

**OFFICE OF THRIFT SUPERVISION**

**Order Not Objecting to Stock Repurchases Made in the  
First Year Following a Conversion**

**Order No.: 2003-26**

**Date: July 18, 2003**

**Docket No.: H-3915**

First Niagara Financial Group, Inc., Lockport, New York (Holding Company), has submitted a notice, pursuant to 12 C.F.R. § 563b.515, to repurchase up to 2,107,161 shares of its common stock, constituting 3.0 percent of its outstanding shares, in open market purchases for the purposes of funding the exercise of options for existing stock option plans (SOPs). The Holding Company's subsidiary, First Niagara Bank, Lockport, New York (Savings Association), and the Savings Association's former federal mutual holding company, First Niagara Financial Group, MHC, completed a mutual to stock conversion under OTS regulations on January 17, 2003. In approving the mutual to stock conversion, OTS imposed a condition requiring that following the conversion, the Holding Company would be subject to the OTS stock repurchase regulations as if it were the Savings Association.

The OTS Mutual to Stock Conversion Regulations generally prohibit stock repurchases during the first year after a mutual to stock conversion, but provide for certain limited exceptions. In particular, OTS regulations, at 12 C.F.R. § 563.510(a)(1), provide that in extraordinary circumstances, open market repurchases of up to five percent of the stock are allowed in the first year after conversion if a notice is filed under 12 C.F.R. § 563b.515, and OTS does not disapprove the repurchase. Section 563b.515(c) states that OTS will not object to a proposed repurchase if: (i) the proposed repurchase will not adversely affect the converted institution's (or, in the case of holding company repurchases, the holding company's) financial condition; (ii) the institution submits sufficient information to evaluate the proposed repurchases; (iii) the filing demonstrates extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and (iv) the repurchase program is not contrary to other applicable regulations.

OTS has considered the repurchases proposed in the notice. OTS concludes that the Savings Association's regulatory capital position will be unaffected by the repurchases, because no Savings Association funds will be used to make the repurchases. Moreover, the Holding Company's financial condition will not be affected materially, because its shareholders' equity will decrease by approximately \$30.7 million from its current level of \$718.4 million as a result of the repurchases. In addition, OTS has considered the materials submitted in connection with the filing, and concludes that sufficient information was submitted to enable OTS to evaluate the repurchases.

With respect to the third criterion, before the Savings Association's mutual to stock conversion, it was the subsidiary of a mutual holding company, and a subsidiary mutual holding company (Mid-Tier). In 1999 and 2002, the Mid-Tier established SOPs. Despite the elimination of the Mid-Tier in connection with the conversion of the federal mutual holding company, the SOPs continue to exist, but now provide for the exercise of options in return for Holding Company common stock. The SOPs have not been fully funded, and the Holding Company proposes to repurchase shares of its stock to fund such exercises.

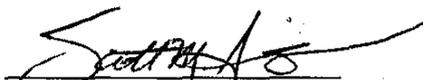
Before the conversion, under applicable regulations, the Mid-Tier would have been permitted to make repurchases to fund the SOPs. Although exceptions from the post-conversion stock repurchase restrictions for certain types of employee benefit plans exist, these exceptions do not apply to the SOPs. However, the SOPs were already in place at the time of the conversion, and the conversion materials made it clear that the SOPs would continue to exist after the conversion. The Holding Company asserts that the shareholders would suffer dilution if the Holding Company were not allowed to repurchase the shares, and instead had to issue new shares to fund the SOPs.

Based on the foregoing, OTS concludes that the Holding Company has presented compelling and valid business reasons for the repurchases, and has demonstrated that extraordinary circumstances exist.

Finally, OTS has reviewed the relevant regulations, and has concluded that the proposed repurchase program is not contrary to other regulations.

Based on the foregoing, OTS does not object to the notice of the proposed repurchases.

By order of the Managing Director, Office of Supervision, OTS, effective  
July 18, 2003.

  
Scott M. Albinson  
Managing Director  
Office of Supervision