



Office of Thrift Supervision
Department of the Treasury

1700 G Street, N.W., Washington, D.C. 20552 • (202) 906-6000

94/CS-01

February 8, 1994

[REDACTED]

Re: The [REDACTED]
[REDACTED]
OTS No. 7837
Request for No-Action Position
Pursuant to Paragraphs (c)(3),
(c)(5) and (c)(7) of Rule 14a-8

Dear [REDACTED]

I. Introduction & Summary Conclusion

This is in response to your letter dated January 4, 1994, filed pursuant to paragraph (d) of 17 C.F.R. § 14a-8 ("Rule 14a-8") under the Securities and Exchange Act of 1934, concerning the request made of The [REDACTED] ("Savings Bank") by [REDACTED] (the "Proponent") to include a shareholder proposal (the "Proposal") in the Savings Bank's proxy soliciting material for the 1994 annual meeting of shareholders. Your letter expresses the Savings Bank's position that the Proposal may be properly omitted from the Savings Bank's proxy materials in reliance upon the provisions of paragraphs (c)(3), (c)(5) and (c)(7) of Rule 14a-8. Your letter also represents an opinion of counsel on certain legal questions encompassed by management's position. We are also in receipt of and have reviewed letters from the Proponent dated December 5, 1993, and January 25, 1994.

While there appears to be some basis for your view that the Proposal may be excludable from the Savings Bank's proxy material under Rule 14a-8(c)(7), as discussed below, the staff currently is unable to provide a "no-action" position on this issue. In considering our enforcement alternatives, we have not found it necessary to reach the other bases for omission upon which you rely.

II. Background

By letter dated December 5, 1993, the Proponent submitted to the Savings Bank what he characterized as a single shareholder proposal consisting of two "subdivisions" and a supporting statement. The Proposal sought action by the Savings Bank to (1) insure that no executive officer be permitted more than one "outside" involvement, such as a directorship of a corporation, and to (2) collect earnings of executive officers from "involvements" outside the Savings Bank.

III. Discussion

There appears to be some basis for your view that the Proposal may relate to the conduct of ordinary business operations and, therefore, be excludable under Rule 14a-8(c)(7). As indicated in a recent no-action letter, the staff of the Securities and Exchange Commission ("SEC") previously has taken the position that stockholder votes concerning outside involvements of executive officers relate to the conduct of ordinary business operations and, therefore, could be omitted from proxy materials pursuant to Rule 14a-8(c)(7)¹.

In considering your letter, we discussed the subject proposals and the submissions with the staff of the Chief Counsel's Office of the Division of Corporation Finance, Securities and Exchange Commission. It is our understanding that our views are consistent with the SEC's regulations and policies in this area. This position continues to reflect both our and the SEC's views in this area. However, due to pending litigation in this unsettled area of law, we are currently following the SEC's practice of refraining from expressing any view with respect to the application of Rule 14a-8(c)(7) to any shareholder proposal pending resolution of this matter in the courts.

The views expressed in this letter constitute informal advice and suggestions. We do not and cannot purport to "adjudicate" the merits of the Savings Bank's posture in this matter. Only a federal district court can decide whether the Savings Bank is obligated to include the instant proposals in its proxy materials. Accordingly, our views do not preclude the Proponent, or any shareholder of the

1. See, e.g., The Southern Company, SEC No-Action Letter, March 25, 1993.

Savings Bank, from pursuing any rights they may have against the Savings Bank in a district court, should management omit the proposals from the Savings Bank's proxy materials.

Should you have any questions with respect to the foregoing, please call Norman Schou, Corporate and Securities Division, at (202) 906-6911.

Sincerely yours,



V. Gerard Comizro
Deputy Chief Counsel