

**To: Legend Bank, N.A. (Primevest) (the Custodian), Beneficiaries and Other Interested Persons with respect to the Individual Retirement Account (the IRA) established for and maintained by C. Todd Brown (the Applicant).**

## **NOTICE TO INTERESTED PERSONS**

### **CONCERNING EXPRO APPLICATION E-00713**

You are hereby notified that a written submission has been filed on behalf of the IRA and the Applicant with the United States Department of Labor (the Department) seeking authorization pursuant to Prohibited Transaction Class Exemption 96-62: Class Exemption to Permit Certain Authorized Transactions Between Plans and Parties In Interest. *Class Exemption to Permit Certain Authorized Transactions Between Plans and Parties In Interest*, 61 Fed. Reg. 39,988 (July 31, 1996), as amended by *Adoption of Amendment to Prohibited Transaction Exemption 96-62 to Permit Certain Authorized Transactions Between Plans and Parties In Interest*, 67 Fed. Reg. 44622 (July 2, 2002) (referred to as PTE 96-62 or EXPRO), for an exemption from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986, as amended (the Code) to the proposed transaction (the Proposed Transaction), as described below.

The submission has met the requirements for tentative authorization under PTE 96-62.

The authorization is subject to the following conditions:

1. The terms and conditions of the Proposed Transaction are at least as favorable to the IRA as those obtainable in an arm's length transaction with an unrelated party.
2. The Proposed Transaction is a one-time transaction for cash.
3. The IRA will receive the fair market value of the Company Stock on the date of the Proposed Transaction, based upon an updated appraisal (the Appraisal) of Company Stock determined by The Bank Advisory Group, L.L.C. (BAG). Neither the IRA nor the Applicant will pay commissions, costs or other expenses in connection with the Proposed Transactions.
4. The Applicant is the only person who will be affected by the Proposed Transaction.
5. The IRA meets the requirements of section 401(a) of the Code.

#### **I. The Proposed Transaction**

The Proposed Transaction consists of the cash sale by the IRA to the Applicant of all of the IRA's shares of common stock (the Company Stock) of Legend Bancorp, Inc. (the Company). Without the Department's authorization pursuant to PTE 96-62, the Proposed Transaction would result in the sanctions described under section 4975(c)(1)(A), (D), and (E) of the Code.

#### **II. The Parties**

The Applicant is the sole participant and sole beneficiary of the IRA, which is an individual retirement account intended to qualify under Code section 408.

The Applicant's is a director of the Company and Legend Bank, N.A.<sup>1</sup>

The Custodian of the IRA is Legend Bank, N.A. (Primevest) (the "Custodian"). The IRA's sole participant and beneficiary is the Applicant.

### **III. The Acquisition and Holding of the Company Stock**

The Company Stock held by the IRA is further described as follows. The IRA currently owns 868 shares of Company Stock, which constitute approximately 0.09% of the issued and outstanding shares of Company Stock as of April 30, 2012. The IRA acquired the shares of Company Stock (the IRA Shares) in four transactions. On February 18, 2005, the IRA acquired 314 shares in a rollover from an employee stock ownership plan. On March 22, 2005, the IRA acquired 72 shares at \$75.00 per share for cash from another shareholder. On April 26, 2006, the IRA acquired 193 shares as a result of a stock split. On October 29, 2008, the IRA acquired 289 shares as a result of a stock split. Accordingly, the IRA paid, in the aggregate, \$5,400.00 for the IRA Shares.

During the time the IRA has held Company Stock, \$10,434.95 in cash dividends were paid on the Company Stock. During the holding of the Company Stock, the IRA incurred no expenses directly related to the holding of Company Stock, other than standard maintenance fees.

As of the most recently available statements, the assets of the IRA consisted of: (i) cash in the amount of \$530.32, and (ii) 868 shares of Company Stock with a value of \$56,420.00 (based upon the March 31, 2012 fair market value of \$65.00 per share). The estimated total aggregate fair market value of the IRA (based upon an appraised value of the Company Stock as of March 31, 2012 of \$65.00 per share) was approximately \$56,950.32. The Company Stock held in the IRA is not subject to option, hypothecated or pledged, and is only subject to the required restrictions under federal securities laws. As of April 30, 2012, the Applicant beneficially owned, in the aggregate, a total of 6,461 shares of Company Stock, of which 868 shares were held in the IRA and 5,593 shares were owned by the Applicant individually, and which constitute approximately 0.7% of the total estimated outstanding shares of Company Stock.

### **IV. The Appraisal of the Company Stock**

BAG is a specialized consulting firm focusing on providing stock valuations, together with traditional merger and acquisition advisory services, exclusively to financial institutions located throughout the United States, or to groups of individuals associated with U.S.-based financial institutions. BAG represents that its chairman, Robert L. Walters, conducted the Appraisal of the Company Stock. Mr. Walters established BAG in 1989. He has over 25 years of specialized experience and is a nationally-recognized expert in the fields of bank financial analysis, bank stock appraisals, and bank mergers and acquisitions. More specifically, in the field of community bank mergers and acquisitions, Mr. Walters has represented hundreds of banks through brokering selling banks and through developing negotiating strategies, formulating pricing and structure alternatives, and determining pro forma financial

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<sup>1</sup> In the event that the Applicant or the Applicant's spouse is an officer and/or director of the Company or any of its subsidiaries, the Applicant may have had an interest in acquiring the Company Stock on behalf of the IRA which affected his or her best judgment as a fiduciary of the IRA. In such circumstances, the acquisition of the Company Stock by the IRA may have violated sections 4975(c)(1)(D) and (E) of the Code. Accordingly, the Department is providing no relief, herein, for the acquisition and holding of the Company Stock by the IRA. The Applicant is aware that the Department is not providing relief or an exemption to the extent there were violations of sections 4975(c)(1)(D) and (E) of the Code with respect to the IRA's acquisition of the Company Stock.

performance opportunities for bank buyers and bank merger partners. Representing selling banks, buyers of banks, as well as partners in “merger-of-equals” transactions, Mr. Walters has compiled two decades of experience in the community investment banking business. For ten years prior to BAG, Mr. Walters headed the community bank merger and acquisition and bank stock valuation advisory services of Sheshunoff & Company.

BAG satisfies the Department’s independence test found at 29 CFR 2570.31(i). In this regard, BAG received \$28,400 in professional fees in connection with the appraisal and corresponding fairness opinion letter issued to the Company in connection with the Proposed Transaction. These fees exceed 2% of both BAG’s 2011 and its anticipated 2012 revenues, but fall well below 5% of both BAG’s 2011 and anticipated 2012 revenues. BAG’s fee structure is consistent with the pricing BAG utilizes for all of its clientele, and is consistent/competitive with BAG’s understanding of pricing in the community bank advisory environment. BAG’s revenue stream, much like most if not all investment banking entities, is below historical norms due to the downturn in the national economy, and more specifically, the financial services industry. Additionally, prior to the engagement, BAG received less than an aggregate \$6,000 in professional fees from the Company during the prior decade, representing fees received for two separate engagements. Furthermore, BAG does not maintain any type of ongoing client relationship with the Company, and anticipates no further fee generation from the Company in the near future.

BAG represents that it is aware that its “Cash Fair Evaluation of the Common Stock of Legend Bancorp, Inc.” dated June 26, 2012 and which appraises the Company Stock as of March 31, 2012 would be used for purposes of obtaining a final authorization under EXPRO.

As of March 31, 2012, the estimated aggregate fair market value of the Company Stock held by the IRA was \$56,420.00, based upon the most recently available fair market value of Company Stock of \$65.00 per share. BAG utilized the Market Value Approach to obtain a fair market value of \$66.00 per share and the Investment Value Approach to obtain a fair market value of \$63.77 per share. It then determined the fair market value of the Company Stock to be \$65.00 per share. Pursuant to Texas law, BAG could not consider a minority discount.

Pursuant to 26 CFR 1.408-4(a)(2), the IRA has zero basis in the Company Stock with respect to the owner/purchaser. As a result of the acquisition, holding and proposed sale of the Company Stock, the IRA will experience a net gain in the amount of \$56,420.00, although that gain is not taxable. As noted above, the estimated total fair market value of the assets of the IRA (based upon the March 31, 2012 appraised value of \$65.00 for the Company Stock) totaled approximately \$56,950.32. Accordingly, the percentage of the IRA’s assets represented by the Company Stock was approximately 99.07%.

The Proposed Transaction is expected to take place on or about November 29, 2012, provided that the Department grants “final authorization” for the Proposed Transaction. The purchase price paid by the Applicant for the Company Stock held in the IRA will be based on the “fair market value” per share of Company Stock, as determined by BAG. BAG performed a valuation of Company Stock as of March 31, 2012. BAG intends to “bring down” this valuation to approximately the date of the Proposed Transaction. The valuation was, and the “bring down” valuation will be, based upon numerous factors, including, but not limited to: (i) the Company’s current financial condition and recent operating performance, (ii) estimates of the Company’s business potential and the present state of business development, and (iii) the business of banking in general in the Southwestern United States. The Company’s Board of Directors will use the “bring down” valuation to agree with the Applicant upon a per share price at which the Proposed Transaction will occur.

## V. Reasons in Support of the Proposed Transaction

Upon the consummation of the Proposed Transaction, the Company Stock will be purchased from the IRA by the Applicant. The Applicant proposes to purchase the shares of Company Stock from the IRA to facilitate the Company's election to be treated as a Subchapter S Corporation under section 1362(a) of the Code for federal income tax purposes. This election has been determined to be in the best interest of the shareholders by the Company's board of directors. The Applicant notes that the election is conditioned upon the receipt by the IRA of final authorization from the Department pursuant to PTE 96-62.

The Proposed Transaction will not result in a loss to the IRA because the sale of Company Stock will be at the current fair market value of Company Stock, as determined by BAG. In addition, because the sale will result in the exchange of an illiquid, nonmarketable asset for cash, the sale will enhance the liquidity of, and ability to diversify the assets of, the IRA.

This submission meets, among other things, the requirements set forth in PTE 96-62 because the Proposed Transaction is substantially similar to those described in one individual exemption granted by the Department within the past 120 months and one transaction which received final authorization under within the last 60 months. The Federal Register citations for the individual exemption and the Final Authorization Numbers (FAN) for the EXPRO cases are as follows:

- **Prohibited Transaction Exemption 2009-17, 74 FR 30631 (June 26, 2009) for the Individual Retirement Accounts for Ralph Hartwell, Harold Latin, Kenlon Johnson, Carol Johnson, Shanon Taylor, Michael Ball, Dianne Barkas, Roy Barkas, Harry DeWall, Alice Pike, Steven Larsen, C. Timothy Hopkins, Wayne Meuleman, Robert L. Miller, and Richard T. Scott.** This exemption permits the proposed cash sales in Bank of Idaho Holding Company by the above referenced individual retirement accounts to the owners of such accounts where such bank holding corporation has elected Subchapter S status.
- **FAN 2008-20E (E-00610) and FAN 2008-19E (E-00609) for the Individual Retirement Accounts for Mark Garrison and Greg Garrison (the "IRAs") (December 31, 2008).** This authorization permits the proposed cash sales in Commerce National Financial Services, Inc. by the above referenced individual retirement accounts to the owners of such accounts where such bank holding corporation has elected Subchapter S status.

## VI. Your Right to Comment about This Tentative Authorization

As an interested person, you have the right to submit comments to the Department on the tentative authorization. If you decide to do so, please submit your comments to the following address:

Employee Benefits Security Administration  
Office of Exemption Determinations  
Division of Individual Exemptions  
U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Room N-5700  
Washington, D.C. 20210  
Attn: Mr. Scott Ness - Re: E-00713

Please be sure to reference the submission number, E-00713. Comments must be received by the Department no later than November 24, 2012.

Comments may be faxed or e-mailed to the Department. The fax number is (202) 219-0204 and the e-mail address is Ness.Scott@dol.gov. If you have questions regarding your right to comment on this tentative authorization, you may call Mr. Ness at (202) 693-8561.