UNITED STATES OF AMERICA
DEPARTMENT OF THE TREASURY
OFFICE OF THE COMPTROLLER OF THE CURRENCY

In the Matter of	
Carrie Tolstedt, Former Head of the Community Bank	OCC AA-EC-2019-82
Claudia Russ Anderson, Former Community Bank Group Risk Officer	OCC AA-EC-2019-81
James Strother, Former General Counsel	OCC AA-EC-2019-70
David Julian, Former Chief Auditor	OCC AA-EC-2019-71
Paul McLinko, Former Executive Audit Director	OCC AA-EC-2019-72
Wells Fargo Bank, N.A. Sioux Falls. South Dakota	ALJ McNeil

Order Regarding Enforcement Counsel's Motion Concerning the Answers of Respondents Strother, Julian and McLinko

Respondents Strother, Julian, and McLinko filed written Answers responsive to the Notice of Charges issued by the OCC in this administrative enforcement action.[1]

By a Motion dated June 22, 2020, Enforcement Counsel for the OCC seek relief in the form of an Order from this Tribunal directing that these three Respondents either amend their Answers so that the contents are consistent with prior admissions, or specify why they now deny facts they previously had admitted.[2]

In support of their Motion, Enforcement Counsel note that pursuant to the OCC's Uniform Rules of Practice and Procedure, answers to notices of charges must be "well-grounded

[1] Respondent James Strother's Answer to Notice of Charges for Order to Cease and Desist and Notice of Assessment of a Civil Money Penalty; Respondent David Julian's Answer; and Answer of Paul McLinko to Notice of Charges for Orders of Prohibition and Orders to Cease and Desist Notice of Assessments of a Civil Money Penalty, each dated February 20, 2020.

[2] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted (submitted in sealed and redacted versions), dated June 22, 2020.

in fact," and must "fairly meet the substance of each allegation of fact denied."[3] They note further that each of the three Respondents provided sworn testimony and submitted to the OCC responses to what Enforcement Counsel refer to as the OCC's "15-Day Letters" addressed to each Respondent.[4] Enforcement Counsel compare the responses provided during the part of the administrative action that preceded the issuance of the Notice of Charges, with responses presented by the three Respondents in their respective Answers.

With this comparison, Enforcement Counsel assert that under the OCC's Uniform Rules regarding the submission of Answers, "Respondents are not permitted to deny in their Answers facts they know and admitted under oath to be true".[5] Drawing from analogous provisions of the Federal Rules of Civil Procedure, Enforcement Counsel assert that by signing the Answers for their respective clients, the attorneys representing these Respondents certified to this Tribunal "that the signer has read the document, has conducted a reasonable inquiry into the facts and the law and is satisfied that the document is well grounded in both, and is acting without any improper motive."[6]

Enforcement Counsel draw attention to three features common to the Answers of these Respondents. First, they contend some of the responses to factual claims appearing in the Notice of Charges were *denied*, notwithstanding that each Respondent had through their prior sworn testimony or 15-Day Letter responses *admitted* the claims; Second, that Respondents had, and by their Answers have breached, the duty to admit in part those factual claims that were true and deny the remaining claims; and Third, that in those instances where a Respondent answered that a given document or testimony "speaks for itself," that such an answer is "presumptively improper" as the response fails to "admit, deny, or state that the party lacks sufficient

---

[3] *Id.* at 2, quoting 12 C.F.R. §§ 19.7(b) and 19.19(b), and citing *In re Golden*, No. OCC-AA-EC-00-25, 2000 WL 36732359 (Sept. 21, 2000) (recommended decision), and *In re Godfrey*, No. OCC-AA-EC-91-189, 1993 WL 114132, at *2 (Apr. 1993) (final decision). Note that pursuant to the prehearing Orders of this Tribunal, Enforcement Counsel's citation to the recommended decision in *Golden* will not be considered, as there has been no showing that the Comptroller or his designee has considered and approved the recommended decision. See Order to Attend Scheduling Conference and Supplemental Prehearing Orders issued February 13, 2020, which provided: "Only the applicable regulatory agency may enter final decisions and establish precedential determinations in cases presented to adjudicators at the Office of Financial Institution Adjudication. As such, citations to authority using as precedent orders and recommended decisions from OFIA should be limited to those in which the agency has considered and approved the ALJ's order or recommended decision." For the same reasons, Enforcement Counsel's references to the June 17, 2019 Order Regarding Enforcement Counsel's Motion for Certain Allegations in the Notice of Charges, and July 2, 2019 Order Regarding Respondent's Motion for Reconsideration of the Orders Dated June 17, 2019 filed in *Daniel Weiss*, OCC Docket No. AA-EC.2018-95, are given no weight.

[4] Enforcement Counsel further aver that Respondents Carrie Tolstedt and Claudia Russ Anderson asserted their Fifth Amendment rights with respect to all substantive questions during their sworn statements, and that as such, Enforcement Counsel was not presently requesting that the Tribunal order Respondents Tolstedt and Russ Anderson to amend their Answers for noncompliance with the OCC's Uniform Rules of Practice and Procedure, but reserved the right to do so in the future. See Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at n. 1.

[5] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 8, quoting 12 C.F.R. § 19.7(b)(1).

[6] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 8, quoting *Bus. Guides, Inc. v. Chromatic Comms. Enters., Inc.*, 498 U.S. 533, 542 (1991); and citing Fed. R. Civ. P. 11(b)(4).

information to admit or deny each allegation of fact" as is required under the OCC's Uniform Rules.[7]

Responding separately, Respondents Strother, Julian and McLinko address the substantial merits of Enforcement Counsel's Motion.[8] In addition, each of these Respondents included in their briefs in opposition the assertion that the relief Enforcement Counsel seeks should be denied because Enforcement Counsel failed to meet and confer with the Respondents prior to filing this Motion.[9]

The "meet and confer" requirement is set forth in the Tribunal's Notice of Designation, Order Requiring Electronic Filing, and Initial Prehearing Orders (January 23, 2020) at 4:

> Before any motion is filed in this proceeding (except dispositive motions, as defined by applicable regulation [*See* 12 C.F.R. §§ 19.29-30]) counsel for the moving party shall confer with all other counsel in an attempt to resolve their differences. Only after such efforts have been made may the party move for relief, and in such motion the moving party shall certify in writing the efforts undertaken to resolve the matter. Any motion that does not contain such a certification will be subject to summary denial.[10]

---

[7] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 8, 57-61,quoting 12 C.F.R. § 19.19(b), and citing *FDIC v. Stovall*, No. 2:14-CV-00029-WCO, 2014 WL 8251465, at *11 (N.D. Ga. Oct. 2, 2014); *Miller v. Holzmann*, 240 F.R.D. 1, 4 (D.D.C. 2006); *Thompson v. Ret. Plan for Emp. of S.C. Johnson & Sons, Inc.*, Nos. 07-CV-1047, 08-CV-0245, 2008 WL 5377712, at *2 (E.D. Wis. Dec. 22, 2008); and *Rudzinski v. Metro. Life Insur. Co.*, Nos. 05 C 0474, 05 C 0474, 2007 WL 2973830, at *4 (N.D. Ill. Oct. 4, 2007).

[8] James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations; Respondent David Julian's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations; and Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions, each dated July 8, 2020.

[9] See James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 33-34 ("the Motion challenges Answer paragraphs about which Enforcement Counsel refused to meet and confer"; Respondent David Julian's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations at 22-23 ("the Motion challenges Answer content about which Enforcement Counsel Never met and conferred" and "Enforcement Counsel never mentioned a challenge to Answers averring that documents or testimony cited in the Notice 'speak for themselves'" and because the Motion "includes an ambiguous demand that 'Respondents . . . review their Answers in their entirety, and amend them as appropriate,'" "[t]his too reflects a failure to meet and confer because Enforcement Counsel did not notify Respondents of the relief they seek and, indeed, still have not done so"); and Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions at 5 (adopting the arguments presented by Respondents Strother and Julian).

[10] Notice of Designation, Order Requiring Electronic Filing, and Initial Prehearing Orders, footnote omitted.

Responsive to this requirement, apparently (and correctly) anticipating the argument would be made, Enforcement Counsel included in their Motion the following certification regarding their efforts to meet and confer with these Respondents:

> **I. Meet and Confer with Respondents**
>
> The parties met and conferred regarding the subject matter of this motion by telephone on June 15, 2020 and by email dated June 9 and 16, 2020, but could not reach a resolution. See Exh. 1 (email correspondence between the parties). Specifically, on June 9, 2020, Enforcement Counsel informed counsel for Respondents Julian, McLinko, and Strother that they were preparing to file a motion seeking an order requiring Respondents to amend their Answers to be consistent with their prior admissions or explain why they are denying matters they previously admitted, and wished to meet and confer before filing to give Respondents an opportunity to amend their Answers on their own.
>
> During the meet and confer call on June 15, 2020, Enforcement Counsel provided counsel for Respondents Julian, McLinko, and Strother with a list of categories where Respondents' answers diverged from their sworn testimony and 15-Day Letter Responses, and thus were not well-grounded in fact and did not fairly meet the substance of the allegations denied as required by 12 C.F.R. §§ 19.7(b) and 19.19(b), as follows: (1) each Respondent previously admitted that the Bank had a longstanding systemic sales practices misconduct problem and acknowledged its root cause; (2) Respondent Strother previously admitted sales practices misconduct is unlawful; (3) Respondents Julian and Strother previously admitted the bank's controls regarding sales practices misconduct were inadequate or ineffective; (4) Respondents Julian and Strother also previously admitted that the sales practices misconduct resulted in significant harm to the bank; and (5) lastly, each Respondent previously admitted to aspects of their own failures with respect to the sales practices misconduct problem. Enforcement Counsel asked counsel for Respondents Julian, McLinko, and Strother to inform Enforcement Counsel by June 17, 2020 whether they would amend Respondents' Answers to address those inconsistencies.
>
> On June 16, 2020, in response to a request from counsel for Respondents Julian, McLinko, and Strother on the June 15, 2020 call, Enforcement Counsel provided a non-exhaustive list of Answer paragraphs that should be amended because they are inconsistent with their prior admissions. Enforcement Counsel also included information regarding this Tribunal's authority to grant the relief requested in this Motion and allowed Respondents an additional five days to respond to Enforcement Counsel, until June 22, 2020. On June 22, 2020, counsel for Respondents Julian and Strother informed Enforcement Counsel that they saw "no need to amend"

> Respondents' Answers and counsel for Respondent McLinko said it would be not be "necessary or appropriate." See Exh. 1 (emphasis added).[11]

Having examined the exhibits presented in support of Enforcement Counsel's averment that they had met and conferred with these Respondents, I find no basis has been shown that would permit summary denial of Enforcement Counsel's Motion based on the meet-and-confer requirement.

The general thrust of Respondents' argument is that Enforcement Counsel's Motion includes factual assertions that go beyond those assertions discussed during the meet and confer process. For example, Respondent Strother averred "Enforcement Counsel emailed counsel for Messrs. Strother, Julian, and McLinko a list of 27 Answer paragraphs that they contended do not comply with the law."[12] When actually presented, Enforcement Counsel's Motion "now challenges 51 Answer paragraphs," including "23 of the 27 paragraphs that Enforcement Counsel initially disclosed and 28 new paragraphs that Enforcement Counsel refused to identify, precluding the parties from discussing prior to Enforcement Counsel's filing of the Motion."[13] Further, Respondent Strother noted that Enforcement Counsel "never mentioned a challenge to Answers averring that documents or testimony cited in the Notice 'speak for themselves."[14]

In their email to Respondents dated June 9, 2020, Enforcement Counsel (through Jason Friedman) advised these Respondents that:

> We are preparing to file a motion seeking an order requiring Respondents Strother, Julian, and McLinko to amend their Answers to be consistent with their prior admissions or explain why they are denying matters they previously admitted. Before filing, we would like to meet and confer to give Respondents an opportunity to amend their Answers on their own. We will provide some additional context on the call.[15]

In a subsequent email to Respondents, dated, June 16, 2020, Enforcement Counsel elaborated thus:

> Specifically, the relief sought will be an order requiring Respondents to amend their answers to conform to their prior admissions or explain why they now deny facts previously admitted. As we mentioned, the OCC's rules require that answers be well-grounded in fact and fairly meet the substance of the allegations denied. See 12 CFR 19.7(b) and 19.19(b).[16]

The record thus does not support Respondent Strother's assertion that "Enforcement Counsel refused to identify" all of the examples where Enforcement Counsel sought a remedial

[11] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 5-6, emphasis omitted.
[12] James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 33.
[13] *Id.*
[14] *Id.*
[15] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted, Ex. 1 at 2.
[16] *Id.*, Ex. 1 at 9.

answer.[17] The assertion that Enforcement Counsel "refused" to identify each of the examples ultimately presented in Enforcement Counsel's Motion is not supported by Mr. Strother's references to the record. Those references do not recognize the supporting documentation presented as an exhibit to the Motion. Instead, the sole factual premise relied upon by Mr. Strother was the fact that not all of the examples initially presented to Respondents were included in the actual Motion, and examples not initially presented to Respondents were included in the Motion. This difference does not establish a refusal to disclose; its import is limited to the fact that the population of examples shared during the meet and confer process changed. Nothing in the change has been shown to materially affect the scope of the legal issues Enforcement Counsel was preparing to present through their Motion.

Similarly, Respondents' argument that the meet and confer process was noncompliant because Enforcement Counsel failed to specifically identify "all of the paragraphs that included that 'speaks for itself' language" is not supported by the record.[18] Through the exhibits presented with their Motion, Enforcement Counsel demonstrated that during the meet and confer process, they put Respondents on notice that the Motion would address answers that "are contrary to the OCC's rules" and that Enforcement Counsel anticipated seeking an order "requiring Respondents to amend their answers to conform to their prior admissions," noting that the motion would be based on 12 CFR §§ 19.7(b) and 19.19(b).[19] Because those sections of the Rules speak directly to the sufficiency of Respondents' Answers, and because the examples provided by Enforcement Counsel addressed a range of answers that purportedly were not "well-grounded in fact" and did not "fairly meet the substance of the allegations denied,"[20] the suggestion that Respondents were not informed about the legal and factual basis for Enforcement Counsel's Motion is not supported by the record.

Without more, there is no basis to find Enforcement Counsel failed to conform to the meet and confer requirements.

Claim Regarding the Content of Respondents' Answers

Through their Motion, Enforcement Counsel advance the argument that certain responses presented by Respondents Strother, Julian, and McLinko fail to conform to the OCC's Uniform Rules with respect to the sufficiency of pleadings.

---

[17] James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 33. See also, to the same effect, Respondent David Julian's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations at 22-23; and Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions at 5.

[18] Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions at 5; see also, to the same effect, Respondent David Julian's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations at 23; and James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 33.

[19] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted, Ex. 1 at 9 (6/16/20 email from Jason Friedman to Matthew Martens et al.)

[20] *Id.*

The primary Rule relied upon by Enforcement Counsel describes the obligations of a responding party upon issuance of a Notice of Charges by the OCC:

> 12 C.F.R. § 19.19 **ANSWER**
>
> (b) Content of answer. An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order.[21]

The second Rule relied upon by Enforcement Counsel concerns obligations applicable to all parties, and their attorneys, regarding *all* submissions to this Tribunal. In pertinent part, Rule 12 C.F.R. § 19.7 provides:

> **GOOD FAITH CERTIFICATIONS**
>
> (b) Effect of signature.
>
> (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.[22]

Taken together, these Rules, which the parties acknowledge are similar to comparable sections of the Federal Rules of Civil Procedure, impose burdens on Respondents that are relevant to Enforcement Counsel's Motion.[23] The two-fold burdens are *first*, that there are only three options when responding in an answer: admit, deny, or aver the respondent lacks sufficient information to admit or deny each allegation of fact; and *second*, that the party, or his or her attorney – whoever signed the submission – has signed the submission only "after reasonable inquiry" where such inquiry became the basis for the signors knowledge, information, and belief,

[21] 12 C.F.R. § 19.19(b).

[22] 12 C.F.R. § 19.7(b).

[23] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 7; James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 4, 10; Respondent David Julian's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations at 8, 13; and Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions at 1.

and has done so only after reading the filing and determining the answer, to the best of his or her knowledge, information, and belief, "is well-grounded in fact."

The requirement that an answer admit, deny, or aver lack of information "precludes a response that the document or testimony 'speaks for itself.'"[24] Responses to the effect that documents presented in the Notice of Charges speak for themselves, or that allegations in the Notice of Charges are legal conclusions, do not comply with Fed. R. Civ. P 8(b)'s requirements.[25] Case law establishes that the federal Rule analog to 12 C.F.R. § 19.19 – Fed. R. Civ. P. 8 (General Rules of Pleading) – does not permit a defendant to respond that the document "speaks for itself."[26]

As the District Court in *Rudzinski v. Metropolitan Life Ins. Co*. explained:

> Instead of admitting or denying these allegations, MetLife denies Sharp's "summarizing language," and then goes on to state, essentially, that the terms of the referenced documents speak for themselves. As Judge Shadur explained in *State Farm Mutual Automobile Insurance Co. v. Riley*, 199 F.R.D. 276 (N.D.Ill.2001), this device is frequently, and improperly, employed by lawyers who would prefer not to admit something that is alleged about a document in a complaint. Despite lawyers' persistence in relying upon the "speaks for itself" response, "this Court has been attempting to listen to such written materials for years (in the forlorn hope that one will indeed give voice) – but until some such writing does break its silence, this Court will continue to require pleaders to employ one of the three alternatives that are permitted by Rule 8(b)." *Id*. at 279. Because MetLife has failed to properly deny the allegations in Paragraphs 18, 21, 26, 29, 30, 32, 53, and 55 of the Cross-Claim, these Responses are stricken and the referenced allegations are deemed admitted."[27]

Courts construing Fed. R. Civ. P. 8 have repeatedly made it clear that a responding party "must respond to all of a plaintiff s allegations," and "responses that documents speak for

[24] Lane v. Page, 272 F.R.D. 581, 602–03 (D.N.M. 2011).

[25] *Id*. at 602, citing *Thompson v. Ret. Plan for Employees of S.C. Johnson & Sons, Inc*., 2008 WL 5377712, at *1–2 (E.D. Wis. Dec. 22, 2008)("Rule 8 does not permit a defendant to respond only by stating that the plaintiff's allegations 'constitute conclusions of law'").

[26] *Lane*, 272 F.R.D. at 602-03 (quoting *State Farm Mut. Auto. Ins. Co. v. Riley*, 199 F.R.D. 276, 278 (N.D. Ill. 2001).); *N. Ind. Metals v. Iowa Exp., Inc*., 2008 WL 2756330, at *3 (N.D. Ind. July 10, 2008) ("[A] responsive pleading indicating that a document 'speaks for itself' is insufficient and contrary to the Federal Rules of Civil Procedure."); *Rudzinski v. Metropolitan Life Ins. Co*., 2007 WL 2973830, at *4 (N.D. Ill. Oct. 4, 2007) (stating that a defendant may not simply employ "summarizing language" and then state, "essentially, that the terms of the referenced documents speak for themselves."); *State Farm Mut. Auto. Ins. Co. v. Riley*, 199 F.R.D. 276, 278 (N.D. Ill. 2001) ("Another regular offender is the lawyer who takes it on himself or herself to decline to respond to an allegation because it 'states a legal conclusion.' That of course violates the express Rule 8(b) requirement that all allegations must be responded to"). "Indeed, legal conclusions are an 'integral part of the federal notice pleading regime. Therefore, legal conclusions must be addressed in one of the three ways contemplated by Rule 8.' " *Thompson v. Ret. Plan for Employees of S.C. Johnson & Sons, Inc*., 2008 WL 5377712, at *1 (citation omitted).

[27] *Rudzinski v. Metro. Life Ins. Co*., No. 05 C 0474, 2007 WL 2973830, at *3–4 (N.D. Ill. Oct. 4, 2007).

themselves and that allegations are legal conclusions do not comply with Rule 8(b)'s requirements."[28]

I reject as not supported by law Respondents' assertion that "a 'speaks for itself' response constitutes an appropriate part of an answer" if the respondent accompanies such language with an explicit admission or denial of the remainder of the allegation.[29] Respondents support this legal premise with references to three cases: *Hobbs*,[30] *Eternal Investments*,[31] and *Minge*.[32]

In *Hobbs*, the District Court determined the merits of a motion to strike portions of the Defendant's answer in a diversity action alleging bad faith insurance practices on the part of Defendant Employers Mutual Casualty Company, upon Plaintiff's claim of the bad-faith denial of Plaintiff's worker's compensation claim.[33] The District Court observed that courts "do not construe Rule 8(b) strictly, nor require highly precise denials."[34] Noting that "Rule 8 requires no technical form," the Court stated that "nomenclature and formal matters should not be determinative and the intention of the pleader should be given effect so that a resolution of the merits can be achieved."[35]

The Court in *Hobbs* made no reference to the substantial body of law holding that responses answering that the "thing speaks for itself" is an improper answer. Instead, citing no authority other than Fed. R. Civ. P. 8(b), the District Court rejected the motion that sought to strike such answers, stating only that "[w]hen the pleader's intent is clear, courts disfavor corrective motions addressed to somewhat ambiguous denials because they simply create unnecessary delay and expense."[36] Even with this admonition, however, the District Court recognized that while "it usually is not productive to try and police the pleadings by motion, a

---

[28] *McSweeney v. Janes*, No. 14-CV-00456-REB-MEH, 2014 WL 3707788, at *2 (D. Colo. July 24, 2014) citing *Lane*, 272 F.R.D. at 602-03 (citing Fed.R.Civ.P. 8(b)(1)(B) ("In responding to a pleading, a party must ... admit or deny the allegations asserted against it by an opposing party.")).

[29] James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 13; Respondent David Julian's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations at 21; and Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions at 1.

[30] *Hobbs v. Employers Mut. Cas. Co*., No. 5:17-CV-05040-JLV, 2018 WL 1221166, at *3 (D.S.D. Mar. 8, 2018) (refusing to strike a defendant's answer that a document "speaks for itself" where defendant also "denies the allegations of the paragraph to the extent they are inconsistent with the same").

[31] *Eternal Invs., L.L.C. v. City of Lee's Summit, Mo*., No. 05-0521-CV-W-FJG, 2006 WL 573919, at *1 (W.D. Mo. Mar. 8, 2006) (denying a motion to strike defendants answers stating that a "document speaks for itself," noting that these phrases are "terms of art" and "did not prevent plaintiff from understanding or comprehending defendant's [a]nswer").

[32] U*nited States ex rel. Minge v. TECT Aerospace, Inc.*, No. 07-1212-MLB, 2011 WL 2473076, at *2 (D. Kan. June 21, 2011) (while "the document speaks for itself" language alone does not meet the legal standard, defendants' answers were sufficient because they also admitted or denied the substance and extent of the allegations in each paragraph).

[33] *Hobbs*, 2018 WL 1221166, at *1.

[34] *Id.*, citing Fed. Prac. & Proc. Civ. § 1261 (3d Ed.).

[35] *Hobbs*, 2018 WL 1221166, at *1, Fed. Prac. & Proc. Civ. § 1266; see Fed. R. Civ. P. 8(d).

[36] *Hobbs*, 2018 WL 1221166, at *1, citing Fed. Prac. & Proc. Civ. § 1267.

gross violation of this standard would justify a motion under Rule 12(f), which could result in an order to strike the pleading or part of it."[37]

Unlike the moving party in *Hobbs* and *Eternal Investments*, Enforcement Counsel presently do not seek an order *striking* any of Respondents' Answers. Instead, the Motion seeks an order requiring Respondents to "review their Answers in their entirety, and amend them as appropriate, to ensure their compliance with 12 C.F.R. §§ 19.7(b) and 19.19(b) (including remedying their responses that a document 'speaks for itself')."[38]

Minge, too, would not warrant a contrary conclusion, as it acknowledges that a "document speaks for itself" response, "standing alone, would not meet the requirements of Rule 8," and declines to order the requested relief only upon a finding that "defendants also made admissions and denials as they deemed necessary given the substance and extent of the allegations in each paragraph."[39]

Also unlike in *Hobbs*, the Answers that have been called into question through this Motion are sufficiently disassociated with the factual claims presented in the Notice of Charges as to create, if left intact, a substantial risk of confusion and waste of time during the hearing, in prehearing discovery, in motion practice, and in clarifying the factual issues likely to be addressed during the hearing.

Upon the foregoing legal and factual premises, I find those answers alleging that the referenced material presented in an allegation in the Notice of Charges either "speaks for itself" or "states a legal conclusion" constitute answers the fail to comply with 12 C.F.R. §§ 19.7(b) and 19.19(b). While the District Court in *Rudzinski* ordered the noncompliant answers stricken and deemed the referenced allegations admitted,[40] such relief here is not presently appropriate (nor has it been sought through Enforcement Counsel's Motion). Instead, given the nature of relief requested in Enforcement Counsel's Motion and the relatively early stage of this enforcement action, the better course of action is to direct the Respondents to amend those answers that have been found noncompliant based on the averment that the referenced material "speaks for itself" or "states a legal conclusion".[41] All Respondents are directed to review any such response in their Answers and by not later than August 7, 2020 amend them as appropriate to ensure their compliance with 12 C.F.R. §§ 19.7(b) and 19.19(b).

Any pleading by any party that, after August 7, 2020, fails to conform with 12 C.F.R. §§ 19.7(b) and 19.19(b) in this respect will be subject to sanction, which may, upon sufficient cause shown by motion, include striking the Answer and deeming admitted the factual claim presented in the Notice of Charges and, if warranted, remedies provided for by the OCC's Uniform Rules regarding appearance and practice in this adjudicatory proceeding.[42]

---

[37] *Hobbs*, 2018 WL 1221166, at *1, citing Fed. Prac. & Proc. Civ. § 1261.
[38] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 64.
[39] *U.S. ex rel. Minge v. TECT Aerospace, Inc.*, No. CIV.A. 07-1212-MLB, 2011 WL 2473076, at *2 (D. Kan. June 21, 2011)
[40] *Rudzinski v. Metro. Life Ins. Co.*, No. 05 C 0474, 2007 WL 2973830, at *4 (N.D. Ill. Oct. 4, 2007).
[41] *See, e.g., Gross v. Weinstein, Weinburg & Fox, LLC*, 123 F. Supp. 3d 575, 582 (D. Del. 2015) ("Under the circumstances here, including the early stages of this case, the Court concludes that the better exercise of its discretion is to permit DMD to amend its answer to be in compliance with Rule 8. DMD is placed on notice that if its amended answer suffers from the same deficiencies as its original answer, the Court will be inclined to grant any reasonable request from Plaintiffs' for appropriate relief.")
[42] See 12 C.F.R. § 19.6(b).

Sufficiency of Answers that Concern Facts Addressed by Respondents' Prior Testimony and Written Submissions

As noted above, Enforcement Counsel's Motion is predicated on their claim that a significant number of Respondents' Answers failed to conform to the OCC's Uniform Rules because it appears the Answers were not based on beliefs "formed after reasonable inquiry," where such inquiry would have included a meaningful examination of admissions made by the three Respondents, either during investigative depositions or through written responses to 15-day letters.

There should be no question regarding the affirmative obligation that each of Respondents' various signatories owed to this Tribunal to engage in such a "reasonable inquiry" before answering the Notice of Charges, and to ensure that any Answer submitted to this Tribunal takes into account the full measure of what that inquiry produced. An answer either denying or averring the lack of sufficient information to admit or deny a factual claim that is contradicted by an admission made by the Respondent and known by the signatory is, by definition, noncompliant with 12 C.F.R. § 19.7(b):

> In responding to a complaint, "a party 'may not deny sufficient information or knowledge with impunity, but is subject to the requirements of honesty in pleading. An averment will be deemed admitted when the matter is obviously one as to which a defendant has knowledge or information.'" *Djourabchi v. Self*, 240 F.R.D. 5, 12 (D.D.C.2006) (quoting *David v. Crompton & Knowles Corp.*, 58 F.R.D. 444, 446 (E.D.Pa.1973)). A leading federal practice treatise cautions that although "availability of the denial of knowledge or information sufficient to form a belief meets the dilemma of a pleader who lacks sufficient data to justify interposing either an honest admission or a denial of an opponent's averment . . .[r]esort to this form of allegation should not be capricious." 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1262 (3d ed.2010).
>
> A denial of knowledge or information requires that the party not only lack first-hand knowledge of the necessary facts involved but also that the pleader lack information upon which she reasonably could form a personal belief concerning the truth of the adversary's allegations. Normally, a party may not assert a lack of knowledge or information if the necessary facts or data involved are within his knowledge or easily brought within his knowledge, a matter of general knowledge in the community, or a matter of public record. A denial of knowledge or information in this context casts doubt on the good faith of the pleader. Furthermore, a federal court often will impute knowledge of certain matters to a party, such as charging a corporation with the knowledge of the acts of its agents, or will impose a reasonable burden of investigation upon the pleader.[43]

In answering those factual claims directed at a specific Respondent, if the facts are sufficiently related to facts that were the subject of the Respondent's responses to the OCC's 15-day letter, at a minimum that Respondent had an affirmative duty to acknowledge the

[43] *Certain Underwriters at Lloyd's, London Subscribing to Certificate No. IPSI 12559 v. SSDD, LLC*, No. 4:13-CV-193 CAS, 2013 WL 6801832, at *3–4 (E.D. Mo. Dec. 23, 2013).

relationship between the Respondent's responses to the 15-day letter and the claims in the Notice. A denial of such a factual claim can properly be presented only if the necessary facts or data involved are not within the Respondent's knowledge or could not easily be brought within his or her knowledge.

Mr. Strother

Enforcement Counsel posit that each of the three named Respondents provided answers that were materially inconsistent with responses given to the OCC's 15-day letters or sworn testimony each gave prior to the issuance of the Notice of Charges. For example, Paragraph 355 of the Notice of Charges makes the following factual claims:

> (355) The Law Department that Respondent Strother supervised knew about the root cause and scope of sales practices misconduct during the entire time the problem existed, which coincided with his tenure as General Counsel. Respondent Strother himself recognized the "systemic nature of sales practice[s] misconduct [by] Fall 2013." Nevertheless, he failed to escalate the sales practices misconduct problem to the Board and the CEO. Regardless of the amount of information supplied to him about the sales practices misconduct problem, at no point during his tenure as General Counsel did Respondent Strother advise the Board and the CEO that the Community Bank's business model motivated employees to break the law, that the business model needed to be changed, and that the Bank's controls were inadequate and not reasonably designed to prevent and detect serious legal violations associated with sales practices misconduct.[44]

Deconstructed, the claims include the following:

1. That Mr. Strother knew about the systemic nature of sales practice misconduct by the fall of 2013.

2. That employees of the Law Department Mr. Strother supervised knew about the root cause and scope of sales practices misconduct throughout Mr. Strother's tenure as General Counsel.

3. That Mr. Strother nonetheless failed to bring the problem to the attention of the Bank's Board and CEO.

In his Answer, Respondent Strother answered only "Denied" to Paragraph 355, without elaboration.[45]

To support their Motion, Enforcement Counsel cite to responses provided by Respondent Strother to the OCC's 15-day letter. Mr. Strother's response to the 15-day letter is dated March 18, 2019, and is signed by attorney Walter F. Brown, Jr., of the law firm of Orrick, Herrington & Sutcliffe LLP – who also signed Mr. Strother's February 12, 2020 Answer to the Notice of Charges.

Included in Mr. Strother's March 18, 2019 submission to the OCC was the following:

[44] Notice of Charges at ¶355.

[45] Respondent James Strother's Answer to Notice of Charges for Order to Cease and Desist and Notice of Assessment of a Civil Money Penalty at ¶355.

> Contrary to the Letter's contention, Mr. Strother *did not testify* that he knew of these issues in 2011. Instead, he explained that although he was aware of some firings within the Community Bank, he lacked sufficient information to recognize the systemic nature of sales practice misconduct until Fall 2013. It is only with the benefit of hindsight, which he acknowledged during his sworn testimony, that Mr. Strother now is able to retrospectively observe that sales practice misconduct had become a significant issue by 2011. [Emphasis *sic*.]
>
> Further, the OCC Letter characterizes the issues set forth in the Consent Order as "very similar" to the Community Bank's sales practice misconduct issues. By placing the term "very similar" in quotes, the OCC Letter seems to imply that Mr. Strother himself testified to this effect. The OCC Letter then argues that, based on these admitted similarities, Mr. Strother's involvement in the Consent Order in 2011 should have triggered him, at that time, to identify and try to eradicate misconduct within the Community Bank. This somewhat tortured reading of Mr. Strother's testimony fails to acknowledge that, although Mr. Strother stated that he recognized in hindsight some broad similarities between the two types of misconduct, he lacked adequate information to identify the systemic nature of the Community Bank's sales practice misconduct until 2013.[46]

Respondent Strother's Answer denying the factual claims presented in Paragraph 355 is contradicted by the factual claims appearing in his attorney's response to the 15-day letter. His letter includes the admission that Mr. Strother recognized the systemic nature of sales practice misconduct by the fall of 2013. His Answer denied that he had such knowledge. His response established that he had adequate information allowing him to identify the systemic nature of the misconduct by 2013. His Answer denied having such knowledge. The inconsistencies are not limited to what is shown here, and are material, and warrant a determination regarding whether the Answer fails to comply with the OCC's requirement that such submissions be made in good faith.

Here, the question is whether Respondent's counsel conducted a reasonable inquiry and therefrom, to the best of his knowledge, information, and belief, concluded the denial was made in good faith; or whether the denial was not well-grounded in fact; or was made for any improper purpose, such as to cause unnecessary delay or needless increase in the cost of litigation.

Respondent Strother's opposition brief does not address the inconsistencies noted above between his denial, his attorney's responses to the 15-day letter, and Paragraph 355 of the Notice of Charges. Instead, he makes the following legal arguments:

First, that his Answer "complies with the Rules and accomplishes its purpose of apprising Enforcement Counsel as to what is in dispute. That ends the analysis."[47] I disagree, and find instead that the analysis ends when the record establishes whether the inconsistencies between

---

[46] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted, Exh. 6 at 47-48.

[47] James Strother's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Certain Allegations at 5.

admissions appearing in Mr. Strother's responses to the 15-day letter are reconciled with his blanket denial of each of the factual claims appearing in Paragraph 355 of the Notice of Charges.

Through their Motion, Enforcement Counsel have brought forward sufficient evidence of Mr. Brown's noncompliance with OCC Rule 12 C.F.R. § 19.7(b) to warrant remedial action. If Mr. Brown determined there was no need to include the contents of Mr. Strother's response to the OCC's 15-day letter in his "reasonable inquiry" leading to determining whether Mr. Strother's Answers were "well-grounded in fact," I find such a determination to be unsupported by the above-reference authorities, and hold that he should do so now. Each paragraph of Mr. Strother's Answer that includes factual claims that are related to factual claims presented in Mr. Strother's responses to the OCC's 15-day Letter shall be amended to conform to OCC Rule 12 C.F.R. § 19.7(b).

Next, Respondent Strother asserts that the law does not require Mr. Strother to conform his Answer to Enforcement Counsel's view of the evidence.[48] I agree. The sole question that will determine the bona fides of any Answer presented to this Tribunal through the present motion will be whether the Answer is well-grounded in facts arrived at through a reasonable inquiry, where such inquiry includes all of the factual statements made by Mr. Strother appearing in his responses to the OCC's 15-day letter.

A similar set of conditions exists with respect to Answers provided by counsel for both Mr. Julian and Mr. McLinko.

Mr. Julian

The Notice of Charges at Paragraph 167 alleges: "The sales practices misconduct problem caused enormous and ongoing financial losses and other damage to the Bank."

Through his Answer, which was signed by Matthew T. Martins of the law firm of Wilmer, Cutler, Pickering, Hale & Dorr LLP on February 12, 2020, Mr. Julian denied the allegation, without elaboration.[49]

Mr. Julian's response to the OCC's 15-day letter, dated December 14, 2018, was signed by Franca Harris Gutierrez of the law firm of WilmerHale.[50] Having examined both the public version and the unredacted version of the December 14, 2018 letter, I find that through his response to the OCC, Mr. Julian acknowledged that the sales practices misconduct problem referred to in Paragraph 167 damaged the Bank. I find the inconsistency between Mr. Julian's submission to the OCC in his December 14, 2018 response to the 15-day letter and his Answer at Paragraph 167 is a material one. I find this set of conditions raises the question of whether Mr. Julian's Answer is well-grounded in facts arrived at through a reasonable inquiry, where such inquiry includes factual statements made by Mr. Julian in his responses to the OCC's 15-day letter.

Through their Motion, Enforcement Counsel have brought forward sufficient evidence of Mr. Martins' noncompliance with OCC Rule 12 C.F.R. § 19.7(b) to warrant remedial action. If Mr. Martins determined there was no need to include the contents of Mr. Julian's response to the

[48] Id. at 6.
[49] Respondent David Julian's Answer at ¶167.
[50] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted, Exh 4.

OCC's 15-day letter in his "reasonable inquiry" leading to determining whether Mr. Julian's Answers were "well-grounded in fact," I find such a determination to be unsupported by the above-reference authorities, and hold that he should do so now. Each paragraph of Mr. Julian's Answer that includes factual claims that are related to factual claims presented in Mr. Julian's responses to the OCC's 15-day Letter shall be amended to conform to OCC Rule 12 C.F.R. § 19.7(b).

Mr. McLinko

Paragraph 458 of the Notice of Charges alleges: "Respondent McLinko failed to fulfill his audit responsibilities with respect to the sales practices misconduct problem."

Through his Answer, which was signed by Timothy P. Crudo of the law firm of Coblentz Patch Duffy & Bass LLP on February 12, 2020, Mr. McLinko denied the allegations in Paragraph 458, without elaboration.[51]

Mr. McLinko's response to the OCC's 15-day letter, dated January 16, 2019 and signed by Mr. Crudo, included the following:

> The OCC Letter does not identify the unsafe or unsound banking "practice" in which Mr. McLinko allegedly engaged. Read generously, the OCC Letter appears to assert that the putative practice is two-fold: that Mr. McLinko "failed to identify and adequately escalate" the [Community Bank's] sales practice misconduct problem. OCC Letter at 2.
>
> We agree with one aspect of this assertion: Mr. McLinko did not identify the depth and breadth of the systemic sales practices misconduct that ultimately was revealed in the Board Report. But that fact must be the beginning of the analysis, not the end. Indeed, according to the Board Report the entire second and third lines of defense, the corporate-level control functions, the Board of Directors, the outside auditor, the third-party consultants, the Bank's regulators, and information about complaints, reliable complaint information organized in the right taxonomy was not available. [Citation omitted]
>
> The allegation that Mr. McLinko had ready access to all information about the full scope of the events occurring within the CB is also inconsistent with the findings of the Board Report that some within CB, including Carrie Tolstedt, the head of CB, and Ms. Anderson, withheld information from those outside the CB, including WFAS.[52] *See, e.g.*, Board Report at 8, 47 ("Tolstedt reinforced a culture of tight control over information about the [CB], including the sales practice issues. This hampered the ability of control functions outside the [CB] and the Board to accurately assess the problem and work toward a solution."); OCC Supervisory Letter 2015-36 (June 26, 2015), WF-OCC-003165136 (OCC recognizing lack of

[51] Answer of Paul McLinko to Notice of Charges for Orders of Prohibition and Orders to Cease and Desist Notice of Assessments of a Civil Money Penalty at ¶458.

[52] Per Respondent McLinko's Opposition memorandum, references to WFAS are to the Wells Fargo Audit department. See Respondent Paul McLinko's Opposition to Enforcement Counsel's Motion Requesting an Order Requiring Certain Respondents to Amend their Answers or Explain their Denials of Certain Allegations, and Joinder in Certain Portions of Respondents David Julian's and James Strother's Oppositions at 2.

> transparency at first line of defense regarding investigations and ongoing control and monitoring processes). While as described elsewhere Mr. McLinko acted with appropriate professional skepticism toward the CB and its managers, and there is no evidence that he was aware that anyone was withholding information to the CBO, it appears that certain CB personnel nevertheless impeded WFAS's and Mr. McLinko's ability to uncover what turned out to be systemic issues. The same is true for the entire WFB corporate model, which the Board Report recognized constrained the corporate control functions. *See* Board Report at 11 (WFAS's decentralized organizational structure hampered the ability of WFAS "to effectively analyze, size and escalate sales practice issues").[53]

Through this narrative, Respondent through Mr. Crudo identified specific impediments that impaired Mr. McLinko's ability to fulfill his audit functions, thereby creating inconsistencies with Mr. McLinko's blanket denial of the allegations in Paragraph 458 of the Notice of Charges. I find the inconsistency between Mr. McLinko's submission to the OCC in his January 16, 2019 response to the 15-day letter and his Answer at Paragraph 458 is a material one. I find this set of conditions raises the question of whether Mr. McLinko's Answer is well-grounded in facts arrived at through a reasonable inquiry, where such inquiry includes factual statements made by Mr. McLinko in his responses to the OCC's 15-day letter.

Through their Motion, Enforcement Counsel have brought forward sufficient evidence of Mr. Crudo's noncompliance with OCC Rule 12 C.F.R. § 19.7(b) to warrant remedial action. If Mr. Crudo determined there was no need to include the contents of Mr. McLinko's response to the OCC's 15-day letter in his "reasonable inquiry" leading to determining whether Mr. McLinko's Answers were "well-grounded in fact," I find such a determination to be unsupported by the above-reference authorities, and hold that he should do so now. Each paragraph of Mr. McLinko's Answer that includes factual claims that are related to factual claims presented in Mr. McLinko's responses to the OCC's 15-day Letter shall be amended to conform to OCC Rule 12 C.F.R. § 19.7(b).

No Reliance on Transcript Testimony

The record reflects that at the time each Respondent filed his Answers, the contents of his responses to the 15-day letters were available – a conclusion I reach based on the fact that Counsel serving each Respondent at the time their respective Answers were filed also represented that Respondent in submitting responses to the OCC's 15-day letters. This suggests the attorneys who signed these Answers had ready access to the contents of those letters for several months prior to the time the Answers were filed.

The same does not appear to be true, however, regarding the *transcripts* relied upon by Enforcement Counsel in support of their Motion. The Notice of Charges was issued on January 23, 2020, and Enforcement Counsel has represented that they produced all sworn statement transcripts and exhibits in support of this Motion to Respondents on March 12, 2020 (redacted

[53] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted, Ex. 5 at 20-21.

for Bank privilege) and April 9, 2020 (unredacted for Bank privilege).[54] I disagree with the premise advanced by Enforcement Counsel that "Respondents have had ample time to re-familiarize themselves with the content of their testimonies if necessary."[55]

The issue raised by Enforcement Counsel's Motion is whether the identified Answers by these three Respondents were the result of a reasonable inquiry by Respondents' respective attorneys, conducted in the days between when the Notice of Charges was filed and when the Answers were submitted. Inasmuch as the record reflects that at the time their Answers were filed, Respondents did not have access to the transcripts of sworn testimony relied upon to support this Motion, I find no basis to determine whether the Answers were compliant based on facts sworn to in such testimony.

While the contents of the transcripts form no basis for the present Order, the inconsistencies between the factual claims made through Respondents' sworn testimony and their Answers may yet prove legally significant in this administrative enforcement action. The record reflects that by no later than April 2020 Respondents' Counsel have had copies of those transcripts. Any amended Answer must take into account the contents of those transcripts in order to comply with OCC Uniform Rules 12 C.F.R. § 19.7, and any denial based on insufficient evidence must be supplemented as appropriate in order to comply with OCC Uniform Rules 12 C.F.R. § 19.19(b).

Remedial Order

Upon sufficient cause shown through Enforcement Counsel's Motion, all parties shall by not later than August 7, 2020 examine the Answers submitted and amend any Answer so as to comply with OCC Uniform Rules 12 C.F.R. § 19.19(b), which limits answers to those that admit, deny, or aver a lack of sufficient information to admit or deny the allegations. Denials must fairly meet the substance of each allegation of fact denied. When a Respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Denials based on averments that the alleged fact "speaks for itself" will not be permitted; nor will averments that the contents of the allegation constitutes a legal conclusion. In the absence of a timely amendment conforming to this Order, the contents of claims responding to the Notice of Charges in those paragraphs answering either that the document speaks for itself or the averment constitutes a legal conclusion will be deemed admitted without further Order of this Tribunal.

Further, all parties shall by not later than August 7, 2020, examine the Answers he or she submitted and amend any Answer so as comply with OCC Uniform Rules 12 C.F.R. § 19.7, which requires the Answers constitute the signatory's best knowledge, information, and belief, formed after reasonable inquiry, where such inquiry will include any responses provided by the Respondent to the OCC's 15-day letters, identified above, and any transcript produced for Respondents by Enforcement Counsel by April 2020.

This Order is not limited to Respondents Strother, Julian, and McLinko, but includes Respondents Tolstedt and Russ Anderson, both of whom received notice of the Motion and had the opportunity to respond, but declined to do so.

So ordered.

---

[54] Enforcement Counsel's Motion Requesting an Order Requiring Respondents David Julian, Paul McLinko, and James Strother to Amend their Answers or Explain their Denials of Allegations that they Previously Admitted at 12, n.6.
[55] *Id.*

July 16, 2020

Christopher B. McNeil
Administrative Law Judge
Office of Financial Institution Adjudication

CERTIFICATE OF SERVICE

On July 16, 2020 I served by email transmission a copy of the foregoing Order Regarding Enforcement Counsel's Motion Concerning the Answers of Respondents Strother, Julian and McLinko upon:

Hearing Clerk:
Office of the Controller of the Currency
400 7th Street, S.W.
Washington, D.C. 20219
By email to: hearingclerk@occ.treas.gov

Enforcement Counsel:
William Jauquet, Assistant Director, Enforcement
Jason E. Friedman, Enforcement Counsel
Zina Lapidus, Enforcement Counsel
Quinn Nguyen, Enforcement Counsel
Tarek Sawi, Special Counsel
Lauren R. Snook
Melinda Barnes
Office of the Comptroller of the Currency
400 7th St SW
Washington, DC 20219
william.jauquet@occ.treas.gov
jason.friedman@occ.treas.gov
zina.lapidus@occ.treas.gov
quinn.nguyen@occ.treas.gov
tarek.sawi@occ.treas.gov
Lauren.snook@occ.treas.gov
melinda.barnes@occ.treas.gov

Treana D. Bennett, Counsel
Western District Office
Office of the Comptroller of the Currency
1225 17th Street, Suite 300

Denver, CO 80202
treana.bennett@occ.treas.gov

Respondents' Counsel:

Respondent Carrie Tolstedt
c/o Enu A. Mainigi
Beth A. Stewart
William I. Stewart
Annie E. Showalter
Tobin J. Romero
Williams & Connolly LLP
725 Twelfth Street NW
Washington, DC 20005
emainigi@wc.com
bstewart@wc.com
ashowalter@wc.com
tromero@wc.com
wstewart@wc.com

Respondent Claudia Russ Anderson
c/o Douglas A. Kelley
Daniel M. Scott
Kelley, Wolter & Scott, P.A.
Centre Village Offices
431 S. Seventh Street, Suite 2530
Minneapolis, MN 55415
dkelley@kelleywolter.com
dscott@kelleywolter.com

Respondent James Strother
c/o Walter F. Brown, Jr
Melinda Haag
Robin Linsenmayer
Randy Luskey
Roland Chang
Orrick, Herrington & Sutcliffe LLP
The Orrick Building
405 Howard Street
San Francisco, CA 94105
wbrown@orrick.com
mhaag@orrick.com
rlinsenmayer@orrick.com
rluskey@orrick.com
strother-ohs@orrick.com

Respondent David Julian
c/o Franca Harris Gutierrez
Matthew T. Martens
Daniel P. Kearney
John T. Byrnes
WilmerHale
1875 Pennsylvania Avenue NW
Washington, DC 20006
franca.gutierrez@wilmerhale.com
matthew.martens@wilmerhale.com
Daniel.kearney@wilmerhale.com
John.byrnes@wilmerhale.com

Respondent Paul McLinko
c/o Timothy P. Crudo
Rees F. Morgan
Benjamin C. Pulliam
Daniel M. Bruggebrew,
Coblentz Patch Duffy & Bass LLP
One Montgomery Street, Suite 3000
San Francisco, CA 94104
ef-tpc@cpdb.com
ef-rfm@cpdb.com
ef-bcp@cpdb.com
ef-dmb@cpdb.com

____
Christopher B. McNeil
Administrative Law Judge
Office of Financial Institution Adjudication
ofia@fdic.gov (e-mail)
(703) 562-2740 (telephone)