

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

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ANDRIS INDRIKSONS, on behalf of	)
himself and all others similarly	)
situated,	)
	)
Plaintiff,	)
	)
v.	)
	)
HAMILTON BANCORP INC., EDUARDO A.	)
MASFERRER, JOHN M.R. JACOBS	)
and MARIA FERRER-DIAZ	)
	)
Defendants.	)

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Plaintiff makes the following allegations, except as to allegations specifically pertaining to plaintiff and his counsel, based upon the investigation undertaken by plaintiff's counsel, which investigation included analysis of publicly-available news articles and reports, public filings, press releases and other matters of public record.

**NATURE OF THE ACTION**

1. This is a class action on behalf of all purchasers of the common stock of Hamilton Bancorp Inc., ("Hamilton " or the "Company") between April 21, 1998 and December 22, 2000, inclusive, (the "Class Period"), seeking to pursue remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. During the Class Period Hamilton, a Florida-based full service commercial bank, reported quarter after quarter of "record" financial results and increased loan activity which caused the price of Hamilton securities to trade for \$29 per share in January, 1999. On November

2, 2000, Hamilton announced the Company was forced by its regulators to take an increase in its provision for loan losses of \$11.5 million, a write-down of an investment security of \$4.3 million and a one-time provisioning in legal reserves of \$3.3 million. In response, the price of Hamilton stock dropped more than 35%. However, the truth regarding Hamilton's true financial condition was yet to be revealed. On December 22, 2000, defendants shocked investors - - who invested in Hamilton stock relying on the integrity of the Company's publicly issued financial statements - - by announcing a restatement of its previously reported financial results for fiscal years 1998, 1999 and the first quarter of fiscal year 2000. On December 26, 2000, Hamilton stock traded at slightly over \$6.5 per share - - a far cry from its Class Period high.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331, 1337 and 1367 and Section 27 of the Exchange Act (15 U.S.C. § 78aa).

4. This action arises under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

5. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b) and (c). Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District and Hamilton maintains its principal executive offices in this District.

6. In connection with the acts and omissions alleged in this complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the mails, interstate telephone communications, and the facilities of the national securities markets.

**PARTIES**

7. Plaintiff purchased Hamilton common stock during the Class Period, as set forth in the accompanying certification which is incorporated herein by reference, and was damaged thereby.

8. Defendant Hamilton Bancorp Inc., through its wholly owned subsidiary, Hamilton Bank N.A., is a full service commercial bank specializing in worldwide trade finance. Hamilton has nine branches in Florida and in Puerto Rico. Hamilton's executive offices are located at 3750 N.W. 87<sup>th</sup> Avenue, Miami, Florida 33178.

9. The individual defendants, at all times relevant to this action, served in the capacities listed below and received substantial compensation:

<b><u>Name</u></b>	<b><u>Position</u></b>
EDUARDO A. MASFERRER	CHAIRMAN, PRESIDENT AND CHIEF EXECUTIVE OFFICER
MARIA FERRER-DIAZ	SENIOR VICE PRESIDENT AND CHIEF FINANCIAL OFFICER (until December 1, 1998)
JOHN M.R. JACOBS	SENIOR VICE-PRESIDENT AND CHIEF FINANCIAL OFFICER (effective December 1, 1998)

10. The Individual Defendants, as senior officers and/or directors of Hamilton were controlling persons of the Company. Each exercised their power and influence to cause Hamilton to engage in the fraudulent practices complained of herein.

11. Each of the defendants is liable as a participant in a fraudulent scheme and course of business that operated as a fraud or deceit on purchasers of Hamilton common stock, by disseminating materially false and misleading statements and/or concealing material adverse facts. The scheme: (i) deceived the investing public regarding Hamilton 's business, its finances and the

intrinsic value of Hamilton common stock; and (ii) caused plaintiff and other members of the Class to purchase Hamilton common stock at artificially inflated prices.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

12. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons who purchased or otherwise acquired Hamilton common stock between April 21, 1998 and December 22, 2000, inclusive (the "Class Period"), and who were damaged thereby. Excluded from the Class are defendants, members of the immediate family of each of the Individual Defendants, any subsidiary or affiliate of Hamilton and the directors, officers and employees of Hamilton or its subsidiaries or affiliates, or any entity in which any excluded person has a controlling interest, and the legal representatives, heirs, successors and assigns of any excluded person.

13. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are thousands of members of the Class located throughout the United States. As of March, 2000, there were reportedly more than 10 million shares of Hamilton common stock outstanding. Throughout the Class Period, Hamilton common stock was actively traded on the NASDAQ National Market System under the symbol "HABK". Record owners and other members of the Class may be identified from records maintained by Hamilton and/or its transfer agents and may be notified of the pendency of this action by mail, using a form of notice similar to that customarily used in securities class actions.

14. Plaintiff's claims are typical of the claims of the other members of the Class as all members of the Class were similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

15. Plaintiff will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

16. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

1) whether the federal securities laws were violated by defendants' acts and omissions as alleged herein;

2) whether defendants participated in and pursued the common course of conduct complained of herein;

3) whether documents, press releases, and other statements disseminated to the investing public and the Company's shareholders during the Class Period misrepresented material facts about the business, finances, financial condition and prospects of Hamilton ;

4) whether statements made by defendants to the investing public during the Class Period misrepresented and/or omitted to disclose material facts about the business, finances, value, performance and prospects of Hamilton ;

5) whether the market price of Hamilton common stock during the Class Period was artificially inflated due to the material misrepresentations and failures to correct the material misrepresentations complained of herein; and

6) to what extent the members of the Class have sustained damages and the proper measure of damages.

17. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this suit as a class action.

**A. *Background***

18. Hamilton went public through an initial public offering in 1997. On January 15, 1998, defendants issued a press release announcing “record” fourth quarter results an a 97% increase in net income. In an environment where many other banks experienced significant pricing pressure, Hamilton maintained a net interest margin at the 4.20% level. Commenting on the seemingly stellar results, defendant Masferrer stated, “[w]e are very pleased with our ability to maintain strict cost controls, enabling us to achieve record growth with only minor additions to our infrastructure.” Accordingly, at the start of the Class Period, it appeared that Hamilton had successfully executed an initial public offering and had grown into what Masferrer characterized as “one of the leading trade finance banks.”

**B. *Substantive Allegations***

19. On April 21, 1998, Hamilton issued a press release over the *PR News- Wire* reporting “record” first quarter results and a 74% increase in net income due to “strong growth in loans and fee income.” For the first quarter ended March 31, 1998, net income increased from \$2.8 million in the first quarter of 1997 to \$4.9. Net interest income rose 65% to \$12.1 million from \$7.3 million for the same period in 1997, while fee income increased to \$4.0 million from

\$3.2 million the previous year. The net income per common share basic was \$0.50 as compared to \$0.49 in 1997. Defendants characterized this change as “very positive” in view of the 72% increase in weighted average shares outstanding as a result of the Company’s initial public offering.

20. Commenting on the Company’s “record” financial results, defendant Masferrer stated:

*Our strong first quarter performance is a reflection of continued demand for trade finance services as well as the reputation and ability of Hamilton to meet that demand. The modest decrease in the net interest margin was largely predicted and reflects both the increased competition in global trade and the favorable lending rates that are offered in a global economy. . . . Average loans grew by 82% to \$1.023 billion at the end of the first quarter of 1998 from \$561 million for the quarter end one year earlier. Average assets grew to \$1.336 billion from \$776 million the previous year. Return on average assets for the quarter was steady at 1.47% as compared with 1.46% the previous year. I am especially proud to report that the growth in the business was achieved while improving on an already favorable efficiency ratio. We have observed strict cost controls and realized economies of scale coincident with the growth.*

21. On May 14, 1998, defendants filed a quarterly report on Form 10-Q which repeated the financial results reported in the April 21, 1998 press release detailed above. The report was signed by both defendants.

22. On July 22, 1998, defendants issued a press release announcing financial results for the second quarter of fiscal year 1998. The press release announced “record” results for the quarter ended June 30, 1998 as a result of “strong asset growth.” Net income for the second quarter increased 48.5% to \$5.6 million, or \$0.56 per share in relation to the same period in 1997. Year-to-date earnings were \$10.5 million, or \$1.05 per common share compared to \$6.6 million, or \$0.84 per share for the first half of 1997. Net interest income for the quarter rose 36.6% to \$13.1 million compared to the same quarter ended June 30, 1997, as a result of strong loan growth.

Net interest income for the six months increased by 49.06% to \$25.2 million from \$16.9 million in 1997. The net interest margin for the second quarter was 3.89% compared to 4.49% in the second quarter of 1997 and 4.07% in the first quarter of 1998. The net interest margin was 3.97% for the first six months of 1998 from 4.37% in the same period in 1997. Total average loans increased to \$1.2 billion, a 76.1% increase over the same period last year. The growth in loans was reported as “spurred by the bank’s activities in trade finance in the Latin American and Carribean region, as well as in a newly opened Puerto Rico branch.”

23. In the July 22, 1998 press release, defendants reported a return on average assets for the second quarter of 1.52% compared to 1.59% in 1997. The return on average equity rose to 20.46% from 17.56% for the same periods. Commenting on the “sold” financial results, defendant Masferrer stated:

***Hamilton’s profitability is consistent with the bank’s mission statement, which includes enhancing shareholder value, and this is reflected in our performance ratios. The bank’s profitability was reached through asset and fee income growth while keeping expenses under control.***

24. The Company’s financial results were repeated in a quarterly report on Form 10-Q filed on August 14, 1998, signed by the individual defendants. The quarterly report included a section stating:

Determining the appropriate level of the allowance for credit losses requires management’s judgment . . . and estimates made in the context of changing political and economic conditions in many countries of the Region. ***Accordingly, there can be no assurance that the Company’s current allowance for credit losses will prove to be adequate in light of future events and developments.***

25. The statements detailed above in ¶¶ 19-24 were materially false and misleading. As now revealed, at all times during the Class Period, defendants issued false and misleading

financial statements and press releases concerning Hamilton 's net income and earnings per share. The financial statements of the Company made during the Class Period, all of which implicitly and/or expressly were prepared in conformity with generally accepted accounting principles (GAAP), were materially false and misleading because the Company materially overstated its net income. In addition, the statement detailed in ¶ 24 above which purported to warn investors of *future* events and developments was itself false because, as revealed on December 22, 2000, the Company's provisions for credit losses were already inadequate.

26. On October 21, 1998, Hamilton issued a press release reporting "strong" third quarter results and "record" net income of \$5.7 million. The "record" results were purportedly the result of "strong asset and fee income growth." Net income for the third quarter was \$5.7 million, an increase of 22.8% over the third quarter of 1997. Net income per basic common share was \$0.57, up 21.3% over the same period in 1997. Year-to-date earnings were \$16.1 million, or \$1.62 per common share compared to \$11.2 million, or \$1.32 per share for the first nine months of 1997. Total average loans increased to \$1.2 billion, a 55.3% increase over the same period in 1997. The return on average assets for the third quarter was 1.45% in 1998 compared to 1.72% in 1997. Commenting on the financial results, defendant Masferrer stated:

***Hamilton's efficiency ratio continued to outpace the industry improving to 35.47% from 37.01% for the quarters ended September 30, 1998 and 1997 respectively. We are proud of our good operating efficiency which has positively affected our third quarter results.***

27. These results were repeated in the quarterly report on Form 10-Q, for the quarterly period ended September 30, 1998, filed with the SEC on or about November 16, 1998, and signed by defendant Diaz.

28. On December 8, 1998, defendants issued a press release announcing the filing of a registration statement for the proposed initial public offering of 1,200,000 beneficial unsecured securities by Hamilton Capital Trust I, a Delaware statutory business trust. Hamilton was the sponsor of the Trust and will own all of its common securities. The liquidation value of the securities was announced at \$25 per share. The Company revealed that the proceeds of the offering would be used to increase the capital of Hamilton Bank. On December 31, 1998, the completion of 1,100,000 beneficial unsecured securities (“Series A”) was consummated, at a liquidation price of \$10 per security. Net proceeds from the offering amounted to approximately \$11.3 million.

29. On January 20, 1999, defendants issued a press release announcing “strong” fourth quarter 1998 and year-end results. The Company reported an increase of 37.1% in net income to \$21.8 million, or \$2.18 per common share, compared to \$15.9 million, or \$1.81 per share for the year ended December 31, 1997. Earnings for the fourth quarter increased 20.1% to \$5.7 million, or \$0.56 per common share. Defendant Masferrer stated:

I am excited that we celebrated our 10<sup>th</sup> anniversary with our best year ever. ***1998 was another year of record earnings and strong financial performance.***

30. In response to the news announcing “record” earnings and seemingly stellar financial performance, Hamilton stock traded at \$29 per share. Had the Company’s financial condition been accurately reported by defendants, the stock would not have traded at such artificially inflated levels.

31. On March 31, 1999, defendants filed an annual report on Form 10-K for the year ended December 31, 1998. The report was signed by, among others, the individual defendants. In the 10-K, defendants noted that:

Quantitative measures established by regulation to ensure capital adequacy require the Bank to maintain minimum amounts and ratios . . . of total and Tier 1 capital (as defined in the regulations) to risk-weighted assets . . . and of Tier 1 capital to average assets . . . ***Management believes, as of December 31, 1998, that the Bank meets all capital adequacy requirements to which it is subject.***

32. The statement detailed in ¶ 31, above was materially false and misleading because of the reasons set forth in ¶ 25, and because, as revealed on October 3, 2000, the Office of the Comptroller of the Currency (the "OCC") issued a cease and desist order for Hamilton, and required the Company to increase its capital ratios, and to "review and revise various policies and procedures and certain of the Bank's risk management processes." Defendants knew the statement was false when made or were severely reckless in making it.

33. During 1999, defendants continued to issue press releases announcing quarter after quarter of increasing financial growth, while failing to correct the false and misleading financial results and press releases issued during fiscal year 1998.

34. On November 10, 1999, defendants filed a quarterly report for the quarterly period ended September 30, 1999, signed by defendants Masferrer and Jacobs. The report stated:

The Company is in discussions with its banking regulatory agency regarding the proper application of the mandatory regulatory accounting reserve rules under the requirements of the Interagency Country Exposure Review Committee of the U.S. Bank regulatory agencies. ***If such mandatory regulatory accounting reserves are applicable, the Company's capital ratios for regulatory purposes may be reduced, but are expected to remain within the current classification of "well capitalized" the highest classification category.***

35. The statement detailed above was materially false and misleading, and failed to reveal the scope and magnitude of the Office of the Comptroller inquiry, which ultimately resulted in a cease and desist order and an enforcement action against the Company.

36. On April 14, 2000, defendants filed an annual report on Form 10-K for the year ended December 31, 1999, signed by defendants Masferrer and Jacobs. The annual report revealed, for the first time that:

*As part of its examination, the OCC has directed Hamilton Bank, among other things, to take substantial transfer risk reserves related to Hamilton Bank's exposure in Ecuador and "mark to market" certain assets based upon the OCC's interpretation of regulatory accounting rules. While Hamilton Bank has taken the actions directed by the OCC, it disagrees with the OCC's interpretations of the regulatory accounting rules and is appealing such directions within the OCC. . . In this connection, the OCC has initiated formal administrative action under Section 8 of the Deposit Insurance Act which Hamilton Bank has not agreed to and which Hamilton Bank is appealing and disputing in appropriate administrative actions within the OCC. As a result of these proceedings and directions, however, Hamilton Bank may not accept new, or renew "brokered deposits" without the prior approval of the Federal Deposit Insurance Corporation or appoint new directors or senior officers without the prior approval of the OCC. **Hamilton Bank does not anticipate that either of such restrictions will have a material adverse effect on its business or operations.** The transfer risk reserves taken by Hamilton Bank at the direction of the OCC are for regulatory accounting purposes only, and do not materially affect its financial statements included in this Form 10-K and prepared in accordance with Generally Accepted Accounting Principles.*

37. The statement detailed in ¶ 36 above, was materially false and misleading. The statement above was intended to, and did, convey the false impression to investors that the OCC investigation was limited to Hamilton's exposure in Ecuador, and did not reveal material, adverse problems which the OCC was investigating at Hamilton, including:

- # A failure of internal management and accounting controls at numerous Hamilton Bank branches;
- # Serious problems in Hamilton's Loan Review and Problem Loan Workout areas which were adversely impacting the quality of Hamilton's loan portfolio.

38. On April 26, 2000, defendants issued a press release announcing a "record" quarter of profitability. For the first quarter ended March 31, 2000, defendants reported results of \$7.2 million or \$0.71 per common share compared to \$6.1 million or \$0.60 per common share for the same quarter in 1999. Net interest income rose 23.2% to \$16.5 million due to "continued asset growth" and non-interest income increased to \$4.7 million from \$4.3 million for the first quarter in 2000 and 1999 respectively. The return on average assets for the quarter was reported as 1.68% compared to 1.45% for the first three months of 1999. Commenting on the financial results, defendant Masferrer stated:

We continue to see the benefits from our focus on the U.S. market and South Florida in particular, over the past quarter and remain excited about our ability to leverage our trade finance expertise to capitalize on the tremendous opportunities both domestically and in the international market. . . ***Hamilton continued to operate in a highly efficient manner with an efficiency ratio well above industry standards of 42.54% compared to 40.49% for the same period last year.***

39. The Company filed a quarterly report on Form 10-Q for the quarterly period ended March 31, 2000, signed by defendants Masferrer and Jacobs, which reiterated the financial results detailed in ¶ 38. The quarterly report also revealed that the Company was forced to take "certain adjustments" in accordance with GAAP, in the amounts of \$35,338,000 and \$42,651,000 for March 31, 2000 and December 31, 1999, respectively.

40. On July 26, 2000, defendants issued a press release announcing "strong" second quarter results. The company reported results for the second quarter ended June 30, 2000 of \$7.6 million, or \$.75 per common share compared to \$6.4 million or \$.64 per common share for the quarter ended June 30, 1999. Net interest income for the quarter rose 10.6% to \$15.8 million compared to the same period ended June 30, 1999 due to a 12% increase in average earning assets. The return on average equity for the second quarter of 2000 was 20.4% compared to

19.4% for the second three months of 1999. Commenting on the results, defendant Masferrer stated:

Hamilton continued to benefit from the current interest rate environment as well as our continued growth in the U.S. Market. . . ***The Bank's strong ROA [return on assets] and ROE [return on equity] demonstrate our continued resilience to perform in a dynamic business environment.***

41. On August 14, 2000, defendants filed a report on Form 10-Q for the quarter ended June 30, 2000, which repeated the financial results discussed in ¶ 40, above.

***C. The Belated And Gradual Revelation Of The Truth Concerning Hamilton's Financial Condition***

42. On September 21, 2000, the OCC issued a press release announcing that it had commenced an enforcement action against Hamilton, and had issued a cease and desist order as well as monetary penalties in connection with the action. On October 3, 2000, Hamilton announced that it reached an agreement with the OCC, and was required to maintain higher capital ratios than those normally required of a bank rated as "well capitalized". The settlement also required Hamilton to review and revise "various policies and procedures and certain of the Bank's risk management processes." Hamilton's President, Carlos Bernace, stated: "***[o]verall, we are satisfied that the Bank's future operations will not be unduly impacted by the consent order.***"

43. On November 2, 2000, defendants issued a press release reporting third quarter results. Defendants reported a \$5.6 million loss, or \$0.55 per common share diluted. Results for the quarter were impacted by an increase in the provision for loan losses of \$11.5 million, a write-down of an investment security of \$4.3 million, and one-time provisioning for legal reserves of \$3.3 million. Defendant Masferrer stated in connection with the shocking news:

While the third quarter results did not meet our expectations, we continue [to remain] confident in the growth capacity of our business as well as returning to historical profit levels. ***We remain committed to improving credit quality and we feel the actions taken by the Bank during the quarter build a strong foundation for future growth.***

44. In response to the news, shares of Hamilton Bank plummeted over 35%, dropping from over \$14 on November 1, 2000, to \$9.6 on November 2, 2000, after the news was revealed. However, the full extent and magnitude of the Company's problems was yet unknown to the investing community. On December 22, 2000, defendants issued a press release announcing that it would have to restate its previously reported financial results for 1998, 1999, and part of 2000.

The Company stated:

Hamilton Bank has reached an agreement with its primary regulator on the accounting for certain transactions in 1998 as well as provisioning for credit losses for the third quarter ended September 30, 2000. The Company will restate its 1998 and 1999 financial statements. This restatement will result in a decrease of \$14.3 million in after tax net income for 1998 and an increase of \$14.3 million in comprehensive income for 1999 with no change in total stockholders' equity at December 31, 1999. ***The above changes will also result in a restated net loss of \$14.5 million for the quarter ended September 30, 2000. The increase in the net loss is attributable to an increase in the provision for credit losses of \$19.2 million, offset by an increase in gain on sale of assets of \$3.2 million. For the nine months ended September 30, 2000, net income will be \$1.5 million compared to \$9.1 million as originally reported.***

45. As now revealed, defendants' Class Period statements touting quarter after quarter of "record" financial growth were materially false and misleading because, *inter alia*:

- # Defendants improperly underwrote certain transactions as loans and failed to properly account for certain financial transactions as "related transactions" as opposed to "independent transactions";
- # The credit quality of defendants' loan portfolio had significantly deteriorated during the Class Period, a fact which defendants concealed from investors;

- # Defendants' financial statements issued during 1998 and the first six months of fiscal year 2000 were materially overstated;
- # At all times during the Class Period, defendants failed to adequately reserve for credit losses.

46. The market for Hamilton 's common stock was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements and failures to disclose, Hamilton common stock traded at artificially inflated prices during the Class Period until the time the fact that Hamilton had engaged in the wrongful course of conduct described herein was finally communicated to an understood by the securities markets. Plaintiff and other members of the Class purchased or otherwise acquired Hamilton common stock relying upon the integrity of the market price of Hamilton stock and market information relating to Hamilton and have been damaged thereby.

47. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Hamilton's business, business practices and operations. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Hamilton and its business, finances and operations, thus causing the Company's common stock to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiffs and other members of the Class purchasing the Company's common stock at an artificially inflated price, thus causing the damages complained of herein.

**THE COMPANY'S FINANCIAL STATEMENTS  
AND RELATED REPRESENTATIONS  
WERE MATERIALLY FALSE AND MISLEADING**

48. All of the reported financial statements and the related discussions contained therein, which the Individual Defendants caused the Company to file and issue during the Class Period, and in public reports about and press releases issued by the Company were false products of financial manipulations which deceived members of the investing public who purchased Hamilton securities based upon those representations.

49. The undisclosed improper accounting practices employed by defendants misled the marketplace and investors -- those who reviewed and analyzed the Company's financial statements -- and artificially inflated the price of Hamilton's stock.

50. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Hamilton securities by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its financial performance, accounting, reporting and condition, including, *inter alia*:

(i) During the Class Period, the Company net income for fiscal years 1998 and the first six months of 2000 was materially overstated;

(ii) The Company's financial statements did not present, in all material respects, the Company's true financial condition, and did not reflect all adjustments which were necessary for a fair statement of the interim and full year period presented;

(iii) The Company's internal controls were inadequate and, as a result, the Company improperly and prematurely recognized revenues; and

(iv) The Company's interim financial statements were not presented in conformity with GAAP or principles of fair reporting.

51. Defendants failed to disclose the existence of known trends, events or uncertainties that it reasonably expected would have a material unfavorable impact on net revenues or income or that were reasonably likely to result in the Company's liquidity decreasing in a material way, in violation of Item 303 of Regulation S-K under the federal securities laws (17 C.F.R. 229.303), and that failure to disclose rendered the statements that were made during the Class Period materially false and misleading; and

(i) By failing to file financial statements with the SEC which conformed to the requirements of GAAP, such financial statements were presumptively misleading and inaccurate pursuant to Regulation S-X, 17 CFR 210.4-01(a)(1).

52. As a result of its accounting improprieties, particularly with respect to the Company's revenue recognition practices, the Company's reported financial results (and all defendants) also violated at least the following provisions of GAAP for which each defendant is responsible:

(i) The principle that financial reporting should provide information that is useful to present to potential investors and creditors and other users in making rational investment, credit and similar decisions was violated (FASB Statement of Concepts No. 1, ¶ 34);

(ii) The principle that financial reporting should provide information about the economic resources of an enterprise, the claims to those resources, and the effects of transactions, events and circumstances that change resources and claims to those resources was violated (FASB Statement of Concepts No. 1, ¶ 40);

(iii) The principle that financial reporting should provide information about how management of an enterprise has discharged its stewardship responsibility to owners (stockholders) for the use of enterprise resources entrusted to it was violated. To the extent that management offers securities of the enterprise to the public, it voluntarily accepts wider responsibilities for accountability to prospective investors and to the public in general (FASB Statement of Concepts No. 1, ¶ 50);

(iv) The principle that financial reporting should provide information about an enterprise's financial performance during a period was violated. Investors and creditors often use information about the past to help in assessing the prospects of an enterprise. Thus, although investment and credit decisions reflect investors' expectations about future enterprise performance, those expectations are commonly based at least partly on evaluations of past enterprise performance (FASB Statement of Concepts No. 1, ¶ 42);

(v) The principle that financial reporting should be reliable in that it represents what it purports to represent was violated. That information should be reliable as well as relevant to a notion that is central to accounting (FASB Statement of Concepts No. 2, ¶¶ 58-59);

(vi) The principle of completeness, which means that nothing is left out of the information that may be necessary to ensure that it validly represents underlying events and conditions, was violated (FASB Statement of Concepts No. 2, ¶ 79); and

(vii) The principle that conservatism be used as a prudent reaction to uncertainty to try to ensure that uncertainties and risks inherent in business situations are adequately considered was violated. The best way to avoid injury to investors is to try to ensure that what is reported represents what it purports to represent (FASB Statement of Concepts No. 2, ¶¶ 95, 97).

#### **APPLICABILITY OF PRESUMPTION OF RELIANCE:**

## FRAUD-ON-THE-MARKET DOCTRINE

53. At all relevant times, the market for Hamilton common stock was an efficient market for the following reasons, among others:

(i) Hamilton common stock met the requirements for listing, and was listed and actively traded, on the NASDAQ National Market System, a highly efficient market;

(ii) As a regulated issuer, Hamilton filed periodic public reports with the SEC and the NASD;

(iii) Hamilton stock was followed by securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

(iv) Hamilton regularly issued press releases which were carried by national newswires. Each of these releases was publicly available and entered the public marketplace.

54. As a result, the market for Hamilton securities promptly digested current information with respect to Hamilton from all publicly-available sources and reflected such information in Hamilton's stock price. Under these circumstances, all purchasers of Hamilton common stock during the Class Period suffered similar injury through their purchase of stock at artificially inflated prices and a presumption of reliance applies.

### NO SAFE HARBOR

55. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The specific statements pleaded herein were not identified as "forward-looking statements" when made. Nor was it stated with respect to any of the statements forming the basis of this complaint

that actual results "could differ materially from those projected." To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking was made the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Hamilton who knew that those statements were false when made.

### **SCIENTER ALLEGATIONS**

56. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements, issued or disseminated by or in the name of the Company were materially false and misleading; knew or recklessly disregarded that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violators of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Hamilton and its business practices, their control over and/or receipt of Hamilton ' allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Hamilton were active and culpable participants in the fraudulent scheme alleged herein. Defendants knew and/or recklessly disregarded the falsity

and misleading nature of the information which they caused to be disseminated to the investing public. This case does not involve allegations of false forward-looking statements or projections but instead involves false statements concerning the Company's business, finances and operations. The ongoing fraudulent scheme described in this complaint could not have been perpetrated over a substantial period of time, as has occurred, without the knowledge and complicity of the personnel at the highest level of the Company, including the Individual Defendants.

57. The Individual Defendants engaged in such a scheme to inflate the price of Hamilton common stock in order to: (i) protect and enhance their executive positions and the substantial compensation and prestige they obtained thereby; and (ii) enhance the value of their personal holdings of Hamilton common stock and options.

58. Defendants were also motivated to engage in the fraudulent scheme described herein in order to enable Hamilton to complete an offering for Hamilton Trust, the proceeds from which were used to capitalize Hamilton Bank.

### **FIRST CLAIM**

#### **(Violations Of Section 10(b) Of The Exchange Act And Rule 10b-5 Promulgated Thereunder Against All Defendants)**

59. Plaintiff repeats and realleges each and every allegation contained above.

60. Each of the defendants: (a) knew or recklessly disregarded material adverse non-public information about Hamilton ' financial results and then existing business conditions, which was not disclosed; and (b) participated in drafting, reviewing and/or approving the misleading statements, releases, reports and other public representations of and about Hamilton .

61. During the Class Period, defendants, with knowledge of or reckless disregard for the truth, disseminated or approved the false statements specified above, which were misleading in that they contained misrepresentations and failed to disclose material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

62. Defendants have violated § 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material facts or omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices and a course of business that operated as a fraud or deceit upon the purchasers of Hamilton stock during the Class Period.

63. Plaintiff and the Class have suffered damage in that, in reliance on the integrity of the market, they paid artificially inflated prices for Hamilton stock. Plaintiff and the Class would not have purchased Hamilton stock at the prices they paid, or at all, if they had been aware that the market prices had been artificially and falsely inflated by defendants' false and misleading statements.

## **SECOND CLAIM**

### **(Violation Of Section 20(a) Of The Exchange Act Against Individuals Defendants)**

64. Plaintiff repeats and realleges each and every allegation contained above.

65. The Individual Defendants acted as controlling persons of Hamilton within the meaning of Section 20(a) of the Exchange Act. By reason of their senior executive and/or Board

positions they had the power and authority to cause Hamilton to engage in the wrongful conduct complained of herein.

66. By reason of such wrongful conduct, Hamilton and the Individual Defendants are liable pursuant to §20(a) of the Exchange Act. As a direct and proximate result of these defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their purchases of Hamilton stock during the Class Period..

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

1) Determining that this action is a proper class action and certifying plaintiff as class representative under Rule 23 of the Federal Rules of Civil Procedure;

2) Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

3) Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

4) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

DATED: January 12, 2001.

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