



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

DIVISION OF  
CORPORATION FINANCE

September 9, 2016

Frederic Dorwart, Esq.  
Frederic Dorwart, Lawyers  
Old City Hall  
124 East Fourth Street  
Tulsa, Oklahoma 74103

Re: In the Matter of BOKF, NA  
**BOK Financial Corporation – Waiver Request of Ineligible Issuer Status under  
Rule 405 of the Securities Act**

Dear Mr. Dorwart:

This is in response to your letter dated August 22, 2016, written on behalf of BOK Financial Corporation (“Company”) and constituting an application for relief from the Company being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). The Company requests relief from being considered an “ineligible issuer” under Rule 405, due to the entry on September 9, 2016, of a Commission Order (“Order”) pursuant to Section 8A of the Securities Act and Section 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against BOKF, NA (“BOKF”). The Order requires that, among other things, BOKF cease and desist from committing or causing any violations and any future violations of Section 17(a) of the Securities Act and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

Based on the facts and representations in your letter, and assuming BOKF complies with the Order, the Commission, pursuant to delegated authority, has determined that the Company has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that the Company will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

Sincerely,

/s/

Tim Henseler  
Chief, Office of Enforcement Liaison  
Division of Corporation Finance

**FREDERIC DORWART**

LAWYERS

OLD CITY HALL

124 EAST FOURTH STREET

TULSA, OKLAHOMA 74103-5010

Main (918) 583-9922

Facsimile (918) 583-8251

August 22, 2016

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

*Re: In the Matter of BOKF, NA*

Dear Mr. Henseler:

This letter is submitted on behalf of BOK Financial Corporation ("BOK Financial") in connection with the proposed settlement of the above-referenced matter by the Securities and Exchange Commission (the "Commission" or "SEC") with BOKF, NA ("BOKF NA") in connection with BOKF NA's role as indenture trustee for a series of fraudulent bond offerings involving Christopher Brogdon ("Brogdon"). BOKF NA is a bank organized under the National Bank Act and a subsidiary of BOK Financial. The proposed settlement will result in the entry of an administrative cease-and-desist order against BOKF NA (the "Order"), which is described below.

Pursuant to Rule 405 promulgated under the Securities Act of 1933 (the "Securities Act"), BOK Financial hereby requests that the Commission or the Division of Corporation Finance pursuant to delegated authority, determine that for good cause shown it is not necessary under the circumstances for BOK Financial to be considered an "ineligible issuer" under Rule 405. BOK Financial requests that this determination be effective upon the entry of the Order.

**BACKGROUND**

BOKF NA is consenting to the entry of the Order by the Commission. The Order will, when entered, find that BOKF NA caused violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, prohibiting fraudulent conduct in the offer or sale of securities and in connection with the purchase or sale of securities.

In the United States District Court for the District of New Jersey, the Division of Enforcement previously obtained the entry of an Order to Show Cause, Temporary Restraining Order and Order Freezing Assets and Granting Other Relief against Brogdon in *SEC v. Christopher Freeman Brogdon, et al* 15 Civ.8173 (KM)(D.N.J.) filed November 20, 2015 (the "Brogdon Action"). The Brogdon Action concerned, in relevant part, approximately 38 separate bond offerings for which BOKF NA served as

indenture trustee. In those offerings, Brogdon routinely drew down on debt service reserves without replenishing them, failed to file annual financial statements, and failed to make timely debt service payments, all without making required disclosures to bondholders. As a result of this and other conduct the Division of Enforcement alleged that Brogdon made material misrepresentations to investors about his compliance with SEC disclosure requirements and engaged in a scheme to defraud investors regarding the financial viability of the projects underlying the various bond offerings. On December 28, 2015, following a hearing and settlement with the Commission, the Court entered a judgment against Brogdon containing permanent injunctive relief and certain other relief. The BOKF NA Order will find that, although a former employee and senior vice president (the "Employee") and others in BOKF's Corporate Trust Department, knew BOKF, NA was required to make such disclosures it did not. The Order will further find that the Employee knew and told others in the Department that such disclosures and notifications could impair the closings of future offerings, raise red flags with bondholders, and cause regulatory problems for Brogdon's underwriters and that the Employee facilitated BOKF's continued work as trustee for new offerings involving Brogdon and his facilities. The Order will conclude that BOKF NA caused Brogdon's primary antifraud violations by ignoring its own contractual disclosure and notification obligations regarding these issues.

Solely for the purpose of settling these proceedings, BOKF NA consented to the Order, and does not admit or deny the findings therein, except as to the Commission's jurisdiction over it and the subject matter of the proceedings. The BOKF NA Order will require BOKF NA to cease and desist from committing or causing any future violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. In addition, the Order will require BOKF NA to pay \$984,200.73 in disgorgement, pre-judgment interest of \$83,520.63, and a civil money penalty of \$600,000 to the Securities and Exchange Commission.

## DISCUSSION

In 2005, the Commission revised the registration, communications, and offering processes under the Securities Act.<sup>1</sup> As part of this offering reform, the Commission revised Securities Act Rule 405, creating a new category of issuer, the "well-known seasoned issuer" (or "WKSI"), and a new category of offering communication, the "free writing prospectus." A well-known seasoned issuer is eligible for important reforms that have changed the way corporate finance transactions for larger issuers are planned and structured. These reforms include the ability to "file-and-go" (i.e., eligibility for automatically effective shelf registration statements) and "pay-as-you-go" (i.e., the ability to pay filing fees as the issuer sells securities off the shelf). In addition, well-known seasoned issuers are provided with greater flexibility in terms of communications, including the ability to use free writing prospectuses in advance of

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<sup>1</sup> See Securities Act Rules 164(e), 405 & 433, 17 C.F.R. §§ 230.164(e), 230.405 & 230.433.

filing a registration statement.

The Commission also created another category of issuer under Rule 405, the "ineligible issuer." An ineligible issuer is excluded from the category of "well-known seasoned issuer" and is ineligible to make communications by way of free writing prospectuses, except in limited circumstances. As a result, an ineligible issuer that would otherwise be a well-known seasoned issuer does not have access to file-and-go or pay-as-you-go, and cannot use certain types of free writing prospectuses.

Securities Act Rule 405 authorizes the Commission to determine, "upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer."<sup>2</sup> BOK Financial understands that the entry of the Order against BOKF NA, which is a subsidiary of BOK Financial, would make BOK Financial an ineligible issuer under Rule 405. As a result, BOK Financial would not be able to qualify as a well-known seasoned issuer, and, therefore, would not have access to file-and-go and other reforms available to well-known seasoned issuers.

### **REASONS FOR GRANTING A WAIVER**

Consistent with the framework outlined in the Division of Corporation Finance's Revised Statement on Well-Known Seasoned Issuer Waivers issued on April 24, 2014, BOK Financial respectfully requests that the Commission determine that it is not necessary for BOK Financial to be considered an ineligible issuer as a result of the Order. Applying the ineligibility provisions to BOK Financial would be disproportionately and unduly severe, for the reasons described below.

#### **1. Nature of Violation: Responsibility for and Duration of the Violations Described in the Order**

The conduct described in the BOKF NA Order involves disclosure failures between 2007 and 2015 in a single office of the Corporate Trust Department of BOKF NA. The failures were orchestrated, as the Order describes, by the Employee. Following the receipt of a bondholder complaint on June 24, 2015 alleging that BOKF NA had colluded with a borrower in misusing revenues pledged to the bonds, BOKF NA conducted an investigation. On July 9, 2015, BOKF NA terminated the Employee for violations of company policies and procedures and promptly reported the circumstances to the Enforcement Division of the Commission. The violations addressed in the Order do not pertain to activities undertaken by BOK Financial in connection with BOK Financial's role as an issuer of securities (or any disclosure related thereto) or otherwise involve fraud in connection with BOK Financial's offerings of its own securities.

No conduct by BOK Financial and no conduct with respect to BOK Financial's financial reporting and SEC filings is implicated. Rather, the conduct occurred in a

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<sup>2</sup> Securities Act Rule 405, 17 C.F.R. 230.405.

single office of the Corporate Trust Department of BOK Financial's banking subsidiary, without involvement by BOK Financial. No employees of BOK Financial are named in the Order, and no directors or executive management of BOK Financial engaged in any misconduct or were aware of violative conduct or ignored any warning signs or "red flags" regarding the conduct. The conduct described in the Order does not call into question the reliability of BOK Financial's financial reporting and SEC filings.

In addition, as noted above, BOKF NA terminated the individual responsible for facilitating the Brogdon violations, reported the activities to the Division of Enforcement, and, following such reporting, has actively facilitated the Division's investigation and cooperated with the Division's prosecution of the Brogdon Action which resulted in both the entry of a temporary restraining order by the Court and a judgment against Brogdon by the end of 2015.

BOK Financial believes that the conduct described in the Order does not call into question the reliability of BOK Financial's current and future disclosures as an issuer of securities because none of such conduct is related in any way to any of BOK Financial's current or future disclosures as an issuer of securities. BOK Financial believes its disclosure controls and procedures as an issuer and its filings with the Commission are effective.

## **2. Remedial Steps**

As specifically acknowledged and detailed in the Order, BOKF NA has taken appropriate steps to prevent the conduct described in the Order from recurring. BOKF began implementing all of these steps without the Commission's involvement, and it will verify the completion of these measures with the Commission as set forth in the Order. BOKF NA has undertaken to:

- Implement additional policies and procedures regarding the acceptance of new unrated conduit municipal financing business, including: (i) review and approval of the engagement by senior Corporate Trust Department management, risk, legal, and compliance; and (ii) review of appropriate negative news searches on the proposed borrowers, obligated persons, and underwriters;
- Enhance the tickler system used by the Corporate Trust Department for unrated conduit municipal financings by providing a set of mandatory ticklers including, at least, ticklers for the receipt of required annual financial information, the receipt of payments to replenish a debt service reserve fund that has been drawn down, and appropriate disclosure filings or other bondholder notifications if such information or payments are not received;
- Implement automated reporting on debt service reserve fund balances for all Corporate Trust Department accounts, such that

senior Corporate Trust Department management, risk, legal, and compliance may run global or concentration reports on debt service reserve funds that have been drawn down or are otherwise below their required levels;

- Enhance segregation of duties and supervisory committee review created by the Corporate Trust Department for unrated conduit municipal financings to include review of all outstanding and past-due ticklers, with a particular focus on high risk ticklers and the mandatory ticklers described above;
- Provide training to all Corporate Trust Department employees regarding relevant corporate trust administration subjects, including: (i) review of trust indentures and continuing disclosure agreements, and the corresponding duties and obligations of each transaction participant (including BOKF NA) under those documents; (ii) making required or appropriate disclosure filings or other bondholder notifications; (iii) use of the tickler system and other monitoring systems in order to ensure compliance items are appropriately cataloged; (iv) participation in the supervisory committee review process and other supervisory review processes, to ensure that compliance issues and other red flags are escalated for review; and (v) the Corporate Trust Department's whistleblower policies and the procedure by which to report complaints.

In connection with the Commission's Municipalities Continuing Disclosure Cooperation ("MCDC") initiative, the Commission granted BOK Financial a waiver pursuant to Rule 405. *In the Matter of BOSC, Inc.* (File No. 3-16611) (June 18, 2015). The conduct alleged in connection with the the Commission's MCDC initiative was wholly different from the conduct alleged in the Order and did not relate to BOK Financial's conduct as an issuer of securities or call into question the reliability of BOK Financial's current and future financial reporting and SEC filings.

Taking into account the nature of the conduct and the remediation steps which have been described above, BOK Financial does not believe that the conduct described in the Order calls into question the reliability of BOK Financial's current and future financial reporting and SEC filings.

### **3. Impact on the Issuer.**

The loss of BOK Financial's status as an eligible issuer could, as described in more detail below, have a significant impact on BOK Financial's ability to raise capital and conduct its operations, which in turn, could potentially harm investors and the market as a whole. This would be an unduly severe consequence, particularly in light of the fact that the conduct at issue in the Order involves a single office of the Corporate Trust Department of its subsidiary and not BOK Financial itself.

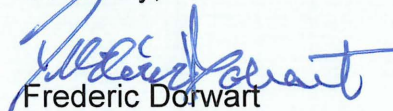
BOK Financial has availed itself of its well-known seasoned issuer status to offer securities under an automatic shelf registration statement. For BOK Financial, the automatic shelf registration process provides an important means of access to the United States capital markets to fund operations. Losing its status as a well-known seasoned issuer would subject BOK Financial to communication and registration burdens, limiting BOK Financial's flexibility and ability to access the capital markets when market conditions are most advantageous. All of these consequences would impose additional administrative burdens and costs on BOK Financial.

On June 20, 2016, BOK Financial used an automatic shelf registration statement to effect the issuance of \$150 million in subordinated debt securities to maintain Tier 2 capital levels required by its primary regulator. While BOK Financial has not historically been a frequent issuer, it is important for BOK Financial to maintain the automatic shelf registration privileges of Rule 405 to be able to meet future regulatory, capital, funding and business requirements should they arise.

In light of these considerations, subjecting BOK Financial to ineligible issuer status is not necessary under the circumstances, either in the public interest or for the protection of investors, and good cause exists to determine that BOK Financial should not be considered an ineligible issuer under Rule 405 as a result of the Order. We respectfully request the Commission or the Division of Corporation Finance pursuant to delegated authority make that determination.

Please contact me at (918) 583 9922 if you have any questions regarding this request.

Sincerely,



Frederic Dorwart