



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Interpretive Letter #1084
July 2007
12 CFR 16.20
12 CFR 16.3

April 30, 2007

Subject: [] (“Bank”) – Request for No Action Letter on
Noncompliance with Requirements to File a Registration Statement and
Continuing Reports in Connection with Exercise of Warrants

Dear []:

This relates to your letter of February 27, 2007 and related communications with Office of the Comptroller of the Currency (“OCC”) staff, concerning the Bank’s request for a no action letter for noncompliance with: (1) the requirement to file a securities registration statement under 12 C.F.R. § 16.3; and, (2) the continuing reporting requirements of 12 C.F.R. § 16.20. Based on the facts presented, as described below, we: (1) do not grant the Bank’s request for an OCC no action position concerning noncompliance with the registration statement requirements under 12 C.F.R. § 16.3; and, (2) grant the bank’s request that the OCC not take enforcement action if the Bank does not comply with the continuing reporting requirements of 12 C.F.R. § 16.20.

I. Background

In [], 2004, the OCC declared effective a registration statement on Form SB-2 for the offer and sale by the Bank of certain “Units,” each consisting of three shares of common stock and one warrant to purchase one additional share of common stock. The stock sale closed in [] of 2004. The OCC informed the Bank when the registration statement became effective that the warrants to be issued as part of the Units would be subject to a new registration statement under 12 C.F.R. Part 16 before the warrants become exercisable. The warrants are exercisable between [], 2007 and [], 2007. The Bank acknowledges that Part 16 requires a registration statement for exercise of the warrants, and that this also triggers the requirement to file continuing reports under 12 C.F.R. § 16.20. The Bank now requests a no action letter if it does not file a registration statement in connection with the warrants, and does not file the accompanying continuing reports.

II. Registration of Warrants

In a letter of February 27, 2007, you state that there are [] stock warrants outstanding at a strike price of \$[], which may result in \$[] in additional capital. You anticipate that a significant number of the 123 warrant holders will elect to exercise their warrants, given the current market price of the stock (\$[]) and the upward trend of the Bank's performance. You state that the method and timing of exercise, the exercise price, and the risks associated with the exercise of the stock warrants were fully described in the original stock prospectus dated [], 2004. Since then, the Bank has filed Call Reports, and has provided shareholders and customers with access to Bank information through its web site, annual reports, quarterly newsletter and press releases.

However, a new registration statement and prospectus prepared by the Bank in accordance with applicable requirements would provide warrant holders with important information relating to the exercise of the warrants, such as current information on the Bank's business, management's discussion and analysis of the Bank's financial condition and results of operations, and current financial statements. Accordingly, the OCC is not granting the Bank's request for a no action position on noncompliance with the requirement to file a new registration statement in connection with potential exercise of the warrants.

III. Continuing Reporting Requirement Under 12 C.F.R. § 16.20

The Bank's February 27 letter also acknowledges that registration of the offering will subject the Bank to subsequent public reporting requirements under section 16.20. The Bank has advised OCC staff that the Bank estimates the extra expense of preparing a registration statement to be approximately \$[], but the expense of the continuing reporting and related requirements, to be approximately \$[]. The Bank states that this cost, equal to approximately one-fourth of its anticipated profit of \$[] for 2007, is excessive in view of the limited information that stockholders would receive beyond what the Bank already makes available on an ongoing basis. The OCC agrees and will not take action against the Bank if the Bank does not comply with section 16.20 under the circumstances described.

IV. Conclusion

In conclusion, the OCC is not granting the Bank's request for a no action position on noncompliance with the requirement to file a new registration statement in connection with potential exercise of the warrants. However, the OCC will not take action against the Bank for not complying with the continuing reporting requirement of 12 C.F.R. § 16.20.

These positions are based on the representations in your letter and related communications with OCC staff as described in this letter, and the facts and circumstances at the time of this letter. Any different representations, conditions, facts or circumstances might require us to reach different conclusions. Further, this response only represents our position on enforcement and, aside from the general applicability of the registration and continuing reporting requirements, does not purport to express any legal conclusions on the matters presented.

If you have further questions or concerns, please contact me at 202-874-4497.

Sincerely,

/s/

Michael C. Dugas
Senior Attorney
Securities and Corporate Practices Division