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ARIZONA CORPORATION COMMISSION

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SECURITIES DIVISION
1300 West Washington, Third Floor
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February 4, 1997

David R. Selmer, Esq.
Barrack Ferrazzo, Et. al.
333 West Wacker Drive, Suite 2700
Chicago, IL 60606

RE: GreatBank, N. A.;
S-0053362-NOAC
A.R.S. § 44-1843(A)(2)

Dear Mr. Selmer:

On the basis of the facts set forth in your letter of January 13, 1997, and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. Although the Division expresses no opinion as to the applicability of the National Securities Market Improvement Act of 1996 ("NSMIA") to the registration of the securities of a bank in formation, the Division notes that NSMIA does not apply to whether GreatBank, N. A. must register as a dealer, and whether its president must register as a securities salesman under the Securities Act of Arizona.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached a photocopy of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:NC
Attachment

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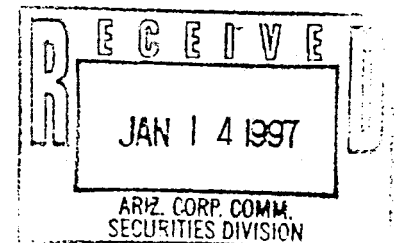
Telephone (312) 984-3100
Facsimile (312) 984-3150

January 13, 1997

VIA UPS OVERNIGHT

Leslie Block, Esq.
Associate General Counsel
Arizona Securities Division
1300 West Washington Street
Suite 300
Phoenix, Arizona 85007

Re: Proposed National Bank (In Organization)
Request for No-Action



Dear Ms. Block:

As a follow-up to our recent conversation, this law firm represents an existing bank holding company which is proposing to form a national bank which will be based in Arizona (the "Bank"). This letter is a request for no-action under the Securities Act of Arizona (the "Act") and the rules and regulations promulgated thereunder by the Arizona Corporation Commission, acting through the Director of Securities, with respect to certain capital raising aspects of this Bank formation. A check for \$200 made payable to the Arizona Corporation Commission is enclosed herewith for the processing fee.

Background

The existing bank holding company will own a majority of the common stock of the Bank through an intermediate bank holding company which it controls. The remainder of the Bank's common stock will be owned by various investors, many of whom it is anticipated will be residents of Arizona. The Bank proposes to solicit the Arizona residents through the proposed President of the Bank. The Bank will be capitalized with between \$4 million and \$5 million and all stockholders (including the holding company) will pay the same price per share. At this point in time, it appears that the placement will be a Regulation A offering.

The Bank is in the process of filing an application with the Office of the Comptroller of the Currency ("OCC") which will be the primary regulator for the Bank. The OCC will consider many factors in evaluating the application such as the convenience and needs of the community to be served, the adequacy of the Bank's capital and the integrity and experience of the Bank's proposed management. The OCC will also regulate the capital formation stages as

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discussed in more detail under the Analysis - Registration of Bank Securities section below. In addition, the Bank will also file an application for deposit insurance with the Federal Deposit Insurance Corporation ("FDIC") and the two holding companies will file applications with the Board of Governors of the Federal Reserve System ("Federal Reserve Board"). No filings will be necessary with the Arizona state banking regulators.

The OCC will not allow the Bank to begin operation until sufficient funds have been raised. Prior to this time, the Bank is commonly referred to as a bank in organization or formation. Funds received from investors will be held in an escrow account until all of the OCC's conditions, including the raising of sufficient capital, have been met. Upon satisfaction of these conditions and upon receipt of deposit insurance by the FDIC and approval by the Federal Reserve Board, the Bank will be allowed to engage in the banking business, funds will be released from the escrow to the Bank and certificates representing shares of the common stock of the Bank will be issued to the investors.

Analysis

Registration of Bank Securities

We believe that the offer and sale of the Bank securities will be exempt from state regulation by the National Securities Market Improvement Act of 1996 (the "Improvement Act"). The Improvement Act amends Section 18 of the Securities Act of 1933 (the "Securities Act") to provide, in subsection (a), that, except as otherwise provided in the Improvement Act, no law, rule or regulation of any State requiring or concerning registration or qualification of securities or registration or qualification of securities transactions shall apply to a security that is a "covered security" or will be a "covered security" upon completion of the transaction or prohibit, limit or impose any conditions upon the use of any offering document prepared by or on behalf of an issuer with respect to a "covered security." A "covered security" is thereafter defined, in subsection (b), to include a security with respect to a transaction that is exempt under the Securities Act from registration pursuant to Section 3(a) except as provided in paragraphs (4) or (11) of such section. The bank securities exemption is Section 3(a)(2) so that a bank security would be a "covered security" within the meaning of the Improvement Act.

The no-action positions of the Securities and Exchange Commission (the "SEC") regarding banks in formation support the position that bank securities within the meaning of Section 3(a)(2) of the Securities Act are involved in the capital formation stages of a de novo bank as is contemplated by the Bank. We understand that you have previously been provided with copies of these no-action letters so we are not separately enclosing copies with this letter. The no-action letters regard state banks in organization but, due to the similarity of the bank regulatory procedures, we do not believe the result is different for national banks in organization. Even if this aspect is not totally free from doubt, the securities will clearly be

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bank securities upon completion of the transaction and, thus, within the provisions of Section 18(a) of the Securities Act as amended by the Improvement Act.

Assuming, arguendo, that the Improvement Act has no application to the issues in this request for no-action, we believe that the Bank can further rely upon the securities exemption contained in ARS §44-1843.A.2. for its solicitation of Arizona residents. This section provides that §§44-1841 and 44-1842 do not apply to:

“Securities issued by a national bank or a bank or credit or loan association organized pursuant to an act of Congress and supervised by the United States or an agency thereof; or issued by a state bank or savings institution the business of which is supervised or regulation by an agency of this state or of the United States.”

The Bank will be a national bank and supervised and regulated by the OCC. The instant situation differs from the facts giving rise to the refusal to grant relief by the Arizona Corporation Commission in its letter dated May 10, 1996 concerning the bank being formed under Idaho law. ARS §44-1843.A.2. limits the exemption with respect to state banks to banks “supervised and regulated by an agency of this state or of the laws of the United States.” The May 10 letter stated the Commission’s position that such section does not exempt securities issued by banks that are regulated by other states and that the involvement by the Federal Reserve Board and the FDIC is not sufficient since such agencies do not regulate the capital formation stages of a bank in organization. In the instant situation, the Bank will be organized under the National Banking Act and regulated by the OCC which agency also regulates the capital formation stages of a national bank in organization. A copy of the OCC’s securities offering disclosure rules is attached for your review in this regard. Generally speaking, the OCC puts itself into the shoes of the SEC and incorporates the SEC’s rules and regulations regarding the issuance of securities. Therefore, even though the issuance of the Bank’s securities will be exempt under Section 3(a)(2) of the Securities Act, the same type of regulation is imposed by the OCC.

This request letter earlier mentioned that the offer and sale of Bank securities would be pursuant to Regulation A. This type of transaction is covered by §16.8 of the OCC’s rules and regulations. Based on discussions with the OCC regional office which will process the charter application for the Bank, the Regulation A offering circular will be submitted to the OCC for review as part of the OCC’s review of the bank charter application. Any comments which the OCC provides must be addressed satisfactorily in the final offering circular to be disseminated by the Bank.

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Registration of Bank as Dealer and President as Salesperson

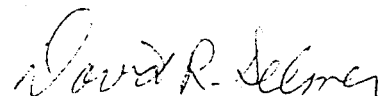
ARS §44-1801.9(a) excludes from the definition of "dealer" a bank which is supervised and regulated by an agency of Arizona or the United States but it appears that the exclusion pertains to where the transactions are in securities issued by another person. ARS §44-1801.9(b) defines "dealer" as including "an issuer who, directly or through an officer, director, employee or agent who is not registered as a dealer under this chapter, engages in selling securities by such issuer." ARS §44-1801.19 defines "salesman" as "an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities in" Arizona. Thus, the Bank would appear to fall within the definition of "dealer" and, if so, the Bank's President would fall within the definition of "salesman." ARS §44-1842.A. prohibits transactions by unregistered dealers and salesmen, but ARS §44-1843.A. states that the provisions of both ARS §§44-1841 (sale of unregistered securities) and 44-1842 do not apply to bank securities covered by subsection 2. of ARS §44-1843.A. Therefore, based upon our view that the offer and sale of the common stock of the Bank falls within the exemption provided by ARS §44-1843.A.(2), we do not believe that the Bank must register as a dealer or the proposed President as a salesman under the Act.

Conclusion

Pursuant to the facts and analysis recited above, we hereby request a no-action position from the Arizona Corporation Commission regarding the Bank's reliance on ARS §44-1843.A.2. both with respect to: (a) not registering the Bank's shares of common stock under the Act, and (b) not registering the Bank as a "dealer" and not registering the President as a "salesman" under the Act.

Thank you for your cooperation in this matter, and please feel free to contact me if you have any questions or comments or need further information.

Yours truly,



David R. Selmer

DRS/dd
Enclosure