

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

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In re

ATA Holdings Corp., et al,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 04-19866 (BHL)  
(Jointly Administered)

Honorable Basil H. Lorch  
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**LIMITED OBJECTION OF U.S. BANK NATIONAL ASSOCIATION AND U.S. BANK  
NATIONAL ASSOCIATION ND TO EMERGENCY MOTION FOR ORDER  
AUTHORIZING DEBTORS TO PROVIDE CERTAIN LEASES AND OTHER  
MATERIAL CONTRACTS CONTAINING SENSITIVE INFORMATION TO  
INTERESTED PARTIES SUBJECT TO CONFIDENTIALITY AND USE  
PROTECTIONS**

U.S. Bank National Association (“USB”) and U.S. Bank National Association ND (“USB-ND” and together with USB, “U.S. Bank”), through their undersigned counsel, hereby file this limited objection to the Debtors’ Emergency Motion for Order Authorizing Debtors to Provide Certain Leases and Other Material Contracts Containing Sensitive Information to Interested Parties Subject to Confidentiality and Use Protections (the “Motion”) insofar as the Motion seeks authorization to disclose U.S. Bank’s confidential information to undefined parties without a demonstration of need for such release of information. As grounds in support of this objection U.S. Bank states as follows:

**BACKGROUND**

A. The Merchant Processing Agreement

1. USB and ATA Airlines, Inc. (“ATA”) are parties to that certain Agreement dated as of December 31, 1998 (as amended, the “Processing Agreement”) pursuant to which ATA and

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<sup>1</sup> The Debtor entities are ATA Holdings Corp., ATA Airlines, Inc., Ambassadors Travel Club, Inc., ATA Leisure Corp., Amber Travel, Inc., American Trans Air Execujet, Inc., ATA

USB agreed to the terms and conditions whereby USB processes payments of travel costs made by the Debtors' customers with cards bearing the servicemark of VISA International, VISA U.S.A. Inc. or MasterCard International Incorporated.

2. The Processing Agreement is set to terminate according to its terms on March 31, 2005.

3. Section 28 of the Processing Agreement provides:

Carrier covenants and agrees that Schedules 1 and 2 hereto (the "Confidential Schedules") shall be maintained in confidence and not disclosed by Carrier or Carrier's representatives, officers, agents or employees without Bank's prior written consent unless required to be disclosed pursuant to judicial order or applicable law. The Confidential Schedules shall not be utilized for any purpose other than performance by Carrier under this Agreement. In the event that Carrier determines that it is required to disclose the Confidential Schedules, or any of them, whether pursuant to a judicial order or to applicable law, Carrier agrees to provide Bank with ten (10) days prior written notice (or such shorter prior notice as shall be reasonable in the circumstances) of such determination and the basis for such determination prior to making disclosure so that Bank may consider whether to seek an appropriate protective order and/or to waive compliance with the requirements of this Section 28.

4. Schedule 1 to the Processing Agreement contains confidential information related to the pricing charged by USB for the services rendered. Schedule 2 to the Processing Agreement contains, among other things, confidential and proprietary business information about the manner in which USB calculates the potential chargeback risk.

5. USB routinely engages in the business of offering VISA and MasterCard processing services to domestic and international airlines. As a consequence, parties interested in acquiring ATA's assets currently are, or in the future may be, customers of USB for credit card processing services.

6. Additionally, other "interested parties" may be direct or indirect competitors with

USB for airline processing business.

B. The Co-Branded Agreement

7. USB-ND and ATA are parties to that certain Co-Branded Credit Card Agreement dated as of March 31, 2004 (the “Co-Branded Agreement”) pursuant to which the parties created a program involving the issuance to eligible individuals or businesses of Visa credit cards, including business credit cards, bearing trademarks of ATA, that were tied to the ATA Travel Awards program.

8. USB-ND believes that the Co-Branded Agreement is an executory contract subject to assumption under 11 U.S.C. § 365.

9. Section 11.2 of the Co-Branded Agreement provides, in part:

ATA shall at all times maintain, and cause its agents, employees, corporate parents, Subsidiaries and Affiliates (including other divisions and business lines) to maintain the confidentiality of all Confidential Information belonging to U.S. Bank. ATA shall not sell or otherwise convey any of such Confidential Information to any third Person (except as provided in Section 4.2) and shall exercise all necessary precautions to prevent access to such Confidential Information by any third Person

10. Section 11.4 of the Co-Branded Agreement similarly provides:

Without the prior written consent of the other party and except as necessary to enforce this Agreement or obtain damages or other relief hereunder, and except as contemplated to be disclosed to Cardholders in promotion of the Program, neither party will disclose to any Person (other than as expressly permitted pursuant to this Article 11) the terms or conditions of this Agreement or any amendments, supplements or modifications hereto.

11. USB-ND routinely engages in the business of entering into co-branded agreements with various businesses, including airlines. As a consequence, parties interested in acquiring ATA’s assets in the future may be customers of USB-ND for co-branded credit card services.

12. Additionally, other “interested parties” may be direct or indirect competitors with

USB-ND for co-branded business services both to airlines and to other business enterprises.

C. The Motion

13. The Motion, put forward by the Debtors on an emergency basis, seeks to provide “Sensitive Information (including copies of Leases and Material Contracts)” to “Interested Parties.” *Motion ¶ 12.*

14. Sensitive Information is defined in the Motion simply as “copies of certain documents and information” (*Motion – Introductory Paragraph*) while Material Contracts is defined as material contracts other than leases, including without limitation, agreements with regard to credit card processing. *Motion ¶ 10.*

15. Interested Parties is also broadly defined as:

third parties including, AirTran, the Committee’s Advisors, counsel for the ATSB Lenders, Qualified Bidders, and other parties in interest who have legitimate need for such information . . .

16. The Motion does not expressly provide that parties who wish to see the Sensitive Information execute a confidentiality agreement.

17. Disclosure of Sensitive Information to third parties will be based upon the terms of the Confidentiality Agreement attached as Exhibit 2 to the bid procedures. This form of confidentiality agreement does not address how the rights of third parties to Sensitive Information are protected since the confidentiality agreement is merely between the Debtors and the potential bidder. Moreover, the form of confidentiality agreement provides that the Debtors can give written authorization to potential bidders to disclosure information, thereby completely defeating the purpose of the confidentiality provisions.

**ARGUMENTS**

U.S. Bank objects to entry of an order approving the Motion on the basis that the Debtors are seeking a blanket waiver of all confidentiality provisions without a clear showing of the need

for parties to review such contract, without appropriately limiting the parties that can review the contracts and without providing any meaningful protections or recourse to U.S. Bank. A simple citation to § 105 cannot suffice for the imprecise relief sought by the Debtors. Without further clarification and protections, U.S. Bank objects to the disclosure of any of the confidential terms of the Processing Agreement and the Co-Branded Agreement.

A. The Debtors Fail to Demonstrate a Need for Disclosure

In requesting relief to disclose confidential information, the Debtors assert that Material Contracts may be essential for the AirTran Transaction or an alternative transaction and therefore Interested Parties need access to Sensitive Information. However, simply stating that a need may exist is a far cry from demonstrating that an actual need exists to disclose information about the Processing Agreement and the Co-Branded Agreement.

U.S. Bank does not believe that either of its agreements would properly be the subject of the AirTran Transaction. Under the terms of the AirTran Transaction there is no expressed desire on the part of AirTran to assume either the Processing Agreement or the Co-Branded Agreement. In fact, the AirTran Transaction contemplates ATA's continued operation. In such a case, ATA would have a clear need for the assumption of the Processing Agreement and may have an interest in assuming the Co-Branded Agreement. AirTran already has a contract for the processing of VISA and MasterCard sales rendering the assumption and assignment of U.S. Bank's agreement unnecessary. Furthermore, the Processing Agreement is set to expire on March 31, 2005 and could only yield at most 3 months of benefit to AirTran. Without a demonstration that there is a realistic possibility that AirTran would desire to assume either of U.S. Bank's contracts, as evidenced by an appreciable benefit to AirTran, there is no need to give AirTran or other parties access to such contracts.

In the event a party that has expressed a desire to possibly take over ATA's entire

business, there could conceivably be a need on the part of such entity to review the Processing Agreement and the Co-Branded Agreement. U.S. Bank does not object to the disclosure of the confidential information contained in such agreements to a bidder if a good faith effort is being put forward by the inquiring party to submit a qualifying bid that has a realistic chance of success. In such a case, though, any disclosure must occur only to those parties that have a demonstrated need for such information and under the auspices of a confidentiality agreement that provides U.S. Bank with real protections.

B. Protective Remedies Must be Provided to U.S. Bank

The request for disclosure of confidential information simply states that disclosure will occur “under substantially the same restrictions on use and disclosure of such Sensitive Information as is provided in the form of a confidentiality agreement attached as Exhibit 2 to the Bid Procedures . . .” *Motion* ¶ 12. It is not clear from the language of the Motion whether parties desiring to review Sensitive Information are required to sign a confidentiality agreement. U.S. Bank strenuously objects to the Motion to the extent that it implies that the execution of a confidentiality agreement is not required. Without a written agreement, prosecution of a claim involving the improper use of the confidential information will be difficult.

Moreover, the form of confidentiality agreement referenced in the Debtors’ Motion is drafted so as to provide protections and rights solely to the Debtors. In order for any confidentiality agreement to provide meaningful protection against the disclosure of the information in the Processing Agreement or the Co-Branded Agreement, U.S. Bank must be a party thereto or at least be a third party beneficiary. The opportunity for the Debtors to waive protection of confidential information must also be removed from the confidentiality agreement. U.S. Bank should solely possess the right to the waiver of the confidential provisions.

## CONCLUSION

WHEREFORE, U.S. Bank objects to the entry of an order approving the Motion unless the relief sought by the Debtors is carefully tailored to limit dissemination to parties truly needing such information and to provide U.S. Bank real protections against improper disclosure.

Dated: November 23, 2004

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