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UNITED STATES OF AMERICA
Before The
OFFICE OF THRIFT SUPERVISION

In the Matter of)

MOTILAL RAICHAND,)

Former Chairman of the Board.)

BANK USA, S.A.,)

Silvis, Illinois)

Re: Enforcement Review
Committee Resolution
No. ERC 90-55

Dated: August 15, 1990

NOTICE OF INTENTION TO PROHIBIT AND NOTICE OF HEARING
NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTY

In accordance with the provisions of Section 8(e) of the Federal Deposit Insurance Act ("FDIA"), as amended by the Financial Institutions Reform, Recovery and Enforcement Act of 1989 ("FIRREA"), Pub. L. No. 101-73, 103 Stat. 183, the Office of Thrift Supervision ("OTS"), being of the opinion that Motilal Raichand ("Respondent") has engaged in an unsafe or unsound practice in connection with the affairs of Bank USA, S.A., Silvis, Illinois ("Bank USA"), and has breached his fiduciary duty to Bank USA, and by reason of such has caused Bank USA to suffer financial loss and Respondent has received financial gain thereby, and that such practice and breach involved personal dishonesty on the part of Respondent, and demonstrated willful disregard by Respondent for the safety or soundness of Bank USA, hereby issues this Notice of Intention to Prohibit and Notice of Hearing against Respondent.

In accordance with the provisions of Section 8(b)(2) of the FDIA, as amended by FIRREA, the OTS, being of the opinion that Respondent violated a Temporary Cease and Desist Order served on May 25, 1990, recklessly engaged in an unsafe or unsound practice in conducting the affairs of Bank USA, and breached his fiduciary duty to Bank USA causing more than a minimal loss to Bank USA, and resulting in pecuniary gain to the Respondent, hereby issues this Notice of Assessment of Civil Money Penalty ("Notice of Assessment") against Respondent.

I. JURISDICTION

1. Bank USA is a federally-insured, state-chartered savings association which maintains its principal place of business in Silvis, Illinois. Bank USA is a wholly-owned subsidiary of Banc USA Corporation, Oak Brook, Illinois ("Holding Company").

2. On May 25, 1990, the OTS appointed the Resolution Trust Corporation ("RTC") as the conservator for Bank USA.

3. Bank USA is a "savings association" as defined by Section 2(4) of the Home Owners Loan Act ("HOLA"), as amended by Section 301 of FIRREA (to be codified at 12 U.S.C. § 1462(4)), and Section 3(b) of the FDIA, as amended by Section 204 of the FIRREA (to be codified at 12 U.S.C. § 1813(b)), and is an "insured depository institution" as defined by Section 3(c) of the FDIA, as amended by Section 204 of the FIRREA (to be codified at 12 U.S.C. § 1813(c)).

4. Respondent is the Chairman of the Board, and the Majority Shareholder of the Holding Company, and was the Chairman of the

Board of Bank USA. He was dismissed as Chairman of Bank USA by the RTC on May 25, 1990.

5. Respondent is an "institution-affiliated party" as that term is defined by Section 3(u) of the FDIA, as amended by Section 204 of the FIRREA (to be codified at 12 U.S.C. § 1813(u)).

6. The OTS is the "appropriate Federal banking agency" as defined in Section 3(q) of the FDIA, as amended by Section 204 of the FIRREA (to be codified at 12 U.S.C. § 1813(q)), with the authority to bring enforcement actions against institution-affiliated parties.

7. In particular, the OTS has the authority to issue this Notice of Intention to Prohibit and Notice of Hearing and Notice of Assessment pursuant to Sections 8(e) and 8(i)(2)(E) of the FDIA, as amended by Section 907 of the FIRREA (to be codified at 12 U.S.C. §§ 1818(e) and 1818(i)(2)(E)).

II. FACTS

8. As of December 31, 1989, Bank USA failed to meet all minimum capital requirements as set forth in Section 5(t) of the HOLA, as amended by Section 301 of FIRREA (to be codified at 12 U.S.C. § 1464(t)) and 12 C.F.R. § 567.2.

9. On or about April 5, 1990, Bank USA's funds totaling \$2.4 million were placed into its checking account at LaSalle National Bank, Chicago, Illinois ("LaSalle National Bank").

10. On May 23, 1990, OTS directed Respondent, as Chairman of the Board of Bank USA, not to transfer any funds out of Bank USA's

account at LaSalle National Bank. Respondent orally agreed that he would not transfer those funds.

11. On May 24, 1990, Respondent transferred \$790,000 from Bank USA's account at LaSalle National Bank to the Holding Company's account at Northern Trust Bank, Chicago, Illinois.

12. On May 25, 1990, Respondent told OTS Senior Manager David J. Kalina that he transferred the funds from Bank USA to the Holding Company to refund the directors of the Holding Company for their initial investment.

13. On May 25, 1990, OTS issued a Temporary Order to Cease and Desist ("Order") against Bank USA, the Holding Company and Respondent, as Chairman of the Boards of both Bank USA and the Holding Company, based on the events described in paragraphs 8 through 12 above.

14. The OTS's Order specifically stated, inter alia, that, "[the Holding Company] shall immediately transfer \$790,000 to Bank USA," and that "Raichand shall immediately execute all necessary documents required to transfer \$790,000 from [the Holding Company] to Bank USA."

15. From May 25, 1990, to June 4, 1990, Respondent refused to comply with the OTS's Order. On June 4, 1990, following repeated demands by OTS counsel, Respondent returned the \$790,000 to Bank USA. On June 12, 1990, upon additional demands by the OTS, he returned the interest earned by the transferred funds (\$1,214.99).

16. Respondent's refusal to take the steps necessary to transfer the funds back to Bank USA, violated the terms of the

OTS's May 25, 1990 Order.

17. Respondent's violation of the terms of the OTS's May 25, 1990 Order caused more than a minimal loss to Bank USA.

18. The Holding Company was enriched by the transfer of the \$790,000 from Bank USA. Because Respondent owns a majority of the stock of the Holding Company, the transfer of the funds to the Holding Company resulted in his pecuniary gain.

III. GROUND'S FOR PROHIBITION AND ASSESSMENT OF CIVIL MONEY PENALTY

19. Respondent's transfer of the \$790,000 from Bank USA to the Holding Company was unsafe or unsound in light of the fact that Bank USA had insufficient capital, and had failed to meet its minimum capital requirements. See 12 U.S.C. §§ 1818(e)(1)(A)(ii) and 1818(i)(2)(B)(i)(II).

20. Respondent's transfer of the \$790,000 from Bank USA to the Holding Company, after he agreed not to transfer any funds, demonstrated personal dishonesty on his part. See 12 U.S.C. § 1818(e)(1)(C)(i).

21. Respondent's transfer of the \$790,000 from Bank USA to the Holding Company, in violation of the OTS's May 23, 1990 directive, demonstrated a willful and reckless disregard by the Respondent for the safety or soundness of Bank USA. See 12 U.S.C. §§ 1818(e)(1)(C)(ii) and 1818(i)(2)(B)(i)(II).

22. Respondent breached his fiduciary duty to Bank USA by transferring the \$790,000 from Bank USA to the Holding Company. See 12 U.S.C. §§ 1818(e)(1)(A)(iii) and 1818(i)(2)(B)(i)(III).

23. Respondent's refusal to take steps necessary to transfer the funds back to Bank USA violated the terms of the OTS's May 25, 1990 Order. See 12 U.S.C. § 1818(i)(2)(B)(i)(I).

24. Respondent's violation of the terms of the OTS's May 25, 1990 Order constitutes a breach of his fiduciary duty to Bank USA. See 12 U.S.C. §§ 1818(e)(1)(A)(iii) and 1818(i)(2)(B)(i)(III).

25. Respondent's violation of the May 25, 1990 Order was unsafe or unsound in light of the fact that Bank USA had insufficient capital, and had failed to meet its minimum capital requirements. See 12 U.S.C. §§ 1818(e)(1)(A)(ii) and 1818(i)(2)(B)(i)(II).

26. Respondent's violation of the May 25, 1990 Order demonstrated a willful and reckless disregard by the Respondent for the safety or soundness of Bank USA. See 12 U.S.C. §§ 1818(e)(1)(C)(i) and 1818(i)(2)(B)(i)(II).

27. Respondent's violation of the terms of the OTS's May 25, 1990 Order caused more than a minimal loss to Bank USA. See 12 U.S.C. §§ 1818(e)(1)(B)(i) and 1818(i)(2)(B)(ii)(II).

28. The Holding Company was enriched by the transfer of the \$790,000 from Bank USA. Because Respondent owns a majority of the stock of the Holding Company, the transfer of the funds resulted in pecuniary gain to him. See 12 U.S.C. §§ 1818(e)(1)(B)(iii) and 1818(i)(2)(B)(ii)(III).

IV. NOTICE OF HEARING

Notice is hereby given that an administrative hearing will be held, pursuant to the authority of Section 8(e)(1) of the FDIA, as amended by FIRREA, and in accordance with the Rules of Practice and Procedure of the OTS, 12 C.F.R. §§ 509.1 - 509.32 ("Rules"), to determine whether Respondent should be prohibited from further participation in any manner in the affairs of Bank USA or its successor or any other federally insured depository institution. The hearing will commence 60 days following the date of this Notice, in Chicago, Illinois, before a Presiding Officer to be designated by the OTS, or on such other date or location as the Presiding Officer may designate.

Respondent Raichand is hereby directed to file an Answer to the allegations contained herein within twenty (20) days from the date of service hereof, as required by Section 509.14 of the Rules, 12 C.F.R. § 509.14. The requirements of the Answer, as well as the consequences of failure to file an Answer, are set forth in Section 509.5(a)-(d) of the Rules. Respondent Raichand is directed to present, at the same time as his Answer is filed, his written views on whether the hearing should be public or private.

V. NOTICE OF ASSESSMENT

After taking into account the gravity of the violations of the Order, the financial resources of Respondent Raichand, and the

good or bad faith involved in his actions, the OTS has determined that the appropriate civil money penalty for Respondent is \$150,000. The civil money penalty assessed pursuant to this Notice of Assessment is payable within sixty (60) days after the issuance of this Notice of Assessment.

Respondent shall be afforded an opportunity for a hearing before the OTS to challenge the assessment of the penalty if he requests such hearing within twenty (20) days of service of this Notice of Assessment. If the Respondent makes a timely request for a hearing to challenge the assessment of the penalty, Respondent shall not be required to pay such penalty until the OTS has issued a Final Order of Assessment following the hearing.

Any such hearing shall be conducted pursuant to Part 509 of the Rules, 12 C.F.R. 509 (1990) and shall become a part of the hearing identified in Section IV herein. If Respondent Raichani does not request a hearing within the prescribed twenty (20) day period, this Notice of Assessment shall constitute a final and unappealable order of the OTS.

The above civil money penalty shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office of Thrift Supervision at 1700 G Street, N.W., Washington, D.C. 20552, to the attention of the undersigned.

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Rosemary Stewart
Secretary, Enforcement Review
Committee, and Director of
Enforcement