



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

November 19, 2004

Interpretive Letter #1012
December 2004
12 CFR 4.31

Mark E. Wilson, Esq.
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333 West Wacker Drive, Suite 1840
Chicago, Illinois 60606

Subject: In the Matter of the Arbitration between IBAT Bond Trust and City Nat'l Bank

Dear Mr. Wilson:

This is with further reference to your request, acknowledged on October 4, 2004, seeking non-public OCC information under 12 C.F.R. § 4.31 *et seq.* on City National Bank, Kilgore, Texas, for use in the above referenced arbitration proceeding. Your request, which is on behalf of the IBAT Bond Trust, asks for OCC examination reports, examiner work papers and Suspicious Activity Reports related to this bank for the period 1997 to present. We also received a comment from your opposing counsel dated October 19, 2004.

Background

Your request indicates that in the arbitration proceeding referenced above, City National Bank is seeking insurance coverage for its potential liability in a separate proceeding brought against the bank by the Securities Investor Protection Corporation and pending in U.S. Bankruptcy Court for the Eastern District of Texas. In the first phase of the arbitration proceeding, the parties are now engaged in discovery. According to your request, one important question is whether the bank made a material misstatement or omission on its May 22, 2000 application for insurance when it answered "no" to a question asking whether, in the most recent examination by regulatory authorities, any "material criticisms of your operations" were cited. Exhibit 2, § A, question 18. The application also asks whether, in the past two years, the bank's directors or officers were alerted to "[m]aterial violations of laws and regulations." Exhibit 2, § C, question 9(d). You indicate that another issue in the arbitration is whether the bank failed to disclose to IBAT that it had not filed a timely Suspicious Activity Report ("SAR") when the owner of Sunpoint Securities "tried to give CNB's president a paper bag containing \$25,000 in cash in an apparent attempted bribery."

Decision

Although your request seeks non-public OCC information for the period 1997 to September 2004, this is plainly too broad. As noted above, the bank's application for insurance asked about

material criticisms in "the last examination" and material violations of law during the two years preceding the bank's May 22, 2000 application for insurance. Thus, for purposes of your request, the only OCC examination report that might be responsive is the report covering the examination commenced on October 5, 1998.

While the OCC may conclude that it is appropriate to authorize disclosure of nonpublic OCC information when a national bank has made specific misrepresentations regarding OCC statements in examination reports or in other nonpublic OCC information, the OCC will not authorize disclosure to confirm or refute a bank's general statements that do not misrepresent the tenor of nonpublic OCC information, nor will the OCC authorize disclosure to confirm or refute a bank's general statements about its condition. After reviewing the relevant examination report in light of the issues raised in your request, I conclude that there is no basis for authorizing disclosure of nonpublic OCC information. Accordingly, your request for examination reports and workpapers is denied.

Moreover, statements in an OCC examination report regarding the bank are simply not relevant to the arbitration because the bank is barred by federal law from disclosing such information to its bonding company. See 12 C.F.R. § 4.37(b)(1). While the OCC's regulation contains several exceptions in 12 C.F.R. § 4.37(b)(2) to the general prohibition on disclosure by a national bank of non-public OCC information, disclosure to the bank's bonding company is *not* among the exceptions. Thus, City National Bank would not have been able to disclose such criticisms and violations, if they were discussed in an OCC examination report. Nor does the regulation permit a national bank to disclose its composite CAMEL rating to a bonding company, and City National Bank erred in doing so on its insurance application. Exhibit 2, § A, question 22.

With respect to SARs, the OCC will not disclose any SARs or state whether a SAR was filed. Under federal statutes, OCC regulations and the abundant case law, a SAR is confidential. 31 U.S.C. § 5318(g)(2); 12 C.F.R. § 21.11(k); Whitney Nat'l Bank v. Karam, 306 F.Supp. 2d 678 (S.D. Tex. 2004) (citing numerous court decisions). The OCC's position on disclosure of SARs is well known. See OCC Interpretive Letter 978 dated December 4, 2003, signed by Ford Barrett, Assistant Director, Litigation Division.

For the reasons above, I must deny your request.

Sincerely yours,

/s/ Timothy W. Long

Timothy W. Long

Senior Deputy Comptroller

Mid-Size / Community Bank Supervision

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