



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

June 20, 2007

Cristeena G. Naser, Senior Counsel
Center for Securities, Trust & Investments
American Bankers Association
1120 Connecticut Avenue, NW
Washington, DC 20036

Re: Owner Trustee Fiduciary Accounts – Reporting on Schedule RC-T

Dear Ms. Naser:

This letter responds to your letter dated December 18, 2006, concerning the proper reporting of “owner trustee” fiduciary accounts on the Consolidated Reports of Condition and Income (call report). In your letter, you state that the American Bankers Association (ABA) believes that the OCC should affirm an industry practice of reporting the number of accounts for which a bank serves as owner trustee and a book value of \$1 when disclosing the “market value” of such account assets. Based on the information you provided and subsequent discussions the OCC has had with you, we believe it is reasonable that in the circumstances in which a national bank serves in a fiduciary capacity as an owner trustee as outlined below, it is an acceptable practice to report a book value, such as \$1 per account, on Call Report Schedule RC-T, Fiduciary and Related Services.

Background

In your letter you state that the fiduciary accounts at issue are tax-advantaged leveraged lease transactions in which an investor or “owner participant,” usually through a bank “owner trustee,” acquires property. Most of the funding is provided by third party lenders (“loan participants”). Those loans are usually documented with note certificates or bonds under an indenture that is administered by an indenture trustee. The indenture trustee is typically the “secured party” on any mortgage or UCC financing statements. The roles of owner trustee and indenture trustee are typically filled by different banks.

This type of structure is used primarily for large-ticket items such as aircraft, rail equipment, vessels and barges, co-generation facilities, commercial real estate, mining equipment, and satellites. The owner trustee must have the legal capacity to meet registration requirements that are required to secure legal title. For example, a bank located in the U.S. may need to serve as

owner trustee for certain of these financial transactions in order to meet U.S. registration requirements for aircraft and certain vessels.

Duties of the Owner Trustee

The duties of the owner trustee are strictly limited to taking those actions that are directed in writing by the investor. At the closing, where the investor purchases the asset subject to the terms of an indenture, the owner trustee bank that acts as the lessor in the transaction:

- Receives title to the asset as evidenced by a bill of sale;
- Issues bonds or note certificates under an indenture (the debt) and uses those funds as well as the contribution from the investor to purchase the property to be leased;
- Provides a lien interest on the property to the indenture trustee with an assignment of rent as security for the note certificates; and
- Leases the property to the lessee. (The lessee, with the exception of holding title, receives all incidents of ownership pursuant to the lease including use, maintenance, and risk of loss).

The owner trustee's rights under the lease (including the right to receive rent, insurance proceeds, *etc.*) are *assigned* to the indenture trustee for the benefit of the loan participants. In addition, the trust agreement divests the owner trustee of any duties or responsibility for the leased assets. The owner trustee can not independently exercise any discretion over the asset. The owner trustee can only act during the lease term on the written instruction and direction of the investor.

Discussion

According to the current instructions for Call Report Schedule RC-T, Fiduciary and Related Services, "*institutions should generally report fiduciary and related assets using their market value as of the report date.*" In your letter you state that the owner trustee may initially be aware of various values that are associated with the leveraged lease transaction. These values may include the bill of sale value (typically \$1 plus other valuable consideration), the lessor's cost to acquire the leased asset, or the stipulated loss or insured value. However, none of these values are an accurate indicator of the actual market value of the collateral property because they are subject to various factors such as the equity contribution, the amount borrowed, the rate of return on the equipment loan certificates and any remaining tax benefits. Additionally, you state that in these transactions the owner trustee has no knowledge on an ongoing basis of the market value of the asset, nor does it have a responsibility under the terms of the trust agreement to monitor the asset's value during the lease term. Accordingly, banks serving in the capacity of owner trustee typically record these assets on their internal recordkeeping systems at a book value of \$1.

The Call Report instructions recognize that while market value quotations are readily available for marketable securities, many financial and physical assets held in fiduciary accounts are not widely traded or easily valued. Accordingly, the current Call Report Schedule RC-T instructions contain the following guidance:

If the methodology for determining market values is not set or governed by applicable law (including the terms of the prevailing fiduciary agreement), the institution may use any reasonable method to establish values for fiduciary and related assets for purposes of reporting on this schedule. Reasonable methods include appraised values, book values, or reliable estimates. Valuation methods should be consistent from reporting period to reporting period. This "reasonable method" approach to reporting market values applies both to financial assets that are not marketable and to physical assets. Common physical assets held in fiduciary accounts include real estate, equipment, collectibles, and household goods.

In your letter, you state that the ABA believes it is “reasonable” to report owner trustee assets at a book value of \$1 in Schedule RC-T, Line 6 Column B – Non-managed Assets. This is based on the fact that the owner trustee: (1) has no access to market value calculations for the leased asset at any time during the lease transaction; (2) has no obligation to determine the market value of the leased asset; and (3) has no obligation or reason to monitor the value of the asset during the lease term.

Conclusion

In those situations where a national bank serves in a fiduciary capacity as owner trustee, as outlined above, the OCC believes it is reasonable that the bank report such account assets using a book value, such as \$1 per account, on Call Report Schedule RC-T. Under no circumstances does this relieve the bank of its responsibilities to comply with applicable law (including the terms of the prevailing fiduciary agreement).

Should you have additional questions, please contact David Barfield, National Bank Examiner, Asset Management Group at (202) 874-1829.

Sincerely,

Kerri Corn
Director for Credit and Market Risk