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**Comptroller of the Currency  
Administrator of National Banks**

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March 16, 1998

**Interpretive Letter #825  
April 1998  
12 U.S.C. 59  
12 U.S.C. 83**

Re: [ ] (the "Bank")

Dear [ ]:

This replies to your letters requesting clarification of the concept of "legitimate corporate purpose" as the phrase is used in Interpretive Ruling 7.2020, 12 C.F.R. § 7.2020, in connection with the acquisition and holding of treasury stock by a national bank. As the Bank's counsel and a director, you seek confirmation from the OCC that the Bank's proposed stock repurchase plan would satisfy this requirement of a "legitimate corporate purpose" under the ruling.

The Proposal

Under the plan, the Bank would offer from time to time to purchase, at fair market value, a certain amount of outstanding stock from its stockholders, subject to the approval of the stockholders and the OCC. You suggest an important reason would be to purchase the stock of major stockholders in the event such persons die, retire or otherwise have need of selling the shares, *e.g.*, when elderly stockholders in the community no longer wish to remain stockholders or when heirs of past stockholders desire to sell inherited shares because they no longer reside in the Bank's community. Fair market value would be determined by recent trades in the stock. Although the stock trades sporadically, there is a market and a recognized price at any given time. The Bank's stock trades through the NASDAQ system and is listed on the NASDAQ "Billboard." The stock has been traded through several New York Stock Exchange investment firms, including [ ], [ ], [ ], and [ ]. The Bank would buy stock at the fair market price as stated on the Billboard for that day with the approval of its Board of Directors. The Bank would hold the stock so purchased as treasury stock to be made available to employees under an employee stock purchase plan to be established with the objective of enabling employees to have a stake in the Bank's profitability.

In connection with this employee stock purchase plan, all full-time employees from time to time would be offered an opportunity to become stockholders through the purchase of the Bank's stock at a discounted price, *i.e.*, at a yet-to-be-determined percentage of the Billboard price of acquired treasury stock. A payroll deduction plan for employee stock purchase or a stock option plan are other alternatives under consideration. In addition to making stock available as an employee benefit, this proposal is part of a corporate strategy, to be explicitly stated in the Bank's strategic plan, for keeping the Bank community-focused and less likely to be an acquisition target. Treasury stock so acquired and held would not be available for general resale (*e.g.*, for creating a market for the Bank's stock). Should the Bank authorize a large public offering, available treasury stock might be included as part of such a public offering.

### Discussion

As you know, the OCC issued Interpretive Letter No. 660, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,608 (December 19, 1994), which concluded that a national bank could lawfully acquire and hold treasury stock provided that: (1) the holding is for a legitimate corporate purpose; (2) certain procedures are satisfied; and (3) OCC approval is obtained pursuant to 12 U.S.C. § 59. In that letter, examples of acceptable stock repurchase programs included holding shares in connection with an officer or employee stock option or bonus plan, holding stock for sale to a potential director in circumstances where a director is obligated to own qualifying shares, or purchasing a director's qualifying shares upon death or resignation of the director if there is no ready market for the shares. The letter further stated "[i]t would not be permissible for a national bank to acquire and hold treasury stock for speculation or as a means of bypassing some requirement or obligation under the federal banking laws."

That letter was based on a combined reading of 12 U.S.C. §§ 24(Seventh), 59 and 83. Briefly, the OCC concluded that the authorities in sections 24(Seventh) and 59, when read together with the judicial precedent under section 83, permit the acquisition and holding of treasury stock where there would be no capital impairment and the prescribed procedures and conditions under section 59 are satisfied. Because 12 U.S.C. § 59 limits capital reductions to situations where the bank receives the approval of the OCC and of two-thirds of its shareholders, we concluded there would be little risk of an improper use of treasury stock. Moreover, section 59 does not require that the stock repurchased be retired or even refer to retirement as a purpose for the reduction of capital. The OCC's examples of what would be legitimate corporate purposes were based upon the proposal of the bank that requested the interpretation, and did not imply that those were the only legitimate reasons which could support an acquisition and holding of treasury stock.

Based upon the principles in Interpretive Letter No. 660, *supra*, the establishment of an employee stock purchase plan is permissible. I am assuming that an employee stock purchase plan would operate similarly to an employee stock option or bonus plan. Applying the same analysis as is contained in Interpretive Letter No. 660, which read sections 59 and 83 as being harmonious with each other to the fullest extent possible, we conclude that, in the manner and for the reasons you describe and provided certain conditions are satisfied, the proposed repurchase and holding would be a legitimate corporate purpose.

The purpose of section 83's restriction on purchasing or holding a bank's own shares is to prevent

impairment of a bank's capital resources and the consequent injury to its creditors in the event of an insolvency.<sup>1</sup> A reduction in capital, nevertheless, is expressly provided by section 59, if the procedures and conditions contained therein are met. Capital reductions are permissible where the bank receives the approval of the OCC and of two-thirds of its shareholders. 12 U.S.C. § 59. Under its corporate policy, the OCC will approve capital reductions for banks in satisfactory condition unless the proposed capital structure is not considered adequate. For banks in unsatisfactory condition, the change in capital may be denied or approved conditionally at the OCC's discretion for reasons of bank safety and soundness and any other supervisory concerns. Specifically, approval of a change in capital may be withheld for banks that: fail to comply with a capital plan; propose a capital structure that the OCC considers inadequate; violate laws or regulations; exhibit conditions that threaten safety and soundness; fail to provide adequate information. Comptroller's Manual for Corporate Activities, Vol. 1, page 172.<sup>2</sup>

Assuming the Bank's capital structure is adequate and the Bank is in satisfactory condition, the OCC may approve a capital reduction for the purpose of acquiring and holding treasury stock to establish an employee stock purchase plan. While section 83 states that a national bank cannot be the "purchaser or holder" of its own shares, section 59 permits capital reductions involving the purchase of some outstanding securities. Where the interaction of these two statutes does not prohibit the purchase, the subsequent holding should not be prohibited either. Like the holding in First Nat. Bank of Lake City v. Young's Estate, 338 So.2d 67 (Fla. App. 1976), a case involving a bequest of bank stock, the employee stock purchase plan enhances and does not impair the Bank's capital resources. Nor does the Bank's proposal to acquire the stock of major shareholders, with the approval of shareholders and the OCC in accordance with 12 U.S.C. § 59, and to hold it as treasury stock available to employees in connection with an employee stock purchase plan as described, violate laws or regulations or threaten the Bank's safety and soundness. It is not speculative and does not create a market for the stock because the treasury stock so acquired would be offered at a discount only to employees through the stock purchase plan and not to the general public or others in the Bank's community at a "market rate."

Structuring and operating an employee stock purchase plan in this way will help the Bank to remain an independent and community-based institution, which is part of the Bank's specific strategic plan for its future operations. It is not a means of bypassing any requirement or obligation under the federal banking laws.

In sum, a national bank has authority under 12 U.S.C. § 24(Seventh) to hold treasury stock to

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<sup>1</sup> See Deitrick v. Greaney, 309 U.S. 190 (1940); see also Wallace v. Hood, 89 F. 11, 13 (C.C. Kan. 1898), *aff'd*, 97 F. 983, *aff'd*, 182 U.S. 555 (The object and policy of this section is to prevent the reduction of the outstanding stock of a national bank and the withdrawal pro tanto of its capital).

<sup>2</sup> The Comptroller's Manual for Corporate Activities is in the process of revision. The policy guidance for OCC approval of decreases in permanent capital contained in the new Comptroller's Corporate Manual, Capital and Dividends Booklet, pages 7 and 8, states: The OCC generally approves reductions in permanent capital for banks in satisfactory condition, unless the proposed capital structure is not considered adequate under OCC policies. The OCC may deny or conditionally approve a reduction in capital that would: use treasury stock as a means to speculate in the bank's own stock or to bypass a requirement or obligation under federal banking laws; violate laws or regulations; or exhibit conditions that threaten safety and soundness.

fulfill a legitimate corporate need, provided it complies with section 59 in its repurchase of outstanding shares with the consequent reduction in capital. The Bank's proposed employee stock purchase plan, to be operated in the circumstances and as described above and also subject to the approvals required by section 59, fulfills a legitimate corporate need. It is therefore legally permissible.

I trust this reply is responsive to your inquiry.

Sincerely,

/s/

Jonathan Rushdoony  
District Counsel