

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES, *ex rel.*
ERVIN AND ASSOCIATES, INCORPORATED,

Plaintiffs,

v.

THE HAMILTON SECURITIES GROUP, INC., *et al.*,

Defendants.

~~FILED UNDER SEAL~~

Civil Action No. 96-CV-1258
(Judge Stanley Sporkin)

FILED

SEP - 3 1999

NOTICE OF FILING OF AMENDED COMPLAINT

JOHN WATER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

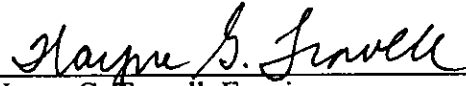
Plaintiff Ervin and Associates, Incorporated ("Ervin"), by counsel, pursuant to Fed. R.

Civ. P. 15(a), hereby file with the Clerk of this Court, its Amended Complaint in the above-styled action. Pursuant to Rule 15(a), a party may amend its complaint once, as a matter of course, at any time before a responsive pleading is served. As of the date hereof, no responsive pleading has been filed in this case.

Ervin had discussed the filing of this Notice with counsel for the United States of America and he has indicated that the United States does not oppose the relief requested herein.

Respectfully submitted,

TUCKER FLYER, P.C.



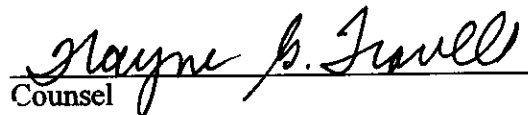
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Telecopier: (202) 429-3231
Counsel for Plaintiff

Dated: September 3, 1999

CERTIFICATE OF SERVICE

I hereby certify that on this the 3rd day of September, 1999, a true copy of the foregoing
Notice of Filing of Amended Complaint was served by first-class mail upon the following:

Anthony M. Alexis, Esquire
Assistant United States Attorney
Judiciary Square Building
555 Fourth Street, N.W.
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Washington, D.C. 20001


Counsel

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES, ex rel.
ERVIN AND ASSOCIATES, INCORPORATED

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NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

**FIRST AMENDED COMPLAINT FOR DAMAGES
AND OTHER RELIEF UNDER THE FALSE CLAIMS ACT**

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Dated: September 2, 1999

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Main Justice Building
10th Street & Constitution Avenue, N.W.
Washington, D.C. 20503

SERVE: Anthony Alexis
Assistant U.S. Attorney
555 Fourth Street, N.W.
Room 10-102
Washington, D.C. 20001

ex relator,

ERVIN AND ASSOCIATES, INCORPORATED,
4550 Montgomery Avenue, Suite 650 North
Bethesda, Maryland 20814

Plaintiffs,

v.

THE HAMILTON SECURITIES GROUP, INC.,
802 Rhode Island Avenue, N.E.
Washington, D.C. 20002

SERVE: C. Austin Fitts
802 Rhode Island Avenue, N.E.
Washington, D.C. 20002

- and -

HAMILTON SECURITIES ADVISORY SERVICES,
INC.,
802 Rhode Island Avenue, N.E.
Washington, D.C. 20002

SERVE: C. Austin Fitts
802 Rhode Island Avenue, N.E.
Washington, D.C. 20002

Civil Action No. 1:96CV01258
(Judge Stanley Sporkin)

~~FILED UNDER SEAL~~

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- and -

BLACKROCK CAPITAL FINANCE L.P.,
345 Park Avenue
New York, New York 10154

SERVE: CT Corporation System
Registered Agent
1633 Broadway
New York, New York 10019

- and -

GOLDMAN, SACHS & CO.,
85 Broad Street
New York, New York 10004

SERVE: David A. George
Chairman of the Board
85 Broad Street
New York, New York 10004

- and -

OCWEN FINANCIAL CORPORATION (formerly)
BERKELEY FEDERAL BANK & TRUST, FSB
The Forum, Suite 1000
1675 Palm Beach Lakes Boulevard
West Palm Beach, FL 33401

SERVE: John R. Erbey, Registered Agent
1675 Palm Beach Lakes Blvd.
Suite 1002
West Palm Beach, FL 33401

- and -

WILLIAMS, ADLEY & COMPANY

1330 Broadway, Suite 1825
Oakland, CA 94612

SERVE: Henry L. Adley, Registered Agent
1411 Lake Arbor Way
Suite 302
Michelliville, MD 20721

FILED

SEP - 3 1999

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

**FIRST AMENDED COMPLAINT FOR DAMAGES
AND OTHER RELIEF UNDER THE FALSE CLAIMS ACT**

Plaintiffs Ervin and Associates, Incorporated and the United States of America

("Plaintiffs"), by and through counsel, state as and for their Amended Complaint pursuant to the qui tam provisions of the False Claims Act, against Defendants The Hamilton Securities Group, Inc., Hamilton Securities Advisory Services, Inc., BlackRock Capital Finance L.P., Goldman, Sachs & Co., Ocwen Financial Corporation, and Williams, Adley (collectively, the "Defendants"), on knowledge as to themselves and on information and belief as to all others, as follows:

PARTIES

1. Plaintiff Ervin and Associates, Incorporated is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business at 4550 Montgomery Avenue, Suite 650 North, Bethesda, Maryland, 20814. Plaintiff has standing pursuant to 31 U.S.C. §3730(b) (the "False Claims Act" or the "Act") to assert the legal claims contained herein to the extent that a private right of action exists under 31 U.S.C. §3730(b) and

authorizes a civil action for a violation of §3729 for the person and for the United States Government.

2. Defendants The Hamilton Securities Group, Incorporated and Hamilton Securities Advisory Services, Incorporated are corporations with their last known principal places of business at 802 Rhode Island Avenue, N.E., Washington, D.C. 20002. Defendants The Hamilton Securities Group, Incorporated and Hamilton Securities Advisory Services, Incorporated are referred to collectively herein as "Hamilton" unless the context plainly indicates otherwise.

3. Defendant BlackRock Capital Finance L.P. ("BlackRock") is a limited partnership with its principal place of business at 345 Park Avenue, New York, New York 10154. BlackRock is an investment banking firm and a wholly owned subsidiary of PNC Bank Corp.

4. Defendant Goldman, Sachs & Co. ("Goldman Sachs") is a corporation with its principal place of business at 85 Broad Street, New York, New York 10004. Goldman Sachs is an investment banking firm.

5. Defendant Ocwen Financial Corporation (formerly Berkeley Federal Bank & Trust, FSB) ("OFC"), organized in Florida, has its principal places of business at The Forum, Suite 1000, 1675 Palm Beach Lakes Boulevard, West Palm Beach, FL 33401. OFC, OFB and Berkeley Federal are referred to collectively herein as "Ocwen".

6. Williams, Adley & Company, LLP ("Williams, Adley") is a limited liability partnership organized under the laws of the state of California, and maintains its principal place of business at 1330 Broadway, Suite 1825, Oakland, CA 64612. Williams, Adley maintains a local office at is 1300 I Street, N.W., Suite 260 East, Washington, D.C. 20005.

JURISDICTION

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1331 (1988) because this action arises under the Federal False Claims Act, 31 U.S.C. §3729, et seq., which provides that the United States District Courts shall have exclusive jurisdiction of actions brought under that Act.

8. Venue is proper in this district pursuant to 28 U.S.C. §1391(a) (Supp. V 1993).

9. Section 3732(a) of the Act provides that "any actions under Section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business or in which any act proscribed by Section 3729 occurred." The acts complained of herein occurred in the District of Columbia, within this judicial district.

10. Under the Act, this Amended Complaint is to be filed under seal and shall remain under seal and shall not be served on the Defendants until the Court so orders. To date, the Government, with approval from the Court, has deferred its intervention decision.

AMENDED COMPLAINT

11. This Amended Complaint amends the complaint that Ervin filed in this matter on June 6, 1996. At numerous times over the past three years, relator Ervin has supplied the United States Attorney and the HUD Inspector General with significant additional information, analysis, commentary, calculations and other facts and information as to which it is the original source, with respect to its allegations herein. A summary of the additional information provided is attached hereto as the Revised Written Disclosure of Material Evidence Pursuant to 31 U.S.C. §3730(B)(2).

12. This amended complaint includes all additional claims of which Ervin is now aware that arise out of the same set of facts as initially pled. Ervin has not, however, been privy to the findings of the ongoing investigation by the United States Attorney's Office and the HUD Inspector General. As such, it is foreseeable that, if the United States elects to intervene in this case, the complaint will need to be further amended to include additional facts and claims uncovered in the government's investigation.

INTRODUCTION

13. Hamilton, a private sector contractor hired to conduct competitive loan auctions on behalf of HUD, directed approximately \$4.7 billion of government owned notes to its business partner, BlackRock, and to BlackRock's associates, Goldman Sachs and Ocwen, at below market prices. As a result of these directed sales, the U.S. Treasury has been deprived of hundreds of millions of dollars which it should have received.

14. In April 1995, Hamilton entered into a subcontract with BlackRock under which BlackRock would provide Hamilton with financial advisory services related to complex structured finance transactions. In return for this assistance, as well as the expectation of substantial future business from members of the BlackRock, Goldman Sachs and Ocwen bidding team (the "BGO Team"), Hamilton provided BlackRock with confidential, inside information or access to inside information concerning note sales for which members of the BGO Team were bidding. Specifically, Hamilton provided BlackRock with information on its competitors' bids, the true value of the assets being sold and the structure of the sales. In at least one instance, Hamilton awarded assets to a member of the BGO Team when it was not the highest bidder.

15. In the nine loan auctions conducted by Hamilton during the two-year period between September 1995 and September 1997, members of the BGO Team were awarded \$4.68

billion out of \$7.57 billion in loans sold (62%) . This information is further presented in graphic form in Attachment A to this Complaint.

16. While members of the BGO Team were uniquely successful in purchasing all types of performing and non-performing loans, their primary goal was to acquire the highly profitable non-performing single family loans. With Hamilton's assistance, the BGO Team was able to monopolize the market for these notes, as indicated in the following chart:

<u>Single Family Note Sale</u>	<u>UPB Non-performing Loans in Sale</u>	<u>Non-performing Loans Acquired by The BGO Team</u>	<u>% of UPB Acquired</u>
No. 1	\$ 191,593,769	\$ 133,859,205	70%
No. 2	393,177,848	393,177,848	100%
No. 3	258,830,977	258,830,977	100%
No. 4	499,839,243	484,347,418	97%
No. 5	<u>639,234,452</u>	<u>639,234,452</u>	<u>100%</u>
	<u>\$1,982,676,289</u>	<u>\$1,909,449,900</u>	<u>96%</u>

17. In addition to claims of directed note sales, this complaint also includes claims of procurement fraud concerning the contracts let by HUD to implement the Note Sales. Specifically, Hamilton and another contractor, Williams, Adley, made false statements to the government in support of approximately \$70 million in contracts to provide the financial advisory and due diligence services.

FACTUAL BACKGROUND

18 The facts alleged describe a subtle and complex scheme to defraud the government of hundreds of millions of dollars in secured notes and contracts. Ervin is the original source of the information alleged herein insofar as Ervin has brought to bear its intimate knowledge of HUD operations, its observations and analyses of the mortgage loan auctions, its

discussions with certain HUD employees and Wall street bidders, as well as its independent analyses of HUD's responses to numerous Freedom of Information Act requests.

A. HUD's Office of Housing.

19. HUD's Office of Housing has direct responsibility over all single family and multifamily loans insured by the Federal Housing Administration ("FHA"). It oversees multifamily loans with original mortgage balances of over \$50 billion secured by approximately 16,000 projects and over 2 million housing units. In addition, FHA insurance in place on single family mortgages exceeds \$350 billion.

20. HUD's statutory mission is to insure and regulate the loans that it insures. When, however, a borrower on an FHA-insured mortgage goes into default, the lender often assigns the loan to HUD in return for a substantial payment from the FHA. In that case, HUD may end up owning a loan it only intended to insure.

21. HUD also administers the Section 8 rental subsidy program, which provides rental assistance to underprivileged families by paying the difference between fair market rents and 30% of the residents' income. Through such subsidy payments, HUD provides most of the revenue to meet the mortgage payments on many HUD-insured multifamily mortgages.

i. HUD's Note Sales Initiative.

22. By early 1994, HUD amassed a portfolio of approximately 2,500 multifamily loans and 90,000 single family loans that had been assigned to it as a result of insurance claims paid on defaults of mortgages it had insured. The unpaid principal balance of this HUD-held portfolio exceeded \$11 billion.

23. In 1994, HUD instituted a program designed to dispose of these loans primarily through competitive sealed-bid public auctions. HUD had never before conducted major sales of non-performing notes to the private sector and relied on its financial advisor contractor,

Hamilton, to control effectively the design, structure and conduct of the Note Sales program and to ensure that the government received a fair price for the notes.

24. The Note Sales program continued until October 1997, when senior officials at HUD became aware of two memoranda written by Hamilton in which Hamilton admitted that it had awarded assets to other than the highest bidders in at least two multifamily note sales. After discovering the memoranda, HUD requested that Hamilton repay \$3.88 million to reimburse the government for the lost revenues admitted to by Hamilton as a result of the errors, and the Note Sales program was suspended.

ii. HUD's Mark-to-Market Initiative.

25. In addition to the backlog of HUD held notes, HUD was also facing a growing problem concerning the cost of subsidized loans. Although the loans were performing, the ability of the projects to meet their debt service was contingent upon the government continuing to subsidize the rent payments. The government was looking to decrease the amount of rental subsidies paid each year, which in turn would lead to decreased cash flow for the subsidized properties, massive defaults on the subsidized mortgages, and assignments to HUD.

26. As part of HUD's Mark-to-Market (a.k.a. Portfolio Re-engineering) initiative, HUD was developing a program that would ultimately bifurcate, then transfer, up to \$20 billion of first and second mortgages on subsidized properties into trusts or similar types of pooled investment vehicles. Essentially, HUD would write down the mortgage balances on the subsidized projects to offset the decrease in rental subsidies.

27. Although Mark-to-Market was still in the design phase when Hamilton was acting as financial advisor to HUD, the Partially Assisted Note Sale, for which BlackRock acted as "co-investment advisor" to Hamilton, was intended to serve as a prototype for the Mark-to-

Market initiative. Additionally, Hamilton was conducting negotiated sales of subsidized properties with State Housing Finance Agencies on behalf of HUD.

28. In the fall of 1995, C. Austin Fitts, president of Hamilton, confided to John Ervin that she expected HUD would have to take an approximate \$25 billion write-off before the note sales and Portfolio Re-engineering processes were completed. This projection far exceeded any estimates that had otherwise been made public.

B. Contracts to Implement Note Sales/Mark to Market.

i. Financial Advisor #1.

29. During the 1980's, Fitts was Managing Director of Dillon, Reed, then a major Wall Street firm. In 1990, Fitts was appointed Assistant HUD Secretary and FHA Commissioner under Secretary Jack Kemp. In this position, Fitts controlled all aspects of the FHA's portfolio of single family and multifamily loans and insurance, including the HUD held assigned notes that would later be sold at auction. It has been reported that Kemp fired Fitts from her position with HUD.

30. Fitts and Russell Davis, a protégé of Fitts' from both FHA and Dillon Reed, established Hamilton Securities as a merchant bank in 1991. Through their experience at HUD/FHA, both Fitts and Davis were intimately aware of the inner workings of the FHA and the opportunities for profit that existed with the FHA portfolio.

31. On September 30, 1993 Hamilton Securities was awarded its first financial advisory contract with HUD ("Financial Advisor #1", DU-18161). Although the contract was awarded with a maximum value of \$5 million over five years, to be paid on an hourly basis, it was expanded to cover \$19 million over two years. From September, 1993, through December, 1995, Hamilton was the only financial advisor engaged by HUD to conduct note sales.

ii. Due Diligence #1.

32. In December, 1995, HUD awarded Williams, Adley a contract to provide due diligence services on HUD's note sales ("Due Diligence #1", HC-18410). The contract was a \$15 million, sole source award under the Small Business Administration's 8(a) program. Three months after the award, the contract was expanded to \$30 million

33. Hamilton Securities was listed as a subcontractor in Williams, Adley's proposal to HUD for this contract. Under the subcontract, Williams, Adley paid Hamilton approximately \$8 million for services.

iii. Financial Advisor #2,

34. In January, 1996, HUD awarded contracts to four firms to provide Financial Advisor services: Hamilton Securities ("Financial Advisor #2", DU-18505), Merrill Lynch (DU-18504), Cushman and Wakefield (DU-18419), and C.S. First Boston (DU-18506). Ernst & Young and Ervin and Associates protested the award, and HUD agreed to a corrective action Best and Final. As a result, after C.S. First Boston dropped out, Ernst & Young was awarded a contract (DU-18541).

35. The first task order awarded by HUD under the new financial Advisor contracts was a "crosscutting" task order to Hamilton Securities. As HUD's crosscutting financial Advisor, Hamilton continued as HUD's primary financial advisor on portfolio issues, and the new financial Advisors became transactional financial advisors for individual sales. Hamilton also remained in charge of general note sale structuring and the bid selection process for each note sale.

C. The BlackRock/Goldman Sachs/Ocwen Team.

i. BlackRock Capital Finance, L.P.

36. BlackRock serves as an investment advisor to institutional and individual fixed income investors in the U.S. and overseas through a number of funds and separately managed accounts totaling billions of dollars.

37. Under an agreement dated April 15, 1995, Hamilton subcontracted to BlackRock \$1,250,000 of financial advisory services related to HUD's Partially Assisted note sale. On information and belief, BlackRock does not regularly pursue the business of acting as a subcontractor to Government contractors and subcontractors.

38. As part of this arrangement, BlackRock worked out of Hamilton's office on a full time basis. This allowed BlackRock access to confidential, inside information on all Note Sales on a daily basis. BlackRock attended planning meetings for not only the Partially Assisted note sale, but also on sales in which BlackRock planned to be a bidder.

ii. Goldman Sachs & Co.

39. Goldman Sachs is a global investment banking and securities firm. Its clients include corporations, governments, institutions and individuals worldwide. The firm is registered as a broker-dealer with the U.S. Securities and Exchange Commission.

40. Aside from its size and capacity to do huge deals in its own name or through funds or partnerships it controlled, Goldman Sachs and/or its principals were also large campaign contributors to the Clinton re-election campaign and the DNC. This could be anticipated to provide additional political "air cover" in case Goldman Sachs' conduct in the note sales was challenged.

iii. Ocwen Financial Bank.

41. Ocwen Financial Corporation is a \$3.13 billion financial institution headquartered in West Palm Beach, Florida. The Company's primary businesses are the acquisition, servicing, and resolution of subperforming and nonperforming residential and commercial mortgage loans, as well as the related acquisition and development of loan servicing technology and software for the mortgage and real estate industries.

42. Ocwen teamed with BlackRock and Goldman Sachs on various single family sales and served as the principal loan servicer for many of the single family loans purchased by the BGO Team.

iv. The BGO Bidding Team.

43. After BlackRock entered into its subcontract with Hamilton, BlackRock entered into an informal teaming arrangement with Goldman Sachs, who was working with Ocwen, Cargill and Security National, as potential buyers of single family notes being sold in Single Family sale #1. Additionally, BlackRock and Goldman Sachs were working together to purchase multifamily notes from HUD as a representative of state HFAs.

44. The activities discussed herein were primarily conducted through funds or other entities controlled by BlackRock and/or Goldman Sachs and/or Ocwen, who were teaming partners in various combinations on numerous HUD Note Sales. To avoid public criticism of the BGO Team, they varied who was actually included on any given bidding team for any transaction. For example, in Single Family sale #1, BlackRock and Goldman Sachs were the official bidders, but in violation of the bidding rules, flipped numerous loans to Ocwen shortly after closing. For Single Family #2, BlackRock and Ocwen were the official bidders but flipped numerous loans to Goldman Sachs shortly after closing.

45. In November 1995, while BlackRock was acting as a subcontractor to Hamilton, John Ervin, Mike Nathans and Lucie Du met with Mike Offit, Peter Briger and Adam Sherman of Goldman Sachs and Wes Edens and Randy Nardone of BlackRock to discuss HUD's single family, state agency and Mark-to-Market activities. At this meeting, Goldman Sachs and BlackRock stated emphatically that BlackRock and Goldman Sachs should be considered as "one and the same" for the purpose of all HUD note sale and restructuring activities.

46. As a result of this representation by Goldman and BlackRock, and the intentional acts by members of the BGO Team to cloak their association with one another in the early Single Family Sales, Ervin has assumed for the purposes of this complaint that BlackRock, Goldman Sachs and Ocwen remained bidding partners for each of the five single family note sales and has referred to them collectively as the "BGO Team."

D. Hamilton's Business Plan.

47. In response to HUD's request for proposals for Financial Advisor #1, Hamilton proposed an hourly, cost reimbursable fee structure. Hamilton acknowledged in its proposal that this structure was in the best interest of the government, because a contractor's fee structure based on a percentage of each transaction could result in "huge and hideous" fees being charged to the government.

48. Once HUD awarded Hamilton a contract, however, Hamilton's attitude changed. In a January 1, 1995 internal Hamilton memorandum entitled "FHA: Duties and Responsibilities: Part IV", Fitts stated:

The key is in the contracting process. The key is to find a way to charge SERIOUS FEES so that we have the physical and analytical infrastructure necessary and can draw on a powerful network of allies and technical expertise so that we can do the job well in a manner that is healthy and fun for us.

(Emphasis in original)

49. In the same memorandum, Fitts outlined Hamilton's expectation that the FHA work would enable Hamilton to build relationships with private sector organizations that would form the basis for Hamilton's future, post-FHA business:

FHA has the potential to provide the role of a Phase I equity investor. Our work this year can fund the physical infrastructure of the firm, the creation of a teaming partner network and a core Hamilton team, the building of a continuous training program as well as the beginnings of an analytic infrastructure and a one year operating reserve, and a strategic position in the market that will begin to translate into strategic opportunities elsewhere. To be able to do this with revenues and income as opposed to capital is a marvelous opportunity and the nature of this funding (expenses and profits both) in 1995 is literally a company maker. Consequently, FHA's importance to us WHILE WE ARE STILL CREATING THESE ASSETS is fundamentally different than it will be after we have created them. It is essential to perceive this element to be CLEAR about our strategic direction. It is also essential as the nature of project management must be oriented towards precision engineering of a starship which can travel to multiple galaxies as opposed to one dedicated and captive to its immediate master.

(Emphasis in original.)

50. In short, Hamilton intended to charge the government exorbitant fees for financial advisory services to enable Hamilton to develop its entire corporate infrastructure and a one year operating reserve, entirely at government expense. More significantly, however, was that Hamilton's primary goal in administering the Note Sales program was not to serve HUD, Hamilton's 'immediate master', but was instead create a teaming partner network and to build relationships that would "translate into strategic opportunities elsewhere." Specifically, Fitts intended to use Hamilton's role as HUD's financial Advisor to establish relationships with Wall Street firms such as the members of the BGO Team that would be profitable for years after Hamilton's work for FHA was complete.

i. Wall Street Experience/Expertise.

51. Hamilton's approach to trading inside information on Government assets sales for favors from Wall Street firms was apparent from the Best and Final Offer Hamilton submitted for its first Financial Advisory contract:

Wall Street and institutional investors will provide a substantial amount of advice for free if the bankers sense that a free flow of information between an offeror and a potential bidder increases their understanding of a bidding situation, particularly if it is a major market event. HUD is seeing a steady stream of major institutions which are interested in bidding and which are offering to provide advice; their reward is early information and a possible inside track on future transactions.

(emphasis added)

52. Hamilton also stated in its first Financial Advisor Best and Final Offer proposal that it was aware of the risk of Wall Street firms using contracting relationships to obtain inside information on sales they intended to bid on:

If we had chosen any active member of the RTC and non-performing "bidders club" as a teammate, we would run the risk that our capital markets partner would be joining the team primarily to gain access to critical market information. The advisor would want such information in order to "trade," in the hopes of having the "favor" returned on a different program. Why is trading information in this manner - a common practice in the mortgage loan sale market - a problem for HUD in its mortgage sales? Such a "you scratch my back, I'll scratch yours" arrangement - which is common among the firms that serve as both loan sales advisor and bidder at the RTC - works to HUD's disadvantage in the following manner. . . Such a financial advisor would be more inclined to work through intermediaries to fulfill its part of an information trading bargain. In so doing, however, HUD may not get the best returns possible on its sales.

53. With their Wall Street and government backgrounds, Hamilton's staff clearly understood the serious conflicts of interest that would arise in using a potential bidder as a subcontractor. Thus, Hamilton's decision to subcontract financial advisory work to BlackRock and to provide BlackRock with office space within Hamilton's office, thereby allowing BlackRock open access to Hamilton's staff and systems, must be understood as a knowing act

that would provide inside information to BlackRock in exchange for free advice and future considerations.

ii. Future Considerations.

54. Hamilton recognized that any HUD business was, by its nature, limited and susceptible to the comings and goings of senior HUD employees, many of whom were political appointments. Considering this, Hamilton recognized that developing business relationships outside of HUD was critical to its long term success. It saw the BGO Team as a reliable revenue source for years to come and sought to buy this relationship by utilizing its power over the sale of Government assets.

55. In furtherance of Hamilton's scheme to benefit from the illicit relationship it had built with the BGO Team, Hamilton, in its role as financial advisor, built into the sale of subsidized notes certain resident initiative programs.

56. These initiatives required successful bidders to set aside funds for "re-investment" in programs designed to provide residents at low income housing multifamily projects with training and other services, such as computer learning centers called "neighborhood networks," which were intended to partially offset the negative effects of subsidy reduction associated with welfare reform.

57. Having created the requirement that successful bidders invest in neighborhood networks or other resident programs, Hamilton formed a subsidiary called "e.Villages" which would market supplies and services to neighborhood networks centers. e.Villages would profit both from selling Neighborhood Networks start-up kits, called "training centers in a box," and through a partnership share of each business that was formed by the Neighborhood Networks center.

58. On information and belief, Hamilton and the BGO Team had an agreement that, in consideration for the inside information provided by Hamilton about the note sales, the BGO Team would affiliate any neighborhood networks centers in subsidized projects which they purchased with e.Villages. With over 8,500 multifamily subsidized projects potentially subject to Mark-to-Market, this arrangement would have resulted in substantial profits for Hamilton had the scheme not been interrupted by the termination of Hamilton's contract.

E. Structure of the Note Sales.

59. HUD employees had no past experience or frame of reference on how to conduct a note sale prior to receiving Hamilton's recommendations. Therefore, Hamilton was able to set up bidding rules and approaches which would allow Hamilton to direct notes to its favored Wall Street bidders.

i. Note Sale Contractors.

60. Hamilton structured HUD note auctions valued in the billions of dollars with minimal or no oversight by HUD or any independent party. In the early stages of the note sales, virtually all services not provided directly by Hamilton were provided by a subcontractor Hamilton controlled.

- Hamilton's law firm, Holland & Knight, provided legal advice on Note Sales;
- Hamilton's subcontractor, Coopers & Lybrand, provided due diligence services, bid day validation services and bid day scanning services;
- Hamilton's subcontractor, AT&T Bell Labs, who subsequently became Lucent Technologies (hereinafter referred to as "Lucent Technologies"), ran the optimization model; and
- When HUD hired Williams, Adley to perform due diligence in December, 1994, Hamilton arranged for an employee of Coopers & Lybrand, Hamilton's subcontractor, to be transferred to Williams, Adley payroll, enabling Hamilton and Coopers & Lybrand to maintain full control over the due diligence process.

61. When new financial advisors were hired in January 1996, Hamilton maintained responsibility for coordinating the activities of all note sales contractors, and retained direct responsibility for the bid selection process. Therefore, many of the same procedures put in place during the first note sales, which were essential to Hamilton's ability to direct notes to the BGO Team, remained in place throughout the balance of the Note Sales initiative.

ii. The Optimization Model.

62. To select the winning bidders on note sales, Hamilton hired a subcontractor, Lucent Technologies, to run a computerized "optimization" model which would evaluate all of the bids submitted and select the combination of bids that maximized gross proceeds to the government. Although Hamilton proclaimed that the optimization model would promote participation by large and small bidders alike, in practice the optimization process was structured to favor large Wall Street firms over small bidders.

63. Hamilton outlined its intention to direct notes to large full pool bidders in its Best and Final for financial Advisor #1:

If pressure is put on HUD to run a "small investor program" we could structure the auction this way also, but still would expect one large buyer to purchase all lots.

64. While the general concept of optimization is sound, there is one major flaw in the optimization process used by Hamilton for HUD note sales -- unsold assets are not assigned any value in bid selection. While this is a valid assumption for certain scenarios in which optimization is used, such as scheduling flight crews on airlines, this assumption is not valid in evaluating bids for mortgage loans, which do not lose all of their value immediately if they are not sold. By not assigning any residual value to unsold loans, the optimization model is biased towards large bidders.

65. Further compounding the built in biases towards large bidders in the Single Family sales was the fact that Hamilton arbitrarily limited the number of bids that any bidder could submit. In multifamily sales, bidders were allowed to submit as many single asset bids as they desired. For the early Single Family sales, however, Hamilton limited the number of bids each bidder could submit to 20 or less for no apparent reason. The only result of this unnecessary restriction on the number of bids was to ensure that any combination of non-full pool bids would include several mortgage loan blocks that would be assigned a value of \$0 since there would be no covering bids, making it virtually impossible for small bidders to be successful.

66. By refusing to assign residual value to unsold assets and unnecessarily limiting the number of bids for Single Family #1 and Single Family #2, Hamilton ensured that only the highest full pool bid would be successful.

iii. **Bid Deposits.**

67. The bid deposit rules in effect for the Southeast sale, HUD's first unsubsidized multifamily sale conducted by Hamilton, required only a 5% bid deposit which would be refunded **with interest** if a bid was unsuccessful.

68. In subsequent note sales, however, including all single family sales, the bid deposit rules were changed to require a deposit of 10% of a bidder's highest bid which would be returned **without interest** in the event of an unsuccessful bid. As a result of this change, prudent bidders would submit bid deposits equal to exactly 10% of their highest bid price, so as not to forfeit significant interest.

69. Under the auction rules, all bid deposits had to be made via wire transfer either the day before or the day of the bid, and the wire confirmation number needed to be included

with the bid that was submitted. If a bid was received without the appropriate deposit the bid would be rejected as nonconforming.

70. Although it is a common industry practice to require deposits to be submitted via wire transfer, the time the bid deposits had to be received by the Federal Reserve Bank of Atlanta is significant. The Atlanta Fed had to receive all bid deposits by no later than 2:00 on bid day, a full hour-and-a-half before the bid submission deadline of 3:30 p.m.

71. Since the structure of the optimization model and the limitation on the number of bids gave an insurmountable advantage to full pool bidders on Single Family loans, if a full pool bidder had access to the amount of the bid deposits after the 2:00 deposit deadline but before the 3:30 bid deadline, it could calculate the highest competing full pool bid by multiplying the highest deposit by ten. This would give the bidder a full hour and a half to submit a bid it was certain would win by the narrowest of margins.

iv. **Bid Selection Process.**

72. The bid procedures designed and implemented by Hamilton required that Hamilton's subcontractor, Lucent Technologies, would run the optimization model and provide Hamilton with the results. Hamilton would then inform HUD of who the highest bidders were. HUD invariably accepted Hamilton's representations as true without any validation. Hamilton did not even provide the bid cards to HUD, making validation of the process impossible.

73. Although these auctions involved billions of dollars of government-owned assets, Hamilton did not provide or recommend an independent review of the bid selection process. Although, Hamilton did hire Coopers & Lybrand as a subcontractor to supervise the bids, to scan the bid cards into a computer and to provide the computer file to Lucent Technologies, Coopers & Lybrand did not verify the bid results.

74. In January, 1996, new financial Advisors were awarded contracts by HUD. The awards of financial Advisor contracts to firms other than Hamilton threatened to eliminate Hamilton's ability to control the Note Sales and the flow of inside information to the BGO Team. Consequently, Hamilton suggested that HUD issue a Crosscutting Task Order which was intended to allow Hamilton to continue its role in controlling the winners of the Note Sales while making it appear as if the Note Sales themselves were being administered by four different contractors. Hamilton bid on and was awarded the Crosscutting Task Order.

75. On information and belief, Hamilton insisted on changing the task order from what had been originally proposed before it would sign it.

76. In the original draft of the task order in the request for proposals, section 3.2 required the selected contractor to:

Provide access to an optimization model for whole loan auctions.

(emphasis added.)

77. However, in the Crosscutting Task Order which Hamilton ultimately signed, section 3.2 required the crosscutting financial advisor to:

Provide and run an optimization model for whole loan auctions. In contrast to other sales interaction between the financial advisor on the sale and the Crosscutting Advisor, this activity has the Crosscutting Advisor in the role of performing the task, rather than reviewing the design or results of the sales financial advisor.

(emphasis added.)

78. By demanding this change in the Crosscutting Task Order, Hamilton was able to maintain complete control over the selection of winners. This allowed Hamilton to continue to direct notes to members of the BGO Team, while at the same time covering up evidence of past instances of directed sales.

v. Policy of Non-Disclosure.

79. A key element in Hamilton's ability to allow this note sale fraud to continue without detection was its ability to prevent any independent analysis of the selection of bids. Hamilton went to great lengths to ensure that it would be difficult, if not impossible, to challenge the results of the sales:

- 1) Hamilton did not provide HUD with copies of the bids. Instead, Hamilton presented HUD with an optimization analysis summarizing the bids and identifying who Hamilton had concluded was the highest bidder.
- 2) Hamilton had its attorneys, Holland and Knight, draft a memorandum for HUD identifying all exemptions which could be claimed to prevent the release of Note Sale bid information and other documents through FOIA.
- 3) Hamilton drafted the press releases announcing the winners of the sales on behalf of HUD. The press releases were very vague and inconsistent and did not provide an asset-by-asset breakdown of the winning bids.

vi. Conflicts of Interest.

80. HUD took almost 9 months to process the second Financial Advisory Services procurement. Much of this time was expended negotiating a conflicts of interest policy. At least one draft of this policy would have prevented BlackRock from bidding in any note sales due to its relationship with Hamilton. Hamilton, however, exercised its influence over HUD to ensure that the offending language was watered down which allowed BlackRock and Goldman Sachs, and its affiliate J.E. Robert, to continue to be active note buyers or participants.

vii. Non-Collusion Agreements.

81. In a preliminary draft of the Design Book for the Southeast note sale, Hamilton had initially intended to require bidders to submit an "Executed Affidavit of Non-Collusion." This document, however, was never included in any of the bidding materials for any of the sales.

82. The failure to include such a document is particularly significant because a review of the bids submitted in Single Family sale #4, as well as bids submitted in the North Central and

Midwest multifamily note sales, clearly indicate that certain of the large bidders apparently decided amongst themselves which assets each would bid on. This collusion further limited competition and prevented the taxpayer from achieving the full proceeds that would have been received in a truly competitive auction.

viii. Flipping Assets.

83. Prior to bidding on any Single Family sale, bidders were required to submit an executed bidder qualification statement which certified that:

Buyer is bidding for, and will purchase the loans for their own account and not for resale with a view toward distribution within the meaning of the Act, and Buyer's ownership of the loans and intended use of the loans will comply fully with all applicable federal and state laws, regulations and requirements, including, without limitation, any and all laws and/or restrictions imposed on resale of the loans by federal and state securities or Blue Sky laws, rules, regulations or requirements

84. Despite this precondition, various members of the BGO Team not identified as purchasers were flipped assets after the sale was closed. This occurred in at least the first two single family sales.

85. On information and belief, members of the BGO Team knew, through Hamilton, that HUD would not enforce these requirements resulting in an additional bidding advantage for the members of the BGO Team.

F. Obstruction/Cover Ups by Hamilton.

86. On June 5, 1996, Ervin filed Ervin and Associates, Incorporated, et al. v. Helen Dunlap, et al., CA No. 96-1253 (WBB) in the U.S. District Court for the District of Columbia alleging violations by HUD of Ervin's First and Fifth Amendment rights, as well as violations of the Freedom of Information Act and the Administrative Procedures Act. In the complaint, Ervin alleged that HUD's conduct of certain procurements involving Hamilton, including Financial

Advisor #1, Due Diligence #1, and Financial Advisor #2, and the subsequent administration of those contracts, violated procurement law and Ervin's Constitutional rights.

87. Prior to filing suit, in the beginning of May 1996, Ervin's counsel had met with HUD to explore the possibility of settling Ervin's claims before litigation was initiated. Shortly thereafter, Hamilton learned that Ervin had threatened to bring suit against HUD. On information and belief, Hamilton immediately purged its files of damaging evidence.

88. On May 7, 1996, Hamilton employee Tristin Lee sent an e-mail message to all Hamilton Securities employees establishing a policy regarding the destruction of e-mail archives: If you have cc:mail archives, you are asked to confirm the necessity for retaining all messages contained herein. If you have any doubt whatsoever of the relevance of the archived messages to our obligation as government contractors for document retention, then you are asked to delete the archives at once.

89. This "when in doubt, throw it out" policy regarding records retention related to note sales and the procurements discussed herein, was highly unusual particularly since Hamilton strived to be a paperless office and maintained the vast majority of its records electronically, particularly with respect to the note sales.

90. On October 4, 1996, Hamilton's counsel wrote to the Inspector General concerning subpoenas that had been issued to Hamilton, and stated:

Hamilton's computer systems personnel have determined that the June 16, 1996 backup tape (the oldest one at Hamilton) contains a snapshot of the cc: Mail database as of May 27, 1996. That same backup tape also has a snapshot of the Groupwise database as of June 16, 1996. Hamilton has cataloged the contents of this oldest backup tape and the backup appears to have been successful.

91. Despite Hamilton's counsel's representations that the June 16, 1996 backup tape existed and had been cataloged by Hamilton computer personnel, Hamilton first refused to produce the June 16, 1996 backup and now claims that such a backup tape never existed.

92. In correspondence of May 26, 1999, to Hamilton's current counsel, Ralph Drury Martin of Storch & Brenner, L.L.P. stated:

The Special Masters have asked me to conduct the inquiry regarding the existence and whereabouts of the back-up tape and regarding the way this subpoena demand was handled by respondents. The fact that the issue has arisen in this manner also raises troubling questions about respondents' overall diligence in providing material required by the subpoenas in this case.

93. On information and belief, Hamilton destroyed the June 16, 1996 backup tape after a review of its contents revealed that it contained substantial evidence in support of the false claims alleged herein.

SUMMARY OF CLAIMS

A. Single Family Note Sales Fraud.

94. Single family loan buyers are generally divided into two broad categories: those interested primarily in performing loans, which will produce a steady stream of cash flow; and those interested in non-performing loans, which can produce a large profit through the foreclosure and disposal of the underlying real estate collateral.

95. Although there is a larger market for performing loans, which sell for a higher percentage of unpaid principal balance ("UPB") and are perceived as less risky than non-performing loans, the BGO Team was interested primarily in non-performing loans, since these loans would present a greater profit opportunity if acquired at the right price.

HUD's Assignment Program

96. Under Section 230(b) of the National Housing Act, prior to its amendment in April 1996, HUD was permitted to pay claims for FHA single family mortgage insurance, accept assignments of the loans and provide forbearance relief for defaulted mortgage loans. To qualify for the assignment program, the default must have been caused by circumstances beyond

the owners' control and there must have been reasonable prospect that the owners would be able to resume making full mortgage payments within 3 years. The majority of the loans in the single family sales were acquired by HUD pursuant to the assignment program.

97. Since HUD did not aggressively service assignment program loans, many owners continued making less than their original mortgage payment beyond the three year forbearance period. In these circumstances, the loans continued to accrue interest and the real estate collateral continued to appreciate in value. Additionally, HUD failed to foreclose on many owners who fell into default after the three year forbearance program, leaving many very old, non-performing notes in HUD's assignment portfolio.

98. On information and belief, there are no other programs in the government or the private sector with terms comparable to those of the assignment program. Consequently, there were no other portfolios of loans that resembled HUD's assignment inventory.

Non-Performing Loans

99. Due to the nature and operation of HUD's assignment program, many of the single family loans being sold had accumulated significant accruals. As a result, the total legal balance due on HUD loans was considerably larger, as compared to UPB, than most RTC or conventional non-performing loans that had been included in note sales.

100. The non-performing assignment program loans were also much older than typical single family non-performing loans that had been sold by the RTC and others. Consequently, the real estate collateral securing the typical assigned single family loan had experienced far greater appreciation in value than was expected by the market.

101. The result of these factors was that there was limited financial risk in most of the non-performing loans being sold in the HUD auctions. If the owner could not bring the loan

current or restructure the debt, then the note purchaser would be able to foreclose on the loan, sell the property, and still recover well over 100% of the unpaid principal balance and often close to the full legal balance. If the owner was able to bring the loan current or agree to a loan modification or workout with the purchaser, then the purchaser would receive an extraordinary profit and would essentially have acquired performing loan at a non-performing price.

102. Since Hamilton did not adequately disclose these distinctions between HUD assignment program notes and the non-performing RTC single family notes, it appeared to the market that HUD loans were over-priced. This misperception limited competition while allowing the BGO Team, who understood the true characteristics and value of the notes, to acquire the notes at bargain prices.

103. Using inside information provided by Hamilton, the BGO Team was able to acquire virtually all (96%) of the \$1.98 billion in non-performing single family notes sold in auctions conducted by Hamilton.

Performing Loans

104. Due to the nature of the assignment program, many of the performing loans were very attractive to purchasers because they included higher than current market interest rates.

105. Despite the fact that many of the loans in each single family auction were, in fact, performing under the terms of the assignment agreement, Hamilton labeled the auctions as "non-performing" sales. Because of this labeling, many potential purchasers of conventional performing loans did not even request an information package or perform any due diligence on the sales, thereby further limiting competition.

106. Hamilton stratified the loans into performing, sub-performing and non-performing categories. Despite this, many of the performing loans were misclassified as non-performing.

This occurred on approximately 1,256 properties in the first Single Family Note Sale. Since Hamilton did not provide cash flow information until shortly before the sale, many potential bidders were unable to adjust for these misrepresentations regarding the nature of the loans being offered.

107. In the third through fifth single family sales, financial Advisors other than Hamilton were involved in the sales. These new financial Advisors provided significantly more complete cash flow information on the loans, and changed the bidding procedures so that bids for performing loans, sub-performing loans (performing loans which had recently become delinquent on 1-3 payments) and non-performing loans were evaluated separately. As a result, the prices for performing and sub-performing loans increased significantly from that paid in previous auctions.

i. Single Family Sale #1.

108. On October 25, 1995, Hamilton conducted the first sale of single family assigned loans on behalf of HUD.

109. The BGO Team submitted a non-interest bearing bid deposit of exactly 7.300% of the unpaid principal balance of the entire portfolio. As such, one would have expected that they would have submitted a bid of 73.00% for the entire portfolio. However, the BGO Team submitted a bid of only 72.07%, beating out the only other full pool bid by only six one-hundredths of a percent (0.06%).

110. The second highest full pool bidder, EMC Mortgage, submitted a bid deposit of exactly 7.201% of the unpaid principal balance. As expected, their full pool bid was exactly ten times their deposit, or 72.01%.

111. Considering the BGO Team's apparently excessive bid deposit and the narrow margin by which the BGO Team's bid defeated the EMC bid, it appears that the BGO Team had

inside information on the amount of EMC's bid or bid deposit, and formulated its bid to beat EMC by the slimmest of margins.

112. Although the BGO Team's bid represented the highest full pool bid, and was therefore identified as the winner by the Optimization Model, Hamilton was unable to accept the bid. Shortly before the sale, the Office of Management and Budget ("OMB") had informed HUD and Hamilton that the "value to the government" of the assets included in the sale was 73.1%, and the government could not sell the loans for less than this 73.1% unstated minimum.

113. Since OMB had provided the unstated minimum, or bid floor, very late in the process, BlackRock was unaware of the bid floor. In a Post Auction Review prepared by Hamilton, it was recommended that the bid floor "should be secured as early as possible in order to respond to staff questions or concerns, if need be, and incorporate any changes in the process." The true motive in making this recommendation was, on information and belief, to give Hamilton the ability better to control the selection of winners without unanticipated constraints placed by OMB.

114. Bypassing any pretense of fairness, Hamilton secretly contacted the BGO Team and gave them the illegal opportunity to increase their full pool bid by approximately 1% (to at least 73.1%) to meet the OMB bid floor, but the BGO Team refused Hamilton's offer.

115. Since the BGO Team had submitted a bid deposit of exactly 7.300% UPB, they could only increase their bid to 73.00% without resulting in a non-conforming bid which would have been rejected. If they had secretly increased their bid to 73.1% to meet the OMB bid floor, their bid would have been non-conforming, leaving a paper trail of the secret deal. On information and belief, the constricting bid deposit was the sole reason that the BGO Team did not accept Hamilton's offer to increase their bid to the unstated minimum.

116. Although the BGO Team refused Hamilton's offer, the bidding rules for this sale only allowed for a Best and Final round in the event of tie bids, so the opportunity Hamilton gave to the BGO Team to win \$641 million in assets was a clear violation of bidding rules.

117. In the Post Auction Review, Hamilton confirmed its own understanding that a Best and Final bid was not permitted absent tie bids, and recommended that the bidding rules be changed:

"Provide more flexibility for best and final rounds, and/or re-offerings. The LSA (Loan Sale Agreement) and the bid procedures only provided for a best and final in the event of a tie. In the future, the LSA and/or bid procedures should provide for best and final rounds at the discretion of FHA."

118. If Hamilton's contact with the BGO Team had been legal, fairness and the interests of the government would have demanded that the same opportunity to increase its bid be given to EMC, the only other full pool bidder. On information and belief, no such offer was made to EMC.

119. Since the single family sale structure had been designed to ensure that a full pool bid would be successful, the required elimination of the two full pool bids left numerous loans that were not bid on. Fearing that the failure of this first single family sale was quickly becoming a major embarrassment, Helen Dunlap, the Deputy Assistant Secretary for Multifamily Housing, stepped in and took control of the sale. Dunlap quickly determined that HUD should accept the greatest number of bids that still resulted in a net percentage to the government that was greater than the 73.1% bid floor.

120. At Dunlap's direction, HUD awarded all 8,465 of performing loans to EMC Mortgage for 82.01% (a separate EMC bid that included only performing loans), 1,325 non-performing loans to CF/SPC 1995, Inc. for only 37.98%, and 80 loans to Schillinger for only

60.86%. On October 31, 1995, Hamilton then issued a re-offering memorandum in which it announced that it would be re-offering the remaining loans on November 6, 1995.

121. HUD's decision to award the performing loans to EMC and a limited number of non-performing loans to CF/SPC and Schillinger presented a significant problem to the BGO Team. Sale #1 was the first of approximately six planned Single Family sales. The BGO Team had intended to reap huge financial rewards from each of these sales. With 10,000 assets ready to be placed in the hands of the BGO Team's competition, the market could learn the true value of the assets, and increased competition would drive the prices up for future sales.

122. On October 27, 1995 and October 30, 1995, Wes Edens of BlackRock wrote to Nicolas Retsinas, then-Assistant Secretary for Housing-Federal Housing Commissioner, urging him to reconsider and accept the BGO Team's full pool bid. When Mr. Retsinas denied these requests via a letter of October 31, 1995, Wes Edens wrote to then-Secretary Cisneros and requested that Cisneros reconsider HUD's decision once the results of the re-offering were in, and that HUD accept whatever scenario maximizes the proceeds to the Government.

123. On November 6, 1995, Hamilton re-offered the remaining 5,402 non-performing assets. The October 31, 1995 re-offering memorandum specifically stated that "FHA has established a floor price for the portfolio of 5,402 mortgages equal to 74% of the unpaid principal balance of the mortgages being offered." Despite this fact, the BGO Team submitted a bid of 73.11% for 3,111 of the loans. This bid, which was .89% lower than the published bid floor, beat the actual bid floor imposed by OMB by only one one-hundredth of a percent (0.01%). The only possible explanation for the BGO Team's decision to bid 73.11% with confidence is that Hamilton informed BlackRock that the actual bid floor required was not the 74.00% it had publicly indicated, but only 73.1%.

124. On information and belief, the BGO Team only bid on 3,111 of the 5,402 loans offered because if they had bid on all of the loans being re-offered they would have undercut their pending request that Secretary Cisneros reconsider HUD's position and accept their full pool bid for all of the assets. Had HUD sold all of the remaining assets at 73.11%, the gross proceeds of the initial offering plus the re-offering would have exceeded the amount of the BGO Team's original full pool bid, thereby eliminating any remaining opportunity for HUD to sell them the entire portfolio of \$641 million in loans.

125. Hamilton and HUD's refusal to accept BlackRock's full pool bid put a serious strain on the Hamilton-BlackRock relationship. In an effort to control the brewing problem, senior Hamilton employee Grace Huebscher sent an e-mail on November 19, 1995 to Wes Edens, Chief Operating Officer of BlackRock (and the same person who had written to Mr. Retsinas and Secretary Cisneros concerning the BGO Team's bid for Single Family #1), with copies to Hamilton employees Kevin McMahan and Brian Dietz, outlining the relationship between Hamilton and BlackRock. Huebscher said, in pertinent part:

Lastly, I hope the next several months allow BlackRock to get better leverage from the association with the HUD business through this contract and I will do what ever I can to make that happen.

126. In essence, Hamilton was making a commitment to BlackRock that, if it continued to work with Hamilton as a teaming partner, Hamilton would ensure that they were successful bidders in the upcoming auctions.

ii. Single Family Sale #2.

127. On March 20, 1996, Hamilton conducted the second single family note sale.

128. As a result of the problems with Single Family Sale #1, Hamilton recommended to HUD that it add provisions to future sales to conduct a Best and Final round if the two highest

bidders were close. This recommendation was implemented and the Single Family Sale #2 bid package stated that:

FHA reserves the right to conduct a "best and final" round among the top Bidders (either the highest Bidders or any Bidder within 5% of the highest Bid(s)) for Mortgage Loan Blocks and/or Mortgage Loan Pools which it selects at its sole discretion . . . Hamilton will send notice by facsimile to those Bidders selected for participation in the "best and final" round and present them with the opportunity to increase their Bid(s). . . . The conducting of a "best and final" shall not be construed as a rejection of any Bid made by a Bidder or preclude Seller from thereafter accepting any Bid made by a Bidder.

129. The BGO Team submitted a non-interest bearing bid deposit of 9.044% of the unpaid principal balance of the entire portfolio. As such, one would have expected that they would have submitted a bid of 90.44% for the entire portfolio. However, the BGO Team submitted a bid of only 83.57% (\$619,657,721), beating out the next highest bidder by only \$2 million (despite being approximately 1.35% less per pool than the second highest bid).

130. The BGO Team's bid deposit demonstrates that the BGO Team was willing to pay up to 90.44% (approximately \$670,000,000), or over \$50 million more than they actually bid, within one day of the sale. Additionally, the BGO Team's initial expected bid amount of 90.44% in Single Family #2 would have been entirely consistent with the values eventually established by the remainder of the market in Single Family #3 (90.76%), Single Family #4 (91.87%) and Single Family #5 (approximately 90%).

131. According to HUD employee William Richbourg, a BlackRock representative was stationed throughout bid day in the lobby of the hotel where Hamilton was verifying bid deposits and accepting bids. By waiting until the last possible moment to submit their bid the BGO Team had up to one-and-a-half hours after the 2:00 p.m. wire transfer deadline to access the bid deposit records via modem, or speak to someone from Hamilton who had accessed the

records, and determine the maximum possible conforming bid of the highest competing bidder. Using this knowledge the BGO Team could formulate and submit a bid just high enough to win the auction.

132. The second highest bidder, Lehman Brothers, submitted a bid deposit of approximately \$61.8 million, and a bid of ten times their deposit, or approximately \$618 million. Lehman obviously did not fully understand the workings of the optimization model, however, and did not include 16 pools of assets in their bid submission. Since there were no cover bids for these remaining 16 pools (as was expected due to the optimization model and the limitation on the number of bids), the optimization model assumed a bid value of \$0 for these assets when evaluating Lehman's bid. As a result, The BGO Team's bid was determined to be the winner, despite the fact that Lehman's per pool price of \$841,580 was higher than the BGO Team's per pool price of \$828,539.

133. Considering the circumstances, there could not have been a more opportune situation for Hamilton to conduct a Best and Final round. For all intents and purposes, the bids were identical. If a Best and Final round had been conducted and Lehman had extended its percentage bid to include the remaining 16 pools, the Government would have made approximately \$10 million more than the BGO Team's successful bid. Similarly, if the BGO Team had increased its bid to ten times its bid deposit, as could have been expected had they not had inside information on Lehman's bid, the Government would have made over \$50 million more than it did by accepting the BGO Teams bid as-is. Since bidders were not entitled to reduce or withdraw their bids during a Best and Final round, there was absolutely no downside to the Government in conducting a best and final round. Despite the tremendous potential upside of

conducting a best and final, and no downside whatsoever, Hamilton did not conduct a best and final.

134. On information and belief, the reason why Hamilton did not conduct a Best and Final bidding round in Single Family sale #2 was because Hamilton was looking out for the BGO Team's interests over that of the Government.

135. Approximately 7 months after Single Family Sale #2, on October 15, 1996, BlackRock and Ocwen securitized 9,825 of the loans they purchased in Single Family sale #2, which represented about 60% of all assets they purchased.

136. Williams, Adley & Co., which was also performing due diligence services for HUD as a subcontractor to Deva at the time for Single Family Sale #4, provided due diligence to BlackRock and Ocwen in this securitization despite the apparent conflicts of interest.

137. The offering documents for Single Family Sale #2 indicated that HUD sold only 8,372 performing loans. However, Ocwen and BlackRock were subsequently able to securitize 9,825 performing loans only seven months later. Thus 1,453 loans were misdescribed by Hamilton or the due diligence provider, Williams Adley & Co., in Single Family Sale #2 as nonperforming. At an average price differential of 14% (91% vs. 77%, estimated from price differential in future sales), opportunity losses on the portfolio resulting from these misclassifications would amount to approximately \$10 million dollars (14% of approximately \$71 million UPB).

138. BlackRock and Ocwen made a profit on the securitization of these 9,825 loans of approximately \$133,825,658 (before carrying costs, transaction fees, and collections), as shown in the following table:

<u>Type of Loans</u>	<u># of Loans</u>	<u>UPB</u>	<u>Estimated Bid Price</u>	<u>Price Paid</u>
As, Bs & Ds	8,372	\$348,305,605	91%	\$316,958,101
Misclassified Cs & Es	1,453	71,076,585	77%	<u>54,728,970</u>
Totals	<u>9,825</u>	<u>\$419,382,190</u>		\$371,687,071
Securitization Proceeds				<u>\$505,512,729</u>
Gross Profit				<u>\$133,825,658</u>

139. This represents a return of approximately 36% on their investment in seven months, or a 62% annualized return. This figure is extremely high on a transaction this large, even by Wall Street standards, and was only possible due to the advantages provided by Hamilton and the below fair-market price the loans were purchased for.

iii. Single Family Sale #3.

140. On September 4, 1996, HUD conducted its third single family sale.

141. Single Family #3 was different from the two prior sales in that Merrill Lynch was the primary transactional financial advisor, instead of Hamilton. Hamilton, however, served as the crosscutting financial advisor, ran the optimization model and selected the winning bids.

142. Recognizing that performing and non-performing loans commanded different levels of market demand, Merrill Lynch changed the structure of the sale so that pools would be divided into stratification groups by class (performing, sub-performing and non-performing) and sold separately. As a result of this change, the BGO Team's ability to acquire substantially discounted performing loans as part of a full pool bid was eliminated, and the BGO Team shifted its focus primarily to the non-performing loans.

143. The BGO Team won all of the non-performing pools with a bid of 76.88% of UPB. This was only one one-hundredth of a percent (0.01%) higher than the second highest bid of 76.87% by Lehman Brothers.

144. Once again, despite virtually identical bids that were separated by a difference of only \$37,437 (on bids exceeding \$250 million), Hamilton again elected to accept the BGO Team's bid without conducting a Best and Final round.

145. In the very next single family sale, the BGO Team purchased all non-performing loans for a price of 85.1%. Had Hamilton conducted a best and final round and had the BGO Team increased its bid for the non-performing loans to the price it paid for similar assets in the next sale, the U.S. Treasury would have received an additional \$21 million for the non-performing loans on Single Family #3.

iv. **Single Family Sale #4.**

146. On January 28, 1997, HUD conducted its fourth single family note sale.

147. As with Single Family #3, Merrill Lynch acted as the transactional Financial Advisor and Hamilton, in its capacity as crosscutting financial advisor, ran the optimization model and selected the winning bids.

148. For the first time in a single family sale, there was no limit on the number of individual bids a bidder could submit. As with Single Family #3, the loans were again stratified by performance class so a full pool bid spanning performing and non-performing loans was not permitted.

149. The BGO Team was awarded all sub-performing and non-performing loans with the exception of 15 mortgage loan blocks of non-performing loans (\$15,491,825 in UPB).

150. All of the BGO Team's successful bids were pool bids. All of EMC's successful bids were bids for individual mortgage loan blocks. Considering this and the BGO Team's

knowledge of the optimization model, it appears that the BGO Team colluded with EMC prior to the sale and intentionally left the 15 mortgage loan blocks on the table for EMC to win.

151. The Post Auction Review prepared by Merrill Lynch stated:

An ongoing concern of small and medium-sized investors was that the structure of the sale and the optimization process limited their likelihood of being awarded any Mortgage Loan Blocks.

As a result of this growing industry recognition that the optimization model was directed towards only the largest bidders, there were only 11 bidders on this sale, a considerable decrease from the 25 bidders in the previous sale.

v. Single Family Sale #5.

152. On September 9, 1997, HUD Held its fifth and final single family note sale.

153. Ernst & Young served as the transactional Financial Advisor, and Hamilton, in its capacity as crosscutting financial advisor, ran the optimization model and selected the winning bids.

154. HUD has refused to release the prices paid for any of the stratification groups for this sale, although they have indicated that the total price paid for all loans was approximately 90%. The BGO Team and EMC each purchased performing loans, EMC won all of the sub-performing loans and the BGO Team won all of the non-performing loans. The BGO Team won a total of \$695,254,154 UPB, and EMC won a total of \$445,286,449 UPB.

155. As a result of the potential collusion between the BGO Team and EMC on the prior sale (#4), and the fact that the BGO Team and EMC won all notes between them on this sale, it appears that the BGO Team and EMC may have colluded in deciding who would bid on which pools of assets in this sale.

156. The optimization model's bias towards large bidders continued to discourage small and medium sized investors from participating, and only six total bidders submitted bids for Single Family #5.

vi. Single Family Summary.

157. Of the 90,000 assigned loans in HUD's inventory at the beginning of the auction process, the oldest loans represented the most valuable loans since they had the largest accruals and the greatest the appreciation on the underlying collateral. Hamilton elected to sell off the oldest and most valuable loans in the earliest note sales.

158. Considering the most valuable loans were sold in the earliest sales, one would have expected the prices paid for the single family notes to decrease as the sales progressed. In practice, however, the sales prices steadily increased from the first sale through the third sale, when new financial Advisors were brought in and conducted the sales in a more competitive manner:

Single Family #1	75.08%
Single Family #2	83.57%
Single Family #3	90.76%
Single Family #4	91.87%

159. On information and belief, had all competing bidders had access to the same level of information as BlackRock concerning the nature and value of the loans being sold, or had BlackRock not had access to information on the bids of its competitors, all of HUD's single family note sales would have sold for prices equal to or exceeding those achieved in Single Family #4.

B. Multifamily Note Sale Fraud.

160. The first multifamily auction, the Southeast sale, was conducted in March 1995, approximately one month prior to the time that BlackRock became a teaming partner of Hamilton. In that sale, G.E. Capital purchased all of the apartment projects being offered by submitting a large pool bid.

161. In August 1995, Hamilton conducted a second multifamily note sale, the National Performing note sale. Since the members of the BGO Team were mostly interested in non-performing multifamily notes, the BGO Team did not participate.

162. For the next four non-performing multifamily note sales, however, each of which took place after Hamilton contracted with BlackRock, members of the BGO Team were highly successful bidders. In two of those sales, Hamilton has admitted to awarding assets to other than the highest bidders.

i. The West of the Mississippi Note Sale.

163. HUD conducted the West of the Mississippi Note Sale on September 19, 1995. By this time, BlackRock had been working in Hamilton's office for five months, and Hamilton was fully aware that BlackRock and Goldman Sachs were planning to be bidding partners for Single Family sale #1 and were jointly marketing to state HFAs for negotiated sales of subsidized properties.

164. After the Southeast Multifamily sale, Hamilton changed the bidding rules for multifamily sales to allow bidders to bid on any number of assets individually, while setting a minimum total UPB that would be accepted (a "bid floor"). Thus, a bidder could bid on a large group of assets individually, without having to worry about winning only one or two assets, which could not be serviced efficiently. If the bidder's bid floor, as expressed in terms of UPB,

was not achieved with a sufficient amount of winning bids, all of that bidders individual bids would be automatically withdrawn.

165. For the West of the Mississippi Note Sale, Goldman Sachs submitted individual bids on \$205 million UPB in loans, and designated a bid floor of \$145 million UPB. Goldman Sachs submitted the highest bids on only \$143 million UPB in loans. Since Goldman Sachs failed to meet its stated minimum bid floor, all of Goldman Sachs' single asset bids should have been withdrawn and Goldman Sachs should not have been awarded any loans.

166. Despite the fact that Goldman Sachs did not meet its bid floor, Hamilton awarded \$164 million in UPB of loans to Goldman Sachs when Goldman Sachs should have received nothing.

167. In order to have Goldman Sachs bid rise above its own self imposed bid floor, Hamilton ignored a winning pool bid from ALI (pool bid #3) so that certain loans included in the pool bid would be awarded to Goldman Sachs.

168. On September 28, 1995, Michael Brocks of Coopers & Lybrand sent a facsimile to Christine Lord of Coopers & Lybrand and Henry Fan at Hamilton and asked why the ALI pool bid was not accepted. The Michael Brocks facsimile was sent shortly after the close of bidding on the West of the Mississippi sale, so there was still time to correct the erroneous selection of winners, accept the ALI bid and close with the correct winners. However, since this would have resulted in all of Goldman Sachs' bids being withdrawn, and Goldman Sachs winning no loans, Hamilton proceeded to close with the incorrect winners selected including Goldman Sachs.

169. On October 17, 1997, the Contracting Officer informed Hamilton that she had just been apprised for the first time of two Hamilton memoranda from December 1996 in which

Hamilton admitted that it had selected the incorrect winners on this sale and on the North Central sale (held in August 1996). On that same day, HUD terminated Hamilton's second Financial Advisor contract (and consequently, Hamilton's Crosscutting task order) for the convenience of the government and requested that Hamilton repay \$3.88 million in lost proceeds to the government.

170. In one of the memoranda which the Contracting Officer was referring, dated December 20, 1996, Hamilton provided a self serving but incomplete explanation of why incorrect winners were selected on the two note sales. This explanation stated that the incorrect selection of winners was the result of a problem programming the optimization model to account for floor bids. Although this explanation must be considered when evaluating the sales that were affected, the memoranda was not verified by HUD and contains several inaccuracies.

ii. The Partially Assisted Sale (a.k.a. the N-Series Sale).

171. In May, 1996, Hamilton conducted the Partially Assisted note Sale.

172. Unlike other note sales where the actual notes were sold, in this sale the government contributed partially subsidized loans into a trust, had the trust issue bonds, and then sold a 70% equity interest in the trust. Due to the nature of this sale, in which there would be only one successful equity bidder, optimization did not apply.

173. The trust took title to the 158 partially subsidized mortgages, with a UPB of \$884,593,325, and then competitively issued bonds for \$509,101,500. From the bond proceeds, \$444,031,500 went to HUD, and the remaining \$65,070,000 remained as a cash reserve for the bonds. Goldman Sachs was then awarded the 70% equity interest in the trust for \$141,100,000 which also went to HUD. Goldman Sachs, as the majority equity holder (70% interest, as opposed to the government's 30% interest), made all decisions relating to the servicing and disposition of the assets after the sale.

174. As part of Hamilton's overall plan to profit from HUD's Mark to Market initiative, Hamilton and BlackRock structured this sale to serve as a prototype mechanism for pooling either first or second mortgages or state agency-owned notes.

175. On March 29, 1996, Lucie Du of Ervin called Rick Wolf and Steve Brookner of Hamilton to inquire about BlackRock's role in the Partially Subsidized Note Sale. Du was informed that BlackRock wanted to learn more about the Partially Assisted transaction and HUD's subsidized portfolio, since BlackRock believed it was the prelude to HUD's Mark-to-Market program. Consistent with Hamilton's statements expressed in its Best and Final Offer about hiring contractors from the "RTC bidders club", BlackRock went to work for Hamilton for the purpose of obtaining and capitalizing on inside information on the Mark to Market opportunity, rather than simply for the fees it would earn assisting Hamilton.

176. The Partially Assisted sale incorporated many of the attributes of a securities transaction which may have made it, and the participants to it, subject to the securities laws restrictions on insider trading. On information and belief, the recognition by Hamilton and BlackRock that the Partially Assisted sale was a securities transaction is what caused Hamilton and BlackRock to structure their Financial Advisory arrangement in the manner in which they did. HUD did not contract with Hamilton to perform financial advisory services for the Partially Assisted sale under either of its financial advisor contracts – instead, the work was performed under a subcontracting agreement with Williams, Adley, who was nominally the financial advisor to this transaction. By engaging BlackRock as a subcontractor to a subcontractor, it became significantly less likely that the conflicts of interest and any violations of securities law would be identified and investigated.

177. Through its subcontract with Hamilton, BlackRock was clearly positioned to influence the rules and structure of the Partially Assisted sale to benefit itself and Goldman Sachs, as well as to gain access to confidential and proprietary inside information relating to the sale. BlackRock was also positioned to provide that inside information, including information on the real quality of the loans in the trust, to its partner on other transactions, Goldman Sachs, who may then have used this information to formulate its winning bid on this sale.

178. At the time, BlackRock and Goldman Sachs were also teaming partners in the marketing of services to State HFAs concerning subsidized notes. Due to this business relationship, it was clearly in BlackRock's best interest to ensure that its partner Goldman Sachs won the Partially Assisted portfolio and gained hands on experience with HUD's subsidized mortgages.

179. Hamilton Securities and BlackRock created unnecessary impediments to bidding on this trust by other potential competing bidders, and as a result, there were only five equity bidders for the most valuable group of multifamily assets HUD would be selling in their note sales. As one example of unnecessary impediments, bidders for the equity component were required to include a rated special servicer as part of their team. There were only 10 approved special servicers in the country, one of whom was the J.E. Robert Company, an organization partially owned by Goldman Sachs. Despite the clear conflict of interest created by the fact that J.E. Robert was initially listed as a teaming partner in Hamilton's proposal for Financial Advisor #2, along with BlackRock and Williams, Adley, Hamilton allowed J.E. Robert to act as special servicer for Goldman Sachs' bid.

180. While Hamilton and BlackRock ignored the conflicts regarding J.E. Roberts and Goldman Sachs, they used a minor conflict of interest to disqualify Midland Mortgage, one of

the most experienced special servicers in the country who understood HUD subsidized mortgages and would have likely formed a bidding team that presented a significant threat to Goldman Sachs' chances of winning.

181. On information and belief, the loans incorporated into the Partially Assisted Note Sale could have been sold utilizing the same methodology that had been used for other assets that had been sold, resulting in a much larger return to the government for a much smaller cost. This approach, however, would have expanded the number of active participants who would recognize the future opportunities with the HUD-held subsidized portfolio or the Mark-to-Market portfolio. Since making this information available to the market would have expanded future Mark to Market competition to the detriment of BlackRock and Goldman Sachs, it was not done.

182. On information and belief, Goldman Sachs was also provided with advance knowledge that HUD would agree to the unprecedented action by HUD of making Section 8 subsidy payments directly to the winner of the Partially Assisted trust instead of to the owners of the properties. This information gave Goldman Sachs an advantage since the direct subsidy payment to the trust instead of through the owners greatly increased the value of the trust.

183. Hamilton further discouraged equity bids by refusing to disclose the indicative interest rate bids on the bonds which were to be issued by the trust. Hamilton refused to provide this information to Ervin, and presumably to other potential bidders, on pretextual grounds.

iii. The North and Central Sale.

184. On August 6, 1996, Hamilton conducted the North and Central Multifamily Sale on behalf of HUD.

185. Although Hamilton discovered and corrected programming problems in the optimization model before this sale, on information and belief, Hamilton consciously decided to

leave the faulty optimization model in place for this sale to make it appear that the exclusion of the ALI pool bid on the West of the Mississippi Note Sale was due to a programming error rather than the intentional exclusion of the pool bid for the benefit of Goldman Sachs as described in paragraphs 163 through 170 above.

186. In addition to the incorrect selection of winners that has been acknowledged by Hamilton, the North and Central sale almost certainly included instances of collusion where bidders decided amongst themselves what assets they would or would not bid on. Specifically:

- Loan Acceptance Corporation pool bid #2, consisting of 16 loans, is perfectly complimentary with the Lennar (who on information and belief also teamed with BlackRock) pool bid #1 consisting of the remaining 135 assets; and
- Loan Acceptance Corporation pool bids 1 (two assets) and 2 (sixteen assets) are also complimentary with 18 WHUD (Goldman Sachs) single loans, and Berkeley Federal (Ocwen) pool bid #1 consisting of 58 loans, or pool 2 consisting of 50 loans.

187. Collusion results in lower prices due to decreased competition, and therefore, less money to the government resulting from the sale.

188. Despite overwhelming evidence of collusion, Hamilton did nothing to protect the government from the practice.

iv. The Midwest Sale.

189. On December 13, 1996, Hamilton conducted the Midwest sale on behalf of HUD.

190. As in the North & Central sale, large players appear to have colluded to decide among themselves which assets they would bid for prior to bidding. Specifically, the assets bid on by the BCFL Team in two pool bids, and one series of single assets bids, is almost perfectly complimentary to two pool bids and one individual bid made by WHBCF Real Estate. Although BlackRock was a partner in each of those bidding groups, any prohibitions against collusion should have continued to be operational.

C. Contracting Fraud.

i. Financial Advisor #1.

191. In 1993, HUD conducted a competitive procurement to retain a Financial Advisor primarily to guide the agency in disposing of "g(4) put" single family and multifamily mortgages. Hamilton was the successful bidder in the procurement and was awarded a 5 year, \$5 million maximum contract which included an "hourly rate, cost reimbursable" fee structure.

192. As a former FHA Commissioner, Austin Fitts was knowledgeable about the responsibilities of political appointees at HUD and had been primarily responsible for the FHA portfolio that would be sold by Hamilton. Ms. Fitts was also aware that procurement regulations within HUD prohibiting personal services contracts, combined with a hiring freeze, left political appointees in HUD's Office of Housing unable to hire support staff. From the very outset of Hamilton's financial Advisor contract, Hamilton improperly sought to expand its influence by providing these prohibited personal services while billing them as something else.

193. Hamilton's initial financial Advisor contract required that all work be assigned through the issuance of task orders. In addition to services ordered by HUD, Hamilton also provided unauthorized services that were not included in any task order. These services (referred to by Hamilton as "Crosscutting" services), primarily benefited Helen Dunlap, then Deputy Assistant Secretary for Multifamily Housing. By the summer of 1994, Dunlap and others had become dependent upon receiving these additional services from Hamilton, providing Hamilton with an inappropriate level of influence over HUD.

194. In the summer of 1994, Hamilton began to pressure Dunlap to increase its compensation under its financial Advisor contract. Essentially, Hamilton threatened that it would not continue to provide additional services without an increase in what it was being paid over what was provided for in the contract.

195. In support of its demands for increased compensation, Hamilton submitted grossly exaggerated cost and pricing estimates for the work it was performing for HUD. While Hamilton represented these excessive fees as being only the cost to perform under existing or proposed task orders, the payments demanded also incorporated all of the costs for Hamilton to provide additional "personal services" or "crosscutting" services, including a substantial markup to fund Hamilton's entire corporate structure and a one year operating reserve.

196. Furthermore, Hamilton overstated the harm the government would suffer if the note sales were delayed to allow HUD to procure such services utilizing competitive procurement methods.

197. Although the Financial Advisor #1 contract specifically limited contract expansion to \$100,000 if the maximum ordering limitation was expended, at the direction of Helen Dunlap, the contract was expanded three times, non-competitively, by a total of \$14 million:

- On August 5, 1994, the contract was modified from an hourly, cost reimbursable contract to a negotiated fee contract, all option periods were exercised at once and the contract maximum was expanded by an additional \$3 million, increasing the total amount to \$8 million;
- On March 15, 1995, the contract was again modified to add another \$5 million in funding, increasing the total amount to \$13 million; and
- On April 28, 1995, the contract was modified for a third time to add another \$6 million in funding, increasing the total to \$19 million.

ii. Due Diligence #1.

198. No later than August 28, 1994, Austin Fitts became aware that HUD intended to issue a sole source, 8(a) contract for Due Diligence services to support the note sales Hamilton was directing. Hamilton was placed on the HUD team that was to select the contractor to receive this lucrative, non-competitive award.

199. Notwithstanding the obvious conflict of interests, at the same time Hamilton was assisting HUD in the due diligence procurement process, it was also marketing its services as a subcontractor to Williams, Adley, a potential awardee. Recognizing that Hamilton was essentially asking for a kickback in exchange for being awarded the sole source due diligence contract, Williams, Adley agreed to include Hamilton as a subcontractor in its proposal.

200. On December 13, 1994, HUD awarded a \$15 million sole source, 8(a) contract to Williams, Adley to provide Due Diligence services on the note sales.

201. After the award of the contract to Williams, Adley, Hamilton drafted all of the task orders to be issued to Williams, Adley. Hamilton then informed Williams Adley that the task order for the Partially Assisted Note sale, as well as certain other select services, were to be performed by Hamilton as a subcontractor. Hamilton expected to receive approximately \$7 million through these arrangements, the maximum amount that would be allowable to a subcontractor under the 8(a) program, which requires that the prime 8(a) contractor direct the work and perform at least 51% of the services and receive at least 51% of the revenues.

202. Williams, Adley refused Hamilton's demand that Hamilton be given work as a subcontractor under this task order on the terms demanded by Hamilton. In response, Hamilton used its influence over Dunlap to expand Williams, Adley's sole source contract from \$15 million to \$30 million. In return, Williams, Adley agreed to hire Hamilton as a subcontractor for the Partially Assisted note sale.

203. In conducting negotiations for the Williams, Adley contract and all task orders and subcontracts issued pursuant to that contract, both Hamilton and Williams, Adley submitted grossly exaggerated cost and pricing estimates for the work to be performed.

iii. Financial Advisor #2.

204. With the rapid and non-competitive expansion of Hamilton's first Financial Advisory Services contract from \$5 million to \$19 million and the industry skepticism that ensued, HUD issued a second Financial Advisory Services procurement in March 1995.

205. In August 1995, while the procurement was still ongoing but was being delayed while conflict of interest restrictions were being negotiated, Hamilton informed Dunlap that it would no longer perform the personal services, or "crosscutting" services, which Dunlap had become dependent upon, once the new financial advisors were engaged.

206. On August 14, 1999, Hamilton, on behalf of Helen Dunlap and Chris Peterson, drafted a memorandum to Nicolas Retsinas, then HUD Assistant Secretary and FHA Commissioner, recommending that HUD issue a "crosscutting" financial Advisor task order as soon as the new financial Advisor contracts were awarded. The memorandum described Hamilton as the only qualified firm. The memorandum stated that the "new" financial Advisors would be ill-equipped to perform such a role in that they would lack the necessary experience and existing relationships.

207. Hamilton's drafting of this memorandum while the Financial Advisor procurement was proceeding was highly improper, particularly since it was intended to influence Retsinas, the source selection official.

208. In January 1996, HUD awarded contracts to four offerors under the second Financial Advisory Services procurement B Hamilton, Cushman & Wakefield, Merrill Lynch and CS First Boston. Two unsuccessful offerors, Ervin and Ernst & Young/Kenneth Leventhal, protested the procurement. HUD acknowledged problems and agreed to conduct a corrective action Best and Final offer competition. Nevertheless, HUD still proceeded to issue the crosscutting financial Advisor task order.

209. At about the same time as Hamilton was convincing HUD to issue a "crosscutting" task order, HUD was also looking to hire a new Comptroller for the FHA. Hamilton had previously interviewed Kathryn Rock about potential employment at Hamilton, but Rock instead chose to take the Comptroller job at the FHA. Despite the clear appearance of a conflict of interest, Rock then participated in the source selection process for Financial Advisor #2 and served as chairman of the Source Evaluation Board for the Crosscutting Task Order.

210. Only Hamilton and Cushman & Wakefield submitted responses to the request for proposals for the crosscutting task order. Kathryn Rock, who was heading the HUD Source Evaluation board's evaluation of the crosscutting proposal and who owed Hamilton for its role in helping secure her position, used her influence to ensure that Hamilton was awarded the task order at their bid price, which included incentives, notwithstanding a much lower bid by Cushman & Wakefield.

211. HUD's contracting department initially challenged Rock's decision to award a \$20 million task order after evaluating Cushman & Wakefield's price bid and reviewing HUD's own internal estimates which had projected the task order would cost only \$5 million.

212. To ensure an award to Hamilton, Rock rationalized that the Cushman & Wakefield proposal was non-conforming. In actions that were taken independently of the Source Evaluation Board but were attributed to that board, Rock effectively disqualified Cushman & Wakefield.

213. Hamilton's bid price of \$868,467 per month was based on .255 basis points per year on HUD's entire \$407 billion portfolio of both HUD-held and HUD-insured mortgages. The crosscutting task order, however, did not include in its scope of work any services for the \$357 billion single family insurance in force portfolio. Therefore, Hamilton inappropriately

billed HUD approximately \$750,000 per month for services on single family insured loans that it was not contracted to perform and which it did not perform.

CAUSES OF ACTION

**COUNT I
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for Single Family #1 Initial Offering
(against Hamilton Securities, BlackRock, Goldman Sachs, & Ocwen)**

214. Paragraphs 1 through 213 are incorporated herein by reference.

215. In marketing materials, bid packages, and other records and statements concerning Single Family #1 that were distributed to and on behalf of HUD by Hamilton, Hamilton misdescribed the bid selection procedures and the true nature and value of the loans being sold.

216. Hamilton, primarily through its association with BlackRock, provided the BGO Team with confidential, inside information concerning the bid selection procedures, the true nature and value of the loans being sold, and the amount of competing bids for Single Family #1. In some instances this confidential information was provided directly to the BGO Team by Hamilton, in other instances Hamilton provided the BGO Team with access to the information.

217. Hamilton applied a personal bias towards the BGO Team in its bid selection procedures for Single Family #1.

218. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT II
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for Single Family #1 Re-Offering
(against Hamilton Securities, BlackRock, Goldman Sachs, & Ocwen)

219. Paragraphs 1 through 218 are incorporated herein by reference.

220. In marketing materials, bid packages, and other records and statements concerning the Single Family #1 Re-Offering that were distributed to and on behalf of HUD by Hamilton, Hamilton misdescribed the bid selection procedures and the true nature and value of the loans being sold.

221. Hamilton, primarily through its association with BlackRock, provided the BGO Team with confidential, inside information concerning the bid selection procedures, the true nature and value of the loans being sold, the amount of the unpublished OMB Bid floor, and the amount of competing bids for the Single Family #1 Re-Offering. In some instances this confidential information was provided directly to the BGO Team by Hamilton, in other instances Hamilton provided the BGO Team with access to the information.

222. Hamilton applied a personal bias towards the BGO Team in its bid selection procedures for Single Family #1 Re-Offering.

223. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT III
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for Single Family #2
(against Hamilton Securities, BlackRock, Goldman Sachs, & Ocwen)

224. Paragraphs 1 through 223 are incorporated herein by reference.

225. In marketing materials, bid packages, and other records and statements concerning Single Family #2 that were distributed to and on behalf of HUD by Hamilton, Hamilton misdescribed the bid selection procedures and the true nature and value of the loans being sold.

226. Hamilton, primarily through its association with BlackRock, provided the BGO Team with confidential, inside information concerning the bid selection procedures, the true nature and value of the loans being sold, and the amount of competing bids for Single Family #2. In some instances this confidential information was provided directly to the BGO Team by Hamilton, in other instances Hamilton provided the BGO Team with access to the information.

227. Hamilton applied a personal bias towards the BGO Team in its bid selection procedures for Single Family #2.

228. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT IV
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for Single Family #3
(against Hamilton Securities, BlackRock, Goldman Sachs, Ocwen)

229. Paragraphs 1 through 228 are incorporated herein by reference.

230. Hamilton, primarily through its association with BlackRock, provided the BGO Team with confidential, inside information concerning the bid selection procedures, the true nature and value of the loans being sold, and the amount of competing bids for Single Family #3. In some instances this confidential information was provided directly to the BGO Team by Hamilton, in other instances Hamilton provided the BGO Team with access to the information.

231. Hamilton applied a personal bias towards the BGO Team in its bid selection procedures for Single Family #3.

232. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT V
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for Single Family #4
(against Hamilton Securities, BlackRock, Goldman Sachs, & Ocwen)

233. Paragraphs 1 through 232 are incorporated herein by reference.

234. Hamilton, primarily through its association with BlackRock, provided the BGO Team with confidential, inside information concerning the bid selection procedures, the true nature and value of the loans being sold, and the amount of competing bids for Single Family #4. In some instances this confidential information was provided directly to the BGO Team by Hamilton, in other instances Hamilton provided the BGO Team with access to the information.

235. Hamilton applied a personal bias towards the BGO Team in its bid selection procedures for Single Family #4.

236. BlackRock colluded with EMC Mortgage concerning bids for Single Family #4.

237. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT VI
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for Single Family #5
(against Hamilton Securities, BlackRock, Goldman Sachs, & Ocwen)

238. Paragraphs 1 through 237 are incorporated herein by reference.

239. Hamilton, primarily through its association with BlackRock, provided the BGO Team with confidential, inside information concerning the bid selection procedures, the true nature and value of the loans being sold, and the amount of competing bids for Single Family #5. In some instances this confidential information was provided directly to the BGO Team by Hamilton, in other instances Hamilton provided the BGO Team with access to the information.

240. Hamilton applied a personal bias towards the BGO Team in its bid selection procedures for Single Family #5.

241. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT VII
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for the West of the Mississippi Multifamily Sale
(against Hamilton Securities, BlackRock, and Goldman Sachs)

242. Paragraphs 1 through 241 are incorporated herein by reference.

243. Hamilton did not accept ALI Pool Bid #3, which was the highest bid for the assets it included and should have been selected, so that Goldman Sachs would be the highest winner on a sufficient number of single asset bids to achieve its self-imposed bid floor.

244. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT VIII
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for the Partially Assisted Multifamily Sale
(against Hamilton Securities, BlackRock, Goldman Sachs)

245. Paragraphs 1 through 244 are incorporated herein by reference.

246. Hamilton and BlackRock, as co-financial advisors on the sale, structured the bid procedures so as to discourage or eliminate competition for Goldman Sachs.

247. In recommendations to HUD, marketing materials advertising the sale to the public, bid packages distributed to potential bidders, and other records and statements concerning the Partially Assisted Multifamily Sale, Hamilton misdescribed the true nature and value of the trust being sold.

248. Hamilton and BlackRock provided Goldman Sachs with confidential, inside information concerning the true nature and value of the trust being sold in the Partially Assisted

Multifamily Sale, including but not limited to advance information on the Government's intent to provide Section 8 housing assistance payments directly to the equity purchaser after the sale.

249. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring a 70% ownership interest in the Partially Assisted trust for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT IX
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for the North & Central Multifamily Sale
(against Hamilton Securities, BlackRock, Goldman Sachs & Ocwen)

250. Paragraphs 1 through 249 are incorporated herein by reference.

251. Hamilton knowingly used a faulty optimization model to select winners on the North and Central Multifamily sale. Hamilton knew that the optimization model was faulty but left it in place nonetheless to cover up prior favoritism in the bid selection process for the West of the Mississippi Multifamily Sale.

252. Members of the BGO Team colluded with other bidders in determining what assets to bid on, and what price to bid, for the North and Central Multifamily sale.

253. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT X
VIOLATION OF 31 U.S.C. 3729(a)(7)
Reverse False Claim for the Midwest Multifamily Sale
(against Hamilton Securities, BlackRock, Goldman Sachs & Ocwen)

254. Paragraphs 1 through 253 are incorporated herein by reference.

255. Members of the BGO Team colluded with other bidders in determining what assets to bid on, and what price to bid, for the Midwest Multifamily sale.

256. In performing the acts alleged herein, defendants made or used false records or statements to decrease an obligation to pay or transmit money or property to the Government. Specifically, the fraudulent acts by defendants resulted in the Government transferring notes to the private sector, including but not limited to those notes transferred to defendants, for less than fair market value, resulting in considerable loss to the U.S. Treasury.

COUNT XI
VIOLATION OF 31 U.S.C. 3729(a)(1)
False Claim Concerning Financial Advisor #1
(against Hamilton Securities)

257. Paragraphs 1 through 258 are incorporated herein by reference.

258. Under Financial Advisor #1, Hamilton charged HUD for personal services it was providing for senior HUD employees which were not included in any contract or task order.

259. To convince HUD to expand Hamilton's contract non-competitively, Hamilton provided false records and statements to HUD which exaggerated the harm to the government that would result from the time required to competitively procure the services.

260. Hamilton provided false records and statements to HUD to support exaggerated cost estimates for task orders under the contract.

261. Hamilton was under contract with HUD to conduct competitive note sale auctions on behalf of HUD. As detailed herein, Hamilton did not conduct completely competitive auctions but instead conducted auctions intended to direct notes to the BGO Team.

262. In performing the acts alleged herein, Hamilton presented false or fraudulent claims to the HUD for approval.

COUNT XII
VIOLATION OF 31 U.S.C. 3729(a)(2)
False Claim Concerning Financial Advisor #1
(against Hamilton Securities)

263. Paragraphs 1 through 262 are incorporated herein by reference. Under Financial Advisor #1, Hamilton charged HUD for personal services it was providing for senior HUD employees which were not included in any contract or task order.

264. To convince HUD to expand Hamilton's contract non-competitively, Hamilton provided false records and statements to HUD which exaggerated the harm to the government that would result from the time required to competitively procure note sales services.

265. Hamilton provided false records and statements to HUD to support exaggerated cost estimates for task orders under the contract.

266. Hamilton was under contract with HUD to conduct competitive note sale auctions on behalf of HUD. As detailed herein, Hamilton did not conduct completely competitive auctions but instead conducted auctions intended to direct notes to the BGO Team.

267. In performing the acts alleged herein, Hamilton made, used or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by HUD.

COUNT XIII
VIOLATION OF 31 U.S.C. 3729(a)(1)
False Claim Concerning Due Diligence #1
(against Williams, Adley & Hamilton Securities)

268. Paragraphs 1 through 267 are incorporated herein by reference.

269. Hamilton served as part of the HUD team that selected Williams, Adley for a contract award. During the selection process, Hamilton solicited and received a "kickback" from

Williams, Adley in the form of subcontracting work, in exchange for Hamilton's recommendation for HUD to select Williams, Adley.

270. Subsequent to the initial award, Hamilton solicited and received an additional "kickback" from Williams, Adley in the form of a multi-million dollar subcontract for work on the Partially Assisted Note Sale, in exchange for Hamilton's recommendation to HUD to non-competitively expand Williams, Adley's contract maximum from \$15 million to \$30 million.

271. Under Williams, Adley's subcontracts under Due Diligence #1 with Hamilton, Williams, Adley charged HUD for personal services provided to, or for the benefit of, senior HUD employees that were not legally included in any contract or task order.

272. To convince HUD to expand Williams, Adley's contract non-competitively, Hamilton provided false records and statements to HUD which exaggerated the harm to the government that would result from the time required to competitively procure the services.

273. Hamilton and Williams, Adley provided false records and statements to HUD to support exaggerated cost estimates for task orders under the contract.

274. Hamilton and Williams, Adley were under contract with HUD to conduct competitive note sale auctions on behalf of HUD. As detailed herein, Hamilton did not conduct completely competitive auctions but instead conducted auctions intended to direct notes to the BGO Team.

275. In performing the acts alleged herein, Hamilton and Williams, Adley presented false or fraudulent claims to the HUD for approval.

COUNT XIV
VIOLATION OF 31 U.S.C. 3729(a)(2)
False Claim Concerning Due Diligence #1
(against Williams, Adley & Hamilton Securities)

276. Paragraphs 1 through 275 are incorporated herein by reference.

277. Hamilton served as part of the HUD team that selected Williams, Adley for a contract award. During the selection process, Hamilton solicited and received a "kickback" from Williams, Adley in the form of subcontracting work, in exchange for Hamilton's recommendation for HUD to select Williams, Adley.

278. Subsequent to the initial award, Hamilton solicited and received an additional "kickback" from Williams, Adley in the form of a multi-million dollar subcontract for work on the Partially Assisted Note Sale, in exchange for Hamilton's recommendation to HUD to non-competitively expand Williams, Adley's contract maximum from \$15 million to \$30 million.

279. Under subcontracts in Due Diligence #1, Hamilton charged HUD for personal services it was providing for senior HUD employees which were not included in any contract or task order.

280. To convince HUD to expand Williams, Adley's contract non-competitively, Hamilton provided false records and statements to HUD which exaggerated the harm to the government that would result from the time required to competitively procure note sales services.

281. Hamilton and Williams, Adley provided false records and statements to HUD to support exaggerated cost estimates for task orders under the contract.

282. Hamilton and Williams, Adley were under contract with HUD to conduct competitive note sale auctions on behalf of HUD. As detailed herein, Hamilton did not conduct completely competitive auctions but instead conducted auctions intended to direct notes to the BGO Team.

283. In performing the acts alleged herein, Hamilton and Williams, Adley presented false or fraudulent claims to the HUD for approval.

284. In performing the acts alleged herein, Hamilton and Williams, Adley made, used or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by HUD.

COUNT XV
VIOLATION OF 31 U.S.C. 3729(a)(1)
False Claim Concerning Financial Advisor #2 & the Crosscutting Task Order
(against Hamilton Securities)

285. Paragraphs 1 through 284 are incorporated herein by reference.

286. Under Financial Advisor #2 and the Crosscutting Task Order, Hamilton charged HUD for personal services it was providing for senior HUD employees which were not included in any contract or task order.

287. Hamilton provided a "kickback" to Kathy Rock, the FHA Comptroller who was the chairman of the source selection board on the Crosscutting Task Order, in the form of the promise of future employment at Hamilton or with members of the BGO Team.

288. Hamilton provided false records and statements to HUD to support exaggerated cost estimates for the Crosscutting Task Order. Specifically, Hamilton submitted a cost proposal based on .255 basis points of HUD's portfolio, but exaggerated the size of the "portfolio" that was covered by the contract by approximately \$350 billion.

289. Hamilton was under contract with HUD to conduct competitive note sale auctions on behalf of HUD. As detailed herein, Hamilton did not conduct completely competitive auctions but instead conducted auctions intended to direct notes to the BGO Team.

290. In performing the acts alleged herein, Hamilton presented false or fraudulent claims to the HUD for approval.

COUNT XVI
VIOLATION OF 31 U.S.C. 3729(a)(2)
False Claim Concerning Financial Advisor #2 & the Crosscutting Task Order
(against Hamilton Securities)

291. Paragraphs 1 through 290 are incorporated herein by reference. Under Financial Advisor #2 and the Crosscutting Task Order, Hamilton charged HUD for personal services it was providing for senior HUD employees which were not included in any contract or task order.

292. Hamilton provided a "kickback" to Kathy Rock, the FHA Comptroller who was the chairman of the source selection board on the Crosscutting Task Order, in the form of the promise of future employment at Hamilton or with members of the BGO Team.

293. Hamilton provided false records and statements to HUD to support exaggerated cost estimates for the Crosscutting Task Order. Specifically, Hamilton submitted a cost proposal based on .255 basis points of HUD's portfolio, but exaggerated the size of the "portfolio" that was covered by the contract by approximately \$350 billion.

294. Hamilton was under contract with HUD to conduct competitive note sale auctions on behalf of HUD. As detailed herein, Hamilton did not conduct completely competitive auctions but instead conducted auctions intended to direct notes to the BGO Team.

295. In performing the acts alleged herein, Hamilton made, used or caused to be made or used, false records or statements to get false or fraudulent claims paid or approved by HUD.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that judgment be entered in their favor and against these defendants as follows:

A. On Counts I through XVI, the maximum civil money penalty allowed by the False Claims Act for each violation thereof and monetary damages sustained by the Government in an

amount not less than three (3) times the amount of damages determined according to proof at trial;

B. That Relator Ervin and Associates, Incorporated, as Qui Tam Plaintiff, be awarded the maximum dollar amount allowed pursuant to 31 U.S.C. 3730(d) of the False Claims Act and/or other applicable provisions of law;

C. Attorney's fees and other costs including Court costs incurred in connection with this case;

D. Such other and further relief as this Court may deem just and equitable.

Respectfully submitted,

TUCKER FLYER, P.C.



Wayne G. Travell, Esquire

D.C. Bar No. 372658

1615 L Street, N.W.

Suite 400

Washington, D.C. 20036

Telephone: (202) 429-3227

Telecopier: (202) 429-3231

Counsel for Qui Tam Plaintiff


Ervin and Associates

Dated: September 3, 1999

CERTIFICATE OF SERVICE

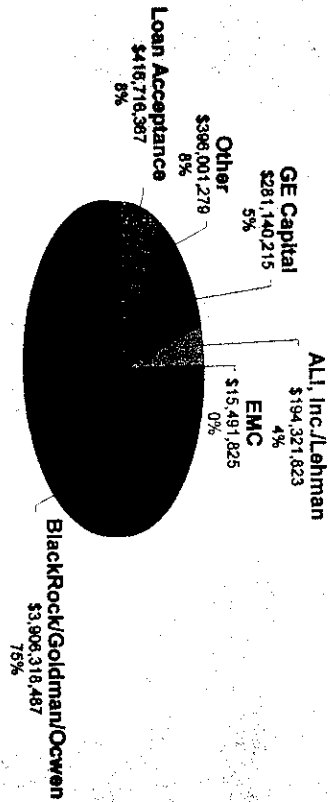
I hereby certify that on this the 3rd day of September, 1999, a true copy of the foregoing First Amended Complaint For Damages And Other Relief Under The False Claims Act and Amended Written Discovery of Material Evidence Pursuant to 31 U.S.C. 3730(B)(2) was served by first-class mail upon the following:

Anthony M. Alexis, Esquire
Assistant United States Attorney
Judiciary Square Building
555 Fourth Street, N.W.
Room 10-816
Washington, D.C. 20001


Counsel

Non-Performing Notes

after BlackRock subcontracted to Hamilton
Total UPB Sold: \$5,209,989,996



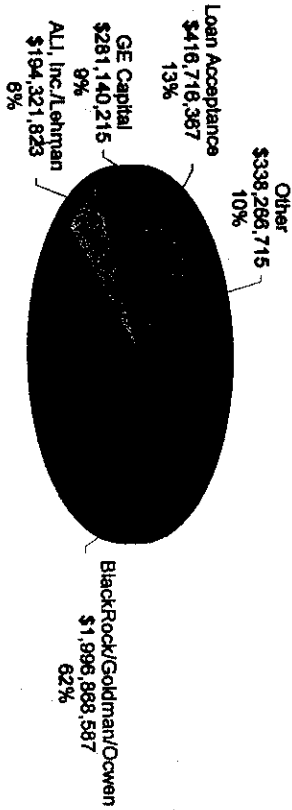
FILED

SEP - 3 1999

NANCY MAYER-WHITTINGTON, CLERK
 U.S. DISTRICT COURT

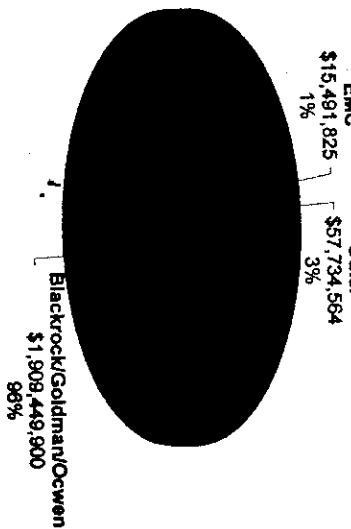
Non-Performing MF Notes

after BlackRock subcontracted to HSG
Total UPB Sold: \$3,227,313,707



Non-Performing SF Notes

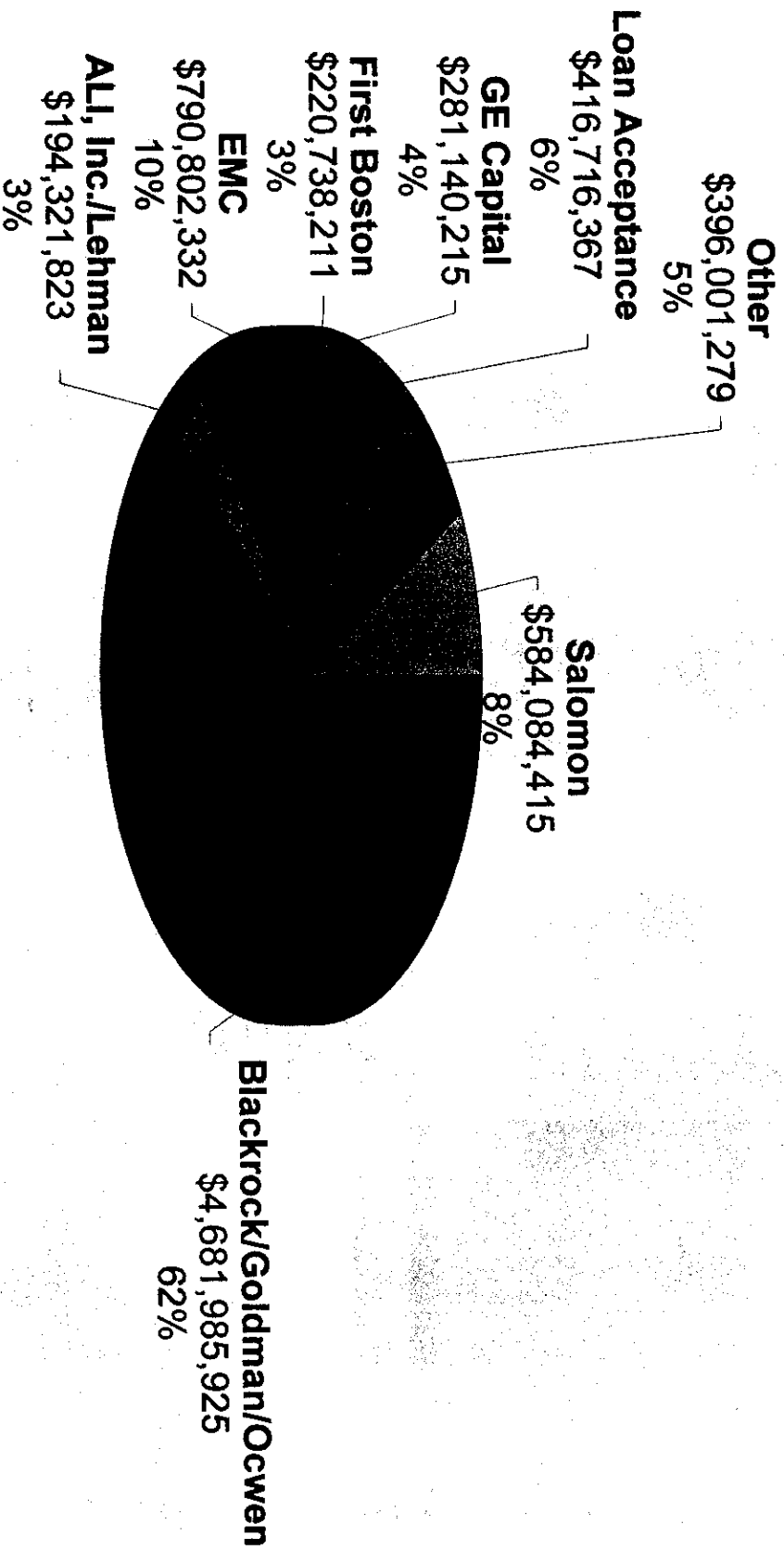
after BlackRock subcontracted to HSG
Total UPB Sold: \$1,982,676,289



All Non-Performing Sales Excluding Healthcare

after BlackRock subcontracted to Hamilton

Total UPB Sold: \$7,565,790,567



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

THE HAMILTON SECURITIES GROUP, INC.,
et al.,

Defendants.

Civil Action No. 1:96CV01258
(Judge Stanley Sporkin)

FILED UNDER SEAL

FILED

SEP - 3 1999

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

**AMENDED WRITTEN DISCLOSURE OF MATERIAL
EVIDENCE PURSUANT TO 31 U.S.C. 3730(B)(2)**

Qui Tam Plaintiff Ervin and Associates, Incorporated ("Plaintiff"), by and through counsel, pursuant to 31 U.S.C. §3730(b)(2), hereby submits the following written disclosure of material evidence in support of its claims on behalf of itself and the United States of America against the Defendants named herein. Plaintiff continues to investigate the bases for its claims alleged herein and will continue to provide the Government with additional material evidence as soon as it becomes available.

In addition, Plaintiff will continue to confer with the United States Attorney's Office for the District of Columbia who will be responsible for determining whether the Government will intervene in this matter. At various meetings, Plaintiff has provided the Government with documents and information that Plaintiff possesses in support of its claims. A listing of the information provided to the U.S. Attorney's Office and the HUD Inspector General is appended hereto as Attachment 1.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, et al.,

Plaintiffs,

v.

THE HAMILTON SECURITIES GROUP, INC.,
et al.,

Defendants.

Civil Action No. 1:96CV01258
(Judge Stanley Sporkin)

FILED UNDER SEAL

FILED

SEP - 3 1999

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

**AMENDED WRITTEN DISCLOSURE OF MATERIAL
EVIDENCE PURSUANT TO 31 U.S.C. 3730(B)(2)**

Qui Tam Plaintiff Ervin and Associates, Incorporated ("Plaintiff"), by and through counsel, pursuant to 31 U.S.C. §3730(b)(2), hereby submits the following written disclosure of material evidence in support of its claims on behalf of itself and the United States of America against the Defendants named herein. Plaintiff continues to investigate the bases for its claims alleged herein and will continue to provide the Government with additional material evidence as soon as it becomes available.

In addition, Plaintiff will continue to confer with the United States Attorney's Office for the District of Columbia who will be responsible for determining whether the Government will intervene in this matter. At various meetings, Plaintiff has provided the Government with documents and information that Plaintiff possesses in support of its claims. A listing of the information provided to the U.S. Attorney's Office and the HUD Inspector General is appended hereto as Attachment 1.

Plaintiff submits the following material evidence corresponding to the claims in its

Complaint herein:

I. Single Family Note Sale Fraud (Single Family Sales 1, 2, 3, 4 and 5):

Hamilton's provision of a secret opportunity to BlackRock to revise its bid on SF#1; access to and use of inside information on the sales and assets being sold; collusion; conflicts of interest; illegal transfers of loans after sales; BGO Team's access to and use of confidential bid deposit and other information of other bidders to formulate bids; limiting competition in the note auctions by selective disclosure of information, misdescription of sales and assets being sold, and use of defective optimization model; favorable treatment by Hamilton in bid selection, including refusal to conduct a Best and Final round on SF#2 and SF#3.

Our sources:

Jeff Parker - Cargill (a former bidding partner of BlackRock/Goldman Sachs); Terry Dewitt - J-Hawk Corporation (a business associate of Mr. Parker); Michael Nathans - formerly with Penn Capital Corporation (a business associate of Mr. Parker, Mr. Dewitt and Ervin); Wes Edens, Randy Nardone, Chris Haspel - BlackRock; Mike Offit, Peter Briger and Adam Sherman - Goldman Sachs; Toni Moss and Andrea Pimentel - formerly with MAPS; Debra Cooney and Marion Lee - Asset Strategies Group; William Richbourg - HUD.

Others who we believe would know about this:

Austin Fitts, Jim Ladd, Kevin McMahan, Grace Huebscher, Robert Robinson and Henry Fan - all formerly with Hamilton Securities; Helen Dunlap, Nicolas Retsinas, Kathryn Rock and John "Chris" Greer - all formerly with HUD; Audrey Hinton, Ivery Himes and Leonard Nowak - all currently with HUD; Lucent Technologies; Merrill Lynch; Ernst & Young; Price Waterhouse-Coopers.

Documentary Evidence we have:

Various analyses of the note sales; select bidding documents from some of the note sales; e-mails; memoranda; agreements; note sale press releases; copy of the mathematical formula for the optimization model; Ervin's analysis of the optimization model; various issues of Update (a quarterly publication by Hamilton Securities on the note sales); offering documents from each note sale; Note Sale Post Auction status reports.

Other Documentary Evidence to look for:

Memoranda internal to Hamilton and HUD; Bid sheets; depository receipts of bidding team(s); wire transfers; telephone records; cellular phone records; e-mails; memoranda; agreements ; bidder information packages for each applicable

note sale; data diskettes or CD-ROMs containing the due diligence information on loans in a given sale; Post Auction Status Reports for each sale; Optimization Analysis for each sale.

I. Multifamily Note Sale Fraud (West of the Mississippi, North & Central, Midwest and Partially Assisted Sales:

Selection of wrong winners and losers; access to and use of inside information on the sales and assets being sold; collusion; conflicts of interest; BGO Team's access to and use of confidential information of other bidders to formulate bids; limiting competition in the note auctions by selective disclosure of information, misdescription of sales and assets being sold, and use of defective optimization model.

Our sources:

Michael Nathans - Penn Capital Corporation; Wes Edens, Randy Nardone, Chris Haspel - BlackRock; Mike Offit, Peter Briger and Adam Sherman - Goldman Sachs; William Richbourg - HUD

Others who we believe would know about this:

Austin Fitts, Jim Ladd, Kevin McMahan, Grace Huebscher, Robert Robinson and Henry Fan - all formerly with Hamilton Securities; Helen Dunlap, Nicolas Retsinas, Kathryn Rock and John "Chris" Greer - all formerly with HUD; Audrey Hinton, Ivery Himes and Leonard Nowak - all currently with HUD;. Lucent Technologies; Merrill Lynch; Ernst & Young; Price Waterhouse-Coopers.

Documentary Evidence we have:

Various analyses of the note sales; select bidding documents from some of the note sales; e-mails; memoranda; agreements; note sale press releases; copy of the mathematical formula for the optimization model; Ervin's analysis of the optimization model; various issues of Update (a quarterly publication by Hamilton Securities on the note sales); offering documents from each note sale; Post Auction Status reports for certain sales; Loan Sale Design Books for certain sales; bid cards for certain sales.

Other Documentary Evidence to look for:

Memoranda internal to Hamilton and HUD; Bid sheets; depository receipts of bidding team(s); wire transfers; telephone records; cellular phone records; e-mails; memoranda; agreements ; bidder information packages for each applicable note sale; data diskettes or CD-ROMs containing the due diligence information on loans in a given sale; Post Sale Auction Reports; Note Sale Design Books; Optimization analyses for each sale.

I. False Negotiation of Contracts and Subcontracts(Financial Adviser #1, Due Diligence #1 and Financial Adviser #2):

Mischarging of expenses; overcharging for work performed; charging for services not provided; kickbacks; false negotiations.

Our sources:

None

Others who we believe would know about this:

Austin Fitts, Jim Ladd, Kevin McMahan, Grace Huebscher, Robert Robinson and Henry Fan - all formerly with Hamilton Securities; Helen Dunlap, Nicolas Retsinas, Kathryn Rock and John "Chris" Greer – all formerly with HUD; Annette Hancock, Dolores Ammons-Barnett, David Ryan, Myrna Gordon, Audrey Hinton, Ivery Himes and Leonard Nowak - all currently with HUD

Documentary Evidence we have:

Various analyses of HUD contracting associated with services procured for the note sales; select contracting documents; e-mails; memoranda; agreements; activity reports.

Other Documentary Evidence to look for:

Memoranda internal to Hamilton and HUD; telephone records; e-mails; memoranda; agreements; contracting documents; invoices; payment vouchers, activity reports

IV. Other General Information Sources on HUD's Note Sale and Contracting Processes:

1 st Financial Advisor Contract	Hamilton Securities Coopers & Lybrand
2 nd Financial Advisor Contracts	Hamilton Securities Cushman & Wakefield Merrill Lynch CS First Boston Ernst & Young
Due Diligence contracts	Williams, Adley Deva Gardner, Kamyra Tradewinds

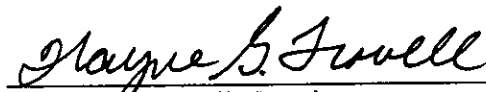
Mark-to-Market (Portfolio Re-engineering) E&Y/Kenneth Leventhal
Nancy Andrews
Helen Dunlap
C. Austin Fitts
State Housing Finance Authorities
e.Villages
Adelson Entertainment

Subcontracting Marta Angueira
Nancy Andrews
Aspen Systems

In addition, Ervin has had many discussions, too numerous to list here, summaries of which are available, with various parties internal and external to HUD. These parties have included successful and unsuccessful bidders, former and current HUD employees, including HUD employee(s) who have called and left anonymous voice messages for Ervin on where to look for wrongdoing.

Respectfully submitted,

TUCKER FLYER, P.C



Wayne C. Travell, Esquire
D.C. Bar No. 372658
1615 L Street, N.W.
Suite 400
Washington, D.C. 20036
Telephone: (202) 452-8600
Telecopier: (202) 429-3231
Counsel for Plaintiff

Dated: September 3, 1999

**Summary of Evidence Provided to the
U.S. Attorney's Office and the HUD Inspector General
under the Continuing Disclosure Obligations of 31 U.S.C. 3730(B)(2)**

**United States of America ex rel Ervin and Associates v. The Hamilton
Securities Group, Inc. et al., (Civil Action No. 1:96CV0258) (SEALED)**

<u>Date</u>	<u>Evidence Provided</u>
6/21/96	<ul style="list-style-type: none">• Notebooks containing preliminary information and analysis:<ul style="list-style-type: none">- 6/20/96 analysis of the issues- Parties involved and backgrounds (Tabs 1-12)- Notes Sales history (Tabs 13-20)
6/27/96	<ul style="list-style-type: none">• Summary of additional preliminary information provided to U.S. Attorney:<ul style="list-style-type: none">- Problems/irregularities with single family sales 1 & 2- Excerpts from Hamilton's Best and Final Offer -Financial Advisor 1- Published "updates" on note sales- Background information on note sales from Hamilton's web page
6/28/96	<ul style="list-style-type: none">• Additional preliminary information provided the U.S. Attorney:<ul style="list-style-type: none">- Transcripts of anonymous phone calls- Williams, Adley due diligence contract information- BlackRock and the Partially Assisted note sale- Country Village- EMC Holdings v. Henry Cisneros
7/17/96	<ul style="list-style-type: none">• Letter dated 9/6/95 to Andrew Cuomo from Asset Strategies Group• Williams, Adley \$30 million, emergency, sole source contractX Anonymous note on contracting with Nancy Andrews
7/17/96	<ul style="list-style-type: none">• Ervin's 6/19/96 debriefing questions on the second Financial Advisory contract
7/18/99	<ul style="list-style-type: none">• Information on The Kerry Company SWAT contracts
7/19/96	<ul style="list-style-type: none">• Anonymous written message from HUD Connecticut State Office on Helen Dunlap's ongoing interference in HUD's contracting process
7/19/96	<ul style="list-style-type: none">• Handwritten notes of meetings and phone conversations with Bill Richbourg
8/5/96	<ul style="list-style-type: none">• Summary of contracting corruption

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- 8/5/96 • Summary of problems with Portfolio Reengineering and the "Multifamily Portfolio Reengineering Study" prepared by E&Y Kenneth Leventhal
- 8/6/96 • Ervin SWAT Protest and GAO determination letter
- 8/6/96 • Ervin protest of Single Family Marketing and Managing Procurement with backup documents
- 8/6/96 • Copy of GAMEX protest filed 7/12/96 by Arnold & Porter
- 8/6/96 • Letter describing anonymous phone call disclosing 2 instances of forced subcontracting along with transcript of anonymous message
- 8/6/96 • Description of phone call with Nancy Kay regarding problems
- 8/12/96 • Ervin response to letter from HUD to GAO urging dismissal of Ervin's SWAT protest
- 8/15/96 • Copy of Complaint for Declaratory Judgement and Money Damages filed in Claims Court
- 8/15/96 • Transcript of anonymous phone message regarding Hamilton's Democratic Party connections and \$800,000 per month crosscutter fee
- 8/16/96 • Information on Nancy Andrews' role in E&Y/Kenneth Leventhal Multifamily Portfolio Reengineering Study - contracting with Ginnie Mae
- 8/16/96 • Information on payments to Nancy Andrews and Marta Anguiera for advisory services
- 8/16/96 • Transcript of anonymous phone message regarding Helen Dunlap/Nancy Andrews relationship, anti-male animus
- 8/19/96 • Copy of Hamilton's Crosscutting Task Order
- 8/28/96 • Reason for changing Hamilton's crosscutting task order from merely providing access to an optimization model to providing and running the model.
- 8/28/96 • Letter describing anonymous phone message regarding Helen Dunlap's anti-male animus
- 08/29/96 • Printouts from Ervin's intelligence system with indexes.
- 9/4/96 • Copy of HUD internal memo relating to the original due diligence work promised to Ervin and given to Williams Adley
- 9/4/96 • Copy of HUD response on the "limited circumstances" of the SWAT contract
- 9/6/96 • Copy of the GAO Agency Report on the SWAT protest
- 9/6/96 • Copy of Plaintiff's Opposition to Defendants' Motion to Dismiss

- 9/9/96 • Copy of National Review article
- 9/9/96 • Copy of HUD's request to GAO for a protective order and Ervin's response regarding SWAT proposal protest
- 9/9/96 • Letter disclosing Toni Moss and Andrea Pimentel of MAPS and Sue Mitchell of HUD as sources for further information
- 9/11/96 • Letter describing information received from Toni Moss regarding bids being "rigged" for BlackRock
- 9/11/96 • Transcripts of anonymous messages regarding Dunlap anti-male animus, and compensation being paid to Hamilton
- 9/11/96 • Transcript of anonymous message regarding "witch hunt" by HUD's Office of General Counsel against employees of HUD who may have given Ervin information regarding corrupt practices in the SWAT procurement, as a result of Ervin protest
- 9/13/96 • Copy of letter from Richard Marchese to Robert Arsenoff regarding Ervin's GAO protest of SWAT and Ervin's response to Marchese's letter
- 9/20/96 • Letter on transfer of Ervin's Denver physical inspection lawsuit to D.C.
- 9/23/96 • Letter disclosing allegations heard with regard to provision of EDS servicing tape to BlackRock, relationships between Kathy Rock, BlackRock and Hamilton, as well as Hamilton's failure to make the competitive range in the Financial Advisor 2 procurement
- 10/14/96 • Letter outlining Hamilton/BlackRock relationship and favoritism toward BlackRock, as well as EDS tape allegedly provided to BlackRock
- 10/17/96 • Copies of a series of FOIA requests regarding Nancy Andrews and HUD's responses evidencing stonewalling of the Nancy Andrews issue
- 10/18/96 • Letter disclosing that Tim Ito has stated that Hamilton did not make the initial competitive range in the Financial Advisor 2 procurement
- 10/21/96 • Ervin withdrawal of FOIA request - FI-160337
- 10/28/96 • Copy of Ervin's protest of HUD Denver multifamily physical inspection procurement
- 10/28/96 • Copy of Ervin's protest of limited competition Equity Monitor procurement

- 10/29/96 • Copies of correspondence between the "U.S. News and World Report" (Ed Pound and Tim Ito) and Hamilton Securities (Austin Fitts) Ervin received anonymously
- 11/4/96 • Letter outlining:
 - Various aspects of the Multifamily North Central Sale, including collusion
 - Nancy Andrews continued work on E&Y contract
 - EDS tape provided to BlackRock, and Ocwen/Berkeley Federal
 - BlackRock winning of Single Family sale #2
- 11/8/96 • Copy of Ervin's letter to HUD demanding to be informed of the winner of the SWAT 2 procurement, demanding a debriefing, and outlining the problems with the procurement
- 11/12/96 • Ervin's letter to Secretary Cisneros outlining 22 specific procurements containing irregularities
- 11/18/96 • Letter outlining:
 - information on George Chabot's involvement in contracting
 - Kevin McMahan working at Jenner & Block with Les Lepow in Hamilton "war room"
 - Jim Ladd's resume showing experience with prior HUD scandals
- 12/2/96 • Copy of GAO protest of National Physical Inspection Procurement
- 12/5/96 • Copy of protest filed by Ervin on Equity Monitor Procurement, with background information on the services required
- 12/5/96 • Letter informing that Ervin has been informed by Tim Ito that Ron Hughes is leaving William & Adley, and Hughes' involvement in note sales
- 12/6/96 • Information regarding Country Village, including "L.A. Times" article, Ervin analysis of financing, transcript of phone call between John Ervin and Helen Dunlap, transcript of phone message left by Helen Dunlap, Inspector General investigation and possible illegal interference by Dunlap
- 12/16/96 • Letter disclosing Tim Ito's inquiries into whether BlackRock may have links to organized crime and/or money laundering
- 01/02/97 • Copy of Ervin protest of Asset Management Procurement
 - X Greer retaliation against Ervin on Asset Management Contract
 - X Greer considers our litigation personal

- 01/06/97 • Letter describing information received in phone call with Toni Moss regarding PPSI providing due diligence services to Ocwen and potential conflict of interest
- 1/14/97 • Ervin's response to HUD's Agency Report to Ervin's GAO protest of the Equity Monitor procurement
X Description of the linkages with the Equity Monitor and the bidders (BlackRock, GE Capital, Goldman Sachs, J.E. Roberts) in the Partially Assisted note sale
- 1/20/97 • Supplemental information regarding the Equity Monitor procurement, contracting interference and forced subcontracting
- 2/3/97 • Copy of FOIA response identifying funds allocated to Williams, Adley and paid to Hamilton
X Linkage to Equity Monitor procurement
- 2/5/97 • Letter detailing:
 - Ocwen/Berkeley Federal/BlackRock winning the Single Family Sale 4
 - HUD is considering letting Hamilton service the G-4 puts
 - MAPS is splitting up
- 2/6/97 • Letter from Richard Marchese to Aldo Benejam providing additional information on Ervin Equity Monitor protest
• Ervin response to Marchese letter
- 2/18/97 • Copy of Judge Bryant's February 14, 1997 Opinion denying, in large part, the Government's Motion to Dismiss
- 2/26/97 • A copy of Ervin's request for a debriefing on the SWAT 3 procurement and outlining re-scoring of proposals
- 2/27/97 • Letter detailing concerns with the HUD Inspector General's investigation as related to Ervin by various people in the industry who had been interviewed by the Inspector General
- 3/6/97 • Memorandum outlining issues surrounding the re-delegation of authority for note sales to Dunlap, along with several press articles about the staffing changes at HUD
- 3/11/97 • Letter endorsing Judge Sporkin's suggestion to use fraud investigators at the SEC in the investigation, instead of an outside consultant
X Destruction of documents at HUD

- 3/11/97 • Copy of Plaintiff's Opposition to Federal Defendant's Motion to Stay Proceedings for 60 Days, Pending Parallel Criminal Investigation
- 3/12/97 • Copy of FOIA request for memorandum written by Nelson Diaz to Nic Retsinas recommending against re-delegating note sale authority from Helen Dunlap's old position to her new position
- 3/13/97 • Copy of Federal Defendant's Reply in support of their Motion to Stay
- 3/18/97 • Letter recommending a government contracting expert to assist the AUSA
- 3/18/97 • Letter outlining details of telephone conversation with Toni Moss regarding relationship of Andrea Pimentel and Hamilton
- 3/18/97 • Letter outlining the HUD FOIA Office's stonewalling on information about note sales and BlackRock, including information on
 - Single Family sale 2
 - collusion between BlackRock/Lennar and Ocwen
 - losing bids
 - flipping assets in violation of single family sale rules
 - the attributes of the Partially Assisted sale that make it look like a security
- 3/19/97 • Letter confirming that the FDIC routinely releases both winning and losing bidder information on asset sales, while HUD refuses to release such information
- 3/31/97 • Letter detailing information received from Tim Ito regarding BlackRock's sale of loans to Goldman Sachs immediately after Single Family Sale #2
- Letter detailing BlackRock's and Berkeley Federal's submission of "complimentary" bids in the North Central Multifamily sale indicating collusion
- 4/9/97 • Letter detailing a HUD FOIA response regarding further instances of forced subcontracting at HUD such as Hamilton's development of 5 computer diskettes under Coopers & Lybrand contract
- Sent a transcript of an anonymous phone call received by Ervin regarding forced subcontracts to
- Sent a copy of Task Order # 9 to Coopers' contract, a listing of all fees paid to Hamilton as a subcontractor, and information on Nancy Andrews' office space at HUD
- 4/10/97 • A copy of the modification to Hamilton's Financial Advisor contract allowing Hamilton to run the optimization model and to increase funds above the \$20 million already committed

- Internal Memo written by Austin Fitts to HUD employees warning about “Hippos” down the road (the “Hippo Memo”)
 - FOIA response indicating that HUD allowed Kathy Rock to hire former Hamilton employee Danila Weatherly as a consultant to the Comptroller (Rock)
- 4/21/97
- A copy of “Wall Street Journal” article detailing Energy Capital’s campaign contributions to the Democratic Party in return for HUD contracts and approval to prime the HUD mortgages on affected properties
- 4/22/97
- A copy of a letter from Dolores Ammons-Barnett to Gardiner, Kamya & Associates explaining why HUD awarded a contract to Deva & Associates under the 8(a) program in order to use Williams, Adley
- 4/22/97
- Letter detailing that GE Capital had access to the workings of the optimization model prior to any other bidders
- 4/23/97
- Copy of Ervin protest of Legal Enforcement protest
- 4/23/97
- Ervin’s appeal of Denial of Waiver of Fees in the amount of \$999 associated with FOIA requests
- 4/25/97
- Letter detailing the involvement of Craig Durkin in the corrupt activities of the Contracting Department with respect to the 235R program and 6 other highly suspect procurements
- 5/1/97
- Letter about bid rigging in FCC auctions and identifying auction experts who met with the Justice Department Antitrust Division
- 6/4/97
- Transcript of anonymous phone message regarding Helen Dunlap’s continued involvement in the ongoing coverup at HUD (after she had left the Department)
- 6/6/97
- Letter disclosing that Nancy Andrews still maintains an office and telephone number at HUD
- 7/8/97
- Letter detailing the personnel changes at HUD, including the possibility that Chris Greer, Al Sullivan, Stephanie Smith, Nic Retsinas and Sarah Rosen may be leaving and suggesting that the criminal investigators access their hard drives
- 7/15/97
- Copy of Federal Defendants’ document requests and interrogatories
- 7/25/97
- Copy of the Protective Order issued by Judge Bryant and an explanation of the importance of Al Sullivan to our allegations

- 7/31/97 • Letter regarding HUD's disconnection of Hamilton Securities from the agency's cc:Mail system in July 1997
- 8/13/97 • Letter regarding the deposition of Brian Valeyko of ATS that contract to maintain HUD's cc:Mail system is a personal services contract
- 8/13/97 • Letter disclosing conversation with Toni Moss regarding "add-ons" to due diligence contracts that were not paid but were charged to the government, and the Munson's control over the entire Single Family due diligence process
 - Sent copy of letter from Gardiner, Kanya & Associates to Toni Moss requesting a price for increased services with a draft response letter provided
 - Sent copy of the actual letter detailing additional costs sent to Gardiner, Kanya & Associates by MAPS
- 8/27/97 • Copies of confidential documents received from The Kerry Company sent by Counsel for Ervin
- 8/28/97 • Additional non-confidential documents evidencing Nancy Andrews' work as a consultant under two Aspen System Corporation contracts
- 9/17/97 • cc:Mail messages regarding re-delegations of authority, Sarah Rosen is assigned to DAS for Multifamily Operations, but Kathy Rock maintains control of note sales
 - Memorandum from Nic Retsinas to Sam Hutchinson requesting a delegation of authority transferring note sale authority from Chris Greer to Helen Dunlap
 - A memorandum from Nelson Diaz to Nic Retsinas recommending against the above transfer of authority
 - A copy of the actual re-delegation of authority signed by Retsinas
- 9/17/97 • Letter detailing the mis-characterization of Hamilton's fees under the crosscutting task order resulting in a false claim to the Government for charges relating to the \$350 billion single family portfolio of insurance in effect
- 9/17/97 • Copy of article from "1997 Multifamily Messenger" detailing Nancy Andrews' continued involvement in portfolio re-engineering as a contractor to HUD
 - Copy of GAO notes taken in meetings with HUD and Nancy Andrews regarding Ernst & Young Study
- 9/19/97 • Two news wire articles detailing Ocwen winning most of the assets in Single Family Sale #5, information outlining partnering links between BlackRock, Ocwen, Austin Fitts, and Daryl and Sue Munson

- 9/29/97 • Letter outlining conversation with Toni Moss regarding Daryl and Sue Munson's involvement in the Single Family due diligence process and their mortgage company, Aspen Ridge Mortgage
- 9/29/97 • Information detailing HUD's award of \$5 million contract to ICF for neighborhood networks, and the connection between Helen Dunlap, ICF, Nancy Andrews, Austin Fitts
- 9/29/97 • Copy of an anonymous message received detailing abuses of contracting authority and money within Ginnie Mae
- 9/29/97 • Copy of letter from Hunton & Williams to Ginnie Mae received anonymously regarding non-renewal of the Legal Services contract for the Multiclass Securities Program
- 10/3/97 • Copy of second anonymous message received regarding Hunton & Williams Ginnie Mae REMIC legal services
- 10/16/97 • Copy of letter from Ervin Counsel to National Academy of Public Administration (NAPA) regarding HUD contracting study and whether it was used to gain intelligence on the criminal investigation
- 10/20/97 • Copy of HUD termination letter to Hamilton, and detail of implications of the termination; letter was leaked by Howard Glaser in return for agreement not to run a story on Ernst & Young's political contribution links to HUD contracts
- 10/21/97 • Transcript of anonymous phone call informing Ervin that Audrey Hinton was "trashing" her files related to Hamilton Securities and Note Sales at that moment
- 10/24/97 • Letter explaining Hamilton's use of the optimization model, along with a detailed analysis of the bid procedures and instructions and bids submitted
- 10/24/97 • Letter regarding Nic Retsinas's appearance before Congress to provide information concerning Hamilton Securities
- 10/29/97 • Letter passing on information received from Carl Johnston regarding Nic Retsinas' testimony to Congress that confidential information had been provided to one of the bidders in the sale
- 10/30/97 • Withdrawal of Ervin FOIA request to the Inspector General
- 11/4/97 • Letter outlining a conversation with an employee of JE Roberts who stated that Lehman Brothers lost the Partially Assisted note sale by only a few

million dollars and that BlackRock/Goldman/Ocwen appear to win all bids by a very thin margin

- 11/7/97 • Letter detailing:
 - a conversation with Marion Lee regarding Bear, Stearns concerns over Hamilton Securities' handling of note sales
 - Nancy Ellsworth's knowledge of wrongdoing by Hamilton and Williams, Adley
 - a conversation with Toni Moss echoing Ms. Lee's sentiments about Williams, Adley

- 11/14/97 • Letter detailing an analysis of the Single Family #1 auction wherein BlackRock was allowed a secret opportunity to increase its bid
- X OMB's late approval of credit subsidy figure for the sale
- Single Family Sale #1 post-auction review prepared by Hamilton Securities

- 11/14/97 • Copy of article in "Real Estate Alert" regarding Wes Edens leaving BlackRock and the break up of the BlackRock team

- 12/3/97 • Analysis of Single Family Sale #3 results prepared by Merrill Lynch detailing that Berkeley Federal/BlackRock again won the bid by the slimmest of margins (missing page 6)

- 12/5/97 • The missing page 6 of the analysis of the Single Family Sale #3 prepared by Merrill Lynch

- 1/8/98 • Letter detailing evidence of collusion before the Midwest Note Sale between BlackRock, Goldman and Ocwen
- X BlackRock, Goldman Sachs and Ocwen conducted mock auctions to determine how to spilt up assets

- 1/14/98 • Letter detailing Hamilton Securities' (Austin Fitts) efforts to undermine the IG investigation
- X Government should seek a stay in Hamilton's litigation

- 1/16/98 • Letter detailing the 1997 HUD Fair and the implications of the contractors invited to display at the fair

- 2/5/98 • Copy of "Structured Finance New Issue Report" summarizing the securitization of the loans purchased by BlackRock and Ocwen evidencing that BlackRock and Ocwen grossed (before expenses) approximately \$131 million through the securitization
- Copy of a press release detailing that Ocwen had record earnings in 1997 as a result of its acquisition of HUD notes

- 2/17/98 • Letter detailing HUD's Conflicts of Interest policy developed for the Financial Advisor #2 procurement
- 2/17/98 • Copy of the privilege logs received by Ervin from Federal Defendants
- 3/3/98 • Letter detailing all of Ervin concerns relating to all major non-specialized note sales that had been conducted by HUD since 1995, with detailed analyses
- 3/6/98 • Transcript of John "Chris" Greer deposition providing material evidence and information in support of Ervin's False Claims Act complaint
- 3/13/98 • Letter informing that Federal Defendants have not responded to Ervin's Second Amended Complaint
- 3/24/98 • Letter indicating that HUD's cc:Mail system is run under a huge personal services contract, as evidenced in the deposition of Brian Valeyko
- 3/25/98 • Copy of memorandum from Helen Dunlap requesting that Legal Services contractor be allowed to attend a meeting with Hamilton Securities and BlackRock for the purpose of planning the design and implementation of a program to restructure the Department's existing multifamily housing programs
- Request for Contract Services and a copy of a draft task order to be issued to Dewey Ballantine to assist Hamilton Securities and BlackRock to design and implement a restructuring program
- 4/9/98 • Copies of documents pertaining to Nancy Andrews produced by Federal Defendants in discovery clearly evidencing how the group of Dunlap, Fitts and Andrews planned to work out and divide the spoils of Mark-to-Market
- 4/10/98 • A copy of a letter from Nancy Andrews to Aspen Systems requesting payment for services that were requested by HUD's Office of Procurement and Contracts, evidencing that Aspen Systems was being used as a conduit for HUD to employ Andrews; mark-up of up to 40% may represent a false claim
- 4/23/98 • Letter detailing altered documents in AFS contract file brought to light in the Dolores Ammons-Barnett deposition
- 5/1/98 • Copies of altered task order documents from AFS contract file, and July 23, 1996 letter from Ervin detailing open issues pertaining to AFS contract
- 5/5/98 • Transcript of Dolores Ammons-Barnett deposition in support of Ervin's False Claims Act complaint

- 5/15/98 • Copies of FOIA requests to Gary Grindler and Ramsey Johnson requesting documents evidencing correspondence between the Department of Justice and the U.S. Attorney's Office concerning litigation against Helen Dunlap
- 5/18/98 • Copy of "Point of View" column written by Helen Dunlap indicating she was leaving NLIHC
- 5/27/98 • Copy of letter to OMB detailing the abuses by both HUD and OMB in calculating note sale-related credit subsidy
- 6/9/98 • Articles relating to Dunlap's departure from the National Low Income Housing Coalition to join Shorebank in Chicago, and the related ties to the Clinton administration
X Nancy Andrews involved in allocating CDFI funds on behalf of the Department of the Treasury
- 6/12/98 • Copy of Grace Huebscher's (Hamilton Securities) 11/19/95 cc:Mail to Wes Edens (BlackRock) detailing the working relationship between the two firms and the hope that BlackRock will "get better leverage from the association with the HUD business through this contract"
- 6/15/98 • Copy of Nic Retsinas letter to Leland Brendsel blessing Freddie Mac's securitization of the notes purchased by BlackRock and Berkeley Federal in Single Family Sale #2
- 6/23/98 • Michael Brocks's fax to Hamilton Securities identifying the error in the West of the Mississippi sale, including analysis, bid cards and detail regarding the chain of events
- 6/24/98 • Letter identifying the problems, errors and attempted coverup of the West of the Mississippi sale and identifying where Hamilton lied to the court
- 6/29/98 • Copy of cc:Mail identifying the fact that HUD and Hamilton Securities knew that the Partially Assisted sale was in fact a securities transaction, and evidence that through a "secret paper," HUD and Hamilton had committed a violation of securities law
- 7/14/98 • Letter identifying Hamilton Securities' cost for maintenance and use of a corporate apartment in New York City
- 7/16/98 • Transcript of Dolores Ammons-Barnett deposition providing evidence and material in support of Ervin's False Claims Act complaint
- 8/14/98 • Transcript of William Richbourg deposition providing evidence and material in support of Ervin's False Claims Act complaint

- 9/4/98
 - Letter detailing Fitts' consent to Ervin receipt of documents, Fitts' threat to undermine HUD auction sales program if she was not paid more money, as well as Hamilton's participation in the selection of Williams Adley as due diligence contractor, even though Hamilton was their named subcontractor
 - Copy of letter from Jenner & Block evidencing Austin Fitts' consent to giving Ervin documents
 - CC:MAIL from Austin Fitts to Hamilton and Coopers & Lybrand employees with cc:Mail to Helen Dunlap attached wherein Fitts complains to Dunlap about the level of compensation Hamilton is receiving and that she will be talking to her Congressional friends about HUD
 - A copy of the "Award Justification - Williams, Adley & Co., Single Family and Multi-Family Mortgage Note Sale Support Services", wherein it identifies members of Hamilton Securities being involved in the selection while being named a subcontractor to Williams, Adley

- 9/23/98
 - Copy of draft motion for a limited lifting of seal to inform Judge Andewalt of the qui tam action
- 9/23/98
 - Copy of page out of Southeast Sale Design Book calling for an executed affidavit of non-collusion, which was never implemented

- 9/24/98
 - Copy of telephone log maintained by Hamilton Securities relating to Single Family Sale #2 and the Partially Assisted Sale
 - Copy of the Bid Administration memo which documents the ability to access bid deposits via computer and possibility that BlackRock could access bid deposit information
 - Copy of "Washington Post" article with marginalia from HUD, regarding the removal of the Inspector General for the District of Columbia

- 10/19/98
 - Letter detailing issues pertaining to Ervin's response to Government's interrogatories

- 10/29/98
 - Copy of letter from Department of Justice detailing Secretary Cuomo's involvement with Oceanmark Bank

- 11/3/98
 - Copy of FOIA appeal to Office of Thrift Supervision detailing Secretary Cuomo's involvement with Oceanmark bank

- 11/19/98
 - Analysis, including color charts, evidencing the success of BlackRock in the HUD note sales had dramatically increased after becoming a subcontractor to Hamilton Securities

- 12/4/98
 - Copy of Holland & Knight memorandum to Dunlap and Grace Huebscher (Hamilton Securities) linking Hamilton, through its contract with the Department of Labor, with both HUD and Goldman Sachs

- 12/8/98 • Copies of articles - "Point of View" in the National Real Estate Investor, "The changing World of Affordable Housing and Low Income Neighborhoods", and "Frequently Asked Questions" - all printed from the Hamilton Securities or e.villages websites, evidencing Hamilton's interest in helping HUD establish Neighborhood Networks and then selling them equipment
- 1/11/99 • Letter written by Joel Zegart of JBS Associates to Helen Dunlap requesting a meeting to discuss the dangers of HUD holding sealed bid auctions
- Comments by Joel Zegart of JBS Associates submitted to Rules Docket Clerk regarding proposed rule on sale of HUD-Held Multifamily Mortgages
- 1/26/99 • Letter describing background information on Henry Fan of Hamilton Securities
- Copy of Henry Fan's resume
- Michael Brock's (Coopers & Lybrand) fax to Henry Fan regarding error on West of the Mississippi Sale
- 1/29/99 • Copy of 3/26/98 letter to Raymond Larizza identifying the eight dates for which Ervin believes HUD should restore cc:Mail backup tapes, with detailed information on events leading up to said dates
- HUD's 8/13/98 formal proposal for the restoration of the cc:Mail messages from backup tapes
- Letter to Raymond Larizza accepting HUD's proposal, identifying dates and mailboxes to be restored
- Letter to Raymond Larizza identifying key words to be used to determine the "hit list" of messages to be reviewed by Federal Defendants
- Letter From Raymond Larizza identifying Key words which HUD agreed to from the Ervin proposed list
- Letter to Raymond Larizza appealing HUD's decision to eliminate key words
- Letter to Raymond Larizza requesting that HUD prioritize its review of restored messages by author
- Declaration of J. Mike Milazzo, Director of the Computer Services Group, Office of Information Technology
- 2/8/99 • Copy of report prepared by Jim Ladd (Hamilton Securities) proposing that HUD take possession of foreclosed single family properties and sell them in bulk to the private sector
- X Ervin's concern that Hamilton planned to enter into a negotiated BlackRock/Ocwen on HUD's single family REO
- 2/9/99 • Letter detailing that former Hamilton employees are being utilized by the SBA to provide similar asset sales services

- 2/17/99
 - Transcript of William Richbourg deposition, with exhibits
 - Transcript of John "Chris" Greer deposition, with exhibits
 - Copies of Ervin "Intelligence" gathered on Kathy Rock
 - Two cc:Mails from Hamilton regarding the Sisters of Mercy

- 2/26/99
 - Copy of notes taken on a conversation between Raymond Larizza and Daniel Hawke (Ervin counsel) regarding the key word searches of the cc:Mail backup tapes

- 3/5/99
 - Copy of John Ervin's handwritten notes regarding the forced subcontract with The Kerry Company

- 3/5/99
 - Copy of FOIA response from the Treasury Department regarding work on CDFIs that Nancy Andrews was performing
 - Press releases from Congressman Jim Saxton

- 3/12/99
 - Letter detailing connection between political contributions and benefits bestowed by HUD:
 - Goldman Sachs - note sales
 - Ernst & Young - HUD and Ginnie Mae contracts
 - Energy Capital Partners - loan subordination plan
 - Country Village project - excessive refinancing
 - AFL-CIO Housing Investment Trust - investments

- 4/27/99
 - Letter detailing conclusions drawn by National Academy of Public Administration (NAPA) report on contracting at HUD
 - X Equity Monitor was not being investigated

- 4/29/97
 - Letter detailing:
 - conflicts of Interest and BlackRock access to information
 - due diligence on BlackRock/Ocwen securitization
 - Dave Ireson and dump of information on 90,000 loans
 - Tristan Lee created the Department of Labor database
 - RTC sensitivity on Hamilton

- 5/12/99
 - A copy of the bid procedures in place for Single Family Sale #1
 - Letter detailing how BlackRock's access to Single Family Sale #1 bid procedures would have benefitted them in Single Family Sale #2

- 6/8/99
 - Copy of Ervin complaint against John "Chris" Greer, Kathryn Rock, Annette Hancock, Dolores Ammons-Barnett, George Chabot and Lawrence Gnessin in their individual capacities

- 6/25/99
 - Copy of a "Notice of Removal" and related documents filed

- 6/30/99 • Copy of internal Coopers & Lybrand cc:Mail discussing relationship with Austin Fitts and Fitts' "key" to contracting opportunities at HUD
- • Copy of internal Coopers & Lybrand cc:Mail detailing the mischarging of time by Hamilton Securities

- 8/11/99 X Outline of issues and charts summarizing the significant allegations in Ervin's qui tam action, including contracting corruption, collusion and bid rigging by Hamilton and use of inside information by BlackRock and others in HUD's note sales

- 08/20/99 X Letter explaining why BlackRock did not bid all assets in the reoffering held in Single Family sale 1

- 08/20/99 X Letter explaining the interrelationships between e.villages, Hamilton, Edgewood, BlackRock, Goldman Sachs, Audrey Hinton and The Enterprise Foundation