



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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 28, 1997

Glenn E. Butash, Esq.
Schulte Roth & Zabel LLP
900 Third Avenue
New York, New York 10022

Hayes F. Michel, Esq.
McCambridge, Deixler & Marmaro
2029 Century Park East
Suite 700
Los Angeles, California 90067

Dear Messrs. Butash and Michel:

This is in response to your letters dated July 11, 1997, requesting Board review of the decision of the Board's General Counsel to release certain information pursuant to the Board's Rules Regarding Availability of Information, 12 C.F.R. § 261.13.^{1/} In his April 29, 1997, letter, the General Counsel authorized release to counsel for plaintiffs in a civil action against your respective clients, Oppenheim & Co., Inc. ("Oppenheimer"), and former directors of Guardian Bancorp and Guardian Bank, Los Angeles, California (collectively, "Guardian"), of certain confidential supervisory information related to Guardian, for use in the litigation and subject to a protective order. The litigation involves claims of securities fraud against your respective clients in connection with a securities offering made by Guardian that closed

^{1/} A petition for review of a delegated action must normally be received by the Secretary of the Board no later than the fifth day following the date of the action. 12 C.F.R. § 265.3(b). Your July 11, 1997, request for review of an action of April 29, 1997, is being considered because of Mr. Butash's representation that he did not see a copy of the General Counsel's letter until July 7, 1997. A copy of the General Counsel's letter was apparently served on Mr. Michel and on Mr. Butash's law firm by mail on June 27, 1997.

in January 1994, and in connection with Guardian securities purchased on the open market through August 1994. Guardian Bank failed on January 20, 1995.^{2/}

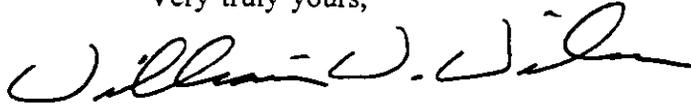
The General Counsel determined that the requester, counsel for the plaintiffs in the above-mentioned litigation, had shown a substantial need for the confidential supervisory information, and that a limited release of confidential supervisory information relating to the allegations in the complaint, and made subject to a protective order, was consistent with the Board's supervisory and regulatory responsibilities. Your letters raise three issues in requesting review by the Board. First, you assert that the supervisory documents that post-date the close of the securities offering are irrelevant to the litigation. Second, you argue that plaintiffs failed to show a "substantial need" for the confidential information in light of the availability of other witnesses. Third, you state that Guardian's former directors presumed that their communications with examiners would be confidential.

As Mr. Butash's letter acknowledges, a substantial issue in the litigation involves what Guardian's directors knew about the matters alleged to have been misstated in the offering materials, and when they knew it. The time period during which the plaintiffs claim that further disclosures should have been made goes through much of 1994, and supervisory correspondence for the remainder of that year could be relevant to the directors' knowledge during that time. The confidential supervisory information the release of which was authorized by the General Counsel provides a unique source of information about what the directors knew from the institutions' federal regulator. Moreover, the privacy interests of Guardian's former directors should be adequately addressed by the protective order required prior to release of the information.

^{2/} The Board notes that it is unclear that either Oppenheimer or Guardian's former directors have standing to seek review. Review is limited to those who claim to be "adversely affected" by the delegated action. 12 C.F.R. § 265.3(a). The information at issue does not relate to Oppenheimer, and the request on behalf of the former directors asserts only that they "presumed" that their communications with Federal Reserve personnel would be confidential, but does not identify any adverse effect disclosure would have on these individuals. To the extent that the requests claim an adverse effect based on the requesters' litigation position, that would not appear to be a legitimate basis on which the Board should reconsider a delegated action. In view of the Board's resolution of the request, however, the Board need not resolve the standing issue.

Upon review of all of the arguments contained in your letters requesting Board review of the General Counsel's determination, no member of the Board has requested review or modification of the General Counsel's action. Accordingly, your request for Board review of that action is hereby denied.

Very truly yours,

A handwritten signature in black ink, appearing to read "William W. Wiles". The signature is fluid and cursive, with a large initial "W" and a long, sweeping underline.

William W. Wiles
Secretary of the Board

cc: John F. Davis, Esq.
Kenneth Kinoshita, Esq.
Federal Reserve Bank of San Francisco