



Robert Bentley
Governor

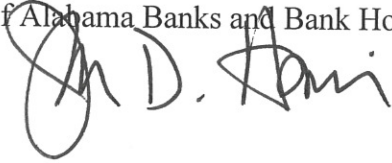
STATE OF ALABAMA
STATE BANKING DEPARTMENT



John D. Harrison
Superintendent of Banks

MEMORANDUM

TO: Chief Executives of Alabama Banks and Bank Holding Companies

FROM: John D. Harrison 

SUBJECT: Guidelines concerning Confidential Supervisory Information

DATE: December 19, 2012

The Alabama Banking Code strictly governs the confidentiality of documents and other information that is ascertained upon an examination or investigation of an Alabama state chartered bank or a bank holding company owning a majority of the voting securities of an Alabama bank (a "BHC"). This confidentiality extends to examinations conducted solely by the Department or jointly with a federal bank regulatory agency, as well as examination reports prepared exclusively by federal bank regulators that are accepted by the Department. This confidentiality also extends to affiliates of banks, and to bank internal and external communications and communications to or from this Department that reference examination or investigation information. This strict confidentiality allows our banks and BHCs to give the Department unrestricted access to their businesses, and for the Department, in turn, to have all of the information that it needs to maintain the safety and soundness of the Alabama banking system. This information is referred to in this memorandum as "Confidential Supervisory Information" or simply as "CSI".

This memorandum is not an all inclusive description or list of CSI, but rather is intended to bring this confidentiality requirement to your attention.

Section 5-3A-3 of the Code of Alabama prohibits disclosure of CSI to ANYONE except a select few categories of recipients. The law allows banks and BHCs to share CSI with their officers, directors, auditors, attorneys, consultants, and advisors and, subject to appropriate confidentiality agreements, persons considering the possible acquisition of, merger with, or

investment in the bank or BHC (“Authorized Persons”). These disclosures are restrictive in the use that can be made of the CSI. Authorized Persons may not (i) use CSI in any way other than in connection with the business of the bank or BHC, (ii) retain the report or information or copies of it, or (iii) disclose the report or information to any person not authorized by law to receive it. Unauthorized disclosures of CSI may be subject to prosecution as a Class A Misdemeanor. It also subjects a non-compliant bank or BHC to additional regulatory scrutiny and enforcement procedures.

The Department is not allowed to disclose CSI except as authorized by law. There are only a handful of persons that the Department can share CSI with. In addition to the members of the Banking Board and others involved in enforcement or supervisory actions by the Department, CSI may be shared by the Department with the Federal Reserve, Federal Deposit Insurance Company, the now nonexistent Office of Thrift Supervision, the Comptroller of the Currency or any successor banking supervisory agency.

CSI may not be obtained from the Department by subpoena unless the subpoena is from a grand jury that is served on the Superintendent, as provided in Section 5-3A-11. No other subpoena served upon the Department should result in the production of CSI and, to date, all such subpoenas have been successfully quashed or withdrawn.

There are several requirements that the Department has of all banks and bank holding companies concerning Confidential Supervisory Information.

1. If your bank or BHC receives a subpoena seeking CSI, immediately notify the Department’s General Counsel, Elizabeth Bressler, by email at Elizabeth.Bressler@banking.alabama.gov or by phone at (334) 353-5200. Ms. Bressler can assist you and your attorneys prepare appropriate responses to these subpoenas. The Department may also elect to intervene in a legal action to maintain the confidentiality of CSI and the application of the governing law.

2. Banks and bank holding companies should adopt and implement a formal procedure to identify CSI, thereby avoiding inadvertent disclosure. This is imperative not only for banks and their affiliates, but also for any lawyer, auditor or other Authorized Person that is in possession of CSI. Lawyers, auditors and other Authorized Persons are held to the same standard of confidentiality, and they must assure you that they are taking all appropriate measures to protect the confidentiality of CSI. Banks, BHCs and their counsel should not rely upon protective orders, claw back agreements or similar devices. Great diligence must be undertaken to be sure that CSI is not disclosed under any circumstances.

3. When the Department is represented at a bank or BHC Board meeting to offer information concerning the condition and affairs of the entity, the Department's comments in the course of the meeting are CSI. Therefore, it is essential that any minutes or notes of these communications and affairs be distinctively marked, and treated as, "Confidential Supervisory Information".

4. Should the Board of a bank or BHC, or any committee, discuss the outcome of an examination, investigation, or other counsel by the Department, those discussions, whether written or oral, are CSI, and any minutes or notes must be distinctively marked, and treated as, "Confidential Supervisory Information".

Over the past several years, the Department has spent considerable time, in court and otherwise, preserving the confidentiality of CSI and enforcing the governing law. Preserving the integrity of these laws is paramount to preserving the Department's ability to protect the safety and soundness of Alabama's banking system.

I am attaching for your review copies of Alabama Code § 5-3A-3 and two recent court decisions concerning the confidentiality of examination reports and documents. I suggest that you read them, keep them on file, and share them and this memorandum with your attorneys, auditors and other Authorized Persons.

We are required to continue all efforts to maintain confidentiality of CSI, and expect your every effort to keep CSI from being disclosed.

Section 5-3A-3

Disclosure of information obtained by superintendent, bank examiners, etc.

(a) Neither the superintendent, any member of the Banking Board, nor any bank examiner or other state employee shall disclose the condition and affairs of any bank or bank holding company ascertained by an examination of such bank, or bank holding company, or report or give information as to persons who are depositors or debtors of a bank, except as authorized or required by law; provided, that this section shall not be construed to prevent bank examiners and other employees from reporting such information to the superintendent or such persons as the superintendent may lawfully designate.

(b) Notwithstanding the provisions of subsection (a), the superintendent, at the superintendent's discretion, may disclose any information, otherwise protected under this section, to the members of the Banking Board and confer with the members of the Banking Board regarding the same and may disclose such information as is necessary in taking enforcement actions or other supervisory actions pursuant to this title.

(c) The superintendent may furnish to the Federal Reserve, Federal Deposit Insurance Corporation, the Office of Thrift Supervision, the Comptroller of the Currency, or to any successor banking supervisory agency of the United States reports of examination and other data as the superintendent deems advisable. The Federal Reserve, Federal Deposit Insurance Corporation, Office of Thrift Supervision, or the Comptroller of the Currency, or any supervisory agency of the United States may use such reports of examination and other information in taking their enforcement and other supervisory actions. Any disclosure by these agencies to third parties must be made with the prior consent of the superintendent and subject to such confidentiality restrictions required by this title or as the superintendent may require.

(d) The superintendent may also furnish copies of his or her reports of examination and any other information to the board of directors of the bank which was examined and to any bank holding company owning more than 50 percent of the capital stock of such bank.

(e) Any reports or information furnished or disclosed under subsection (a), (b), (c), or (d) shall remain the property of the Banking Department and, except as provided in this section and Section 5-3A-11, may not be disclosed to any person other than the officers, directors, attorneys, and auditors of such bank or bank holding company, consultants or advisors to such bank or bank holding company and, subject to appropriate confidentiality agreements, persons considering the possible acquisition of, merger with, or investment in such bank or bank holding company. No person receiving such reports or information may (1) use such report or information other than in connection with the bank or bank holding company and its business and affairs, (2) retain that report or information or copies thereof, or (3) except as expressly permitted by law, disclose such report or information to any person not authorized to receive the same under this subsection.

(f) Any person violating this section shall be guilty of a Class A misdemeanor.

(Acts 1980, No. 80-658, §5-3-3; Act 2007-224, p. 284, §1; Act 2011-589, §1.)

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

LOCAL 703, I.B. OF T. GROCERY
AND FOOD EMPLOYEES WELFARE
FUND, et al.,

PLAINTIFFS,

vs.

CASE NO. CV 10-J-2847-S

REGIONS FINANCIAL CORPORATION,
et al.,

DEFENDANTS.

ORDER

Pending before the court is plaintiffs' motion to compel the production of documents from Regions Financial Corporation (doc. 109), a memorandum of law and a declaration in support of said motion (docs. 110 and 111), defendant Regions Financial Corporation's opposition to said motion (doc. 119), Alabama State Banking Department's motion to deny motion to compel (doc. 121) and non-party Board of Governors of the Federal Reserve System's memorandum of law in opposition to the plaintiffs' motion to compel (doc. 127). The court heard argument on the pending motions on May 9, 2012, and ordered that documents responsive to the motion to compel be produced *in camera* (doc. 132).

The court reviewed *in camera* the 3,189 pages of documents responsive to the motion to compel, as provided to the court by defendant Regions Financial

Corporation. At issue is whether the production of these documents is prohibited by the federal bank examination privilege, 12 C.F.R. §§ 261.2(c), 261.23 and §§ 5-3A-3 and 5-3A-11, *Alabama Code 1975*, as amended.

12 CFR § 261.23 (b) mandates that

Unless the Board [of Governors of the Federal Reserve Bank] has authorized disclosure of the information requested, any person who has Board information that may not be disclosed, and who is required to respond to a subpoena or other legal process, shall attend at the time and place required and decline to disclose or to give any testimony with respect to the information, basing such refusal upon the provisions of this regulation. If the court or other body orders the disclosure of the information or the giving of testimony, the person having the information shall continue to decline to disclose the information and shall promptly report the facts to the Board for such action as the Board may deem appropriate.

Similarly, the Alabama Code directs that

All reports of examination, records reflecting action of a bank or bank holding company taken pursuant thereto, and records and minutes of meetings of the Banking Board relating to a bank or several banks or a bank holding company shall be confidential and shall not be subject to subpoena or inspection except by subpoena from a grand jury served on the superintendent.

Ala.Code 1975 § 5-3A-11.

In an attempt to fall outside the parameters of the above Code provisions, the plaintiffs argue that they do not seek privileged documents. Rather, the plaintiffs seek to carve out purely factual documents contained within the documents submitted


in camera.

Based on consideration of the *in camera* inspection, the court concludes that the majority of the documents in question are privileged for the reasons set forth by the Alabama State Banking Department and the Board of Governors of the Federal Reserve System. The court further finds that the remaining documents in the *in camera* submission, even if directly not within the disclosure prohibitions set forth above, are entirely irrelevant to the plaintiffs' claims before this court.

Having considered the foregoing, and being of the opinion the plaintiffs' motion to compel is due to be denied,

It is therefore **ORDERED** by the court that said motion be and hereby is **DENIED**. The Alabama State Banking Department's motion to deny motion to compel (doc. 121) is **GRANTED**.

DONE and **ORDERED** this the 13th day of June, 2012.



INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA
BIRMINGHAM DIVISION

REED JEAN W.,)
HAYNES MARY W.,)
STOCKHAM SUSAN W.,)
Plaintiffs,)
)
V.) Case No.: CV-2008-903817.00
)
REGIONS BANK,)
MORGAN ASSET MANAGEMENT,)
INC.,)
REGIONS FINANCIAL)
CORPORATION,)
MORGAN KEEGAN & CO. INC. ET)
AL,)
Defendants.)

ORDER

Pending is a motion to enforce protective order, filed by Morgan Asset Management, Inc. Defendant Regions Bank has joined in MAM's motion, and plaintiff Stockham opposes it. Having reviewed the filings made in support of, and in opposition to, the motion, the Court has also conducted an *in camera* review of the document at issue, referred to as the Conclusion Memorandum, after the parties and representatives of the Federal Reserve and the Alabama State Banking Department agreed to such review.

For the reasons stated therein, MAM's and Region Bank's motions are granted. By **June 22, 2012**, counsel for plaintiff Stockham is ordered to either return all copies of the Conclusion Memorandum to MAM's counsel or provide written confirmation that all such copies have been deleted and/or destroyed.

Regions Bank also seeks the return of related documents, but the Court has not been provided information about such documents and therefore cannot ascertain whether the privilege at issue applies to them. This order accordingly does not pertain to any other documents.

Further, this order is subject to any contrary determination made by another tribunal to the effect that the Conclusion Memorandum may be used by plaintiff's counsel in any other action in which it was also produced.

DONE this 23rd day of May, 2012.

/s/ ROBERT S. VANCE
CIRCUIT JUDGE