

OFFICE OF THRIFT SUPERVISION

Denial of Stock Repurchase Notice

Order No.: 2005-47

Date: November 7, 2005

Docket Nos.: H-4234, 05639

American Bancorp of New Jersey, Inc., Bloomfield, New Jersey (Holding Company), the holding company for American Bank of New Jersey, Bloomfield, New Jersey (Savings Association), on October 27, 2005, submitted a written notice (Notice) to the Office of Thrift Supervision (OTS), pursuant to 12 C.F.R. §§ 563b.510 and 563b.515, regarding its proposed repurchase, in the open market, of up to 708,482 shares (five percent) of its common stock. The Holding Company proposes to commence the repurchases as soon as possible. There is no specific termination date for the proposed repurchase program.

Background

The Savings Association and its top-tier mutual holding company (MHC) completed a second-step conversion to stock form on October 5, 2005, with the first trade in the Holding Company's stock occurring on October 6, 2005. The Holding Company's common stock was initially issued and sold at \$10.00 per share. Between October 6 and November 2, 2005, the price of the common stock has closed at lows of \$9.75 per share on October 13 and 21 and a high of \$10.16 on October 6, 2005.

Discussion

Section 563b.510 provides that recently converted savings associations may not repurchase any of their stock during the first year after conversion, subject to certain exceptions.¹ One exception, set forth at 12 C.F.R. § 563b.510(a)(1), provides that a converted savings association (or its holding company) may, in extraordinary circumstances, make open market repurchases of up to five percent of the outstanding stock in the first year following conversion, provided the party files a notice with OTS, and OTS does not disapprove the repurchases. Section 563b.510(a)(1) provides that OTS will not approve such repurchases unless the repurchases meet the standards set forth at 12 C.F.R. § 563b.515.

Section 563b.515(c) provides that OTS will not object to a repurchase program if: (i) the repurchase program will not adversely affect the financial condition of the savings association; (ii) the information submitted is sufficient for OTS to evaluate the repurchases; (iii) the association demonstrates extraordinary circumstances and a

¹ OTS conditioned approval of the Savings Association's and MHC's second-step mutual to stock conversion on the Holding Company being subject to 12 C.F.R. § 563b.510 as if it were a savings association.

compelling and valid business purpose for the repurchases; and (iv) the repurchase program would not be contrary to other applicable regulations.

OTS has reviewed the Notice, and concludes that the Notice fails to demonstrate extraordinary circumstances and a compelling and valid business purpose for the repurchases. The Holding Company has provided the following reasons as to why it believes there are extraordinary circumstances and a valid and compelling business purpose: (1) the price of the Holding Company's common stock has been below the initial public offering (IPO) price since falling below that price on October 12, 2005, the fifth day of trading;² (2) the Holding Company's stock is trading below national and New Jersey average price to book ratios; (3) the repurchase program would not adversely impact the consolidated financial condition of the Holding Company; (4) the repurchases can be accomplished without a capital distribution from the Savings Association; (5) the repurchases would provide a method of increasing the return on average equity and earnings per share; (6) stock repurchases present a key component of overall capital management strategy; (7) the repurchases would increase the market price for stock so that the market does not develop a lasting negative perception of the stock's and the Holding Company's value; (8) after the repurchases, the Holding Company will have capitalization above the offering range of the conversion appraisal and above that assumed in the business plan; and (9) OTS recently approved a Notice filed by another company, to make repurchases within the first year following a conversion when the stock price of that company was trading approximately fifteen percent above its IPO price.

The terms "extraordinary circumstances" and "compelling and valid business purpose" are not defined in the regulations. OTS has analyzed the justifications provided by the Holding Company using a common sense reading of those terms. Moreover, OTS notes that the regulation places the burden on the applicant to demonstrate that there are extraordinary circumstances and a compelling and valid business purpose. With respect to the proposed repurchase of up to 708,482 shares, OTS addresses each of the Holding Company's assertions below.

Stock Price Below IPO Price

The Holding Company has asserted, but not demonstrated that the fact that its stock price fell below the IPO price shortly after the conversion was consummated constitutes "extraordinary circumstances." While stock prices immediately following a conversion are usually above the IPO price (as was true here as well) there is nothing extraordinary about the stock price falling slightly below the IPO price. Prices may fall because purchasers in the IPO seek to profit quickly when the price initially exceeds the IPO price, because market conditions have changed, because of perceptions of the company's future prospects, or for other reasons. Accordingly, this assertion by the Holding Company has not demonstrated extraordinary circumstances, and we conclude

² After the Notice was submitted to OTS and a press release was disseminated by the Holding Company, the stock price has fluctuated with closing prices both above and below the IPO price.

that this assertion, under the circumstances presented by the Holding Company, does not constitute a compelling and valid business purpose.

Stock Price is Below National and State Averages

The Holding Company asserts that because the common stock is trading below the national and New Jersey average price to book ratios, extraordinary circumstances exist. OTS notes that it is common in mutual-to-stock conversions that the stock of the converted entity initially trades below the national and state average price to book ratios. After an IPO, a converting institution has a significant amount of capital that it is not able to immediately invest in high-return assets. Accordingly, it would be expected to have lower returns on capital and a corresponding lower average share price to book ratio than institutions that have invested in such assets. Therefore, we conclude that this assertion by the Holding Company does not demonstrate either extraordinary circumstances or a valid and compelling business purpose for the proposed stock repurchases.

Avoidance of a Lasting Negative Perception

The Holding Company also claims that the repurchase program will help prevent the market from developing a lasting negative perception of the stock's and the Holding Company's value. While a repurchase program may, all other things being equal, have a positive effect on stock prices while it is in progress, it is unlikely to have a significant effect on perceptions of a company's value. Over time, the market value of a company should reflect the fundamentals of the company's business. In addition, if this argument were to constitute an adequate showing, then it would apply to every converted entity that desired to increase its stock price. Therefore, this assertion by the Holding Company does not demonstrate either extraordinary circumstances or a valid and compelling business purpose for the proposed stock repurchases.

Conversion Closed at the Super-Max

The Holding Company states that OTS required that the conversion close at the super-max. This statement is factually incorrect. The independent appraisal concluded that the estimated pro forma market value of the Holding Company was equivalent to the super-max of the valuation range. The Holding Company also asserts that because the conversion closed at the super-max, the proposed repurchases would not reduce capital below the offering range of the appraisal and the capitalization assumed in the business plan submitted with the conversion application. The first assertion is erroneous. The final adjusted appraisal concluded that the super-max represented the correct valuation. In any event, neither assertion presents extraordinary circumstances. Both assertions would apply to every conversion where the final valuation was at the super-max. A substantial number of conversions are completed at that level. Moreover, the fact that management had prepared a business plan that assumed less capital than the amount the Holding Company ultimately received does not constitute either extraordinary circumstances or a valid or compelling business purpose for the proposed stock repurchases. Management should adjust its business plan to take advantage of the

additional capital. Therefore, this assertion by the Holding Company does not demonstrate either extraordinary circumstances or a valid and compelling business purpose for the proposed stock repurchases.

Other Notice Approved

The Holding Company argues that because OTS did not object to another Notice for stock repurchases made in the first year following a conversion (OTS Order No. 2005-42, October 18, 2005), OTS should also permit it to repurchase its shares. OTS considers each Notice on its own merits. OTS makes the determination of whether an applicant has demonstrated extraordinary circumstances and a valid and compelling business purpose, based on the facts presented.

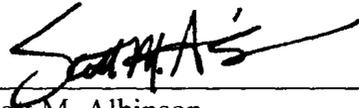
The prior determination was based on facts that have not been demonstrated to exist here. In particular, the earlier case involved recommencing stock repurchases where a share repurchase program that had existed before the conversion had reasonably raised expectations among institutional investors who held more than half the company's stock that repurchases would resume after the conversion. In addition, the market capitalization of the other transaction was significantly larger than here, nearly twenty times larger, thereby elevating the importance of the institutional investor expectations. Furthermore, the Notice here was filed just three weeks after the conversion stock started trading. In contrast, the repurchase notice that the Holding Company refers to was submitted more than four months after the conversion in that case had closed. Therefore, we conclude that the Holding Company's situation is significantly different from the situation addressed in OTS Order No. 2005-42, in which the applicant presented facts that demonstrated extraordinary circumstances existed.

Other Considerations

The remaining arguments presented by the Holding Company do not attempt to demonstrate extraordinary circumstances. Rather, for the most part, they are assertions that the repurchase program is affordable. Also, only one of those assertions has any apparent relevance to the issue of a valid and compelling business purpose. That assertion is that "[i]n the extremely competitive acquisition market in which [the Holding Company] operates, stock repurchases present a key component of overall capital management strategy." However, no explanation is provided as to what the strategy is, why it was adopted or how the current proposal fits with that strategy. Moreover, OTS regulations specifically state: "A newly converted company may not plan on stock repurchases in the first year of the business plan." See 12 C. F. R. § 563b.105(b). Accordingly, the remaining contentions do not demonstrate that there is a valid and compelling business purpose for the proposed repurchase program.

Based on the facts presented, we conclude that the Holding Company has failed to carry its burden to demonstrate that “extraordinary circumstances” and a “compelling and valid business purpose” exist with respect to the Notice. Accordingly, the Notice is hereby disapproved.

By order of the Director of the Office of Thrift Supervision, or his designee, effective November 7, 2005.



Scott M. Albinson
Managing Director
Office of Examinations, Supervision and
Consumer Protection