

SECURITIES AND EXCHANGE COMMISSION
COMPTROLLER OF THE CURRENCY
Washington, D.C.

Litigation Release No.

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SECURITIES AND EXCHANGE COMMISSION AND COMPTROLLER OF THE CURRENCY v. THE NATIONAL BANK OF GEORGIA, THE CALHOUN FIRST NATIONAL BANK, T. BERTRAM LANCE (United States District Court for the Northern District of Georgia, Atlanta Division) Civil Action No. 78-

The Securities and Exchange Commission ("Commission") and the Comptroller of the Currency ("Comptroller") announced today the filing of a civil injunctive action in the United States District Court for the Northern District of Georgia against The National Bank of Georgia ("NBG"), The Calhoun First National Bank ("Calhoun") and T. Bertram Lance ("Lance") alleging violations of the anti-fraud, reporting and proxy provisions of the federal securities laws by NBG, Calhoun and Lance.

The Commission and the Comptroller also announced that the Court simultaneously entered Final Judgments of Permanent Injunction and other Equitable Relief ("Judgment") restraining and enjoining NBG, Calhoun and Lance from violations of the anti-fraud, reporting and proxy provisions of the federal securities laws, and ordering certain equitable relief. NBG, Calhoun and Lance consented to the entry of the Judgments without admitting or denying the allegations in the Complaint.

EQUITABLE RELIEF AS TO NBG AND CALHOUN

In addition to the entry of the Judgment against NBG and Calhoun certain equitable relief was ordered by the Court and NBG and Calhoun made certain undertakings which they were ordered by the Court to comply with, including the following:

1. An order requiring NBG to appoint to its Board of Directors two independent directors, and, within one year after the entry of the Judgment, NBG is required to appoint or nominate one additional independent director to its Board of Directors. In the case of Calhoun, Calhoun will appoint one independent director to its Board of Directors, and the next two directors appointed to Calhoun's Board of Directors, as a result of vacancies or otherwise, shall similarly be independent.
2. The establishment of a Special Committee of the Board of Directors of NBG consisting of the two individual directors appointed pursuant to the Judgment to review the matters alleged in the Commission's Complaint and conduct such further investigation as it deems appropriate into these and other matters. In the case of Calhoun, an independent review person will perform a review of certain specified matters in the Complaint. The Special Committee of NBG will submit

to the Board of Directors of NBG a report of findings and recommendations including:

- (a) a description of the scope of its investigation and review;
- (b) recommendations as to what action, if any should be taken by NBG for the protection of its shareholders, including but not limited to (1) seeking reimbursement to NBG for any monies, assets or other things of value of NBG used for the benefit of any present or former officer, director, employee or agent of NBG where the use of such item was not for business purposes of NBG and (2) the institution and prosecution of any suits on behalf of NBG against any present or former officer, director, agent, or any other person.

The review person of Calhoun shall report in writing to the independent director on his review. The independent director at Calhoun will make a report to the Board of Directors of Calhoun as to the scope of investigation by the review person and the independent director's recommendations as to what action, if any, should be taken, and that report and the report of the Special Committee of NBG will be publicly filed with the Comptroller. NBG's and Calhoun's Boards of Directors shall consider the reports of the Special Committee and independent director respectively, and take whatever action they deems appropriate.

- 3. An order compelling NBG and Calhoun to maintain an Audit Committee of their Board of Directors consisting of the independent directors appointed pursuant to the Judgment and other directors. The Audit Committees of NBG and Calhoun are ordered by the Court to have, among other things, the following duties and functions:
 - (a) To review the financial controls and accounting procedures of NBG and Calhoun, recommend changes and improvements thereto as the audit committee may deem appropriate, and oversee the implementation and maintenance of such procedures;
 - (b) To meet, at regular intervals, with the internal auditor of NBG and Calhoun. The internal auditor shall be responsible to the Audit Committee and shall submit each calendar quarter, a written report to the audit committee regarding the work performed by the internal auditor during the relevant period. The internal auditor may not be dismissed without the approval of the Audit Committee; and
 - (b) Within 180 days after the entry of the Judgment, to review and report on:
 - (1) all outstanding loans exceeding \$50,000 in the case of NBG and \$25,000 in the case of Calhoun, where interest has not been accrued for six months in order to ascertain whether the current treatment of such loans in the financial statements is adequate; and

- (2) all outstanding loans exceeding \$200,000, in the case of NBG and \$50,000 in the case of Calhoun, to ascertain whether the documentation relating to such loans is sufficient including current financial statements of borrowers, purpose statements, terms of collateral, guarantees and endorsements and current financial statements of endorers and guarantors.

As part of their Consent and Undertakings, NBG and Calhoun made certain undertakings which are construed to be a written agreement entered into with the Comptroller within the meaning of the Financial Institutions Supervisory Act of 1966, 12 U.S.C. 1818(b)(1). After five years from the date of the Judgment, unless terminated by the Comptroller, NBG and Calhoun will no longer be ordered by the Court to comply with such undertakings but such undertakings shall continue as a Final Cease and Desist Order of the Comptroller.

Included among such undertakings of NBG and Calhoun were undertakings requiring the review and revision of their respective lending policies to assure that they are of a safe and sound nature, procedures dealing with extensions of credit to, and preferential transactions with, insiders; procedures regarding correspondent accounts of the banks at other banking institutions and reporting requirements of executive officers and directors of both banks with respect to extensions of credit to such persons, formulation and maintenance of written policies and procedures concerning the use of assets of NBG and Calhoun by officers and directors for business or non-business purposes; and procedures dealing with the evaluation of certain collateral given to the banks in connection with the loans by the banks and the manner and method by which the adequacy of loan loss reserves are determined. Further, NBG and Calhoun undertakes not to extend credit to insiders or persons related to insiders unless such extensions of credit meet certain requirements.

EQUITABLE RELIEF AS TO LANCE

In addition to the entry of the Judgment of Permanent Injunction against Lance, as part of his Consent and Undertaking Lance made the following undertakings which he was ordered by the Court to comply with:

1. He will refrain from providing a personal written guaranty in connection with a loan from any banking institution in the United States to any other person unless such guaranty is signed and specifies on its face as to what existing extension of credit such guaranty applies;
2. In connection with the obtaining of a loan from any banking institution, he will (when requested to do so by such an institution), on a timely basis, submit a purpose statement which is complete and accurate in all material respects, in the event such a statement is required by Regulation U promulgated by the Federal Reserve Board or any other applicable federal or state law;

3. He will forebear from executing any document to be submitted to any banking institution in the United States on behalf of any person without obtaining a written power of attorney from such a person and indicating on such a document to be submitted that he is signing the document as an attorney-in-fact for the other person;
4. Within 90 days of the entry of the Judgment, he will update and amend his personal financial statements now on file with any United States banking institution in connection with any then outstanding loans at such institution unless such institution advises in writing that an updated and amended financial statements is not needed;
5. In connection with the obtaining of any loan or other extension of credit from a banking institution in the United States, he will submit to such an institution, if requested to do so, a personal financial statement, which is accurate in all material respects;
6. He shall not, directly or indirectly, obtain a loan or other extension of credit from, or use of any asset of, any bank in connection with any campaign by him for any elective office, except as permitted by statute, rule or regulation;
7. He will not overdraft any checking account at any United States banking institution except as to the extent and on terms which are generally available to other customers of the banking institution who are similarly situated; provided, however, in no event will any overdraft be deemed to be in violation of the undertaking if it is isolated and inadvertent; provided further that he will not engage in a practice of depositing a check drawn on one of his accounts in a U.S. banking institution ("second check") to cover a check drawn on another of his accounts in a U.S. banking institution, ("first check") if, at the time the second check is drawn, there are insufficient funds in that account to cover the second check, provided, however, in no event will such a transaction be deemed to be a violation of this undertaking if it is isolated and inadvertent.

Lance also submitted to the Commission and the Comptroller a letter, dated April 26, 1978, which advised the Commission and the Comptroller of his future plans insofar as they relate to banking, and the Commission and the Comptroller acknowledged receipt of the letter. Both the letter and the acknowledgement have been publicly released today.

THE COMPLAINT

The Complaint alleges that NBG, Calhoun and Lance engaged in a course of business which included financial irregularities and unsafe and unsound banking practices. The various undisclosed practices by Calhoun and Lance, which in some instances constituted violations of certain provisions of the federal banking laws, included a pattern of related party transactions by Lance and certain of his relatives, substantial and prolonged overdrafting in the checking accounts at Calhoun of Lance and his wife, certain relatives, friends, business associates, entities

controlled by such persons, numerous questionable loans to officers and directors of the bank and persons and entities related to such persons, the use of Calhoun balances in connection with loans by at least one bank to directors of Calhoun and the making of misleading entries on Calhoun's books and records. The course of business constituted a potential material risk to the financial stability of Calhoun.

The Complaint alleges that the senior management of Calhoun engaged in, was aware of or permitted certain of the unsafe practices. It was also alleged that the Board of Directors of Calhoun in a number of significant respects performed no meaningful monitoring of Calhoun's management despite persistent criticisms and recommendations by the Comptroller and despite having knowledge of many of these practices.

In a number of instances, it was alleged that loans and other extensions of credit to Lance and certain of his relatives, friends and associates, were made without adequate regard for the borrower's creditworthiness and on preferential terms. Supporting documentation at Calhoun for a number of the loans, including source of repayment, schedule of repayment, and purpose statements were inadequate or non-existent. With respect to loans by Calhoun to several of his relatives, it is alleged that Lance prepared and signed the names of certain of his relatives to financial statements, which statements did not reflect all their liabilities and accordingly overstated their net worth. Certain of those relatives were not aware that their names had been signed to the financial statements, and were not aware of the amounts and other terms of loans which had been taken out in their names for their benefit. When the loans of certain of Lance's relatives were transferred to NBG and other banks, such loans were paid off at Calhoun.

The extensions of credit in part resulted in severe liquidity and related problems at Calhoun. In order to create the appearance that these problems had been eliminated, Calhoun engaged in a series of undisclosed or misrepresented transactions including loan participations with repurchase agreements with other banks, the temporary transfers of loans criticized by the Comptroller and substantial borrowings from another bank without reflecting such borrowings as liabilities on Calhoun's financial statements. In certain instances, these transactions were concealed by the making of misleading entries on Calhoun's books and records.

In 1975, due in part to the problem loans to, and large overdrafts by, Lance, his relatives and certain close friends and business associates, Calhoun was severely criticized by the Comptroller. The Complaint alleges that thereafter, Lance arranged for NBG and a number of other banks to make substantial loans to certain persons including relatives, business associates and friends of Lance, some of which loans were guaranteed by Lance. The Complaint alleges that Lance's personal financial statements, which supported his personal guaranty for loans to certain of these relatives did not reflect certain of his liabilities, including all the liabilities of Lancelot, and certain contingent liabilities of Lance, which related to Lance's guarantee of loans to certain of his relatives, business associates and Campaign Committee.

The Complaint alleges that Calhoun failed to make the required allocation to its provision for loan losses on a number of loans to certain relatives, business associates and friends of Lance. By understating the reserves for possible losses on the loans, Calhoun overstated its earnings and assets for the applicable fiscal periods. Moreover, Calhoun improperly accrued interest on such

loans for purposes of income recognition. Further, it was alleged Calhoun did not disclose to its shareholders, the Comptroller and the investing public the true nature and extent of the deterioration of certain loans in its loan portfolio, and the losses expected therefrom.

The Complaint alleges that as part of NBG's course of business, NBG improperly recognized income on a real estate transaction, incomplete and inadequate evaluation was given to NBG's loan portfolio and loans were made by NBG to relatives and associates of Lance without adequate regard for the creditworthiness of the borrower and on preferential terms. Further, certain undisclosed payments were made in connection with the purchase of a residential property from NBG which payments were inaccurately described on NBG's books and records; the full facts and circumstances surrounding NBG's intention to form a holding company, and the nature of its correspondent banking business were not disclosed.

The management of NBG either engaged in or acquiesced in certain aspects of the course of business discussed in the Complaint and in certain respects there was no meaningful monitoring by NBG's Board of Directors of the management of NBG in carrying out their responsibilities. The various reports and proxy statements disseminated to NBG's shareholders and filings with the Comptroller failed to disclose the course of business which operated as a fraud and deceit.