



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

March 29, 2022

Francesca L. Odell
Cleary Gottlieb Steen & Hamilton LLP

Re: Eagle Bancorp, Inc. (the "Company")
Incoming letter dated January 14, 2022

Dear Ms. Odell:

This letter is in response to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by Timothy D. Hamilton for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders.

The Proposal seeks an independent review of certain investigations performed by the Company.

There appears to be some basis for your view that the Company may exclude the Proposal under Rule 14a-8(i)(7). In our view, the Proposal relates to, and does not transcend, ordinary business matters. Accordingly, we will not recommend enforcement action to the Commission if the Company omits the Proposal from its proxy materials in reliance on Rule 14a-8(i)(7). In reaching this position, we have not found it necessary to address the alternative bases for omission upon which the Company relies.

Copies of all of the correspondence on which this response is based will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: Timothy D. Hamilton

CLEARY GOTTlieb STEEN & HAMILTON LLP

One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999
clearygottlieb.com

WASHINGTON, D.C. • PARIS • BRUSSELS • LONDON • MOSCOW
FRANKFURT • COLOGNE • ROME • MILAN • HONG KONG • BEIJING
BUENOS AIRES • SÃO PAULO • ABU DHABI • SEOUL • SILICON VALLEY

D: +1 212 225 2530
flodell@cgsh.com

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NICOLAS GRABAR
RICHARD J. COOPER
JEFFREY S. LEWIS
PAUL J. SHIM
STEVEN L. WILNER
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KARA A. HAILEY
ANNA KOGAN
BRANDON M. HAMMER
RESIDENT COUNSEL

January 14, 2022

VIA E-MAIL (shareholderproposals@sec.gov)

U.S. Securities and Exchange Commission
Division of Corporation Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

Re: Shareholder Proposal Submitted by Timothy D. Hamilton

Ladies and Gentlemen:

We are writing on behalf of our client, Eagle Bancorp, Inc., a Maryland corporation (“EGBN” or the “Company”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) of the Company’s intention to exclude the shareholder proposal (the “Proposal”) submitted by Timothy D. Hamilton (the “Proponent”), by a letter dated July 27, 2021, from the Company’s proxy statement for its 2022 annual meeting of shareholders (the “Proxy Statement”).

In accordance with Section C of the SEC Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the Proponent as notice of the Company’s intent to omit the Proposal from the Proxy Statement. The Company expects to file its definitive Proxy Statement with the Commission no later than April 5, 2022, and this letter is being filed with the Commission no later than 80 calendar days before that date in accordance with Rule 14a-8(j). Rule 14a-8(k) and Section E of SLB 14D provide that shareholder proponents are required to send companies a copy of any correspondence that the shareholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent that if the Proponent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Company.

THE PROPOSAL

The Proposal is attached hereto as Exhibit A. The Proposal does not clearly distinguish between the portions that constitute the actual proposal and the portions that are meant as supporting statements, so the full Proposal has been reproduced below:

Shareholder proposal:
Timothy D. Hamilton
[ADDRESS REDACTED]
957 Shares of Common Stock
Provenallegations.com

June 29, 2021

Shareholders immediately initiate a full and independent review of all investigations performed by the Bank since the publication of Aurelius regarding illegal and unethical activity. This review will analyze the results of all investigations, speak to all investigating agencies, and further investigate where previous investigations fall short. Results of the investigations, and the review, will be sent to all Regulatory agencies, all law enforcement agencies with jurisdiction, NASDAQ, and the Maryland Bar Association. This review will require our Board to immediately dismiss all individuals found to have committed illegal and unethical acts. Furthermore, this review will determine why the Board of Directors continues to fail at meeting its fiduciary responsibility regarding complying with Sarbanes Oxley and NASDAQ reporting requirements with regards to filing timely ethics policy violation waivers, continuing to employ and financially reward individuals who have committed unethical and illegal acts and those who have not fully cooperated with investigators. Additionally, the Board has failed to correct false and misleading public statements that claimed that all Aurelius Report allegations are "100 Percent false". Failure to correct this statement has been misleading investors for years. The Board has also failed to enforce ethics clauses in employment agreements for both current and past members of Sr. Management.

- 1) Non-compliance with Sarbanes Oxley/NASDAQ listing requirements regarding ethics policy violation waivers. Waivers are required to be timely filed for any violation of our ethics policy. Board/Sr. Management have known for years that dozens of violations and illegal activity (ethics policy violations) have occurred. I can find no evidence of any filed waivers. Sarbanes Oxley 406(b)
- 2) Failure to disclose to Federal Investigators the details surrounding the bank sale (and loan with very questionable underwriting) of real estate the Bank owned to PIT, a trust set up for the benefit of former Chairman's children. The sale of property and loan were orchestrated by Jan Williams, EVP. This felony is known as self-dealing. ([ADDRESS REDACTED], look it up). (Bethesda Leasing, LLC/bank owned). Two of these units have since been sold at a profit, which is nothing less than stealing from shareholders. See Provenallegations.com for details of this theft.
- 3) Determine which members of Sr. Management/Board, have been in contact with Investigators, and what they have and have not disclosed.
- 4) Review of retired executives financial packages to determine why they were paid out by our Board of Directors after they had violated their employment agreements.
- 5) Review of a Susan Riel transfer of PIT accounts ahead of investigations. (see below: Provenallegations.com). Obstructing any investigation is a violation of our ethics policy and also a violation of Susan's employment agreement.

As a result of my employment at EGBN, I have firsthand knowledge of illegal and unethical activity that has not yet been disclosed....

Continued at: Provenallegations.com

BASES FOR EXCLUSION

In accordance with Rule 14a-8, we hereby respectfully request that the Staff confirm that no enforcement action will be recommended against the Company if the Proposal is omitted from the Proxy Statement for the following reasons:

1. The Proposal concerns the redress of a personal claim or grievance against the Company and therefore may be omitted pursuant to Rule 14a-8(i)(4);
2. The Proposal is not a proper subject for action by stockholders under Maryland law and therefore may be omitted pursuant to Rule 14a-8(i)(1); and
3. The Proposal concerns ongoing litigations and investigations and matters relating to the Company's ordinary business operations and therefore may be omitted pursuant to Rule 14a-8(i)(7).

FACTUAL BACKGROUND

The Company's Termination of Proponent's Employment

The Proponent is a disgruntled former employee of EagleBank (the "Bank"), the Company's principal subsidiary. The Proponent joined the Bank in 2004 as a commercial and industrial banker. He was terminated for performance reasons on May 6, 2020 after having been earlier placed on his second 90-day post-performance review reevaluation period, and after nearly three years of significantly declining performance. As described below, the Proposal is one of at least six attempts by the Proponent to accuse the Company of illegal activity and wrongdoing—all part of his transparent effort to exact retribution against the Company for its decision to terminate his employment.

The Aurelius Report and the Company's Investigations

On December 1, 2017, Marcus Aurelius Value, a short seller, posted a report (the "Aurelius Report") entitled "Eagle Bancorp's Insider Loan Scheme Exposed."¹ The Aurelius Report alleges, among other things, that the Company had previously issued "related party" loans on favorable terms to the Company's then-Chairman and CEO Ronald D. Paul in violation of Regulation O promulgated by the Federal Reserve Board.

Following the publication of the Aurelius Report, the Company and its Board of Directors (the "Board") conducted multiple internal and external investigations (the "Aurelius Investigations") into the subject matters that are covered in or related to the matters covered in the Proposal. Several of the Aurelius Investigations were led by outside law firms and prominent consulting firms overseen by either the Audit Committee or the Demand Committee (as defined below), composed of independent (as defined under applicable Commission and stock exchange rules) directors of the Board (each, an "Independent Director").

¹ See <http://www.mavalue.org/research/egbn/>.

In connection with the Aurelius Report, a class action lawsuit was filed on July 24, 2019 in the United States District Court for the Southern District of New York against the Company and certain of its current and former executive officers, on behalf of persons similarly situated, who purchased or otherwise acquired Company securities between March 2, 2015 and July 17, 2019 (the “Civil Securities Class Action”). The plaintiff in the Civil Securities Class Action alleged that certain of the Company’s 10-K reports and other public statements and disclosures contained materially false or misleading statements about, among other things, the effectiveness of its internal controls and related party loans, in violation of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder and Section 20(a) of the Exchange Act, resulting in injury to the purported class members as a result of the decline in the value of the Company’s common stock following the disclosure of increased legal expenses associated with certain government investigations involving the Company relating to the matters alleged in the Aurelius Report.

The Civil Securities Class Action plaintiffs and the Company conducted non-binding mediation in April 2021. Immediately following the non-binding mediation, the parties continued a settlement dialogue and reached an agreement to settle the Civil Securities Class Action, involving a total payment by the Company of \$7.5 million in exchange for the release of all of the defendants from all alleged claims in the Civil Securities Class Action, without any admission or concession of wrongdoing by the Company or the other defendants (the “Civil Securities Class Action Settlement”). The Civil Securities Class Action Settlement is currently pending court approval.

Additionally, in 2019, the Company received a shareholder demand letter (from an individual other than the Proponent) covering substantially the same subject matters as the Civil Securities Class Action (the “Shareholder Demand Letter”).

In response to the Shareholder Demand Letter, the Board formed a special committee composed of Independent Directors whose service on the Board began after the alleged transactions described in the Shareholder Demand Letter (the “Demand Committee”) and authorized the Demand Committee to investigate, review, and analyze the allegations, facts, circumstances, and issues raised by the Shareholder Demand Letter, as well as any future shareholder demand raising the same or substantially the same issues. The Demand Committee hired independent outside counsel to advise them in the course of the investigations in connection with the Shareholder Demand Letter. The Company cooperated in good faith with the proponents of the Shareholder Demand Letter and, pursuant to a stipulation of settlement signed by both the proponents of the Shareholder Demand Letter and the Company, agreed to implement certain corporate governance enhancements and to invest an additional \$2 million incremental spend above 2020 levels (over the course of three years) to enhance its corporate governance, and risk and compliance controls and infrastructure (the “Shareholder Demand Settlement”). As required by DC Superior Court administrative procedures, shareholder’s counsel first filed a derivative action complaint against the individual directors and officers named in the Shareholder Demand Letter, and the Company as a nominal Defendant, and then filed the executed stipulation of settlement accompanied by the shareholder's brief in support of their unopposed motion to approve the Shareholder Demand Settlement. In October 2021, the proponents and the Company received approval of the Shareholder Demand Settlement from the DC Superior Court overseeing the case.

The Proponent’s Relationship with the Company and Related Grievances and Claims

The Proponent was an employee at the time the Aurelius Report was published and was interviewed in the course of the Aurelius Investigations. During these interviews, the Proponent did not discuss or allege any violation of law or regulation associated with any of the transactions referenced in the Aurelius Report or provide any information that was not already known to investigators.

After his employment with the Company was terminated, the Proponent began pursuing claims against the Company in various different venues.

In 2020, the Proponent filed a “Complaint of Retaliation Against Whistleblower” (the “OSHA Complaint”) with the U.S. Occupational Safety and Health Administration (“OSHA”) alleging that his termination was unlawful and repeating substantially the same substance that is contained in the Proposal. The OSHA Complaint remains pending and, under the relevant procedural rules, has the right to file his claims in federal court at any time before a final decision by OSHA is made.

Additionally when the proponents of the Shareholder Demand Letter and the Company sought court approval of the Shareholder Demand Settlement, the Proponent was the only shareholder of the Company to file an objection to the Shareholder Demand Settlement. The Proponent provided much of the same information set forth in the Proposal to the presiding judge on the case. No other objections to the Shareholder Demand Settlement were filed and the presiding judge of the DC Superior Court rejected the Proponent’s objection in favor of approving the Shareholder Demand Settlement. In approving the settlement over the Proponent’s objection, the judge determined that the settlement was “fair, reasonable, and adequate” including because “Eagle Bancorp has agreed to incorporate a series of corporate governance reforms in order to settle the action” and “the board now comprises a majority of directors who came into the board after the misconduct alleged[ly] occurred.” The judge further noted that “most of” the Proponent’s objection “related more to [his] employment termination lawsuit” than it did the shareholder derivative litigation.

In April 2021, over a week after the Company had filed its 2021 proxy statement, the Proponent submitted substantially the same shareholder proposal to be voted on at the 2021 annual meeting of shareholders. The Governance and Nominating Committee of the Company’s Board reviewed the proposal and determined that, under the Company’s by-laws, the proposal was out of order. The Company provided the Proponent with an opportunity to address the Governance and Nominating Committee’s concerns before the Board considered his proposal. The Proponent, however, withdrew his proposal instead of revising it.

In June 2021, the Proponent submitted the current Proposal, which contained deficiencies under Rule 14a-8 that the Company outlined to the Proponent, and in which he expressly stated that the results of the proposed investigations could be used to the benefit of those engaged in legal proceedings against the Company, including himself. In July 2021, the Proponent submitted a revised version of the Proposal remedying those deficiencies. A copy of the Company’s and the Proponent’s correspondence regarding the procedural deficiencies is attached hereto as Exhibit B.

Additionally, in September 2021, the Proponent filed an additional demand letter against the Board, largely relating to the subject matters that are covered in the Proposal. The Demand Committee considered the Proponent’s demand letter and determined that the claims therein constituted “Released Claims” under the court-approved Shareholder Demand Settlement and were thus fully and finally released in exchange for the substantial corporate governance reforms and enhancements the Company agreed to implement as part of the settlement. The Board additionally declined to commence a civil action on the grounds that doing so would not be in the best interest of the Company or its shareholders.

Finally, in December 2021, the Proponent filed an objection to the Civil Securities Class Action Settlement, also largely relating to the subject matters that are covered in the Proposal. The Company filed its response to the Proponent’s objection on January 13, 2022 for a hearing to be held January 20, 2022.

ANALYSIS

I. Under Rule 14a-8(i)(4), the Proposal may be omitted because it concerns the redress of a personal claim or grievance against the Company.

(1) The Proposal is excludable because it seeks redress of the Proponent's personal grievances and is designed to further a personal interest of the Proponent not shared by other shareholders of the Company.

Rule 14a-8(i)(4) provides that a company may omit a shareholder proposal from its proxy materials if the proposal “relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to [the proponent], or to further a personal interest, which is not shared by the other shareholders at large.” As the Commission has explained, “[t]he cost and time involved in dealing with” a shareowner proposal involving a personal grievance or furthering a personal interest not shared by other shareowners is “a disservice to the interests of the issuer and its security holders at large.” Exchange Act Release No. 19135 (Oct. 14, 1982). The Commission designed Rule 14a-8(i)(4) to “insure that the security holder proposal process [is] not abused by proponents attempting to achieve personal ends that are not necessarily in the common interest of the issuer’s shareholders generally.” Exchange Act Release No. 20091 (Aug. 16, 1983). The Commission also has confirmed that this basis for exclusion applies even to proposals phrased in terms that “might relate to matters which may be of general interest to all security holders,” and thus that Rule 14a-8(i)(4) justifies the omission of neutrally worded proposals “if it is clear from the facts presented by the issuer that the proponent is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” Exchange Act Release No. 19135 (Oct. 14, 1982).

As described in the Factual Background section above and further outlined below, the Proposal is part of a prolonged effort by the Proponent to exact retribution against the Company for terminating his employment, which the Company did for performance reasons. On its face, the Proposal conveniently omits reference to the OSHA Complaint and possible district court litigation and does not refer to the Proponent’s personal grievance against the Company related to his termination. However, in the original version of the Proposal submitted in June 2021, the Proponent explicitly stated that “[he] ha[s] filed a complaint with OSHA regarding [his] dismissal from the bank, with the results often taking years. If [he], or any other shareholder, were to file legal action against the bank in the future, the results of this investigation [requested in the Proposal] could be of benefit to their case by reducing their efforts with regards to the discovery process, etc.” See Exhibit A, page 4. Although this language was deleted in the revised Proposal to comply with the word limit requirements of Rule 14a-8, it is “clear from the facts presented” by the Company that the Proponent “is using the proposal as a tactic designed to redress a personal grievance or further a personal interest.” Exchange Act Release No. 19135 (Oct. 14, 1982). As set forth above, the Proponent has presented substantially similar claims as those contained in the Proposal on numerous occasions in multiple different venues, without regard for the suitability of the forum. Whether through the objection against the Shareholder Demand Settlement, the OSHA Complaint, the additional demand letter to the Board, it is clear that the Proponent has a personal grievance against the Company that extends beyond what would be in a typical shareholder’s interests. In addition, the Proposal is laden with unsubstantiated conclusory allegations and infused with the same expressions of personal grievance that have tainted the Proponent’s prior attempts at redress. The Proponent accuses certain members of management of violating their employment agreements as well as the Company’s “ethics policy,” and describes their conduct as “illegal and unethical,” a “felony,” “nothing less than stealing from shareholders” and “theft.” However, these are not new claims or new accusations: these allegations are all based on historical incidents that are no longer ongoing or relevant. The Aurelius Investigations have already been completed, and the related Shareholder Demand Letter and Civil Securities Class Action have already been settled, with the DC Superior Court’s approval of the

Shareholder Demand Settlement having occurred and the Civil Securities Class Action Settlement pending court approval. As discussed above, no other shareholder came forth to object to the Shareholder Demand Settlement or the Civil Securities Class Action Settlement and the Company is already well underway with implementing the agreed-upon terms of the Shareholder Demand Settlement. For all intents and purposes, the items set forth in the Aurelius Report have been investigated, and the issues and weaknesses identified in the Company's controls and governance infrastructure have been remedied. Instead of utilizing the proper civil procedural channels, the Proponent focuses on retaliation against the Company for what he believes to be his "unlawful" employment termination by instead trying to disrupt the Company's Annual General Meeting and to seek privileged information through the shareholder proposal process.

The Commission has consistently allowed the exclusion of proposals presented by disgruntled former employees with a history of confrontation and litigation with the company as indicative of a personal claim or grievance within the meaning of Rule 14a-8(i)(4). *See, e.g., General Electric Co.* (Feb. 14, 2020). Based in part on the repeated pursuit of substantially similar claims over a period of several years, the Company believes that it is clear that the Proponent has submitted the Proposal in an effort to exact retribution against the Company and to obtain personal gain with respect to the Proponent's pending OSHA Complaint against the Company.

The actions that would be required by the Proposal further show the Proponent's personal motivations. The Proposal requires the shareholders of the Company to perform a "full and independent review of all investigations performed by the Bank" since the publication of the Aurelius Report, which "will analyze the results of all investigations, speak to all investigating agencies, and further investigate where previous investigations fall short." The Proposal is a request for information, more akin to a discovery request in a civil lawsuit than a shareholder proposal regarding the ongoing business and affairs of a corporation. The Proponent, in an effort to gain an advantage in his personal disputes involving the OSHA Complaint, his demand letter to the Board and his objection to the Civil Securities Class Action Settlement, seeks to abuse the shareholder proposal system to get free access to the Company's confidential and privileged records about the Aurelius Investigations, upon which the Proponent's arguments in the OSHA Complaint rely. The Proponent thereby attempts to circumvent proper civil court procedures for shareholder lawsuits, which are intended to protect the interests of all shareholders, in service of an agenda that is personal to him alone. This can be readily seen in the fact that the Proponent was the only shareholder to object to the Shareholder Demand Settlement and the Civil Securities Class Action. The Proponent's pattern of conduct reveals that he is motivated by "a personal interest, which is not shared by the other shareholders at large." Rule 14a-8(i)(4). Other Company shareholders should not be required to bear the expenses associated with the inclusion of the Proposal in the Company's proxy statement.

The Proponent's attempted abuse of the shareholder proposal process is exactly the type of situation that Rule 14a-8(i)(4) was intended to avoid. The Company's devotion of significant time and resources dealing with the Proposal is "a disservice to the interests of the issuer and its security holders at large." Exchange Act Release No. 19135 (Oct. 14, 1982). In summary, the Proposal is designed to advance the Proponent's longstanding personal grievance against the Company and not to further the interests of the Company's shareholders. The Company therefore respectfully requests that no enforcement action be recommended if it excludes the Proposal pursuant to Rule 14a-8(i)(4).

II. Under Rule 14a-8(i)(1), the Proposal may be omitted because it is not a proper subject for action by stockholders under Maryland law.

Under Rule 14a-8(i)(1), a company may exclude a shareholder proposal "[i]f the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's

organization.” The note to Rule 14a-8(i)(1) further provides that “some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders.”

The Company is a Maryland corporation, and, as further discussed in the opinion of the Company’s Maryland counsel Thompson Hine LLP, which is attached hereto as Exhibit C (the “Maryland Counsel Opinion”), the Proposal counter to certain provisions of the Maryland Code, Corporations and Associations (the “MCCA”). Section 2-401 of the MCCA provides that the “[a]ll business and affairs of a corporation, whether or not in the ordinary course, shall be managed by or under the direction of a board of directors” and that “[a]ll powers of the corporation may be exercised by or under authority of the board of directors except as conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation.” (Emphasis added.) Neither the MCCA, the Company’s Amended Articles of Incorporation nor the Company’s Bylaws allow the Company’s shareholders to unilaterally initiate investigations or mandate the dismissal of Company personnel over the objection of the Board. Rather, as described in the Maryland Counsel Opinion, such authority is reserved to the Board pursuant to the broad authority provided in MCCA Section 2-401. The highest state court in Maryland has stated, for instance, that:

As a general rule, the business and affairs of a corporation are managed under the direction of its board of directors. Except to the extent that a transaction or decision must, by law or by virtue of the corporate charter, be approved by the shareholders, the directors, either directly or through the officers they appoint, exercise the powers of the corporation. Shareholders are not ordinarily permitted to interfere in the management of the company; they are the owners of the company but not its managers. Thus, any exercise of the corporate power to institute litigation and the control of any litigation to which the corporation becomes a party rests with the directors or, by delegation, the officers they appoint.

Werbowsky v. Collomb, 362 Md. 581, 598–99 (2001) (citations omitted).

The Proposal *requires* the shareholders of the Company, and not the Company’s Board, to “immediately initiate a full and independent review of all investigations performed by the [Company] since the publication of Aurelius regarding illegal and unethical activity.” The Proposal is unclear which “shareholders” would be responsible for undertaking the investigative review and audit of the Company’s Aurelius Investigations, and in any event, the Board or the Company would not have legal authority and power to compel shareholders to undertake any such investigative review, should the Proposal be approved. Allowing shareholders to individually assume the role of the Company’s internal audit function and investigate management, the Board and the Company’s compliance with applicable laws and regulations would be chaotic at best and in direct conflict with the principle set forth in *Werbowsky* and MCCA Section 2-401. The Proposal’s attempt to usurp the Board’s authority in this manner, therefore, makes it an improper subject for stockholder action.

In addition, if the Board were to carry out the actions required by the Proposal, it would also violate the Board’s fiduciary duties to the Company. The Proposal also *requires* that the Board must “immediately dismiss all individuals found [by the Company’s shareholders] to have committed illegal and unethical acts.” Under the MCCA, shareholders do not have the power to compel the Board to carry out such actions. Directors of Maryland corporations “are required to perform their duties in good faith, in a manner they reasonably believe to be in the best interest of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.” *Werbowsky*, 362 Md. at 599 (citing MCCA § 2-405.1). As also discussed in the Maryland Counsel Opinion, the Proposal “encroaches upon the ability of directors to make decisions on matters of management policy by limiting directors’ business judgment and discretion[, and is thereby] improper under Maryland law, because it

would prevent directors from being able to exercise their fiduciary duty over management decisions in compliance with § 2-405.1.” (Maryland Counsel Opinion, pg. 7).

While the Company is incorporated under Maryland law, it is worth noting that this analysis parallels the law of Delaware. *Cf.* Del. Gen. Corp. Law § 141(a). Maryland’s highest court “has noted the ‘respect properly accorded Delaware decisions on corporate law’ ordinarily in our jurisprudence.” *Sutton*, 226 Md. App. 46, 71 n.12 (citations omitted). In accordance with SLB 14, the Staff has consistently permitted corporations to exclude binding shareholder proposals in similar circumstances under Rule 14a-8(i)(1) applying Delaware law. *See, e.g., The Goldman Sachs Group, Inc.* (Feb. 7, 2013); *IEC Electronics Corp.* (Oct. 31, 2012); *Bank of America Corp.* (Feb. 16, 2011); *Archer-Daniels-Midland Co.* (Aug. 18, 2010); *Bank of America Corp.* (Feb. 24, 2010); *The Boeing Co.* (Jan. 29, 2010). Thus, the Company respectfully requests that no enforcement action be recommended if it excludes the Proposal pursuant to Rule 14a-8(i)(1).

III. Under Rule 14a-8(i)(7), the Proposal may be omitted because it concerns the Company’s ordinary business operations.

(1) The Proposal is excludable because it relates to the oversight and evaluation of the Company’s risk exposures and management of the Company’s ordinary business functions, including the Company’s ongoing legal compliance functions and Exchange Act reporting.

Rule 14a-8(i)(7) provides that a company may omit a shareholder proposal from its proxy materials if the proposal “deals with a matter relating to the company’s ordinary business operations.” According to the Commission, the term “ordinary business” in this context “is rooted in the corporate law concept providing management with flexibility in directing certain core matters involving the company’s business and operations.” *Id.* The Commission applies two central considerations for determining whether the ordinary business exclusion applies: (1) whether the subject matter of the proposal relates to a task “so fundamental to management’s ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight;” and (2) the “degree to which the proposal seeks to ‘micromanage’ the company by probing too deeply into matters of a complex nature upon which shareholders, as a group, would not be in a position to make an informed judgment.” *Id.* at 86,017-18 (footnote omitted). In seeking to (i) probe into the Company’s legal and compliance functions and (ii) dictate the content of the Company’s public disclosures, both of which are squarely within management’s and the Board’s exercise of business judgment, the Proposal implicates these two central considerations.

Shareholder proposals requesting a report or investigation and proposals regarding a board’s oversight and deliberations about compliance activities may be excluded under Rule 14a-8(i)(7) to the extent their underlying subject matter is a matter of ordinary business. Here, the Proposal would require that shareholders (namely, we assume, the Proponent) review the Company’s legal compliance and related business and policy practices, including how the Board ensures the Company’s legal compliance with public disclosure and corporate governance regulations. Specifically, the concerns raised by the Proponent include “non-compliance with Sarbanes Oxley/NASDAQ listing requirements regarding ethics policy violation waivers,” “failure to disclose to Federal Investigators the details surrounding the bank sale...of real estate the Bank owned to PIT, a trust set up for the benefit of former Chairman’s children,” “review of retired executives financial packages,” and “any insider trading violations.” Each of these requests by the Proponent relates to a fundamental aspect of the day-to-day work that the Company undertakes as part of its legal compliance and ongoing reporting functions. The Company’s senior management, along with the Company’s Disclosure Controls Committee and Legal, Compliance, Finance, Treasury and other teams, all work to ensure that the Company achieves compliance with

applicable laws and regulations, including but not limited to its public reporting requirements under the Exchange Act.

In fact, the Proposal amounts to nothing more than a requirement that the Company's shareholders personally perform an audit of all of the investigations, discussions and decisions that the Company's Board and management conducted following the Aurelius Report, then avail themselves of management's functions by directing the Company and the Board on what actions to take following the audit, including with respect to certain reporting requirements. If allowed to be presented to shareholders, therefore, the Proposal would turn the well-established (and judicially sanctioned) corporate governance legal framework on its head.

The Staff has repeatedly concurred in the exclusion of proposals relating to a company's legal compliance program, like the current Proposal, on the grounds that they relate to matters of ordinary business under Rule 14a-8(i)(7). *See, e.g., Raytheon Co.* (Mar. 25, 2013) (allowing exclusion of a proposal that required the company to produce a report on the board's oversight of the company's efforts to comply with the requirements of the Americans with Disabilities Act, the Fair Labor Standards Act, and the Age Discrimination in Employment Act); *The Bear Stearns Companies, Inc.* (Feb. 14, 2007) (allowing exclusion of a proposal that required the board of directors to prepare a report on the costs, benefits and impacts of the Sarbanes-Oxley Act on the company's operations because the proposal "relat[ed] to its ordinary business operations (i.e. general legal compliance program)"). Because the current Proposal likewise seeks to micromanage the Company's day-to-day legal and compliance functions, it may also be excluded under Rule 14a-8(i)(7).

- (2) *The Proposal is excludable because it relates to pending government investigations and litigation matters and the Company's legal strategy related to such investigations and litigation matters, and would constitute micromanagement of the Board and management in carrying out their ordinary business duties in connection with, and may prejudice the Company with respect to, such litigation matters.*

Generally, the Staff has allowed exclusion of proposals that sought to micromanage a company's board as it relates to the board's management of risks involving complex decision-making and problem solving. *See Exxon Mobil* (April 2, 2019) (allowing exclusion of the proposals because the imposition of an overarching requirement of alignment with the Paris Agreement displaced the ongoing judgments of management as overseen by its board of directors). The Staff has also concurred with the exclusion of proposals that implicate a company's litigation strategy or conduct in pending litigation proceedings. In *General Electric Company*, the Staff noted that "[p]roposals that would affect the conduct of ongoing litigation to which the company is a party are generally excludable under rule 14a-8(i)(7)." (Feb. 3, 2016) (allowing exclusion of a proposal because the company was "presently involved in litigation relating to the subject matter of the proposal"). *See also Eli Lilly and Co.* (Jan. 13, 2017) (allowing exclusion of a proposal because it related to the disclosure of litigation information above and beyond what is required under the Commission's rules).

If implemented, the Proposal would essentially re-open all of the strategies and decisions made over the past four years in the course of the Company's Aurelius Investigations, the Civil Securities Class Action and Shareholder Demand Letter negotiations, and not only subject all of those previous decisions and strategies to direct shareholder (or the Proponent's) oversight, but also hand over executive decision-making to shareholders, given that they are substantially similar to the subject of legal proceedings currently pending against the Company, including the Civil Securities Class Action and OSHA Complaint. The work done by the Company's Board and management in connection with the above referenced suits and investigations have required intensive and complex decision-making, and a critical part of the legal planning and strategy required to properly defend the Company in connection with such

matters is extensive knowledge regarding the institutional history of the Company, its business model, strategies and mission, and how the Company developed and evolved into its current state.

Additionally, where a proposal would affect the conduct of ongoing litigation because the proposal deals with a subject matter pertinent to that of an ongoing legal proceeding, the Staff has consistently concurred with exclusion under Rule 14a-8(i)(7) on the grounds that the implementation of the proposal may prejudice the company in the ongoing legal proceeding or investigation. *See, e.g., Baxter International Inc.* (Feb. 20, 1992) (allowing exclusion of a proposal on the grounds that “the [c]ompany [was] presently involved in litigation relating to the subject matter of the proposal[, and the] implementation of the proposal might prejudice the [c]ompany in an on-going government investigation of the matter”); *NetCurrents, Inc.* (May 8, 2001) (allowing exclusion of a proposal relating to the company’s ordinary business operations (i.e., litigation strategy) where the proposal required the company to file suit against certain of its officers for financial improprieties); *Benihana National Corp.* (Sept. 13, 1991) (permitting exclusion under Rule 14a-8(c)(7) of a proposal requesting the company to publish a report prepared by a board committee analyzing claims asserted in a pending lawsuit); and *CBS Corp.* (Jan. 21, 1983) (allowing exclusion of two proposals under Rule 14a-8(i)(7) because both related to a then-ongoing lawsuit for libel against the company). The Company is involved in two proceedings in which it may be prejudiced if the Proposal were approved.

As discussed in the Factual Background section, the Proponent has filed a pending OSHA Complaint against the Company, and the Company is currently defending the Civil Securities Class Action, the allegations of each which involve substantially the same matters set forth in the Proposal. After the Proponent was unsuccessful in bringing his concerns and request for further investigation in connection with the Aurelius Investigations, including with the DC Superior Court judge in connection with his objection to the Shareholder Demand Settlement, the Proponent has now turned to the proxy process and is attempting to use shareholder proposals as a means to gain an unfair advantage in his pending OSHA Complaint against the Company, all in attempt to exact retribution from the Company for terminating his employment. The Proposal specifically requests the disclosure of “results of all investigations” including speaking to “all investigating agencies” and “further investigate where previous investigations fell short.” Such actions would disclose a wealth of facts and information about the Company’s business, the specifics of the legal proceedings and the Company’s defenses, etc., essentially granting the Proponent “free” discovery to support his OSHA Complaint and objection to the Civil Securities Class Action Settlement by circumventing the proper civil procedure and OSHA adjudication channels. As the complainant of the pending OSHA Complaint, the Proponent is directly adverse to the Company with respect to the precise subject matter and accusations levied in the Proposal. Using the shareholder proposal process to gain access to the Company’s confidential and proprietary information (for which the Proposal does not include customary carve outs) related to the Company’s work in connection with both past and ongoing investigations and legal compliance matters would also grant the Proponent with access to information protected by attorney/client privilege, attorney work product privilege and/or rules related to confidential supervisory information. The Proposal, if implemented, would adversely impact the Company’s strategy against the Proponent’s OSHA Complaint and would also adversely impact the Company’s overall litigation strategy in connection with the Company’s other ongoing legal proceedings and investigations, including the Civil Securities Class Action.

In summary, the Proposal relates to the Company’s ongoing legal proceedings and litigation matters, in one of which the Proponent is the actual complainant, and the disclosure of the requested items in the Proposal would not only micromanage the Company’s management and Board in carrying out their ordinary business functions, it would also materially adversely impact the Company’s strategy and conduct in the ongoing investigations and legal proceedings. As a result, the Proposal is improper and is excludable under Rule 14a-8(i)(7).

(3) The Proposal does not implicate a significant policy issue that would otherwise render the basis for exclusion under Rule 14a-8(i)(7) unavailable for this Proposal.

Subject to the guidance set forth in Staff Legal Bulletin No. 14L (November 3, 2021) (“SLB 14L”), the Staff has recently clarified that it will realign its approach for determining whether a proposal raises significant policy issues. *See* SLB 14L. The Staff stated that it will no longer focus on determining the nexus between a policy issue and the company, but will “instead focus on the social policy significance of the issue that is the subject of the shareholder proposal” and in making that determination, “will consider whether the proposal raises issues with a broad societal impact, such that they transcend the ordinary business of the company.” *See id.* While the Company treats all allegations of illegal activity seriously, such allegations are the responsibility of the Company and its internal legal and compliance departments, and are not the proper subject of broader social concerns for shareholders or society at large. Therefore, the Company respectfully requests that no enforcement action be recommended if it excludes the Proposal pursuant to Rule 14a-8(i)(7) because it relates to ordinary business and does not raise a policy issue sufficiently significant to transcend day-to-day business matters.

* * * * *

By copy of this letter, the Proponent is being notified that for the reasons set forth herein, the Company intends to omit the Proposal from its Proxy Statement. We respectfully request that the Staff confirm that it will not recommend any enforcement action if the Company omits the Proposal from its Proxy Statement. If we can be of assistance in this matter, please do not hesitate to call me.

Sincerely,



Francesca L. Odell

Cc: Timothy D. Hamilton
Paul Saltzman

Enclosures:

- Exhibit A – Proposal
- Exhibit B – Correspondence between the Company and the Proponent regarding Procedural Deficiencies with respect to the Proponent’s Initial Proposal
- Exhibit C – Opinion of Thompson Hine LLP

Exhibit A

Proposal

EagleBank Board of Directors

June 29, 2021

c/o Jane Cornett, VP, Corporate Secretary

7830 Old Georgetown Road

Bethesda, MD 20814

Dear Ms. Cornett,


Please find included in this Fed-X package the Shareholders Proposal that I am submitting for the 2022 Shareholders meeting of EagleBank. This proposal will be included in the Proxy materials made available to all shareholders prior to the meeting.

I meet the criteria set forth by SEC regulations and qualify to submit the enclosed proposal. I own 987 shares of Common EGBN stock, held both with Raymond James and Computershare. The shares are held in my personal name, Timothy D. Hamilton, [REDACTED]. I intend to hold these shares through the 2022 shareholders meeting. I have reached out to Raymond James to independently confirm that I hold the appropriate amount of shares, and I have held them long enough to qualify to submit the enclosed Shareholder Proposal. I will forward their communication to you as soon as I receive it.

I am also required to make myself available to discuss the proposal, via teleconference, if you so desire. I am available Monday through Friday, 9-2, from July 12, 2021 until July 30, 2021. If you do wish to discuss the proposal, please email me potential dates and times that work for you.

[REDACTED]

Sincerely,


Timothy D. Hamilton

[REDACTED]

Shareholder proposal:

June 29, 2021

Tim Hamilton

[REDACTED]

[REDACTED]

957 Shares of Common Stock

Provenallegations.com

Shareholders immediately initiate a full and independent review of all investigations performed by the Bank since the publication of Aurelius regarding illegal and unethical activity. This review will analyze the results of all investigations, speak to all investigating agencies, and further investigate where previous investigations fell short. Results of the investigations, and this review, will be sent to all Regulatory agencies, all law enforcement agencies with jurisdiction, NASDAQ, and the Maryland Bar Association. This review will require our Board to immediately dismiss all individuals found to have committed illegal and unethical acts. Furthermore, this review will determine why the Board of Directors continues to fail at meeting its fiduciary responsibility regarding complying with Sarbanes Oxley and NASDAQ reporting requirements with regards to filing timely ethics policy violation waivers, continuing to employ and financially reward individuals who have committed unethical and illegal acts and those who have not fully cooperated with investigators. Additionally, the Board has failed to correct false and misleading public statements that claimed that all Aurelius Report allegations are "100 Percent false". Failure to correct this statement has been misleading investors for years. The Board has also failed to enforce ethics clauses in employment agreements for both current and past members of Sr. Management.

- 1) Non-compliance with Sarbanes Oxley/NASDAQ listing requirements regarding ethics policy violation waivers. Waivers are required to be timely filed for any violation of our ethics policy. Board/Sr. Management have known for years that dozens of violations and illegal activity (ethics policy violations) have occurred. I can find no evidence of any filed waivers. Sarbanes Oxley 406(b)
- 2) Failure to disclose to Federal Investigators the details surrounding the bank sale (and loan with very questionable underwriting) of real estate the Bank owned to PIT, a trust set up for the benefit of former Chairman's children. The sale of property and loan were orchestrated by Jan Williams, EVP. This felony is known as self-dealing. [REDACTED] (Bethesda Leasing, LLC/bank owned). Two of these units have since been sold at a profit, which is nothing less than stealing from shareholders. See Provenallegations.com for details of this theft.
- 3) Determine which members of Sr. Management/Board, have been in contact with Investigators, and what they have and have not disclosed.
- 4) Review of retired executives financial packages to determine why they were paid out by our Board of Directors after they had violated their employment agreements.

- 5) **Review of a Susan Riel transfer of PIT accounts ahead of investigations. (see below: Provenallegations.com). Obstructing any investigation is a violation of our ethics policy and also a violation of Susan's employment agreement.**

As a result of my employment at EGBN, I have firsthand knowledge of illegal and unethical activity that has not yet been disclosed....

Continued at: Provenallegations.com

As an example, In August, 2020, certain information regarding this activity was not known by one of the investigating agencies. They were surprised to learn that the bank had sold property it owned to PIT (see above), and had not been told about it by the Bank. The only way this was possible is that employees/Board Members interviewed by this agency did not disclose the truth, as required by the ethics policy.

After the Aurelius report, in December 2017, bank's attorneys questioned me extensively about the PIT transaction (also about other illegal and unethical activity), seven days after my interview, on December 27, 2017, PIT accounts were abruptly (after ten plus years as the account officer) transferred out of my portfolio by Susan Riel. One of the investigating agencies was unaware of this obstruction (transfer) as of August 2020. Although I was the account officer for PIT for over a decade, no investigator from any agency has ever reached out to me to question me about the unethical and illegal activity that I know about. The re-assigning of the accounts was an effort to make sure I was not questioned.

Confirm that the details surrounding a loan to Goodman and Company, which is owned by a former director, were reported to investigators. Mr. Goodman was a director at the time of this crime. In this case, I was told by the account officer (a subordinate of Jan Williams) , that Jan Williams instructed them to "ignore Reg. O, make a loan to Goodman and Company, and don't put it on the books". This is illegal and unethical, and yet another example of self-dealing. To my knowledge, the subordinate has never been questioned by investigators. As of August 2020, one agency with jurisdiction was not aware of this criminal activity.

If legal, a full copy of the findings of this independent review will be provided to all shareholders. Additionally, the banks ethics policy uses as an example, to not do anything that you would not want published in the local press, therefore, if legal, the findings of this investigation will be sent to local media, including The Washington Business Journal and the Washington Post.

The benefit to Shareholders of this proposal is obvious, and include removing individuals who clearly put their own personal financial gain above ethical and legal behavior. By removing these individuals we will stop spending millions of dollars on the defense, perhaps recoup some of these legal expenses as well as previous payouts to retired executives, and finally be able to move on. This proposal will also force the Board to cease from violating both Sarbanes Oxley and NASDAQ requirements regarding ethics policy violation waivers, and to correct false and misleading public statements.

Disclosure: I have filed a complaint with OSHA regarding my dismissal from the bank, with the results often taking years. If I, or any shareholder, were to file legal action against the bank in the future, the results of this investigation could be of benefit to their case by reducing their efforts with regards to the discovery process, etc.

Additional areas to explore:

What portion of legal fees paid to date are a result of defending individuals who committed crimes, including not fully disclosing details to investigators, and should shareholders seek re-imbusement, particularly from those that knowingly broke the law, violated their employment agreements, and did not disclose as required by ethics policy.

Are there any insider trading violations, as certain individuals have traded in EGBN stock, all the while having material information that should have been made public, but was not. These individuals certainly maintain an unfair advantage over the average investor.

Fellow Shareholders, we simply have not been told the truth and we have spent and continue to spend millions of dollars in legal fees, and pay large salaries (million dollar golden parachutes) to defend individuals who have committed illegal and unethical acts. Our board chooses to tolerate these actions and individuals and ignore SEC and NASDAQ Regulations. We can only assume their motivation is personal greed.

Please vote Yes to support this proposal as it is simply the right thing to do.

To our institutional shareholders, you would not tolerate these activities in your own firms, and you should not tolerate it at EagleBank. You have the power to help correct a massive wrongdoing, please do the right thing and vote yes for this proposal.

See other attachments (supporting evidence) here at : Provenallegations.com

Hamilton

Jane Cornett

Eagle Barn

7830 Old Georgetown Rd.
3rd floor

Bethesda, MD 20814

Scott Bernstein
EagleBank
VP, Associate General Counsel
EagleBank
7830 Old Georgetown Road
Bethesda, MD 20814

July 27, 2021

Dear Mr. Bernstein,

In response to your letter dated July 15, 2021 regarding my shareholder proposal, I have attached a slightly revised version. The portion of my proposal that will be included in the Proxy Statement is less than the 500 word limit. The additional materials will be available on the website: provenallegations.com as allowed under SEC Staff Legal Bulletin No. 14G (CF).

As I sort through additional information I have and that which I am receiving from former colleagues, I may need to add to the website information.

Sincerely,

Timothy D. Hamilton



Shareholder proposal:

June 29, 2021

Timothy D. Hamilton

957 Shares of Common Stock

Provenallegations.com

Shareholders immediately initiate a full and independent review of all investigations performed by the Bank since the publication of Aurelius regarding illegal and unethical activity. This review will analyze the results of all investigations, speak to all investigating agencies, and further investigate where previous investigations fell short. Results of the investigations, and the review, will be sent to all Regulatory agencies, all law enforcement agencies with jurisdiction, NASDAQ, and the Maryland Bar Association. This review will require our Board to immediately dismiss all individuals found to have committed illegal and unethical acts. Furthermore, this review will determine why the Board of Directors continues to fail at meeting its fiduciary responsibility regarding complying with Sarbanes Oxley and NASDAQ reporting requirements with regards to filing timely ethics policy violation waivers, continuing to employ and financially reward individuals who have committed unethical and illegal acts and those who have not fully cooperated with investigators. Additionally, the Board has failed to correct false and misleading public statements that claimed that all Aurelius Report allegations are "100 Percent false". Failure to correct this statement has been misleading investors for years. The Board has also failed to enforce ethics clauses in employment agreements for both current and past members of Sr. Management.

- 1) Non-compliance with Sarbanes Oxley/NASDAQ listing requirements regarding ethics policy violation waivers. Waivers are required to be timely filed for any violation of our ethics policy. Board/Sr. Management have known for years that dozens of violations and illegal activity (ethics policy violations) have occurred. I can find no evidence of any filed waivers. Sarbanes Oxley 406(b)
- 2) Failure to disclose to Federal Investigators the details surrounding the bank sale (and loan with very questionable underwriting) of real estate the Bank owned to PIT, a trust set up for the benefit of former Chairman's children. The sale of property and loan were orchestrated by Jan Williams, EVP. This felony is known as self-dealing. [REDACTED] look it up). (Bethesda Leasing, LLC/bank owned). Two of these units have since been sold at a profit, which is nothing less than stealing from shareholders. See Provenallegations.com for details of this theft.
- 3) Determine which members of Sr. Management/Board, have been in contact with Investigators, and what they have and have not disclosed.
- 4) Review of retired executives financial packages to determine why they were paid out by our Board of Directors after they had violated their employment agreements.
- 5) Review of a Susan Riel transfer of PIT accounts ahead of investigations. (see below: Provenallegations.com). Obstructing any investigation is a violation of our ethics policy and also a violation of Susan's employment agreement.

As a result of my employment at EGBN, I have firsthand knowledge of illegal and unethical activity that has not yet been disclosed....

Continued at: Provenallegations.com

Exhibit B

**Correspondence between the Company and the Proponent regarding Procedural
Deficiencies with respect to the Proponent's Initial Proposal**



July 15, 2021

Via UPS and Electronic Mail

Timothy D. Hamilton



Re: Your Shareholder Proposal Submission for the 2022 Proxy Statement

Dear Mr. Hamilton,

The Corporate Secretary of Eagle Bancorp. Inc. (the “Company”) received your “Shareholders Proposal” (the “Proposal”) for inclusion in the Company’s proxy materials for its 2022 Annual Meeting of Stockholders (the “Annual Meeting”) on July 1, 2021, and forwarded the Proposal to me.

The Proposal is governed by Rule 14a-8 under the Securities Exchange Act of 1934, as amended (“Rule 14a-8”), which sets forth the eligibility and procedural requirements for submitting stockholder proposals, as well as thirteen substantive bases under which companies may exclude such proposals. We have included a complete copy of Rule 14a-8 with this letter for your reference.

Based on our review of the information provided in your email, our records and regulatory materials, we are unable to conclude that the Proposal meets the requirements of Rule 14a-8. The Proposal contains the procedural deficiency set forth below, which Securities and Exchange Commission regulations require us to bring to your attention. Unless the deficiency described below can be remedied in the proper time frame, as discussed below, the Company will be entitled to exclude the Proposal from its proxy materials for the Annual Meeting.

Rule 14a-8(d) provides that “[t]he proposal, including any accompanying supporting statement, may not exceed 500 words.” Because the Proposal exceeds 500 words, it does not meet the procedural requirements for inclusion in the Company’s proxy materials for the Annual Meeting.

You have 14 calendar days from the date you receive this letter to correct this procedural deficiency in the Proposal. See Rule 14a-8(f)(1).

Sincerely,

A handwritten signature in dark blue ink, appearing to read "Scott Bernstein".

Scott Bernstein
VP, Associate General Counsel

Enclosure

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of July 8, 2021

Title 17 → Chapter II → Part 240 → §240.14a-8

Title 17: Commodity and Securities Exchanges

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

§240.14a-8 Shareholder proposals.

This section addresses when a company must include a shareholder's proposal in its proxy statement and identify the proposal in its form of proxy when the company holds an annual or special meeting of shareholders. In summary, in order to have your shareholder proposal included on a company's proxy card, and included along with any supporting statement in its proxy statement, you must be eligible and follow certain procedures. Under a few specific circumstances, the company is permitted to exclude your proposal, but only after submitting its reasons to the Commission. We structured this section in a question-and-answer format so that it is easier to understand. The references to “you” are to a shareholder seeking to submit the proposal.

(a) *Question 1: What is a proposal?* A shareholder proposal is your recommendation or requirement that the company and/or its board of directors take action, which you intend to present at a meeting of the company's shareholders. Your proposal should state as clearly as possible the course of action that you believe the company should follow. If your proposal is placed on the company's proxy card, the company must also provide in the form of proxy means for shareholders to specify by boxes a choice between approval or disapproval, or abstention. Unless otherwise indicated, the word “proposal” as used in this section refers both to your proposal, and to your corresponding statement in support of your proposal (if any).

(b) *Question 2: Who is eligible to submit a proposal, and how do I demonstrate to the company that I am eligible?* (1) To be eligible to submit a proposal, you must satisfy the following requirements:

(i) You must have continuously held:

(A) At least \$2,000 in market value of the company's securities entitled to vote on the proposal for at least three years; or

(B) At least \$15,000 in market value of the company's securities entitled to vote on the proposal for at least two years; or

(C) At least \$25,000 in market value of the company's securities entitled to vote on the proposal for at least one year; or

(D) The amounts specified in paragraph (b)(3) of this section. This paragraph (b)(1)(i)(D) will expire on the same date that §240.14a-8(b)(3) expires; and

(ii) You must provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; and

(iii) You must provide the company with a written statement that you are able to meet with the company in person or via teleconference no less than 10 calendar days, nor more than 30 calendar days, after submission of the shareholder proposal. You must include your contact information as well as business days and specific times that you are available to discuss the proposal with the company. You must identify times that are within the regular business hours of the company's principal executive offices. If these hours are not disclosed in the company's proxy statement for the prior year's annual meeting, you must identify times that are between 9 a.m. and 5:30 p.m. in the time zone of the company's principal executive offices. If you elect to co-file a proposal, all co-filers must either:

(A) Agree to the same dates and times of availability, or

(B) Identify a single lead filer who will provide dates and times of the lead filer's availability to engage on behalf of all co-filers; and

(iv) If you use a representative to submit a shareholder proposal on your behalf, you must provide the company with written documentation that:

(A) Identifies the company to which the proposal is directed;

(B) Identifies the annual or special meeting for which the proposal is submitted;

(C) Identifies you as the proponent and identifies the person acting on your behalf as your representative;

(D) Includes your statement authorizing the designated representative to submit the proposal and otherwise act on your behalf;

(E) Identifies the specific topic of the proposal to be submitted;

(F) Includes your statement supporting the proposal; and

(G) Is signed and dated by you.

(v) The requirements of paragraph (b)(1)(iv) of this section shall not apply to shareholders that are entities so long as the representative's authority to act on the shareholder's behalf is apparent and self-evident such that a reasonable person would

understand that the agent has authority to submit the proposal and otherwise act on the shareholder's behalf.

(vi) For purposes of paragraph (b)(1)(i) of this section, you may not aggregate your holdings with those of another shareholder or group of shareholders to meet the requisite amount of securities necessary to be eligible to submit a proposal.

(2) One of the following methods must be used to demonstrate your eligibility to submit a proposal:

(i) If you are the registered holder of your securities, which means that your name appears in the company's records as a shareholder, the company can verify your eligibility on its own, although you will still have to provide the company with a written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the meeting of shareholders.

(ii) If, like many shareholders, you are not a registered holder, the company likely does not know that you are a shareholder, or how many shares you own. In this case, at the time you submit your proposal, you must prove your eligibility to the company in one of two ways:

(A) The first way is to submit to the company a written statement from the "record" holder of your securities (usually a broker or bank) verifying that, at the time you submitted your proposal, you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively. You must also include your own written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the shareholders' meeting for which the proposal is submitted; or

(B) The second way to prove ownership applies only if you were required to file, and filed, a Schedule 13D (§240.13d-101), Schedule 13G (§240.13d-102), Form 3 (§249.103 of this chapter), Form 4 (§249.104 of this chapter), and/or Form 5 (§249.105 of this chapter), or amendments to those documents or updated forms, demonstrating that you meet at least one of the share ownership requirements under paragraph (b)(1)(i)(A) through (C) of this section. If you have filed one or more of these documents with the SEC, you may demonstrate your eligibility to submit a proposal by submitting to the company:

(1) A copy of the schedule(s) and/or form(s), and any subsequent amendments reporting a change in your ownership level;

(2) Your written statement that you continuously held at least \$2,000, \$15,000, or \$25,000 in market value of the company's securities entitled to vote on the proposal for at least three years, two years, or one year, respectively; and

(3) Your written statement that you intend to continue to hold the requisite amount of securities, determined in accordance with paragraph (b)(1)(i)(A) through (C) of this section, through the date of the company's annual or special meeting.

(3) If you continuously held at least \$2,000 of a company's securities entitled to vote on the proposal for at least one year as of January 4, 2021, and you have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company, you will be eligible to submit a proposal to such company for an annual or special meeting to be held prior to January 1, 2023. If you rely on this provision, you must provide the company with your written statement that you intend to continue to hold at least \$2,000 of such securities through the date of the shareholders' meeting for which the proposal is submitted. You must also follow the procedures set forth in paragraph (b)(2) of this section to demonstrate that:

(i) You continuously held at least \$2,000 of the company's securities entitled to vote on the proposal for at least one year as of January 4, 2021; and

(ii) You have continuously maintained a minimum investment of at least \$2,000 of such securities from January 4, 2021 through the date the proposal is submitted to the company.

(iii) This paragraph (b)(3) will expire on January 1, 2023.

(c) *Question 3:* How many proposals may I submit? Each person may submit no more than one proposal, directly or indirectly, to a company for a particular shareholders' meeting. A person may not rely on the securities holdings of another person for the purpose of meeting the eligibility requirements and submitting multiple proposals for a particular shareholders' meeting.

(d) *Question 4:* How long can my proposal be? The proposal, including any accompanying supporting statement, may not exceed 500 words.

(e) *Question 5:* What is the deadline for submitting a proposal? (1) If you are submitting your proposal for the company's annual meeting, you can in most cases find the deadline in last year's proxy statement. However, if the company did not hold an annual meeting last year, or has changed the date of its meeting for this year more than 30 days from last year's meeting, you can usually find the deadline in one of the company's quarterly reports on Form 10-Q (§249.308a of this chapter), or in shareholder reports of investment companies under §270.30d-1 of this chapter of the Investment Company Act of 1940. In order to avoid controversy, shareholders should submit their proposals by means, including electronic means, that permit them to prove the date of delivery.

(2) The deadline is calculated in the following manner if the proposal is submitted for a regularly scheduled annual meeting. The proposal must be received at the company's principal executive offices not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. However, if the company did not hold an annual meeting the previous year, or if the date of this year's annual meeting has been changed by more than 30 days from the date of the previous year's meeting, then the deadline is a reasonable time before the company begins to print and send its proxy materials.

(3) If you are submitting your proposal for a meeting of shareholders other than a regularly scheduled annual meeting, the deadline is a reasonable time before the company

regularly scheduled annual meeting, the deadline is a reasonable time before the company begins to print and send its proxy materials.

(f) *Question 6:* What if I fail to follow one of the eligibility or procedural requirements explained in answers to Questions 1 through 4 of this section? (1) The company may exclude your proposal, but only after it has notified you of the problem, and you have failed adequately to correct it. Within 14 calendar days of receiving your proposal, the company must notify you in writing of any procedural or eligibility deficiencies, as well as of the time frame for your response. Your response must be postmarked, or transmitted electronically, no later than 14 days from the date you received the company's notification. A company need not provide you such notice of a deficiency if the deficiency cannot be remedied, such as if you fail to submit a proposal by the company's properly determined deadline. If the company intends to exclude the proposal, it will later have to make a submission under §240.14a-8 and provide you with a copy under Question 10 below, §240.14a-8(j).

(2) If you fail in your promise to hold the required number of securities through the date of the meeting of shareholders, then the company will be permitted to exclude all of your proposals from its proxy materials for any meeting held in the following two calendar years.

(g) *Question 7:* Who has the burden of persuading the Commission or its staff that my proposal can be excluded? Except as otherwise noted, the burden is on the company to demonstrate that it is entitled to exclude a proposal.

(h) *Question 8:* Must I appear personally at the shareholders' meeting to present the proposal? (1) Either you, or your representative who is qualified under state law to present the proposal on your behalf, must attend the meeting to present the proposal. Whether you attend the meeting yourself or send a qualified representative to the meeting in your place, you should make sure that you, or your representative, follow the proper state law procedures for attending the meeting and/or presenting your proposal.

(2) If the company holds its shareholder meeting in whole or in part via electronic media, and the company permits you or your representative to present your proposal via such media, then you may appear through electronic media rather than traveling to the meeting to appear in person.

(3) If you or your qualified representative fail to appear and present the proposal, without good cause, the company will be permitted to exclude all of your proposals from its proxy materials for any meetings held in the following two calendar years.

(i) *Question 9:* If I have complied with the procedural requirements, on what other bases may a company rely to exclude my proposal? (1) Improper under state law: If the proposal is not a proper subject for action by shareholders under the laws of the jurisdiction of the company's organization;

N. **TE TO PARAGRAPH (i)(1):** Depending on the subject matter, some proposals are not considered proper under state law if they would be binding on the company if approved by shareholders. In our experience, most proposals that are cast as recommendations or requests that the board of directors take specified action are proper under state law. Accordingly, we will assume

that a proposal drafted as a recommendation or suggestion is proper unless the company demonstrates otherwise.

(2) *Violation of law*: If the proposal would, if implemented, cause the company to violate any state, federal, or foreign law to which it is subject;

NOTE TO PARAGRAPH (i)(2): We will not apply this basis for exclusion to permit exclusion of a proposal on grounds that it would violate foreign law if compliance with the foreign law would result in a violation of any state or federal law.

(3) *Violation of proxy rules*: If the proposal or supporting statement is contrary to any of the Commission's proxy rules, including §240.14a-9, which prohibits materially false or misleading statements in proxy soliciting materials;

(4) *Personal grievance; special interest*: If the proposal relates to the redress of a personal claim or grievance against the company or any other person, or if it is designed to result in a benefit to you, or to further a personal interest, which is not shared by the other shareholders at large;

(5) *Relevance*: If the proposal relates to operations which account for less than 5 percent of the company's total assets at the end of its most recent fiscal year, and for less than 5 percent of its net earnings and gross sales for its most recent fiscal year, and is not otherwise significantly related to the company's business;

(6) *Absence of power/authority*: If the company would lack the power or authority to implement the proposal;

(7) *Management functions*: If the proposal deals with a matter relating to the company's ordinary business operations;

(8) *Director elections*: If the proposal:

(i) Would disqualify a nominee who is standing for election;

(ii) Would remove a director from office before his or her term expired;

(iii) Questions the competence, business judgment, or character of one or more nominees or directors;

(iv) Seeks to include a specific individual in the company's proxy materials for election to the board of directors; or

(v) Otherwise could affect the outcome of the upcoming election of directors.

(9) *Conflicts with company's proposal*: If the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting;

NOTE TO PARAGRAPH (i)(9): A company's submission to the Commission under this section should specify the points of conflict with the company's proposal.

(10) *Substantially implemented*: If the company has already substantially implemented the proposal;

NOTE TO PARAGRAPH (i)(10): A company may exclude a shareholder proposal that would provide an advisory vote or seek future advisory votes to approve the compensation of executives as disclosed pursuant to Item 402 of Regulation S-K (§229.402 of this chapter) or any successor to Item 402 (a “say-on-pay vote”) or that relates to the frequency of say-on-pay votes, provided that in the most recent shareholder vote required by §240.14a-21(b) of this chapter a single year (*i.e.*, one, two, or three years) received approval of a majority of votes cast on the matter and the company has adopted a policy on the frequency of say-on-pay votes that is consistent with the choice of the majority of votes cast in the most recent shareholder vote required by §240.14a-21(b) of this chapter.

(11) *Duplication*: If the proposal substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting;

(12) *Resubmissions*. If the proposal addresses substantially the same subject matter as a proposal, or proposals, previously included in the company's proxy materials within the preceding five calendar years if the most recent vote occurred within the preceding three calendar years and the most recent vote was:

- (i) Less than 5 percent of the votes cast if previously voted on once;
- (ii) Less than 15 percent of the votes cast if previously voted on twice; or
- (iii) Less than 25 percent of the votes cast if previously voted on three or more times.

(13) *Specific amount of dividends*: If the proposal relates to specific amounts of cash or stock dividends.

(j) *Question 10*: What procedures must the company follow if it intends to exclude my proposal? (1) If the company intends to exclude a proposal from its proxy materials, it must file its reasons with the Commission no later than 80 calendar days before it files its definitive proxy statement and form of proxy with the Commission. The company must simultaneously provide you with a copy of its submission. The Commission staff may permit the company to make its submission later than 80 days before the company files its definitive proxy statement and form of proxy, if the company demonstrates good cause for missing the deadline.

(2) The company must file six paper copies of the following:

(i) The proposal;

(ii) An explanation of why the company believes that it may exclude the proposal, which should, if possible, refer to the most recent applicable authority, such as prior Division letters issued under the rule; and

(iii) A supporting opinion of counsel when such reasons are based on matters of state or foreign law.

(k) *Question 11:* May I submit my own statement to the Commission responding to the company's arguments?

Yes, you may submit a response, but it is not required. You should try to submit any response to us, with a copy to the company, as soon as possible after the company makes its submission. This way, the Commission staff will have time to consider fully your submission before it issues its response. You should submit six paper copies of your response.

(l) *Question 12:* If the company includes my shareholder proposal in its proxy materials, what information about me must it include along with the proposal itself?

(1) The company's proxy statement must include your name and address, as well as the number of the company's voting securities that you hold. However, instead of providing that information, the company may instead include a statement that it will provide the information to shareholders promptly upon receiving an oral or written request.

(2) The company is not responsible for the contents of your proposal or supporting statement.

(m) *Question 13:* What can I do if the company includes in its proxy statement reasons why it believes shareholders should not vote in favor of my proposal, and I disagree with some of its statements?

(1) The company may elect to include in its proxy statement reasons why it believes shareholders should vote against your proposal. The company is allowed to make arguments reflecting its own point of view, just as you may express your own point of view in your proposal's supporting statement.

(2) However, if you believe that the company's opposition to your proposal contains materially false or misleading statements that may violate our anti-fraud rule, §240.14a-9, you should promptly send to the Commission staff and the company a letter explaining the reasons for your view, along with a copy of the company's statements opposing your proposal. To the extent possible, your letter should include specific factual information demonstrating the inaccuracy of the company's claims. Time permitting, you may wish to try to work out your differences with the company by yourself before contacting the Commission staff.

(3) We require the company to send you a copy of its statements opposing your proposal before it sends its proxy materials, so that you may bring to our attention any materially false or misleading statements, under the following timeframes:

(i) If our no-action response requires that you make revisions to your proposal or supporting statement as a condition to requiring the company to include it in its proxy materials, then the company must provide you with a copy of its opposition statements no later than 5 calendar days after the company receives a copy of your revised proposal; or

(ii) In all other cases, the company must provide you with a copy of its opposition statements no later than 30 calendar days before its files definitive copies of its proxy statement and form of proxy under §240.14a-6.

[63 FR 29119, May 28, 1998; 63 FR 50622, 50623, Sept. 22, 1998, as amended at 72 FR 4168, Jan. 29, 2007; 72 FR 70456, Dec. 11, 2007; 73 FR 977, Jan. 4, 2008; 76 FR 6045, Feb. 2, 2011; 75 FR 56782, Sept. 16, 2010; 85 FR 70294, Nov. 4, 2020]

EFFECTIVE DATE NOTE: At 85 FR 70294, Nov. 4, 2020, §240.14a-8 was amended by adding paragraph (b) (3), effective Jan. 4, 2021 through Jan. 1, 2023.

[Need assistance?](#)

Opinion of Thompson Hine LLP

January 14, 2022

Eagle Bancorp, Inc.
c/o Paul Saltzman
EVP, Chief Legal Officer
7830 Old Georgetown Road
Bethesda, MD 20814

Re: Shareholder Proposal Submitted by Timothy D. Hamilton

Dear Mr. Saltzman:

You have requested our opinion as to certain matters of Maryland law in connection with your request that the staff of the Securities and Exchange Commission (the “Commission”) grant no-action relief to Eagle Bancorp, Inc., a Maryland corporation (“Eagle” or the “Company”), with respect to a stockholder proposal and a statement in support thereof (the “Proposal”) submitted by Timothy D. Hamilton (the “Proponent”), by a letter dated July 27, 2021. The proposal, in its entirety, is set forth below.

In connection with your request for our opinion, we have reviewed the following documents, all of which were supplied by the Company or were obtained from publicly available records: (i) the Articles of Incorporation of the Company, as amended through May 16, 2016 and recorded with the Maryland Department of Assessments and Taxation; (ii) the Bylaws of the Company, as amended through May 12, 2016; (iii) an earlier version of the Proponent’s Proposal dated June 29, 2021 which has since been revised; and (iv) the current Proposal, as revised, dated July 27, 2021.

With respect to the foregoing documents, we have assumed (i) the authenticity of all documents submitted to us as originals and the conformity with authentic originals of all documents submitted to us as copies or forms, and (ii) that the foregoing documents, in the forms submitted to us for our review, have not been and will not be altered or amended in any respect material to our opinions as expressed herein. For the purposes of rendering this opinion, we have conducted no independent factual investigation of our own, but have relied exclusively upon the documents listed above, the statements and information set forth therein and the additional matters related or assumed therein, all of which we have assumed to be true, complete and accurate in all material respects.

Ryan.Spiegel@ThompsonHine.com Fax: 202.331.8330 Phone: 202.973.2742

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c/o Paul Saltzman
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Based upon and subject to the foregoing, and upon such legal authorities as we have deemed relevant, and limited in all respects to matters of Maryland corporate law, for the reasons set forth below, it is our opinion that the Proposal is not a proper subject for action by the Company's shareholders under the laws of Maryland.

The Proposal

The Proposal, as revised by the Proponent via letter dated July 27, 2021, reads as follows in its entirety:

Shareholder proposal: June 29, 2021¹
Timothy D. Hamilton
957 Shares of Common Stock
Provenallegations.com

Shareholders immediately initiate a full and independent review of all investigations performed by the Bank since the publication of Aurelius regarding illegal and unethical activity. This review will analyze the results of all investigations, speak to all investigating agencies, and further investigate where previous investigations fall short. Results of the investigations, and the review, will be sent to all Regulatory agencies, all law enforcement agencies with jurisdiction, NASDAQ, and the Maryland Bar Association. This review will require our Board to immediately dismiss all individuals found to have committed illegal and unethical acts. Furthermore, this review will determine why the Board of Directors continues to fail at meeting its fiduciary responsibility regarding complying with Sarbanes Oxley and NASDAQ reporting requirements with regards to filing timely ethics policy violation waivers, continuing to employ and financially reward individuals who have committed unethical and illegal acts and those who have not fully cooperated with investigators. Additionally, the Board has failed to correct false and misleading public statements that claimed that all Aurelius Report allegations are "100 Percent false". Failure to correct this statement has been

¹ While the revised version of the Proposal was transmitted with a cover letter dated July 27, 2021, the text of the revised Proposal enclosed with that letter continued to reflect the date of June 29, 2021 as the date of the Proposal. The Proponent's stated purpose of the revision was to comply with a 500-word limit, though he stated that "additional materials will be available on the website: provenallegations.com...." See July 27, 2021 Letter. The same website is explicitly referenced in the revised Proposal text.

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misleading investors for years. The Board has also failed to enforce ethics clauses in employment agreements for both current and past members of Sr. Management.

- 1) Non-compliance with Sarbanes Oxley/NASDAQ listing requirements regarding ethics policy violation waivers. Waivers are required to be timely filed for any violation of our ethics policy. Board/Sr. Management have known for years that dozens of violations and illegal activity (ethics policy violations) have occurred. I can find no evidence of any filed waivers. Sarbanes Oxley 406(b)
- 2) Failure to disclose to Federal Investigators the details surrounding the bank sale (and loan with very questionable underwriting) of real estate the Bank owned to PIT, a trust set up for the benefit of former Chairman's children. The sale of property and loan were orchestrated by Jan Williams, EVP. This felony is known as self-dealing. (1833,1835,1875 Brightseat Road Landover, look it up). (Bethesda Leasing, LLC/bank owned). Two of these units have since been sold at a profit, which is nothing less than stealing from shareholders. See Provenallegations.com for details of this theft.
- 3) Determine which members of Sr. Management/Board, have been in contact with Investigators, and what they have and have not disclosed.
- 4) Review of retired executives financial packages to determine why they were paid out by our Board of Directors after they had violated their employment agreements.
- 5) Review of a Susan Riel transfer of PIT accounts ahead of investigations. (see below: Provenallegations.com). Obstructing any investigation is a violation of our ethics policy and also a violation of Susan's employment agreement.”

As a result of my employment at EGBN, I have firsthand knowledge of illegal and unethical activity that has not yet been disclosed....

Continued at: Provenallegations.com

The Proposal does not clearly distinguish between which parts constitute the actual proposal and which parts are meant as supporting statements. However, it seems clear that the Proposal imposes certain requirements on the Board of Directors of the Company, including but not limited to “requir[ing] our Board to immediately dismiss all individuals found to have committed

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illegal and unethical acts.” The previous iteration of the Proposal dated June 29, 2021 also stated that “[t]his proposal will also force the Board to cease from violating both Sarbanes Oxley and NASDAQ requirements regarding ethics policy violation waivers, and to correct false and misleading public statements.”

Discussion

Maryland Code, Corporations and Associations § 2-401, states in its entirety:

Function of directors.

(a) Management. — All business and affairs of a corporation, whether or not in the ordinary course, shall be managed by or under the direction of a board of directors.

(b) Power of board. — All powers of the corporation may be exercised by or under authority of the board of directors except as conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation.

Md. Code, Corp. & Ass’ns. § 2-401.

The principle that the directors, rather than the stockholders, manage the business and affairs of a Maryland corporation is a long-standing principle of Maryland law:

As a general rule, the business and affairs of a corporation are managed under the direction of its board of directors. Except to the extent that a transaction or decision must, by law or by virtue of the corporate charter, be approved by the shareholders, the directors, either directly or through the officers they appoint, exercise the powers of the corporation. *See* Maryland Code, § 2-401 of the Corporations and Associations Article. Shareholders are not ordinarily permitted to interfere in the management of the company; they are the owners of the company but not its managers.

Werbowsky v. Collomb, 362 Md. 581, 598-599, 766 A.2d 123, 133 (Md. 2001). *See also Sutton v. FedFirst Fin. Corp.*, 226 Md. App. 46, 74-75, 126 A.3d 765, 782 (Md. Ct. Spec. App. 2015) (“The board of directors of a corporation generally manages the business of the corporation.... Shareholders ordinarily are not permitted to interfere in the management of the company because they are owners of the company, not managers.”) (citing *Werbowsky*, 362 Md. at 598-99; *George*

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Wasserman & Janice Wasserman Goldsten Family LLC v. Kay, 197 Md. App. 586, 609, 14 A.3d 1193 (2011)).²

Accordingly, Maryland law makes clear, expressly both in statute and in case law, that management authority is broadly reserved for directors, and shareholders may not interfere with or usurp such authority. Section 2-401 provides the board of directors of a Maryland corporation, and not the stockholders, with the express statutory authority to manage *all* the business and affairs of the corporation. Indeed, in addition to using the term “all,” § 2-401(a) also uses the term “shall” – it is mandatory and not permissive. By contrast, shareholders may only exercise those powers “conferred on or reserved to the stockholders by law or by the charter or bylaws of the corporation.” *Id.* § 2-401(b). In the absence of any express provision in a corporation’s charter, articles of incorporation, or bylaws, or as otherwise explicit in statute, management of a company is the exclusive domain of the Board.³

Consistent with this statutory delegation of authority, the Company’s Bylaws provide that “[t]he business and affairs of the Corporation shall be under the direction of its Board of Directors. In addition to other powers specifically set out in these Bylaws or that apply under the General Laws of the State of Maryland, the Board of Directors and any committees thereof shall have the power to manage and administer the affairs of the Corporation and to do and perform all lawful acts with respect to the affairs of the Corporation except those that may be specifically reserved to the shareholders under the General Laws of the State of Maryland.” Bylaws, Art. III Sec. 1. Nothing in the Articles of Incorporation or Bylaws reserves to the Company’s

² While this Opinion is limited to Maryland law, it is worth noting that this analysis parallels the statutory and common law of Delaware. *Cf.* Del. Gen. Corp. Law § 141(a); *Aronson v. Lewis*, 473 A.2d 805, 811 (Del. 1984), *overruled on other grounds by Brehm v. Eisner*, 746 A.2d 244 (Del. 2000); *Quickturn Design Sys., Inc. v. Shapiro*, 721 A.2d 1281, 1291 (Del. 1998); *Abercrombie v. Davies*, 123 A.2d 893 (Del. Ch. 1956), *rev’d on other grounds*, 130 A.2d 338 (Del. 1957). Maryland’s highest court “has noted the ‘respect properly accorded Delaware decisions on corporate law’ ordinarily in our jurisprudence.” *Sutton*, 226 Md. App. 46, 71 n.12, 126 A.3d 765, 780 n.12 (quoting *Shenker v. Laureate Educ., Inc.*, 411 Md. 317, 338 n.14, 983 A.2d 408 (2009), in turn quoting *Werbowsky*, 362 Md. at 618). It is our understanding that the SEC Staff has consistently agreed that corporations may exclude shareholder proposals under Rule 14a-8(i) in similar circumstances applying Delaware law. *See, e.g., The Goldman Sachs Group, Inc.* (Feb. 7, 2013); *IEC Electronics Corp.* (Oct. 31, 2012); *Bank of America Corp.* (Feb. 16, 2011); *Archer-Daniels-Midland Co.* (Aug. 18, 2010); *Bank of America Corp.* (Feb. 24, 2010); *The Boeing Co.* (Jan. 29, 2010).

³ Special statutory provisions regarding the sale or change of control of a corporation, or other enumerated circumstances requiring shareholder approval, whether in statute or in the Articles or Bylaws of the Company, do not apply here because the Proposal does not involve them. They are therefore not addressed in this Opinion, nor is any common law duty specific to such circumstances.

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shareholders any of the management authority that is implicated by the issues raised in the Proposal.⁴ Thus, the Board possesses the full power and authority to manage the business and affairs of the Company under Section 2-401, and the shareholders cannot require the directors to make decisions on matters with respect to which authority is specifically conferred on the directors by statute, articles of incorporation (i.e., charter), or bylaws.

Among other things, the Proposal *requires* the Board of Directors of the Company to take certain actions, including “requir[ing] our Board to immediately dismiss all individuals found to have committed illegal and unethical acts.” The Proposal does not make recommendations or requests for the Board to take action but rather demands. Furthermore, the Proposal seeks to have shareholders take control of management activities and decisions that are the exclusive purview of the Board under Maryland law, namely the review of prior investigations, the undertaking of further investigations, and the transmission of results to various third parties.

Notably, “any exercise of the corporate power to institute litigation and the control of any litigation to which the corporation becomes a party rests with the directors or, by delegation, the officers they appoint.” *Werbowsky*, 362 Md. at 599, 766 A.2d at 133. In the case of the subject matter of the Proposal, several litigation proceedings are either already underway or resolved with the Board managing the Company’s involvement as a party, including but not limited to Mr. Hamilton’s own pending OSHA complaint proceeding against the Company and the Shareholder Demand Proceeding wherein Final Settlement was approved by the District of Columbia Superior Court. The Proposal would divert control of such litigation and attendant activities, such as investigations, away from the Board, in contravention of Maryland law.⁵

Thus, the Proposal runs afoul of the Section 2-401, both because it requires the Board to take certain action, overriding the discretion and judgment of the Board as to matters that are squarely within their managerial control, and because it attempts to displace the Board and usurp management authority over the Company by shareholders acting on their own. Each of these is independently an improper subject for action by the Company’s shareholders under the laws of Maryland, due to improper shareholder efforts to exercise management authority that is expressly reserved to the Board by Maryland statute and by the Company’s Bylaws.

⁴ To be sure, the Bylaws provide *procedures* for bringing shareholder proposals, *see* Bylaws Art. II Sec. 15, but this Opinion addresses what is *substantively* a permissible proposal under Maryland law.

⁵ In light of this, the Proposal cannot be cured simply by recasting those portions of the Proposal that make demands of the Board as recommendations or requests, because the Proposal still impedes improperly upon the Board’s exclusive purview by placing shareholders in charge of reviews and investigations.

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Additionally, Maryland law sets forth the fiduciary obligations of Directors. Maryland Code, Corporations and Associations § 2-405.1, requires a director of a corporation to act (1) in good faith; (2) in a manner the director reasonably believes to be in the best interests of the corporation; and (3) with the care that an ordinarily prudent person in a like position would use under similar circumstances. Md. Code, Corp. & Ass'ns. § 2-405.1(c). Importantly, the statute goes on to make clear that “[a]n act of a director of a corporation is *presumed* to be in accordance with subsection (c) of this section,” *id.* § 2-405.1(g) (emphasis added), and that § 2-405.1 “(1) [i]s the sole source of duties of a director to the corporation or the stockholders of the corporation, ... and (2) [a]pplies to any act of a director, including an act as a member of a committee of the board of directors.” *Id.* § 2-405.1(i). Maryland courts have explained that this statute codifies the Business Judgment Rule. *NAACP v. Golding*, 342 Md. 663, 673, 679 A.2d 554, 559 (Md. 1996).

In other words, “directors are required to perform their duties in good faith, in a manner they reasonably believe to be in the best interest of the corporation, and with the care that an ordinarily prudent person in a like position would use under similar circumstances.” *Werbowksy*, 362 Md. at 599, 766 A.2d at 133 (citing § 2-405.1). Directors “are subject to the fiduciary duties set forth in Md. Code (2014 Repl. Vol.) § 2-405.1 of the Corporations and Associations Article (‘CA’). CA § 2-405.1(a) provides that directors must perform their duties in good faith in a manner that he or she reasonably believes to be in the best interests of the corporation, and ‘[w]ith the care that an ordinarily prudent person in a like position would use under similar circumstances.’ These duties, however, are ‘to the corporation and not, at least directly, to the shareholders.’” *Sutton*, 226 Md. App. at 75, 126 A.3d at 782 (quoting *Werbowksy*, 362 Md. at 599). And shareholders cannot take action to displace or alter the nature of a director’s fiduciary duties, because the law makes clear that § 2-405.1 “ [i]s the sole source of duties of a director to the corporation or the stockholders of the corporation.” *Id.* § 2-405.1(i)(1).

Accordingly, a shareholder proposal that encroaches upon the ability of directors to make decisions on matters of management policy by limiting directors’ business judgment and discretion would be improper under Maryland law, because it would prevent directors from being able to exercise their fiduciary duty over management decisions in compliance with § 2-405.1. Thus, shareholder actions that would preclude directors from fully discharging their fiduciary duties are precluded by §§ 2-401 and 2-405.1, and would therefore be improper under Maryland law.

Here, the subject matter of the Proposal is an area committed to the business judgment of the Board by statute and case law, to the exclusion of the shareholders, and there is nothing in the

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Articles of Incorporation or Bylaws to alter that. The Proposal would improperly encroach upon the Board's duties to the Company as established by § 2-405.1, because it would require the Board to take certain actions. Furthermore, by placing certain reviews and investigations under the direct control of shareholders, it would prevent Directors from being able to make management decisions regarding the business and affairs of the Company in compliance with the duties imposed by § 2-405.1(c).

In conclusion, it is our opinion that the Proposal is an improper attempt by shareholders to exercise management authority that is expressly reserved to the Board by the Maryland Code and the Company's Bylaws, and it interferes with the discharge of the Board's fiduciary obligations.

This opinion is rendered solely for your benefit in connection with the foregoing and may not be relied upon by any other person or entity or be furnished or quoted to any person or entity for any purpose, without our prior written consent; provided that this opinion may be furnished to or filed with the Commission in connection with your no-action request relating to the Proposal.

Sincerely,



Ryan S. Spiegel

Thompson Hine LLP

U.S Securities and Exchange Commission
Division of Corporate Finance
Office of Chief Counsel
100 F Street, N.E.
Washington, DC 20549

January 27, 2022

Re: Shareholder Proposal for EagleBank (EGBN).

In response to Eaglebank's decision to not include my shareholder proposal in their proxy statement, I submit the following:

- 1) Page four of the letter to the SEC states that during two interviews with the Bank's attorneys, I did not discuss or allege any violation of law or regulations. This is completely false, I was questioned twice by the Bank's attorneys about the Aurelius Report. In fact, Courtney Brown of Gibson Dunn asked me "do you think he did it" , referring to Ron Paul.
- 2) They cite settlement of derivative suit and the class action as reasoning not to publish my proposal. These two suits are evidence that my claims are not my personal gripes, but the gripes of other shareholders.
- 3) Interesting that they use the derivative and class action suits as a reason not to allow my proposal. These suits was settled, however, the defendants in both cases told the court and shareholders that they have never done anything wrong. (see attached). Ask Emily Shea, the SEC attorney in charge of your investigation. Ask Ms. Shea about the Brightseat Road transaction, where the bank sold property it owned to a trust set up for the benefit of the then Chairman's children. When I spoke with Ms. Shea in May 2020, she was not aware of this transaction. The SEC had been investigating the bank for quite sometime by then, but no one interviewed prior to this offered up this example of self dealing? This non disclosure is a direct violation of the bank's ethics policy. The Bank's attorney's questioned me extensively about this transaction in December 2017.
- 4) Ask Ms. Shea about the Wells notice issued to the CFO of the Bank. The CFO who told two courts of law recently that he did nothing wrong.
- 5) The Bank has repeatedly issued false and misleading public statements, including Susan Riel stating in the Washington Business Journal on July 21, 2021, "The Board's top priority is, as it always has been, to act in the best interest of the company and the company's stockholders" . Ask Mr. Emily Shea if this is a truthful statement.
- 6) Prior chief legal counsel, Larry Bensignor, recently entered into an agreement with the Board of Governors of the Federal Reserve System to cooperate and provide substantial assistance to the Board of Governors, including testimony, evidence, etc. in connection with their investigations into the company. In this agreement, the Board of Governors states that Mr. Bensignor engaged in unsafe and unsound banking practices. Mr. Bensignor told the NY Superior Court that he did nothing wrong.

- 7) I was interviewed by the FBI and an Assistant US Attorney on December 23, 2021 regarding additional illegal and unethical activity perpetrated by the defendants in the class action suit. I was asked not to share information regarding their investigation. The illegal activity is not activity previously disclosed by me or the Aurelius report. I will provide contact information to the SEC of the investigators if requested.
- 8) They have lied to shareholders, lied in public statements, nothing they say in their letter to the SEC should be believed.
- 9) At the request of the SEC, I am happy to provide my entire OSHA complaint, which will likely shed a different view of events as those put forth by EagleBank.
- 10) They have so far avoided shareholder scrutiny by settling both the previous derivative suit and now the class action suit. Shareholder proposals are an important tool for shareholders for instances such as this where shareholders have been lied to regarding illegal and unethical activity.
- 11) They say that this is one of my at least six attempts to accuse the Company of illegal activity and wrongdoing (the SEC knows of their illegal activity and wrongdoing) –all part of my transparent effort to extract retribution for my termination. If I was interested in personal retribution I would have gone to the local DC press long ago with my evidence. Perhaps it is actually the case that I am a shareholder in a public company, where I know that illegal and unethical behavior has occurred, which has been lied about and covered up for several years, all to the detriment of shareholders.

As I did not have much time for this response, I am available to interview with the SEC at your convenience to further discuss this matter, and I am looking forward to your input.

Shareholders deserve to know the truth.

Tim Hamilton


PII



CLASS ACTION

Plaintiffs and the other members of the Settlement Class will receive under the proposed Settlement; and (b) the significant risks and costs of continued litigation and trial.

20. On January 21, 2020, lead plaintiff Anthony Cassinelli, as Trustee of the Danilee Cassinelli Trust DTD 7-23-93 and Norfolk filed and served their Amended Class Action Complaint for Violations of the Federal Securities Laws (the "Complaint") asserting claims against all Defendants under Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") and Rule 10b-5 promulgated thereunder, and against the Individual Defendants under Section 20(a) of the Exchange Act. Among other things, the Complaint alleged that Defendants made materially false and misleading statements and/or omissions about: (a) Eagle's related-party loan figures for fiscal years 2014 through 2017; (b) the terms of Eagle's related-party loans and their approval process; (c) Defendants' attestations as to the effectiveness of Eagle's internal controls and SOX Certifications; and (d) Defendants' denials of a report issued by Marcus Aurelius Value that was critical of Eagle and claimed that Eagle materially underreported its related-party loan figures. The Complaint further alleged that the prices of Eagle publicly-traded securities were artificially inflated as a result of Defendants' allegedly false and misleading statements and/or omissions, and declined when the purported truth was revealed.

 21. Defendants are entering into the Stipulation solely to eliminate the uncertainty, burden and expense of further protracted litigation. Each of the Defendants denies any wrongdoing, and the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any of the Defendants, or any other of the Defendants' Releasees (defined in ¶33 below), with respect to any claim or allegation of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendants have, or could have, asserted. Similarly, the Stipulation shall in no event be construed or deemed to be evidence of or an admission or concession on the part of any Plaintiff of any infirmity in any of the claims asserted in the Action, or an admission or concession that any of the Defendants' defenses to liability had any merit.

22. On August 16, 2021, the Court preliminarily approved the Settlement, authorized this Notice to be disseminated to potential Settlement Class Members, and scheduled the Settlement Hearing to consider whether to grant final approval to the Settlement.

<p style="text-align: center;">HOW DO I KNOW IF I AM AFFECTED BY THE SETTLEMENT? WHO IS INCLUDED IN THE SETTLEMENT CLASS?</p>
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23. If you are a member of the Settlement Class, you are subject to the Settlement, unless you timely request to be excluded. The Settlement Class consists of:

all persons and entities who or which purchased or otherwise acquired Eagle Common Stock and/or Eagle Call Options, and/or wrote Eagle Put Options between March 2, 2015 and July 17, 2019, inclusive (the "Settlement Class Period"), and were damaged thereby.⁴

Excluded from the Settlement Class are: (1) persons who suffered no compensable losses; and (2) (a) Defendants; (b) the legal representatives, heirs, successors, assigns, and members of the Immediate Families of the Individual Defendants; (c) the parents, subsidiaries, assigns, successors,


⁴ Exchange-traded options are traded in units called "contracts," which entitle the holder to buy (in the case of a call) or sell (in the case of a put) 100 shares of the underlying security, which in this case is Eagle Common Stock.

Derivative

whistleblower program. Based upon these reforms (implementation of which has in some cases already occurred or begun) as well as Stockholder's Counsel's evaluation, the Stockholder has determined that the Settlement is in the best interests of Eagle Bancorp and its stockholders, and has agreed to settle the Derivative Action upon the terms and subject to the conditions set forth herein.

III. DEFENDANTS' DENIAL OF LIABILITY

The Defendants are entering into this Settlement solely to eliminate the uncertainty, distraction, disruption, burden, risk, and expense of further litigation. Pursuant to the terms set forth below, this Stipulation (including all of the exhibits hereto) shall in no event be construed as, or deemed to be evidence of, an admission or concession by the Individual Defendants or Eagle Bancorp with respect to any claim of fault, liability, wrongdoing, or damage whatsoever.

 The Individual Defendants have denied, and continue to deny, any and all allegations of wrongdoing or liability asserted against them in the Demand or the Derivative Action. Without limiting the foregoing, the Individual Defendants have denied, and continue to deny, among other things, the following: that they breached their fiduciary duties or any other duty owed to Eagle Bancorp or Eagle Bancorp's stockholders; that they committed or engaged in any violation of law or wrongdoing whatsoever; or that the Stockholder, Eagle Bancorp, or Eagle Bancorp's stockholders suffered any damage or were harmed as a result of any act, omission, or conduct by the Individual Defendants alleged in the Demand, the Derivative Action, or otherwise. The Individual Defendants have further asserted, and continue to assert, that at all relevant times, they acted in good faith and in a manner that they reasonably believed to be in the best interests of Eagle Bancorp and Eagle Bancorp's stockholders. (While derivative claims, as here, can allege wrongdoing as against individual defendants but not nominal defendants, for the avoidance of

UNITED STATES OF AMERICA
BEFORE THE
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D.C.

In the Matter of

LAURENCE E. BENSIGNOR,

A former institution-affiliated party of Eagle Bancorp, Inc., and EagleBank, Bethesda, Maryland, a state-member bank.

Docket No. 21-025-B-I
21-025-E-I

Order of Prohibition Issued Upon Consent Pursuant to Sections 8(b) and 8(e) of the Federal Deposit Insurance Act, as Amended

WHEREAS, the Board of Governors of the Federal Reserve System (the "Board of Governors"), pursuant to sections 8(b)(1) and 8(e) of the Federal Deposit Insurance Act, as amended (the "FDI Act"), 12 U.S.C. §§ 1818(b)(1) and 1818(e), issues this Order of Prohibition (this "Order") upon the consent of Respondent Laurence E. Bensignor ("Bensignor"), a former institution-affiliated party, as defined in sections 3(u) and 8(b)(3) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b)(3), of Eagle Bancorp, Inc. (the "Company") and EagleBank (the "Bank"), a state-member bank;

WHEREAS, Bensignor was employed by the Company and Bank from April 2010 to March 2018, and served as Executive Vice President and General Counsel of the Company and Bank from February 2012 to March 2018;

WHEREAS, Bensignor, while serving as a senior executive of the Bank, engaged in unsafe and unsound banking practices by failing to ensure that he disclosed, in accordance with the Bank's Code of Conduct and policies relevant to insider lending, certain information regarding the participation of various parties in certain transactions of the Bank;

WHEREAS, Bensignor is retired and no longer involved in the banking industry; and

WHEREAS, by affixing his signature hereunder, Besignor has consented to the issuance of this Order by the Board of Governors and has agreed to comply with each and every provision of this Order, and has waived any and all rights he might have pursuant to 12 U.S.C. § 1818, 12 C.F.R. Part 263, or otherwise: (a) to the issuance of a notice of intent to prohibit on any other matter implied or set forth in this Order; (b) to a hearing for the purpose of taking evidence with respect to any matter implied or set forth in this Order; (c) to obtain judicial review of this Order or any provision hereof; and (d) to challenge or contest in any manner the basis, issuance, terms, validity, effectiveness, or enforceability of this Order or any provision hereof.

NOW THEREFORE, before the filing of any notices, or the taking of any testimony or adjudication of or finding on any issue of fact or law herein, and without Besignor's admitting or denying any allegation made or implied by the Board of Governors in connection herewith, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted litigation or extended litigation,

IT IS HEREBY ORDERED that:

1. Besignor, without the prior written approval of the Board of Governors and, where necessary pursuant to section 8(e)(7)(B) of the FDI Act, 12 U.S.C. § 1818(e)(7)(B), another federal financial institutions regulatory agency, is hereby and henceforth prohibited from:

- a. participating in any manner in the conduct of the affairs of any institution or agency specified in Section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A), including, but not limited to, any insured depository institution or any holding company of an insured depository institution, or any subsidiary of such holding company, or any foreign bank or company

to which subsection (a) of 12 U.S.C. § 3106 applies and any subsidiary of such foreign bank or company;

- b. soliciting, procuring, transferring, attempting to transfer, voting or attempting to vote any proxy, consent, or authorization with respect to any voting rights in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A);
- c. violating any voting agreement previously approved by any federal banking agency; or
- d. voting for a director, or serving or acting as an institution-affiliated party, as defined in sections 3(u) and 8(b)(3) of the FDI Act, 12 U.S.C. §§ 1813(u) and 1818(b)(3), such as an officer, director or employee, in any institution described in section 8(e)(7)(A) of the FDI Act, 12 U.S.C. § 1818(e)(7)(A).

2. Besignor shall fully cooperate with and provide substantial assistance to the Board of Governors, including but not limited to the provision of information, testimony, documents, records, and other tangible evidence, in connection with any investigations of the Company, Bank, or other individuals who are or were institution-affiliated parties of the Company or Bank with respect to any matters relating to this Order or the related investigation.

3. All communications regarding this Order shall be addressed to:

- a. Richard M. Ashton, Esq.
Deputy General Counsel
David Williams, Esq.
Associate General Counsel
Board of Governors of the Federal Reserve System
20th & C Streets, N.W.
Washington, DC 20551

b. Laurence E. Bensignor
Attn: D. Jean Veta
Covington & Burling, LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001-4956

4. Any violation of this Order shall separately subject Bensignor to appropriate civil or criminal penalties, or both, under sections 8(i) and (j) of the FDI Act, 12 U.S.C. §§ 1818(i) and (j).

5. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, or any other Federal or state agency or department, from taking any other action affecting Bensignor; provided, however, that the Board of Governors shall not take any further action against Bensignor on any matters concerning or arising from the matters addressed by this Order based upon facts presently known by the Board of Governors. This release and discharge shall not preclude or affect (i) any right of the Board of Governors to determine and ensure compliance with this Order, or (ii) any proceedings brought by the Board of Governors to enforce the terms of this Order.

6. Each provision of this Order shall remain fully effective and enforceable until expressly stayed, modified, terminated, or suspended in writing by the Board of Governors.

By order of the Board of Governors of the Federal Reserve System, effective this 8th day
of November 2021.

BOARD OF GOVERNORS OF THE
FEDERAL RESERVE SYSTEM

/s/ Laurence E. Bensignor
Laurence E. Bensignor

By: /s/ Ann E. Misback
Ann E. Misback
Secretary of the Board