FEDERAL RESERVE press release

For immediate release February 4, 1997

The Federal Reserve Board announced today the issuance of its Final Decision and Final Order of Prohibition and Assessment of Civil Money Penalty in the Matter of Ghaith R. Pharaon, a former BCCI insider.

The Board assessed a $37 million fine against Pharaon, and permanently barred him from the U.S. banking industry due to his illegal activities.

The Board's Final Decision adopted the Recommended Decision of the Administrative Law Judge who presided at a nineteen-day administrative hearing conducted in 1995 by attorneys from the Board and the Federal Reserve Bank of New York.

The Board found that Pharaon acted illegally as a secret nominee for BCCI when he acquired the Independence Bank of Encino, California in 1985.

The Independence Bank of Encino failed in January 1992.

Pharaon, who is a resident of Saudi Arabia, is the subject of criminal indictments issued by the U.S. Department of Justice and the New York County District Attorney. He participated in the Board's administrative hearing through his

counsel, but has not returned to the United States to contest personally federal and state criminal charges.

Pharaon has the right to appeal the Board's Final Decision in a federal appellate court.

A copy of the Board's Final Decision, with the accompanying Order, is attached.

Attachment

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

In the matter of GHAITH R. PHARAON, Institution-Affiliated Party of BCCI Holdings (Luxembourg) S.A., Luxembourg, and the Bank of Credit and Commerce International S.A., (Luxembourg)	Docket Nos. 91-037-E-I1 91-037-CMP-I1

FINAL DECISION

This is an administrative proceeding of the Board of Governors of the Federal Reserve System (the "Board"), based on the issuance on September 13, 1991 of its "Notice of Assessment of a Civil Money Penalty Issued Pursuant to Section 8(b) of the Bank Holding Company Act of 1956, As Amended, and Amended Notice of Intent to Prohibit Issued Pursuant to Section 8(e) of the Federal Deposit Insurance Act, As Amended" (the "Amended Notice"). The Amended Notice alleges that Bank of Credit and Commerce International ("BCCI")[1/] violated Section 3(a) of the Bank Holding Company Act (the "BHC Act"), 12 U.S.C. § 1842(a), by causing BCCI to become a bank holding company without prior Board

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[1/] "BCCI" refers to BCCI Holdings (Luxembourg), S.A., Luxembourg ("BCCI Holdings") and all of its related entities, including its subsidiary bank, the Bank of Credit and Commerce International, S.A., Luxembourg ("BCCI, S.A."), ICIC Holdings, its subsidiary bank, International Credit and Investment Company (Overseas) Limited, George Town, Cayman Islands ("ICIC Overseas"), ICIC Investments, Ltd. ("ICIC Investments") (also a subsidiary of ICIC Holdings), ICIC Staff Benefit Trust and ICIC Foundation, unless the context requires reference to a specific BCCI entity. See Recommended Decision at 1 n.1.

approval by secretly acquiring an 85 percent interest in Independence Bank, a state-chartered non-member insured depository institution located in Encino, California ("Independence Bank"). The Amended Notice also alleges that BCCI violated Section 5(c) of the BHC Act, 12 U.S.C. § 1844(c), by filing false and misleading reports with the Board which failed to disclose BCCI's interest in Independence Bank. The Amended Notice further alleges that Respondent Ghaith R. Pharaon ("Pharaon") is an institution-affiliated party of BCCI pursuant to 12 U.S.C. § 1813(u),[2]/ and that as such Pharaon "caused, brought about, participated in, or aided and abetted" BCCI's violations of the BHC Act. The Amended Notice seeks the imposition against Pharaon of an industry-wide prohibition order and of civil money penalties in the amount of $37 million.

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[2]/ "Institution-affiliated party" is defined in Section 3(u) of the Federal Deposit Insurance Act (the "FDI Act") as "any director, officer, employee, or controlling stockholder (other than a bank holding company) of, or agent for, an insured depository institution." 12 U.S.C. § 1813(u). These proceedings are instituted under the civil money penalty provisions of the BHC Act, 12 U.S.C. § 1847(b), and under the prohibition provisions of the FDI Act, 12 U.S.C. § 1818(e). Section 1818(e) is applicable with respect to bank holding companies by operation of 12 U.S.C. § 1818(b)(3), which provides that 12 U.S.C. § 1818(b)-(s) and 12 U.S.C. § 1818(u) "shall apply to any bank holding company, . . . in the same manner as they apply to a State member insured depository institution."

OVERVIEW

The first BCCI institution was organized in 1972. By 1985, BCCI had operations in nearly seventy countries, including the United States. Also by that time, BCCI had accumulated losses which far exceeded its stated capital. BCCI concealed these losses from banking regulators around the world in many ways, including embezzling from its customers, creating fictitious loans to disguise actual non-performing loans, and making secret investments through nominees in high-growth enterprises. BCCI intended that the profits resulting from these secret investments, together with the proceeds of normal banking activities, would enable BCCI to recoup its losses.

Before BCCI had successfully recouped its losses, however, the Luxembourg banking authorities refused to continue to serve as BCCI's home country supervisor.[3]/ Forced to find a new home country supervisor for its worldwide banking operations, BCCI decided to establish its home country in the United States and therefore to be supervised by United States banking regulators. To accomplish this, BCCI planned to acquire an existing bank in the United States.

BCCI apparently knew it could not obtain regulatory approval at that time to acquire a United States bank, however, because

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[3]/ Under the principles governing international bank supervision, supervision of an international financial organization is divided between the country where the institution is chartered, its "home country," and any country where an institution conducts business, a "host country." See RD at 10-11.

neither BCCI's undisclosed losses nor its illicit attempts to conceal them would survive the scrutiny of the application process. BCCI therefore decided to acquire a United States bank through a nominee, who would acquire the bank on behalf of BCCI and with BCCI funds in exchange for various kinds of compensation. While the nominee would possess the credentials necessary to receive regulatory approval as the ostensible owner of the bank, BCCI would in reality control the bank. One bank BCCI selected for this undertaking was Independence Bank. The nominee BCCI selected was Ghaith Pharaon.

BCCI and Pharaon signed an agreement, undisclosed to United States banking regulators, pursuant to which Pharaon would acquire and hold as the registered owner 100 percent of the shares of Independence Bank. In reality, pursuant to this agreement, Pharaon was to hold only 15 percent of the stock as beneficial owner and 85 percent as the nominee of BCCI. BCCI funded Pharaon's acquisition of the Independence Bank shares through loans to Pharaon under which BCCI would have no recourse to Pharaon personally, but only to the shares themselves. BCCI approved the appointment of four of the five members of the board of directors of Independence Bank, and also filled senior management positions at Independence Bank with BCCI personnel.

The plan envisioned that, at a later time (and presumably after BCCI had improved its financial condition), BCCI would attempt to obtain regulatory approval to purchase Independence Bank from Pharaon, thus making BCCI's existing holding company a

bank holding company subject to supervision under United States law by the Federal Reserve System. However, BCCI's various plans to recoup its losses were not successful, and BCCI failed on July 5, 1991. The Board initiated these proceedings in September of 1991, and Independence Bank itself failed in January of 1992.

RECOMMENDED DECISION, EXCEPTIONS AND SUMMARY OF FINAL DECISION

After a nineteen-day hearing, Administrative Law Judge Walter J. Alprin issued his Recommended Decision on April 12, 1996 (the "Recommended Decision" or "RD"). In the Recommended Decision, Judge Alprin found that Pharaon was an institution-affiliated party of BCCI who violated Sections 3 and 5 of the BHC Act by participating in BCCI's acquisition of unauthorized control of Independence Bank through acts of personal dishonesty. RD at 3. Judge Alprin recommended the imposition of civil money penalties in the amount of $37 million and the institution of an industry-wide prohibition order against Pharaon, both as sought in the Amended Notice.

Board Enforcement Counsel ("Board Enforcement Counsel" or "BEC") and Pharaon filed exceptions to the Recommended Decision, and each party filed a response to the other's exceptions. BEC excepted only to the amount of civil money penalties recommended by Judge Alprin, arguing that Judge Alprin should have recommended the imposition of $111,595,000 sought by BEC instead of the $37,000,000 he recommended. Pharaon excepted "to

virtually every finding of fact, and to all conclusions of law" in the Recommended Decision. Pharaon's Exceptions ("PE") at 2.[1]/

Upon review of the entire administrative record herein, including all post-trial submissions of the parties, the Board adopts the Administrative Law Judge's Recommended Decision, Recommended Findings of Preliminary Fact and Recommended Conclusions of Law, except as specifically supplemented or modified herein. The Board accordingly determines that the attached Final Order of Prohibition and Assessment of Civil Money Penalty shall issue against Pharaon.

DISCUSSION

1. DIRECT OR INDIRECT CONTROL OF INDEPENDENCE BANK

Section 3(a) of the BHC Act requires prior Board approval before a company becomes a bank holding company. 12 U.S.C. § 1842(a). A "bank holding company" includes any company which has control over any bank. 12 U.S.C. § 1841(a)(1). Section 2(a)(2) of the BHC Act defines "control" as follows:

> Any company has control over a bank or over any company if--
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> (A) the company directly or indirectly or acting through one or more other persons owns, controls, or

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[1]/ Pharaon in his exceptions failed to "set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken," as required by Section 39(c)(2) of the Board's Uniform Rules of Practice and Procedure applicable to these proceedings. 12 CFR § 263.39(c)(2). Because of this failure, the Board assumes that Pharaon excepted to the Recommended Decision in its entirety.

> has power to vote 25 per centum or more of any class of voting securities of the bank or company;
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> (B) the company controls in any manner the election of a majority of the directors or trustees of the bank or company; or
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> (C) the Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company.

12 U.S.C. § 1841(a)(2). Under Section 11(a) of the Board's Regulation Y, implementing this statutory provision, a prior application to the Board for the formation of a bank holding company is required. 12 CFR § 225.11(a).

In the Recommended Decision, Judge Alprin found that BCCI, without obtaining prior Board approval, controlled more than 25 percent of the voting shares of Independence Bank within the meaning of Section 2(a)(2)(A) of the BHC Act through its affiliated entities and through Pharaon as its nominee (RD at 88-99, 103-104), and through financing arrangements (RD at 99-102, 103-104). Judge Alprin also found that BCCI, without obtaining prior Board approval, controlled the appointment of a majority of Independence Bank's directors within the meaning of Section 2(a)(2)(B) of the BHC Act. RD at 102-104.

A. Control Under Section 2(a)(2)(A) of the BHC Act

(1) The Acquisition Agreement

Judge Alprin found that Pharaon illegally acted on behalf of BCCI as its undisclosed agent when he became the registered holder of the stock of Independence Bank pursuant to the terms of a written agreement, undisclosed to United States banking

regulators, between Pharaon and BCCI (the "Acquisition Agreement"). The Acquisition Agreement is a three-page document titled "Memorandum re: Acquisition of Shares of Independance [sic] Bank of _____ [sic] (the Bank)," dated May 17, 1985 and signed by Pharaon and by Swaleh Naqvi ("Naqvi") on behalf of ICIC Overseas.

Pharaon vigorously disputes that the Acquisition Agreement granted control of Independence Bank for purposes of the BHC Act to ICIC Overseas, to BCCI or to anyone other than Pharaon.[5]/ PE at 144-156. Pharaon argues first that the parties never implemented the Acquisition Agreement and/or never considered it to be valid and effective. PE at 38, 145-148. Pharaon further argues that to the extent the Acquisition Agreement permitted BCCI to have illegal control over Independence Bank, that agreement was illegal and unenforceable and therefore a nullity. Id. The Board concurs in Judge Alprin's finding that the Acquisition Agreement "has been clearly demonstrated to be a written expression of the intent of the parties, subject to intermediate changes but never varying the intended goal." RD at 98.

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[5]/ Judge Alprin found that BCCI controlled ICIC Overseas, on whose behalf Naqvi executed the Acquisition Agreement. Specifically, Judge Alprin found that: BCCI controlled ICIC Staff Benefit Trust under Section 2(g)(2)(C) of the BHC Act; ICIC Staff Benefit Trust controlled ICIC Holdings within the meaning of Section 2(a)(2)(A) of the BHC Act because one-half of all the shares of ICIC Holdings were held in a fiduciary capacity for the benefit of ICIC Staff Benefit Trust; and ICIC Holdings controlled ICIC Overseas within the meaning of Section 2(a)(2)(A) of the BHC Act because ICIC Overseas was ICIC Holdings' wholly-owned subsidiary. RD at 88-92.

Pharaon argues next that the Acquisition Agreement was or was intended to be an option agreement. See, e.g., PE at 37, 42, 145-148. Judge Alprin found that the Acquisition Agreement was not intended to be an option agreement, given the intent of the parties thereto, the action of the parties in accordance therewith enabling BCCI to control Independence Bank, an economic analysis thereof, and the evidence that Pharaon knew the difference between a true option agreement and a nominee agreement like the Acquisition Agreement. RD at 92-96. The Board concurs in Judge Alprin's finding that the Acquisition Agreement constituted a nominee agreement which Pharaon and BCCI intended to enter and did in fact enter and carry out, and through which BCCI controlled Independence Bank for purposes of the BHC Act.

(2) Control Through Financing Arrangements

The Recommended Decision set forth in detail how BCCI financed the acquisition of 100 percent of the stock of Independence Bank (RD at 34-51, 99-102), and the nature of the financial arrangements between BCCI and Pharaon (RD at 51-60), particularly the significant number and dollar amount of non-recourse loans extended to Pharaon (RD at 51-56). Judge Alprin noted that prior Board decisions had found preferential financing arrangements for the acquisition of bank stock effective to transfer control of an acquired bank for purposes of the BHC Act. RD at 99-102. Applying that precedent, Judge Alprin concluded that by virtue of the financing arrangements BCCI extended for

the purchase of the Independence Bank stock, BCCI controlled more than 25 percent of the voting shares of Independence Bank, and that therefore BCCI violated Section 3(a) of the BHC Act. RD at 102.

Pharaon argues that the precedents which Judge Alprin discussed are inapposite because they involved applications decisions rather than civil money penalties. Neither Pharaon nor BCCI ever applied to the Board for approval of BCCI's acquisition of Independence Bank. On the contrary, Pharaon and BCCI agreed to avoid seeking regulatory approval by having Pharaon act as BCCI's undisclosed nominee in acquiring Independence for the benefit of BCCI, because they realized that BCCI could not pass regulatory scrutiny. See, e.g., RD at 17 ¶ 27; RD at 18 ¶ 29; RD at 27 ¶ 43-44. The fact that those control decisions involved applicants following proper procedures does not mean that they do not apply to BCCI's acquisition of Independence Bank. Rather, they support the position that BCCI controlled Independence Bank.

Pharaon also argues that Pharaon, and not BCCI, bore the risk in the Independence Bank acquisition and that therefore control could not be imputed to BCCI. Specifically, Pharaon argues that he and not BCCI bore the risk of the acquisition because he "paid at least the interest on one account," (PE at 155 n.105) and because he "never received full indemnification from BCCI in connection with his acquisition of Independence Bank." PE at 155. Even if true, these assertions would not refute control by BCCI. Moreover, they are outweighed by the

other evidence of record establishing that BCCI and not Pharaon bore all or virtually all risk associated with the acquisition of Independence Bank. Accordingly, the Board concurs in Judge Alprin's finding that, within the meaning of Section 2(a)(2)(A) of the BHC Act, BCCI controlled the shares of Independence Bank and that, through this control, BCCI violated Section 3(a) of the BHC Act. RD at 102.

B. Ability to Appoint Majority of Directors

Judge Alprin concluded that BCCI also violated Section 3(a) of the BHC Act through its control of the election of a majority of the directors of Independence Bank within the meaning of Section 2(a)(2)(B) of the BHC Act. RD at 102-103. Pharaon contends in his exceptions that "only [one director] could arguably have been 'selected by BCCI' and [that director] believed he was working for Pharaon." PE at 85-86 (emphasis in original). However, Pharaon has failed to refute Judge Alprin's findings that BCCI exercised control over four of the five seats on Independence Bank's board of directors through BCCI's direct appointment, recruitment, consent to appoint and rejection of proposed candidates. RD at 102-103. Therefore, the Board concurs in Judge Alprin's finding that BCCI impermissibly controlled Independence Bank through its ability to control the appointment of a majority of the directors of Independence Bank.

C. Conclusion On Section 3(a) of the BHC Act

For the foregoing reasons, the Board concludes that BCCI violated Section 3(a) of the BHC Act because BCCI controlled

Independence Bank within the meaning of Section 2(a)(2)(A) and Section 2(a)(2)(B) of the BHC Act. The Board further concludes that, through his participation in BCCI's violation, Pharaon violated Section 3(a) of the BHC Act within the meaning of Section 8(b)(5) of the BHC Act.

2. PARTICIPATION IN FILING FALSE AND MISLEADING REPORTS UNDER SECTION 5 OF THE BHC ACT

Foreign banks operating branches or agencies within the United States are required to file annual "Y-7" reports with the Board by a regulation implementing the Board's authority under the BHC Act to require reports. 12 U.S.C. § 1844(c); 12 CFR § 225.5(b); 12 CFR § 225.2(c)(2). Under this requirement, BCCI Holdings,[6]/ as an entity controlling a foreign bank that operated agencies in the United States, filed Y-7 reports with the Federal Reserve in 1986, 1987, 1988 and 1989. In each of these Y-7 reports, BCCI Holdings stated that it had no ownership interests in banks in the United States, even though BCCI in reality had a beneficial interest in Independence Bank. See RD at 77-78.

Judge Alprin found that BCCI's Y-7 reports were false and misleading because, contrary to the statements in those reports, BCCI in fact controlled Independence Bank. RD at 104. Judge Alprin found that Pharaon participated in BCCI's violation of Section 5(c) by filing an application with the California State Banking Department and a notice with the Federal Deposit

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[6]/ See note 1 supra.

Insurance Corporation (the "FDIC"), both of which falsely indicated that Pharaon was the sole owner of Independence Bank. Id. Pharaon argues that because there is no evidence that Pharaon knew what a Y-7 was, what a Y-7 contains, or even whether BCCI filed Y-7's or any other reports with the Board, he cannot have "participated" in BCCI's violation of Section 5(c). PE at 157-158.

The Board concurs in Judge Alprin's rejection of this argument. Both Pharaon and BCCI knew that the successful execution of their scheme to defraud government regulators and avoid regulatory scrutiny required that BCCI's interest in Independence Bank remain secret. Pharaon was, and intended to be, an integral part of this scheme. Pharaon was indispensable to the illusion, reflected in the Y-7 reports and in all reports to United States banking regulators, that he, and not BCCI, controlled Independence Bank. This illusion could not have been sustained had Pharaon not continued to act as BCCI's nominee, and had he himself not submitted false reports to the California State Banking Department and to the FDIC. Had Pharaon not filed deceptive reports with the California State Banking Department and the FDIC (or had Pharaon failed to file reports at all), the fraudulent scheme reflected in BCCI's Y-7 reports would have been exposed and brought to an end more quickly. Instead, Pharaon's participation enabled that deception to remain undetected for over four years.

The BHC Act states that the Board may impose a civil money penalty upon "[a]ny company which violates, and any individual who participates in a violation of, any provision of this chapter, or any regulation or order issued pursuant thereto." 12 U.S.C. § 1847(b)(1). The BHC Act defines "violation" as "includ[ing] any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation." 12 U.S.C. § 1847(b)(5). The combined application of these two statutory provisions encompasses any kind of participation by an individual in aiding or abetting a violation of the BHC Act. Even unknowing participation comes within this definition of a "violation." "This extremely broad definition clearly includes any action, intentional or inadvertent, by which [an individual] 'participates in' the bank's violation of the [statute]." Lowe v. FDIC, 958 F.2d 1526, 1535 (11th Cir. 1992) (construing parallel language in 12 U.S.C. § 1828(j)(4)). Therefore, even if Pharaon were unaware of all of the details through which the scheme was implemented, it does not negate his status as a violator of the BHC Act. Accordingly, the Board concurs in Judge Alprin's findings and conclusion that Pharaon violated Section 5(c) of the BHC Act by participating in BCCI's violation of Section 5(c).

3. CIVIL MONEY PENALTIES AND ORDER OF PROHIBITION

A. Civil Money Penalties

In the Recommended Decision, Judge Alprin recommended the imposition of civil money penalties in the amount of $37 million, the same amount sought in Board Enforcement Counsel's Amended Notice. RD at 127. In so doing, Judge Alprin evaluated in the circumstances of this enforcement proceeding the statutory factors required to be considered in assessing a civil money penalty.[7/] Judge Alprin found that none of the mitigating factors applied to reduce the amount of civil money penalties sought against Pharaon. RD at 114-121. In particular, Judge Alprin found that Pharaon had failed to offer any evidence of a substantive change in his financial or economic position since 1985, when he represented his net worth to be nearly $500 million. RD at 114. In addition, Judge Alprin found that there was no evidence of good faith and that Pharaon's violations were "especially grave." RD at 115. Furthermore, Judge Alprin found that Pharaon violated other laws in addition to his violations of Sections 3 and 5 of the BHC Act. RD at 119. Finally, Judge Alprin found that "[t]he record in this matter includes no factors that would tend to mitigate civil money penalties against Pharaon." RD at 121. Judge Alprin observed, however, that

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7/ Section 8(b) of the BHC Act, 12 U.S.C. § 1847(b), incorporates the mitigation factors set forth in Section 8(i)(2)(G) of the FDI Act, 12 U.S.C. § 1818(i)(2)(G); specifically: Respondent's financial resources; Respondent's good faith; the gravity of the violation; the history of previous violations; and "such other matters as justice may require."

"insofar as the transactions with Independence are concerned, Pharaon did not enjoy any material financial or other benefit." RD at 127.

In addition, Judge Alprin "undertook an application" of the factors set forth in the Interagency Policy Regarding the Assessment of Civil Money Penalties by the Federal Financial Institutions Regulatory Agencies, 45 Fed. Reg. 59,423 (1980) ("Interagency Policy"), in arriving at the recommended penalty amount. RD at 126-127, as corrected by "Corrections to Recommended Decision" (Apr. 15, 1996). Judge Alprin concluded that applying the Interagency Policy in this case "resulted in computation of a civil money penalty of slightly over $151 million, while the cap on such computation remains at the maximum penalty, here at most just over $111 million." Id.

Both parties excepted to the recommended amount of civil money penalties. Board Enforcement Counsel argued that Judge Alprin should have imposed the maximum penalty of $111,595,000. Based upon an order entered earlier in the case bifurcating this enforcement proceeding to limit it to the acquisition of Independence Bank, Judge Alprin refused to increase the amount of penalties sought. RD at 112-113. As a result, Judge Alprin recommended the imposition of civil money penalties in the amount of $37 million as requested in the Amended Notice, stating that "in spite of the egregiousness of Pharaon's wilful, knowing, continuing violations engaged in with absolute disregard for accuracy of reports or for any consideration of the requirements

of law, . . . [$37 million] is a very meaningful figure, in line with the gravity of the offenses, the intentional nature of the actions, [and] the attempts to conceal the nature of the transactions" that also took into account both Pharaon's financial means and the failure to establish an evidentiary link between Pharaon and the Independence Bank transactions by themselves. RD at 127, as corrected by "Corrections to Recommended Decision" (Apr. 15, 1996). The Board concurs in Judge Alprin's findings and reasoning on this issue, and accordingly concurs in the determination in the Recommended Decision not to impose civil money penalties in excess of the amount originally sought.

In addition to his Constitutional challenges to the amount of the recommended penalty,[8]/ Pharaon in his exceptions argues that Judge Alprin erroneously failed to reduce the amount in response to Pharaon's lack of financial gain from the violations (PE at 163-164), that there is no evidence that he intended to violate the BHC Act (PE at 165-167), that the penalty assessed "does not comport with the Board's own guidelines" (PE at 167), and that there is no evidence of Pharaon's current financial condition (PE at 169). As discussed below, the Board rejects each of these arguments.

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[8]/ See infra at 4., pp. 24-29.

(1) Pharaon's Lack of Financial Gain

Pharaon argues that "[he] was found to have received no pecuniary gain whatsoever." PE at 163. However, in the Recommended Decision Judge Alprin's recommendation is not based on any finding of pecuniary gain, but rather the "gravity of the offenses, the intentional nature of the actions, the attempts to conceal the nature of the transactions, the expected levels of profit and the realities of loss." RD at 127. Indeed, a finding of financial gain might well have resulted in the recommendation of a higher penalty.

The Recommended Decision notes that the longstanding nature of the relationship between Pharaon and BCCI, and the manner in which Pharaon and BCCI structured and conducted that relationship, do not permit a determination that a specific reward was or was not tied to a specific transaction. RD at 110-111, 127. The record is clear that Pharaon and BCCI never contemplated a disaggregated series of actions and rewards, but rather that the overall plan would yield profits in which Pharaon would share. The parties to the relationship made it impossible to determine the benefit Pharaon derived from service as BCCI's nominee for the acquisition of control of Independence Bank.

(2) Pharaon's Lack of Intent to Violate the BHC Act

Pharaon argues that, in order to impose civil money penalties in this case, Board Enforcement Counsel was required specifically to prove that Pharaon intended to violate the BHC Act and Regulation Y. PE at 165. It is clear from the statutory

text that a showing of intent or scienter is not necessary to impose civil money penalties. Congress is explicit when it intends to require scienter for banking offenses. See 12 U.S.C. § 1818(i)(2) (providing three "tiers" of increasing amounts of civil money penalties for, respectively, "violations," "reckless" activities, and "knowing" violations). The civil money penalty provisions for violation of the BHC Act, on the other hand, have no such requirement, demonstrating a conscious legislative choice. There is therefore no basis in the BHC Act for Pharaon's asserted scienter requirement. Furthermore, even if there were such a requirement, the record is clear that Pharaon and BCCI intentionally violated U.S. banking laws by intentionally deceiving and making affirmative misrepresentations to U.S. banking regulators. Accordingly, the Board rejects Pharaon's exceptions on the issue of scienter.

(3) Comportment with Board Guidelines

Pharaon claims in his exceptions that Judge Alprin failed to comport with Board guidelines in arriving at the recommended amount of civil money penalties. Pharaon argues that Judge Alprin failed to set forth his analysis of the case under the Interagency Policy. PE at 162. However, Judge Alprin concluded that such an analysis would have resulted in a figure far in excess of the statutory maximum, let alone the amount sought by Board Enforcement Counsel. RD at 126-127, as corrected by "Corrections to Recommended Decision" (Apr. 15, 1996). Accordingly, the Board is unable to discern any prejudice to

Pharaon by the absence of an analysis which would have produced an unusable, and unused, result.

Similarly, Pharaon argues that in bringing this enforcement action for the recovery of $37 million in civil money penalties, the Board "ignored its own procedures" (PE at 161), referring to a 1991 supervisory letter relating to the assessment of civil money penalties. PE at 167, citing SR 91-13 (FIS) (June 3, 1991). The supervisory letter was an internal guideline and does not have the status of a regulation. It was not issued pursuant to a notice of proposed rulemaking or a public comment period as required under the Administrative Procedure Act (5 U.S.C. § 551), nor was it published with the Board's formally adopted rules in the Code of Federal Regulations.[9]/ Accordingly, it is a general statement of Board policy that is not binding on the Board. See Used Equipment Sales, Inc. v. Department of Transportation, 54 F.3d 862, 867 (D.C. Cir. 1995); Amrep Corp. v. Federal Trade Commission, 768 F.2d 1171, 1178 (10th Cir. 1985). Indeed, even if it were more formally part of the Board's decisional process, it would not bind the Board. See OTS v. Rapp, 52 F.3d 1510, 1522 (10th Cir. 1995) (OTS never intended to bind itself to its matrix; "petitioners had no reasonable or legally protected expectation that the OTS would apply matrix methodology in their

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[9]/ In practice, the letter is used for guidance in recommending the initiation of enforcement actions, and has never been used by the Board in determining the amount of a final assessment.

case").[10]/ Accordingly, the Board rejects Pharaon's exceptions on this point.

(4) Pharaon's Current Financial Condition

Pharaon claims that the recommended amount of civil money penalties cannot stand because Board Enforcement Counsel failed to introduce evidence of Pharaon's current financial condition. See, e.g., PE at 169; Transcript at 3659:2-5 (Oct. 18, 1995). For his part, Pharaon claims that he could not introduce evidence of his own current financial condition because "BEC did everything possible to prevent Pharaon from testifying." PE at 169. However, such evidence could have been introduced other than through Pharaon's own testimony. The fact that Pharaon failed to offer any evidence to rebut the record evidence of his great wealth does not shift the burden to Board Enforcement Counsel to introduce mitigation evidence on Pharaon's behalf. Stanley v. Board of Governors of the Federal Reserve System, 940 F.2d 267, 274 (7th Cir. 1991) ("An awkward state of affairs would arise if the Board was required to bear full responsibility for proving the financial condition of the individual Directors who obviously oppose higher penalties and whose self-interest is served by painting as grim a picture as possible of their

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[10]/ Pharaon attempted improperly to introduce this supervisory letter through a declaration of counsel attached to his exceptions. The Board need not consider any matter so submitted, since it constitutes an attempt to introduce additional evidence into the record after the conclusion of the hearing, and does not address the matters contained in or omitted from the Recommended Decision. See 12 CFR § 263.39(c)(1).

respective financial conditions"). As Judge Alprin found in the Recommended Decision:

> In 1985, [Pharaon] declared his net worth to be almost half-a-billion [sic] dollars. Having established this as a point of consideration the Enforcement Counsel met their burden of proof, and during the hearing, Pharaon offered no evidence to indicate any substantive change in his financial or economic position since 1985.

RD at 114. The Board concurs in Judge Alprin's findings on this issue, and accordingly rejects Pharaon's exceptions.

(5) Conclusion on Civil Money Penalties

In summary, the BHC Act authorizes civil money penalties in the amount of $5,000 per day (pre-FIRREA) and $25,000 per day (post-FIRREA) for each day the violation continues. In this case, application of these amounts would result in a penalty of over $111 million. The $37 million amount of civil money penalties recommended clearly falls within the Board's statutory authorization in light of the facts of this case: that Pharaon and BCCI intended to violate U.S. banking laws by deceiving U.S. banking regulators; that the Section 3 violation continued for more than five years; and that the Section 5 violations commenced, continued and grew during that same period. Accordingly, upon review of the evidence and the arguments of the parties, the Board rejects the exceptions of both parties to Judge Alprin's recommendation for the amount of civil money penalties in this enforcement proceeding. The Board concurs with the Recommended Decision's recommendation of civil money penalties in this case in the amount of $37 million.

B. Order of Prohibition

Judge Alprin found that Pharaon, as an institution-affiliated party of BCCI, was subject to prohibition by the Board because the evidence established the statutory requirements for the imposition of an order of prohibition. RD at 128-130, citing 12 U.S.C. § 1818(e)(1). Specifically, Judge Alprin found: that Pharaon had violated the BHC Act and other laws and regulations; that Pharaon had participated in unsafe and unsound banking practices; that Pharaon's misconduct resulted in a loss to Independence Bank and potentially prejudiced the interests of its depositors; and that Pharaon's misconduct demonstrated his personal dishonesty and his willful and continuing disregard for the safety and soundness of Independence Bank. RD at 128-130. Pharaon excepts to these findings, asserting that: he did not commit an unlawful act; no loss to Independence Bank was shown; the evidence did not support the conclusion that depositors' interests could have been prejudiced; and Pharaon did not benefit from the alleged violation. PE at 174-178. The Board rejects all of these exceptions. The Board concurs in the Recommended Decision's findings as to each of the elements supporting the imposition of an order of prohibition. RD at 128-130.[11]/ Accordingly, the Board also concurs in the Recommended Decision's

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[11]/ The Board need not address Pharaon's "no benefit" argument, because the Board concurs in Judge Alprin's findings that the evidence establishes the alternative elements supporting the imposition of an order of prohibition: harm to the institution, and potential prejudice to its depositors. 12 U.S.C. § 1818(e)(1)(B)(i)-(ii).

conclusion that imposition of an order of prohibition upon Pharaon is appropriate.

4. PHARAON'S CONSTITUTIONAL CLAIMS

Pharaon presses two principal constitutional challenges to this enforcement proceeding generally and to the imposition of civil money penalties in particular. First, Pharaon argues that the amount of civil money penalties imposed in the Recommended Decision violates the Eighth Amendment's Excessive Fines Clause. PE at 136. Second, Pharaon argues that the penalty amount is so large that it violates his Fifth Amendment substantive due process rights. PE at 172.

A. Eighth Amendment Excessive Fines Claim

Pharaon's primary arguments with respect to the Eighth Amendment rely upon cases under the Double Jeopardy Clause.[12]/ On that basis, Pharaon argues that the Board is required to determine whether the civil money penalty provisions in the BHC Act can be described as "solely remedial" in purpose. See PE at 133-134. However, the Supreme Court has recently clarified that whether a civil proceeding imposes "punishment" for Double Jeopardy Clause purposes is substantively and analytically distinct from other constitutional punishment analyses. U.S. v.

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[12]/ Pharaon bases these arguments on a line of Supreme Court cases beginning with U.S. v. Halper, 490 U.S. 435 (1989), which set forth the circumstances under which a civil penalty may constitute "punishment" for purposes of the Double Jeopardy Clause's prohibition against multiple punishments for the same offense.

Ursery, 116 S. Ct. 2135, 2147 (1996) ("Ursery"). Accordingly, Pharaon's argument that the Board must determine whether the civil money penalty provisions in the BHC Act are "solely remedial" is simply inapposite for an analysis under the Excessive Fines Clause.[13]/

The only case Pharaon cites that is relevant to his Eighth Amendment Excessive Fines claim is Austin v. U.S., 509 U.S. 602 (1993) ("Austin"), where the Court held that an in rem civil forfeiture that is not solely remedial is reviewable under the Eighth Amendment's Excessive Fines Clause.[14]/ The Supreme Court has expressly refused to establish a test for determining whether a forfeiture is constitutionally excessive. Austin, 509 U.S. at

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[13]/ "It is unnecessary in a case under the Excessive Fines Clause to inquire at a preliminary stage whether the civil sanction imposed in that particular case is totally inconsistent with any remedial goal. Because the second stage of inquiry under the Excessive Fines Clause asks whether the particular sanction in question is so large as to be 'excessive,' a preliminary-stage inquiry that focused on the disproportionality of a particular sanction would be duplicative of the excessiveness analysis that would follow." Ursery, 116 S. Ct. at 2146 (citations omitted).

[14]/ Even Austin is not squarely on point. In Austin, the petitioner had pleaded guilty to one count of possessing cocaine with intent to distribute. Based on that conviction, the United States subsequently filed an in rem action seeking forfeiture of petitioner's mobile home and auto body shop under 21 U.S.C. § 881. Id. at 604-605. Thus, Austin concerned whether an in rem civil forfeiture proceeding was subject to the Excessive Fines Clause. However, Ursery holds that in rem civil forfeiture proceedings are different in form and in substance from in personam civil penalty proceedings such as the instant administrative proceeding. "We acknowledged in Austin that our categorical approach under the Excessive Fines Clause was wholly distinct from the case-by-case approach of Halper [determining when a civil penalty may constitute punishment under the Double Jeopardy Clause]." Ursery, 116 S. Ct. at 2146.

622-623. "Prudence dictates that we allow the lower courts to consider that question [of establishing a multifactor test for determining constitutional excessiveness] in the first instance." Id.

The lower courts that have accepted Austin's invitation to craft such a test have rejected proportionality tests that simply compare the size of the penalty with the size of any actual damages or government loss. Instead, these decisions look to the nature of the conduct which gave rise to liability. "One way to consider what proportion of this award is excessive is to examine the nature of the conduct, rather than simply adopting a mathematical proportion." U.S. v. Gilbert Smith Realty Co., Inc., 840 F. Supp. 71, 74-75 (E.D. Mich. 1993) (emphasis added);[15]/ U.S. v. Advance Tool Co., 902 F. Supp. 1011 (W.D. Mo. 1995), aff'd, 86 F.3d 1159 (8th Cir. 1996).[16]/

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[15]/ In Gilbert Smith Realty, the court found that the defendant had "violated the False Claims Act 58 times: by making 7 [false] statements to the local housing authority, and by endorsing 51 rent checks, each governed by a contract that stated an endorsement constitutes certification of non-receipt of additional rent beyond the amount allowed." Gilbert Smith Realty, 840 F. Supp. at 72. The District Court concluded that "defendants actually made seven certifications to the housing authority directly that were false claims in every sense of the word" and found that a penalty in the amount of $35,000 ($5,000 for each of the 7 false statements) was not excessive, but that imposing a $255,000 penalty based on the endorsement of each specific check would constitute an excessive fine. Id. at 75.

[16]/ In Advance Tool, the defendant was found liable under the False Claims Act for submitting 686 invoices to GSA which defendant knew to be false because defendant did not provide what the invoices purported to show had been delivered. Advance Tool, 902 F. Supp. at 1015-1016. The court looked to the substance of the conduct to determine the permissible amount of the penalty.

(continued...)

Pharaon's conduct constituting violations of Section 3 and Section 5 of the BHC Act was carried out and continued over a period of several years. As more fully described supra, Pharaon's violations of Section 3 and Section 5 of the BHC Act concealed from United States banking authorities the unauthorized control of a United States bank by an entity in direct contravention of the letter and purposes of the BHC Act. Pharaon's conduct giving rise to liability under the BHC Act was fully intentional, continuing and extremely serious. As set forth in the Recommended Decision, the total fine permitted under the applicable statutes in this case, calculated at the statutory maximum for each day that each violation of the BHC Act continued, exceeds $111 million. RD at 106-109. Moreover, Judge Alprin considered a list of factors specified in the Interagency Policy, and concluded that this application would result in a penalty far in excess of the $37 million penalty recommended. For these reasons, the Board does not believe that Austin and its progeny require that the Board find that $37 million constitutes an excessive fine for Eighth Amendment purposes, given "the egregiousness of Pharaon's wilful, knowing, continuing violations engaged in with absolute disregard for accuracy of reports or for any consideration of the requirements of law." RD at 127, as

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[16]/(...continued)
"In the case at bar, [defendant] supplied GSA with 73 different types of tools [which were not as represented by the invoices]. The Court finds that a civil penalty of $5,000.00 per tool in the amount of $365,000 does not violate the Excessive Fines Clause." Id. at 1018-1019.

corrected by "Corrections to Recommended Decision" (Apr. 15, 1996).

B. Substantive Due Process Claim

Relying upon BMW of North America v. Gore, 116 S. Ct. 1589 (1996) ("BMW"), Pharaon claims that "the penalty here is 'grossly out of proportion to the severity of the offense' and has entered the 'zone of arbitrariness that violates the due process clause[.]'" PE at 172 (citations omitted). In BMW, the Court found that a punitive damages award violated the Fourteenth Amendment Due Process Clause. BMW, 116 S. Ct. at 1592-1595, 1604. The statute giving rise to liability in BMW set forth no monetary standards for the imposition of punitive damages. Id. at 1603-1604.[17]/ As more fully discussed supra, the civil money penalty provisions at issue in this case, in contrast, embody a considered congressional calibration of penalty to violation. Therefore, the Board finds no basis for Pharaon's reliance on BMW in this case and, accordingly, no violation of substantive due process.[18]/

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[17]/ In the absence of such standards, the Supreme Court in BMW looked to three factors in determining the reasonableness of a punitive damages award: "the degree of reprehensibility of the defendant's conduct" (id. at 1599 (footnote omitted)), the "ratio [of a punitive damages award] to the actual harm inflicted on the plaintiff" (id. at 1601), and "[c]omparing the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct . . . ." (id. at 1603).

[18]/ Finally, Pharaon also argues that this enforcement proceeding is "the functional equivalent of a criminal prosecution which the Board is unauthorized to conduct in any capacity . . . ." PE at 126. An identical argument was rejected by the District Court in Gilbert Smith Realty:

(continued...)

For all the foregoing reasons, the Board rejects all of Pharaon's constitutional attacks upon this enforcement proceeding and upon the amount of civil money penalties recommended therein.

5. PHARAON'S CHARGE OF BIAS AGAINST JUDGE ALPRIN

Pharaon argues that this enforcement proceeding violated his Fifth Amendment due process rights because it "was fatally infected with Judge Alprin's bias against Pharaon." PE at 137. Pharaon bases this argument primarily upon a quotation from a section of Judge Alprin's disentitlement ruling on summary adjudication, which was subsequently reversed by the Board. To a lesser extent, Pharaon bases this argument on "the fact that Judge Alprin has ruled in favor of the agencies in all . . . the cases he has heard," and on Judge Alprin's rulings against Pharaon during the conduct of this enforcement proceeding. PE at 137-140.

The Supreme Court has stated that where a judge is alleged to be biased, the alleged bias and prejudice must stem from a source "outside the judicial proceeding at hand" to support disqualification on that ground. Liteky v. U.S., 114 S. Ct. 1147, 1152 (1994), citing U.S. v. Grinnell Corp., 384 U.S. 563,

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[18]/(...continued)

> The due process claim is procedural. Defendants argue that because the fine is essentially punishment, it requires the standards of a criminal jury trial to impose the fine. There is no support for this argument, and it loses.

Id. at 73.

583 (1966). The basis upon which Pharaon most strongly relies for his bias charge, however, is a quotation from a ruling in this case, i.e., part of the very judicial proceeding at hand.[19]/ This and Judge Alprin's other rulings against Pharaon during the course of this administrative proceeding cannot constitute the basis for a claim of judicial bias. Hansen v. C.I.R., 820 F.2d 1464, 1467 (9th Cir. 1987) (manner in which judge conducted trial, and judge's trial rulings adverse to defendant, did not violate defendant's due process rights to fair trial).

Similarly, Pharaon has failed to meet the heavy burden necessary to establish that Judge Alprin's prior rulings in favor of banking agencies constitute bias. McBeth v. Nissan Motor Corp. U.S.A., 921 F. Supp. 1473, 1478 (D.S.C. 1996), citing Liteky v. U.S., 114 S. Ct. 1147, 1158 (1994) (emphasis added) ("for any alleged bias arising out of this or prior proceedings, recusal is required only if a 'fair trial [for this particular

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[19]/ The statement in question comes from Judge Alprin's recommendation on summary disposition: "Unless the Board considers as a matter of policy that it requires further graphic public display of oral testimony, and the presentation of mountains of supporting documentary exhibits, with the attendant costs, solely as to the involvement of Pharaon, there is no reason for a full oral hearing herein." Administrative Law Judge's Order Granting Summary Disposition Against Respondent, and Issuing Recommended Decision Prohibiting Respondent from Future Participation in Federally Insured Depository Institutions and Imposing a Civil Money Penalty in the Sum of $37,000,000 (July 20, 1993) at 10. This statement on its face does not evince bias, but merely articulates one legal consequence of Judge Alprin's recommendation that Pharaon be disentitled, i.e., that the Board need not hold a hearing if it adopted Judge Alprin's disentitlement recommendation. However, the Board "decline[d] to invoke the doctrine of disentitlement" and remanded this case to Judge Alprin for trial. Decision on Recommendation of Summary Disposition (July 12, 1994) at 2.

party] is impossible'"). Accordingly, the Board finds that Pharaon's due process rights were not violated because of bias on the part of Judge Alprin.[20]/

6. DISCOVERY ISSUES

Pharaon claims that Board Enforcement Counsel's alleged failure to produce documents, including "Brady" documents and other documents relating to Pharaon, constitutes grounds for refusing to accept the Recommended Decision. PE at 140-142. However, a review of the transcript of the hearing in this matter shows that all Pharaon's discovery arguments were specifically considered and addressed during the hearing, except for Pharaon's argument that Board Enforcement Counsel's failure to disclose an alleged immunity agreement between Naqvi and the New York County District Attorney deprived Pharaon of a fair trial. PE at

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[20]/ In any event, Pharaon's charge of bias is not timely under either the Administrative Procedure Act or the Board's Uniform Rules of Practice and Procedure. 5 U.S.C. § 556(b); 12 CFR § 263.39(b)(2). The Administrative Procedure Act "requires that such a claim [of bias on the part of the ALJ] be raised as soon as practicable after a party has reasonable cause to believe that grounds for disqualification exist. It will not do for a claimant to suppress his misgivings while waiting anxiously to see whether the decision goes in his favor. A contrary rule would only countenance and encourage unacceptable inefficiency in the administrative process. The APA-mandated procedures [set forth in § 556(b)] afford every party ample opportunity to enforce and preserve its due process rights." Gibson v. F.T.C., 682 F.2d 554, 565 (5th Cir. 1982), quoting Marcus v. Director, Office of Workers' Compensation Programs, 548 F.2d 1044, 1051 (D.C. Cir. 1976). For example, assuming Judge Alprin's ruling on disentitlement constituted a proper ground for a charge of judicial bias, the time to raise such a claim was no later than the time this proceeding was remanded to Judge Alprin by the Board, not now.

140-142. The Board has considered this argument, and rejects it.[21]/ Furthermore, in reversing Judge Alprin's recommendation of disentitlement on summary disposition and remanding this proceeding, the Board specifically authorized Judge Alprin "to use his plenary powers over the conduct of the proceedings to ensure that Pharaon's fugitivity does not disrupt this proceeding, and may invoke sanctions such as restrictions on discovery . . . ." Accordingly, the Board denies Pharaon's discovery exceptions.

7. MISCELLANEOUS

A. Judge Alprin's Credibility Determinations

Without actually basing exceptions on this issue, Pharaon argues that Judge Alprin incorrectly found Board Enforcement Counsel's main witnesses to be credible. PE at 115-122, 126. Judge Alprin specifically addressed the issue of witness credibility in the Recommended Decision, declining to "concur with the outmoded legal concept that falso in unis, falso in omnibus," and expressly finding that the Board Enforcement Counsel's two main witnesses were not inherently unreliable solely because they are convicted felons. RD at 82-85. Furthermore, Judge Alprin noted that the testimony of these

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[21]/ Assuming for purposes of argument that the evidence in question constitutes Brady material required to be disclosed, the Board finds that Pharaon has failed to demonstrate that its non-disclosure was "material" and "deprived Pharaon's counsel of material information necessary to conduct cross-examinations of the Board's main witnesses" such that it "deprive[d] [Pharaon] of a fair trial." PE at 142.

witnesses was supported almost completely throughout by documentation. RD at 83. In addition, Judge Alprin noted that:

> The burden of initial proof by preponderance of the evidence was on [BEC] . . . . If there was any contrary testimony, in addition to that of Respondent, it was the responsibility of Respondent to produce it, and he failed to do so. If there were any documentation in refutation, much of which would perforce be in Respondent's possession rather than or in addition to that of [BEC], it was clear that Respondent would have been able to present it, with adequate explanation where required.

Id. Finally, the Board has previously held that credibility determinations are uniquely within the province of the administrative law judge as the trier of fact. In the Matter of Interamericas Investments, Ltd. and Peter Ulrich, 82 Fed. Res. Bull. 609, 615 (Apr. 9, 1996), and cases cited therein. Accordingly, the Board sees no basis for disturbing the administrative law judge's determinations as to credibility.

B. Request for Oral Argument

Finally, Pharaon in his Exceptions requested oral argument. Oral argument is a discretionary procedure. See 12 C.F.R. § 263.29(c). The Board finds that the arguments have been sufficiently presented in the pleadings before the Board. Therefore, the Board hereby denies the request for oral argument.

CONCLUSION

As more fully set forth supra, the Board hereby adopts the Recommended Decision, and accordingly further determines that:

- The exceptions of Pharaon to the Recommended Decision are denied;
- The exceptions of BEC to the Recommended Decision are denied; and
- The request of Pharaon for oral argument is denied.

So ordered, this 31st day of January, 1997.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Jennifer J. Johnson
Deputy Secretary of the Board

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

In the matter of	)	Docket Nos.
	)	91-037-E-I1
GHAITH R. PHARAON,	)	91-037-CMP-I1
	)	
Institution-Affiliated Party of BCCI Holdings (Luxembourg) S.A., Luxembourg, and the Bank of Credit and Commerce International S.A., (Luxembourg)	)	

FINAL ORDER OF PROHIBITION AND ASSESSMENT OF CIVIL MONEY PENALTY

WHEREAS, the Board of Governors of the Federal Reserve System ("the Board") is of the opinion, for the reasons set forth in the accompanying Final Decision, that pursuant to Section 8(b) of the Bank Holding Company Act of 1956, as amended (the "BHC Act"), 12 U.S.C. § 1847(b), and pursuant to Section 8(e) of the Federal Deposit Insurance Act, as amended (the "FDI Act"), 12 U.S.C. § 1818(e), a final Order of Prohibition and Assessment of Civil Money Penalty in the amount of $37 million should issue against Respondent **GHAITH R. PHARAON** for violating the BHC Act and the Board's Regulation Y, 12 C.F.R. Part 225;

Now, therefore, it is hereby

ORDERED, that a civil money penalty in the sum of $37,000,000 be, and it is hereby assessed against **GHAITH R. PHARAON**, remittance of which must be made forthwith, in immediately available funds payable to the order of the Secretary

of the Board of Governors, who shall make remittance of the same to the Treasury of the United States; and it is further

ORDERED, that in the absence of prior written approval by the Board, and by any other Federal financial institution regulatory agency where necessary pursuant to section 8(e)(7)(B) of the FDI Act (12 U.S.C. § 1818(e)(7)(B)), **GHAITH R. PHARAON** is hereby prohibited:

(1) from participating in the conduct of the affairs of any bank holding company, any insured depository institution or any other institution specified in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));

(2) from soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in subsection 8(e)(7)(A) of the FDI Act (12 U.S.C. § 1818(e)(7)(A));

(3) from violating any voting agreement previously approved by the appropriate Federal banking agency; or

(4) from voting for a director, or from serving or acting as an institution-affiliated party as defined in section 3(u) of the FDI Act, (12 U.S.C. § 1813(u)), such as an officer, director, or employee; and it is further

ORDERED, that this Order shall become effective upon the expiration of thirty days after service hereof is made, and that each provision hereof shall remain fully effective and

enforceable until expressly stayed, modified, terminated or suspended in writing by the Board.

So ordered, this 31st day of January, 1997.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

Jennifer J. Johnson
Deputy Secretary of the Board

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 1997, I caused a true and correct copy of the foregoing documents, entitled FINAL DECISION and FINAL ORDER OF PROHIBITION AND ASSESSMENT OF CIVIL MONEY PENALTY, to be served on the following persons by the indicated methods:

Richard A. Small, Esquire — by facsimile (202)736-5641 and by hand delivery
Mail Stop 173
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THE FEDERAL RESERVE SYSTEM
Washington, D.C. 20551

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The Honorable Walter J. Alprin — by facsimile (202)906-5798 and by first class mail
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Heatherun W. Allison