



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

SEP 16 1992

J. VIRGIL MATTINGLY, JR.
GENERAL COUNSEL

Mr. N. P. Van Maren, Jr.
Vice Chairman
Hilltop National Bank
P.O. Box 2680
Casper, Wyoming 82602

Dear Mr. Van Maren:

This is in response to your letter of June 5, 1992, and the letter of R. Stanley Lowe, counsel of Hilltop National Bank, of June 15, 1992. You have requested advice whether various extensions of credit by your bank to its directors are "grandfathered" with respect to the aggregate lending limits applicable to extensions of credit from a member bank to all its insiders under Regulation O. 12 C.F.R. § 215.4(d). This provision became effective May 18, 1992, and was added to Regulation O in order to implement the Federal Deposit Insurance Corporation Improvement Act of 1992, Pub. L. No. 102-242, § 306 ("FDICIA").

Based on the information provided by you and Mr. Lowe in your correspondence, it is my understanding that, at its annual organizational meeting held in April 1992, the board of directors of the bank approved lines of credit for individual members of the board of directors and various associated family members and businesses. Individual directors abstained from voting upon the approval of lines of credit in which they were interested. All lines of credit were approved for the ensuing year. It is the ordinary and customary procedure of the board of directors of the bank to approve loans and lines of credit for a period of approximately one year terminating at the subsequent annual organizational meeting of the board of directors, subject to earlier termination if intervening action is taken by the full board of directors.

As to one director and the persons associated with him as described above, the approved lines of credit included certain extensions of credit ("Excess Lines") that are excepted from the lending limit set forth in section 5200 of the Revised Statutes (12 U.S.C. § 84), pursuant to subsection (c) thereof, and, by reference, from the lending limit set forth in 12 C.F.R. § 215.4(c). However, the Excess Lines are not excepted from the aggregate lending limit set forth in 12 C.F.R. § 215.4(d). Apparently, as a result, all "outstanding extensions of credit" by the bank to its "insiders," as such terms are defined in

Regulation O, exceed the bank's aggregate lending limit. Your concern is whether the Excess Lines are "grandfathered" as a result of their approval prior to the effective date of the revisions to Regulation O which introduced the aggregate lending limit.

The "grandfather" provision of Regulation O, set forth in 12 C.F.R. § 215.3(d), does not apply to the aggregate lending limit set forth in 12 C.F.R. § 215.4(d). However, the aggregate lending limit itself prohibits the extension of credit to an insider of a member bank only when the extension of credit, aggregated with the amount of all outstanding extensions of credit to all insiders, exceeds the aggregate lending limit. 12 C.F.R. § 215.4(d)(1). It does not make illegal any extension of credit outstanding prior to the prohibited extension of credit. In the case you present, the Excess Lines were granted before the effective date of the revisions to Regulation O. Further, the granting of a line of credit is included within the regulation's definition of an "extension of credit." 12 C.F.R. § 215.3(a). Thus, assuming that the Excess Lines were approved in good faith and not for the purpose of avoiding the aggregate lending limit requirements or other provisions of Regulation O, the Excess Lines were unaffected by the subsequent imposition upon your bank of an aggregate lending limit and were effectively "grandfathered."^{1/}

The provisions of FDICIA also may serve to exempt the Excess Lines from the aggregate lending limit. Section 306(n) of FDICIA provides that, "The amendments made by this section do not affect the validity of any extension of credit or other transaction lawfully entered into on or before the effective date of those amendments." The effective date of the amendments made by section 306 was May 18, 1992. The granting of a line of credit is included within the definition of an "extension of credit" under FDICIA. 12 U.S.C. § 375b(9)(D). Since the Excess Lines were granted before the effective date of the amendments made by section 306 of FDICIA, they remain valid if they were lawfully approved. Assuming that no additional actions by the bank were required after the board of directors approved the Excess Lines in order for the person or persons to whom they were extended to draw on them, and that the Excess Lines were approved by the board of directors of the bank in good faith and not for the purpose of avoiding the aggregate lending limits or other

^{1/} It should be noted that pursuant to 12 C.F.R. § 215.3(a) the renewal of the approval of an extension of credit constitutes a new extension of credit, which would not be grandfathered. The preapproval by the board of directors of a member bank of an extension of credit that is made pursuant to a line of credit is not effective more than 14 months from the date of approval. 12 C.F.R. § 215.4(b)(3).

requirements of Regulation O, then the Excess Lines were lawfully approved and therefore were "grandfathered" for purposes of the aggregate lending limits under FDICIA. 12 U.S.C. § 215.4(d).

Regulation O also requires that an interested party abstain from participating directly or indirectly in the voting on the prior approval of an extension of credit, and states that participation in the discussion, or any attempt to influence the voting, by the board of directors regarding an extension of credit constitutes indirect participation in the voting by the board of directors on the extension of credit. 12 C.F.R. § 215.4(b). Your letter and the letter of Mr. Lowe do not fully address these criteria in the description of the activities of the board of directors of the bank. It has been assumed for the purpose of rendering this advice that these criteria have been satisfied. Any additional facts that do not conform to these criteria may cause the Excess Lines and other extensions of credit by the bank to its insiders to be in violation of Regulation O.

If you have any further questions concerning this matter, please do not hesitate to contact Gordon Miller of my office (202/452-2534).

Sincerely,

(signed)

J. Virgil Mattingly, Jr.e