's BSA and AML compliance programs, which have persisted at least since 2001. These deficient areas include:

- a. Customer Due Diligence – Ocean Bank failed to maintain complete and sufficient documentation to develop customer transaction profiles;
- b. Account Monitoring – Ocean Bank maintained inadequate monitoring systems that failed to provide a reasonable level of assurance that suspicious activity would be identified in a timely manner;
- c. Risk Assessment – Ocean Bank conducted inadequate risk assessments to identify high risk customers and transactions;
- d. Suspicious Activity Reporting – Ocean Bank failed to identify activity that warranted filing SARs. The bank failed to file SARs in a timely manner; and,
- e. Staffing – Ocean Bank failed to maintain sufficient and qualified personnel in the BSA Department.

Customer Due Diligence<sup>1</sup>

19. Federal banking regulators have advised banks, including Ocean Bank, that an effective AML program should incorporate the following principles into their business practices:
  - a. Validate the identity of customers as required under the Customer Identification Program rule;
  - b. Determine the particular customer's normal and expected transactions;
  - c. Establish a risk profile for the customer's account;
  - d. Monitor customer transactions to determine if they are consistent with the normal and expected transactions for that customer or for similar categories or classes of customers;
  - e. Identify customer transactions that do not appear to be consistent with normal and expected transactions for that particular customer or for customers in similar categories or classes; and
  - f. Determine if a transaction is unusual or suspicious and, if so, report these transactions.
  
20. Ocean Bank failed to effectively implement the Customer Due Diligence requirements into its Customer Identification Program. From 2002 through 2009, Ocean bank had significant documented deficiencies in their customer profiles. Ocean Bank failed to

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<sup>1</sup> Customer Due Diligence is also referred to in the industry and in law enforcement as Know Your Customer ("KYC").

obtain and independently corroborate critical customer identification at account opening, and failed to develop adequate procedures to update the customer information during the course of the relationship.

21. Ocean Bank failed to apply enhanced due diligence procedures to high risk accounts, including those accounts identified in paragraph 7 above, as required by the USA PATRIOT Act. With respect to the suspicious activities contained in the selected accounts as described in Paragraph 7 above, Ocean Bank should have questioned the source of deposits to verify that they were obtained from legitimate sources that were consistent with the known and reasonable business model of the customer. If the bank had done so, it would have noticed the five targeted accounts received deposits that were not consistent with their account profile.

#### Account Monitoring

22. From 2001 through 2003, Ocean Bank monitored accounts manually. Two employees would review thousands of pages of printouts of currency and wire transfer activity. This was inadequate as the bank had over 80,000 customers and over 115,000 total accounts. In 2003, the bank implemented an automated account monitoring system. However, Ocean Bank only classified fifteen-percent (15%) of its total accounts as "high risk" and thus subjected to monitoring by the system. The remaining 85% of Ocean Bank's accounts continued to be monitored manually. This process remained in effect throughout 2006.
23. By the end of 2006, a backlog of over 100,000 exceptions had been generated by the bank's automated monitoring system. The overwhelmingly majority of these exceptions were improperly cleared by Ocean Bank staff that was ill-trained and inexperienced in reporting suspicious activity. The exceptions were waived without further investigation after a cursory review. Moreover in 2005, several filters in the automated monitoring system were disabled by the bank's BSA staff to slow the increasing number of exceptions while they attempted to modify the monitoring system.
24. From 2003 through 2009, Ocean Bank's automated account monitoring system contained numerous weaknesses and problems, evidencing Ocean Bank's inability to monitor and control the transactions in accounts, particularly those conducted by customers presenting a high-risk of money laundering.

#### Risk Assessment

25. Ocean Bank's procedures and controls failed to ensure that the bank gathered and reviewed sufficient information on account customers to adequately assess risk and potential for money laundering. Ocean Bank failed to update or conduct periodic reviews of both domestic and foreign customer accounts and failed to focus sufficient attention on the accounts and transactions that exhibited high-risk characteristics for money laundering. These deficiencies prevented Ocean Bank from performing adequate analysis of the risks associated with particular customers to determine whether the

transactions lacked any apparent business or lawful purpose or were within the particular customers' normal range of banking activity.

26. Ocean Bank also failed to implement an adequate risk-rating methodology that evaluated customers, based on specific customer information, with balanced consideration for all relevant factors including country/jurisdictional risk, products and services provided, nature of the customers' business or source of income and volume of transactions. Even when Ocean Bank rated certain customers as "high-risk," it did not apply commensurate enhanced due diligence practices to manage the recognized risk. These deficiencies impaired Ocean Bank's ability to appropriately assess and respond to the risks associated with particular customers.
27. Furthermore, Ocean Bank failed to document or properly identify its filtering criteria and thresholds for determining the risk profile of its customers. Management also failed to periodically review and update the filtering criteria and thresholds established to ensure continued AML effectiveness. The deficiencies in Ocean Bank's customer information and risk-rating procedures prevented the bank from focusing on accounts – such as the five targeted accounts – that posed a high risk of money laundering.

#### Suspicious Activity Reporting

28. Federal regulations require that financial institutions report suspicious transactions by filing SARs generally no later than 30 calendar days after detecting the facts that may constitute a basis for filing a suspicious report. Ocean Bank failed to identify and/or timely identify suspicious money laundering indicia, "red flags" or suspicious activity associated with individual transactions such as those described in Paragraph 7. Additionally, Ocean Bank failed to recognize the importance of law enforcement inquiries. According to FinCEN, the receipt of grand jury subpoenas should cause a financial institution to conduct a risk assessment of the subject customer and also review its account activity. Several grand jury subpoenas were served on the five targeted accounts and, even though Ocean Bank reviewed the activity in the accounts, it filed only one SAR on activity in one of the accounts.
29. From 2001 through 2007, Ocean Bank filed an extremely low number of SARs in relation to other banks of comparable size and in light of Ocean Bank's overall high risk rating. In fact, in 2008, Ocean Bank performed a "look back" project that resulted in the bank filing more SARs in 2008 than it filed in the previous seven years combined.
30. For the time period 2001 through 2010, the Ocean Bank's regulators continually noted that Ocean Bank failed to file SARs in a timely manner.

#### Ocean Bank's Cooperation and Remedial Actions

31. Upon learning about the Ocean Bank investigation in 2007, Ocean Bank has cooperated with the Government's investigation by promptly complying with grand jury subpoenas seeking account information and internal policies, procedures and accounting material.

Ocean bank has also devoted substantial resources responding to the United States' requests for information. To date, Ocean Bank has produced more than one million pages of documents. Ocean Bank has organized its document productions as requested by the United States and has provided summaries, indices and explanations of relevant documents to assist the United States in its understanding of the facts relevant to its investigation.

32. Beginning in 2008, Ocean Bank began changing its senior leadership to implement a new direction in BSA compliance. They have also replaced nearly all of their department managers, including the recent hire of a new manager of the BSA department in 2011.
33. In 2009, Ocean Bank created an enhanced due diligence/trending unit that provides proactive account monitoring through special projects that target high risk areas, including CDC transactions and customers with large currency transactions. The enhanced due diligence/trending unit is also designed to address the high risk nature of its profile by providing enhanced review of customers' accounts and to identify suspicious trends between unrelated customers' accounts.
34. Ocean Bank has also voluntarily implemented several projects designed to identify money laundering through customers' accounts. As a result of these special projects, Ocean Bank filed SARs and made several referrals to law enforcement.
35. Ocean Bank has also devoted considerable resources to correct and improve its BSA and AML compliance policies, procedures and controls. Since 2008, these efforts include:
  - a. An enhanced training program for BSA department employees. Ocean Bank conducted more than twenty training sessions within the BSA department over the past two years targeting specific BSA issues;
  - b. Improvement in SAR preparation and cooperation. Since 2009, Ocean Bank has improved its SAR program with respect to preparation of complete, accurate narratives, timeliness of SAR filings and cooperation with law enforcement requesting supporting documentation;
  - c. Reorganization of BSA department. In 2009, Ocean Bank reorganized the BSA department into functional units to improve workflow and monitoring; and,
  - d. Use of outside consultants. Since 2008, Ocean bank has incurred costs of more than \$10 million in contracting with outside consultants to conduct reviews of its BSA and AML program areas and began taking steps to enhance and improve its program.
36. Ocean Bank continues to cooperate with the FDIC, its primary regulator, and FinCEN, which have each identified the BSA and AML compliance deficiencies described herein, and have issued orders requiring Ocean Bank to implement significant remedial measures to correct them.

## **Appendix B**

OCEAN BANK

CERTIFICATE OF ADOPTION OF RESOLUTIONS

I, JAVIER ALVAREZ, do hereby certify that I acted as Secretary for the Special Meeting of the Board of Directors (the “**Special Meeting**”) of Ocean Bank, Miami, Florida (the “**Bank**”) held on August 11, 2011, and that the following Resolutions were duly adopted by the Board of Directors of the Bank during the Special Meeting, and that these Resolutions have not been modified or rescinded and are in full force and effect as of the date of this Certificate:

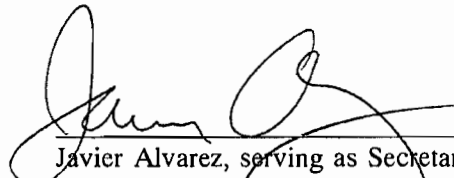
**RESOLVED**, that Mr. Peter Prieto and Mr. Michael Garcia, as outside litigation counsel to the Bank, attended the Special Meeting and presented to the Board of Directors the Deferred Prosecution Agreement with the United States Attorney’s Office, Southern District of Florida (the “**Deferred Prosecution Agreement**”), the Consent to the Assessment of Civil Money Penalty with the United States Department of the Treasury Financial Crimes Enforcement Network (the “**FinCEN Consent**”), the Waiver of Indictment with the United States Attorney’s Office, Southern District of Florida (the “**Waiver of Indictment**”), and other documents related thereto (together with the Deferred Prosecution Agreement, the FinCEN Consent and the Waiver of Indictment, collectively the “**Settlement Documents**”);

**FURTHER RESOLVED**, that after review and discussion, and upon motion made by A. Alfonso Macedo, seconded by Alcides I. Avila, the Board of Directors approved the execution of the Deferred Prosecution Agreement, the FinCEN Consent, the Waiver of Indictment, and all other documents related thereto, thereby consenting to the payment of the forfeiture amount equal to the sum of \$10,988,136.00; and

**FURTHER RESOLVED**, that after review and discussion, and upon motion made by Alcides I. Avila, seconded by Terry J. Curry, the Board of Directors approved the execution of the Settlement Documents by A. Alfonso Macedo, in his capacity as President & CEO of the Bank, and further authorized, empowered and directed Mr. Macedo to take all such further action, in the name and on behalf

of the Bank, as may be deemed to be necessary, proper or advisable in order to fully carry out the intent and accomplish the purposes of the foregoing resolutions, including the execution of the Deferred Prosecution Agreement, the FinCEN Consent, the Waiver of Indictment, and all other documents related thereto.

IN WITNESS WHEREOF, I have executed this Certificate on this 11<sup>th</sup> day of August, 2011.



Javier Alvarez, serving as Secretary for  
the Special Meeting of the Board of  
Directors Solely for the Purpose of  
Taking the Minutes