

COPY



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

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

August 3, 2011

Matthew R. Lee, Esq.
Director
Inner City Press/Fair Finance Watch
P.O. Box 580188
Mount Carmel Station
Bronx, NY 10458

Dear Mr. Lee:

This is in response to your email message dated and received by the Board's Freedom of Information office on July 22, 2011. Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 (the "Act"), you request the entire application by Capital One Financial Corporation, McLean, Virginia, to acquire ING Bank, FSB, Wilmington, Delaware, and indirectly to acquire Sharebuilder Advisors, LLC and ING Direct Investing, Inc., both of Seattle, Washington. You also seek any communications between Federal Reserve System staff and the companies at issue regarding the application proposal for the one year period preceding your request.

Staff searched Board records and located the documents you seek. The Federal Reserve Bank of Richmond provided you with the public portions of the application on or about July 26, 2011. The remaining responsive documents consist of the confidential portions of the application, transmittal letters, and a request by ING for a noncontrol determination with respect to Capital One. These materials contain business and strategic plans, nonpublic pro forma financial figures, due diligence findings, risk, liquidity, and interest rate management plans, anti-money laundering policies and procedures, cash flow projections, personal details regarding individuals, and information related to the supervision and examination of a regulated financial institution. I have determined that this information is subject to withholding and will be withheld under exemptions 4, 6, and 8 of the Act, 5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(8). All reasonably segregable information will be provided to you. The nature and amount of information being withheld will be evident from the face of the documents being provided.

During the search for responsive documents, staff located four pages of information that originated with the Office of Thrift Supervision ("OTS"). These pages are being referred to the Office of the Comptroller of the Currency, as successor to the

OTS, along with a copy of your request for records for a direct response to you. A copy of our referral letter is enclosed with this letter.

Your request for information is granted in part and denied in part for the reasons stated above. The Board's Freedom of Information office will provide you with copies of the documents being made available to you pursuant to this authorization under separate cover. If you believe you have a legal right to any information that is being withheld, you may appeal this determination in accordance with section 261.13(i) of the Board's Rules Regarding Availability of Information, a copy of which is enclosed for your information. You may also submit a request to the General Counsel for discretionary release of confidential supervisory information pursuant to section 261.22 of the Board's Rules, 12 CFR 261.22, a copy of which is also is enclosed.

Very truly yours,


Jennifer J. Johnson
Secretary of the Board

Enclosures

cc: Office of the Comptroller of the Currency



BOARD OF GOVERNORS
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WASHINGTON, D. C. 20551

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

August 3, 2011

Mr. Frank Vance, Jr.
Disclosure Officer
Office of the Comptroller of the Currency
250 E Street, SW
Washington, DC 20219

Re: Freedom of Information Act Request 2011-419

Dear Mr. Vance:

Enclosed are four pages of information that are responsive to a request under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, for the application by Capital One Financial Corporation, McLean, Virginia, to acquire ING Bank, FSB, Wilmington, Delaware, and indirectly to acquire Sharebuilder Advisors, LLC and ING Direct Investing, Inc., both of Seattle, Washington, and all related documents. The documents being referred were included as exhibits to the Capital One application. They consist of an application that was filed by ING Bank, FSB, with the Office of Thrift Supervision ("OTS") and an approval letter from the OTS. We are referring these materials to the Office of the Comptroller of the Currency in its capacity as successor to the OTS. We ask that you consider whether the documents can be released under FOIA.

We have informed the requester of our referral, and we ask that you respond directly to him regarding your determination with respect to release of the documents. In addition to the documents, a copy of the FOIA request and our response letter to the requester are enclosed. Should you have any questions, please contact Dave Caperton of the Board's Legal Division at (202) 452-2899.

Very truly yours,


Jennifer J. Johnson
Secretary of the Board

Enclosures

cc: Mr. Matthew Lee

RULES REGARDING AVAILABILITY OF INFORMATION 12 CFR 261; AS
AMENDED NOVEMBER 19, 1997
SECTION 261.13(i)

(i) Appeal of denial of request. Any person denied access to Board records requested under section 261.12 may file a written appeal with the Board, as follows:

- (1) The appeal shall prominently display the phrase FREEDOM OF INFORMATION ACT APPEAL on the first page, and shall be addressed to the Freedom of Information Office, Board of Governors of the Federal Reserve System, 20th & C Street, N.W., Washington, D.C. 20551; or sent by facsimile to the Freedom of Information Office, (202) 872-7565.
- (2) An initial request for records may not be combined in the same letter with an appeal.
- (3) The appeal shall be filed within 10 working days of the date on which the denial was issued, or the date on which documents in partial response to the request were transmitted to the requester, whichever is later. The Board may consider an untimely appeal if—
 - (i) it is accompanied by a written request for leave to file an untimely appeal; and
 - (ii) the Board determines, in its discretion and for good and substantial cause shown, that the appeal should be considered.
- (4) The Board shall make a determination regarding any appeal within 20 working days of actual receipt of the appeal by the Freedom of Information Office, and the determination letter shall notify the appealing party of the right to seek judicial review.
- (5) The secretary may reconsider a denial being appealed if intervening circumstances or additional facts not known at the time of the denial come to the attention of the secretary while an appeal is pending.

RULES REGARDING AVAILABILITY OF INFORMATION 12 CFR 261.22

SECTION 261.22--Other Disclosure of Confidential Supervisory Information

(a) Board policy. It is the Board's policy regarding confidential supervisory information that such information is confidential and privileged. Accordingly, the Board will not normally disclose this information to the public. The Board, when considering a request for disclosure of confidential supervisory information under this section, will not authorize disclosure unless the person requesting disclosure is able to show a substantial need for such information that outweighs the need to maintain confidentiality.

(b) Requests for disclosure.

(1) Requests from litigants for information or testimony. Any person (except agencies identified in sections 261.11 and 261.12 of this regulation) seeking access to confidential supervisory information or seeking to obtain the testimony of present or former Board or Reserve Bank employees on matters involving confidential supervisory information of the Board, whether by deposition or otherwise, for use in litigation before a court, board, commission, or agency, shall file a written request with the general counsel of the Board. The request shall describe--

(i) the particular information, kinds of information, and where possible, the particular documents to which access is sought;

(ii) the judicial or administrative action for which the confidential supervisory information is sought;

(iii) the relationship of the confidential supervisory information to the issues or matters raised by the judicial or administrative action;

(iv) the requesting person's need for the information;

(v) the reason why the requesting person cannot obtain the information sought from any other source; and

(vi) a commitment to obtain a protective order acceptable to the Board from the judicial or

administrative tribunal hearing the action preserving the confidentiality of any information that is provided.

(2) All other requests. Any other person (except agencies identified in sections 261.11 and 261.12 of this regulation) seeking access to confidential supervisory information for any other purpose shall file a written request with the general counsel of the Board. A request under this paragraph (b)(2) shall describe the purpose for which such disclosure is sought.

(c) Action on request.

(1) Determination of approval. The general counsel of the Board may approve a request made under this section provided that he or she determines that—

(i) the person making the request has shown a substantial need for confidential supervisory information that outweighs the need to maintain confidentiality; and

(ii) disclosure is consistent with the supervisory and regulatory responsibilities and policies of the Board.

(2) Conditions or limitations. The general counsel of the Board may, in approving a request, impose such conditions or limitations on use of any information disclosed as is deemed necessary to protect the confidentiality of the Board's information.

(d) Exhaustion of administrative remedies for discovery purposes in civil, criminal, or administrative action. Action on a request under this section by the general counsel of the Board shall exhaust administrative remedies for discovery purposes in any civil, criminal, or administrative proceeding. A request made pursuant to section 261.9 of this regulation does not exhaust administrative remedies for discovery purposes. Therefore, it is not necessary to file a request pursuant to section 261.9 to exhaust administrative remedies under this section.

(e) Other disclosure prohibited. All confidential supervisory information made available under this section shall remain the property of the Board. Any person in possession of such information shall not use or disclose such information for any purpose other than that authorized by the general counsel of the Board without his or her prior written approval.