

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549**

**FORM 8-K
CURRENT REPORT**

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): December 23, 2022

ORANGE COUNTY BANCORP, INC.
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)

001-40711
(Commission
File Number)

26-1135778
(IRS Employer
Identification No.)

212 Dolson Avenue, Middletown, New York 10940
(Address of principal executive offices) (Zip Code)

(845) 341-5000
(Registrant's telephone number, including area code)

Not Applicable
(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading symbol(s)	Name of each exchange on which registered
Common Stock, Par Value \$0.50 Per Share	OBT	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

(e) On December 23, 2022, Orange Bank & Trust Company (the “Bank”), the wholly owned banking subsidiary of Orange County Bancorp, Inc. (the “Company”), approved and adopted the Orange Bank & Trust Company Non-qualified Deferred Compensation Plan (the “Plan”) as a vehicle for select executives to defer receipt of certain compensation earned for service with the Bank and its affiliates until separation from service (other than death), a specified date/age or death. Participation in the Plan is voluntary and limited to a select group of management or highly compensated employees selected by the Compensation Committee of the Board of Directors of the Bank in its sole discretion. The Company’s Named Executive Officers, President and Chief Executive Officer Michael Gilfeather, Senior Executive Vice President and Chief Financial Officer Robert Peacock and Regional President Joseph A. Ruhl were selected for participation. Participation in the Plan commences upon the timely completion of an irrevocable Deferral Election and Distribution Form.

Elective deferrals are credited to participant accounts on the date a participant’s compensation would have been paid to the participant absent the deferral election. Participant accounts are not credited with earnings. Therefore, the value of an account will always equal the dollar amount a participant has deferred into the Plan and will always be 100% vested.

Obligations established under the terms of the Plan may be satisfied from the general assets of the Bank. To the extent that any person acquires a right to receive payments under the Plan, such rights are no greater than the right of an unsecured general creditor of the Bank.

The Plan is a non-qualified deferred compensation plan that is intended to comply with Section 409A of the Internal Revenue Code of 1986, as amended, and the “top hat pension plan” requirements of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”).

The foregoing description of the terms and conditions of the Plan does not purport to be complete and is qualified in its entirety by reference to the Plan, a copy of which is filed as Exhibit 10.1 hereto and incorporated by reference herein.

Item 9.01 Financial Statements and Other Exhibits.

(d) Exhibits

<u>Number</u>	<u>Description</u>
10.1	Orange Bank & Trust Company Non-qualified Deferred Compensation Plan
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

ORANGE COUNTY BANCORP, INC.

DATE: December 29, 2022

By: /s/ Michael Lesler
Michael Lesler
Senior Vice President, Chief Accounting Officer and
Controller

**ORANGE BANK & TRUST COMPANY
NON-QUALIFIED DEFERRED COMPENSATION PLAN**

ARTICLE I

Purpose

The Board of Directors of Orange Bank & Trust Company (the “Bank”) has adopted the *Orange Bank & Trust Company Non-qualified Deferred Compensation Plan* (“Plan”) to permit eligible executives to defer receipt of certain compensation earned for service with the Bank and its Affiliates.

The Plan is intended to meet the requirements of Code Section 409A, and shall be operated and interpreted consistent with that intent.

The Plan constitutes an unsecured promise by the Bank to pay benefits in the future. Participants in the Plan shall have the status of general unsecured creditors of the Bank.

The Plan is unfunded for federal tax purposes and is intended to be an unfunded arrangement for the Participants.

The Plan is intended to be a plan described in Sections 201(2), 301(a)(3) and 401(a)(1) of ERISA providing unfunded benefits to a select group of management or highly compensated employees.

Any amounts set aside to defray the liabilities assumed by the Bank will remain the general assets of the Bank and shall remain subject to the claims of the Bank’s creditors until such amounts are distributed to the Participants.

ARTICLE II

Definitions

- 2.1 “Account” means the bookkeeping account maintained to record the payment obligation of the Bank to a Participant as determined under the terms of the Plan. The Committee (or its designee) may maintain an Account to record the total obligation to a Participant and component Accounts to reflect amounts payable at different times and in different forms. Reference to an Account means any such Account established under the terms of this Plan, as the context requires.
- 2.2 “Account Balance” means, with respect to any Account, the total payment obligation owed to a Participant from such Account as of a Participant’s “payment date,” as defined in Section 5.1 of the Plan.
- 2.3 “Affiliate” means a corporation, trade or business that, together with the Bank, is treated as a single employer under Code Section 414(b) or (c).
- 2.4 “Beneficiary” means a natural person or estate designated by a Participant to receive payments to which a Beneficiary is entitled in accordance with provisions of the Plan.

- 2.5 “Board of Directors” means the Board of Directors of the Bank.
- 2.6 “Change in Control” has the meaning under Code Section 409A and includes, any of the following events: (i) a change in the ownership of Orange County Bancorp, Inc. (“Company”), (ii) a change in the effective control of the Company, or (iii) a change in the ownership of a substantial portion of the assets of the Company.
- 2.7 “Claimant” means a Participant or Beneficiary filing a claim under this Plan.
- 2.8 “Code” means the Internal Revenue Code of 1986, as amended from time to time.
- 2.9 “Code Section 409A” means Section 409A of the Code and regulations and other guidance issued by the Treasury Department and Internal Revenue Service thereunder.
- 2.10 “Committee” means the Compensation Committee of the Board of Directors.
- 2.11 “Compensation” means a Participant’s base salary or annual cash bonus received for services to the Bank or an Affiliate.
- 2.12 “Deferral Election and Distribution Form” means an agreement between a Participant and the Bank that specifies: (i) the amount of Compensation that the Participant has elected to defer to the Plan in accordance with the provisions of Article IV, and (ii) the Payment Schedule applicable to the Deferral.
- 2.13 “Deferral” means a credit to a Participant’s Account(s) that records that portion of the Participant’s Compensation that the Participant has elected to defer to the Plan in accordance with the provisions of Article IV.
- 2.14 “Disability” means the determination by the Bank’s long-term disability provider or the Social Security Administration that a Participant is totally disabled.
- 2.15 “Effective Date” means the date adopted by the Board of Directors.
- 2.16 “Employee” shall mean any individual whose remuneration for services rendered to the Bank or an Affiliate, as recognized by the Bank or an Affiliate, is reported on Federal Income Tax Form W-2. An individual’s status as an “Employee” will be determined by the Committee and such determination will be conclusive and binding on all persons notwithstanding any contrary determination of Employee status by any court or governmental agency, including, but not limited to, the Internal Revenue Service.
- 2.17 “Participant” means an individual described in Article III.
- 2.18 “Payment Schedule” means the date as of which payment of an Account will commence and the form in which payment of such Account will be made under the terms of a distribution election in effect for such Account under the terms of this Plan.

- 2.19 “Plan” means the “*Orange Bank & Trust Company Non-qualified Deferred Compensation Plan*” as documented herein and as may be amended from time to time hereafter.
- 2.20 “Plan Year” For purposes of 2023, the Plan Year shall mean January 1, 2023 – December 31, 2023. All subsequent Plan Years shall be January 1 through December 31.
- 2.21 “Trust” shall mean one or more trusts established by the Committee in its sole discretion.
- 2.22 “Trustee” shall mean the individuals or corporation appointed by the Committee to administer the Trust in accordance with the terms of the Plan and trust agreement.
- 2.23 “Separation from Service” shall mean the Participant’s termination of employment, voluntarily or involuntarily, for any reason other than on account of death or Disability, as determined by the Committee in accordance with Treasury Regulations Section 1.409A-1(h). In determining whether a Participant has experienced a Separation from Service, the following provisions shall apply:
- (a) A Separation from Service shall occur when such Participant has experienced a termination of employment with the Bank or an affiliate of the Bank. A Participant shall be considered to have experienced a termination of employment when the facts and circumstances indicate that the Participant either (i) will perform no further services after a certain date, or (ii) that the level of bona fide services the Participant will perform after such date (whether as an Employee or as an independent contractor) will permanently decrease to less than 50% of the average level of bona fide services performed by such Participant over the immediately preceding 36 month period (or the full period of services to the Bank or an affiliate of the Bank if the Participant has been providing services less than 36 months). Notwithstanding the foregoing, the Participant’s employment relationship shall be treated as continuing intact while the individual is on military leave, sick leave or other bona fide leave of absence if the period of such leave does not exceed six months (or longer, if required by statute or contract). If the period of the leave exceeds six months and the Participant’s right to reemployment is not provided either by statute or contract, the employment relationship is deemed to terminate on the first date immediately following such six-month period for purposes of Code Section 409A only.
 - (b) For a Participant who provides services as an independent contractor, a Separation from Service shall occur upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the Bank, provided that the expiration of such contract(s) is determined by the Committee to constitute a good-faith and complete termination of the contractual relationship between the Participant and the Bank.
- 2.24 “Unforeseeable Financial Emergency” shall mean a severe financial hardship to the Participant resulting from (a) an illness or accident of the Participant, the Participant’s

spouse, a Beneficiary, or the Participant's dependent (as defined in Code Section 152, without regard to Code Section 152(b)(1), (b)(2), and (d)(1)(B)); (b) loss of the Participant's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by insurance, for example, not as a result of a natural disaster); or (c) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant, all as determined by the Committee based on the relevant facts and circumstances. In any case, payment may not be made to the extent that such hardship is or may be relieved (x) through reimbursement or compensation by insurance or otherwise, (y) by liquidation of the Participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or (z) by cessation of deferrals under the Plan.

ARTICLE III

Eligibility and Participation

- 3.1 Eligibility. Participation in the Plan shall be limited to a select group of management or highly compensated Employees, as determined by the Committee in its sole discretion. Participation commences upon the timely completion of an irrevocable Deferral Election and Distribution Form. *See* Article IV.
- 3.2 Cessation of Participation.
- (a) Elective Deferrals made by a Participant who has been determined by the Committee to experience an Unforeseeable Financial Emergency will cease. A Participant shall remain a Participant in the Plan until his or her Account is paid in full.
 - (b) Notwithstanding anything in the Plan to the contrary, a Participant shall cease to be an active Participant (i.e., no deferrals) upon the earliest to occur of his or her Separation from Service, death or Disability.

eligible to participate in the Plan, he or she must timely complete and file a Deferral Election and Distribution Form in accordance with the terms of Article IV.

ARTICLE IV

Deferrals

4.1 Deferral Elections, Generally.

- (a) Participants may make an initial election to defer Compensation by submitting a Deferral Election and Distribution Form at the time and in the manner established by the Committee, but in any event, in accordance with Section 4.2. A Deferral Election and Distribution Form filed under this paragraph (a) applies to Compensation earned after the date that the Deferral Election and Distribution Form becomes irrevocable. A Participant may defer a minimum of 5% and a maximum of 75% of his or her Compensation for an applicable Plan Year.
- (b) A Deferral Election and Distribution Form that is not timely filed with respect to a service period, or that is submitted by a Participant who experiences a Separation from Service prior to the latest date such form would become irrevocable under Code Section 409A, shall be considered null and void.

4.2 Timing Requirements for Deferral Election and Distribution Forms.

- (a) *Initial Eligibility.* The Committee may permit Employees to defer Compensation earned in the first year of eligibility. The Deferral Election and Distribution Form must be filed within 30 days after attaining eligibility to participate and becomes irrevocable not later than the 30th day. A Deferral Election and Distribution Form filed under this paragraph applies to Compensation earned after the date that the Deferral Election and Distribution Form becomes irrevocable.
- (b) *Prior Year Election.* Except as otherwise provided in this Section 4.2, the Committee may permit a Participant to defer Compensation by filing a Deferral Election and Distribution Form no later than December 31 of the year prior to the year in which the Compensation to be deferred is earned. A Deferral Election and Distribution Form under this paragraph shall become irrevocable with respect to such Compensation not later than the December 31 filing deadline.

- 4.3 Deductions from Compensation. The Committee (or its designee) has the authority to determine the practices under which Compensation subject to a Deferral Election and Distribution Form will be deducted from a Participant's Compensation.
- 4.4 Vesting. Participant Deferrals of cash Compensation shall be 100% vested at all times.

ARTICLE V
Payments from Accounts

- 5.1 General Rules. The vested portion of a Participant's Accounts shall become payable upon the first to occur of the payment events applicable to such Account under Sections 5.2 through 5.6 (a Participant's "payment date").

Payment events and Payment Schedules elected by the Participant shall be set forth in a valid Deferral Election and Distribution Form filed under Article IV or in a valid modification election applicable to such Account as described in Section 5.9.

Payment amounts are based on a Participant's Account Balance as the Participant's payment date.

- 5.2 Specified Date/Age.

Commencement. Payment is made or begins in the calendar year designated by the Participant, however it must be at least 2 years from the date of Deferral.

Form of Payment. Payment will be made in a lump sum, unless the Participant elected to receive a designated number of annual installments from 2 years up to 5 years.

- 5.3 Separation from Service. Upon a Participant's Separation from Service other than death, the Participant is entitled to receive the vested portion of the Participant's Account Balance.

Commencement. The distribution of a Participant's Account shall commence payment on the first business day of the calendar year next following the calendar year in which Separation from Service occurs. Notwithstanding any other provision of this Plan, payment to a Participant who is a "specified employee" as defined in Code Section 409A(a)(2)(B) will commence no earlier than six months following his or her Separation from Service

Form of Payment. The Account Balance will be paid in a single lump sum unless the Participant elected with respect to the Account Balance to receive annual installments from 2 years up to 5 years.

- 5.4 Death. Notwithstanding anything to the contrary in this Article V, upon the death of the Participant, all remaining vested Account Balances shall be paid to the Participant's Beneficiary in a single lump sum in the calendar year following the year of the Participant's death and no later than December 31 of such year.

- (a) *Designation of Beneficiary in General.* The Participant shall designate a Beneficiary in the manner and on such terms and conditions as the Committee may prescribe. No such designation shall become effective unless filed with the Committee during the Participant's lifetime. Any designation shall remain in effect until a new designation is filed with the Committee; provided, however, that in the event a Participant designates his or her spouse as a Beneficiary, such designation shall be automatically revoked upon the dissolution of the marriage unless, following such dissolution, the Participant submits a new designation naming the former spouse as a Beneficiary. A Participant may from time to time change his or her designated Beneficiary without the consent of a previously-designated Beneficiary by filing a new designation with the Committee.
- (b) *No Beneficiary.* If a designated Beneficiary does not survive the Participant, or if there is no valid Beneficiary designation, amounts payable under the Plan upon the death of the Participant shall be paid to the Participant's spouse, or if there is no surviving spouse, then to the duly appointed and currently acting personal representative of the Participant's estate.
- 5.5 Administrative Cash-Out of Small Balances. Notwithstanding anything to the contrary in this Article V, the Committee (or its designee) may at any time and without regard to whether a payment event has occurred, direct in writing an immediate lump sum payment of the Participant's Accounts if the balance of such Accounts, combined with any other amounts required to be treated as deferred under a single plan pursuant to Code Section 409A, does not exceed the applicable dollar amount under Code Section 402(g)(1)(B), provided any other such aggregated amounts are also distributed in a lump sum at the same time.
- 5.6 Acceleration of or Delay in Payments. Notwithstanding anything to the contrary in this Article V, the Committee, in its sole and absolute discretion, may elect to accelerate the time or form of payment of an Account, provided such acceleration is permitted under Treas. Reg. Section 1.409A-3(j)(4). The Committee may also, in its sole and absolute discretion, delay the time for payment of an Account, to the extent permitted under Treas. Reg. Section 1.409A-2(b)(7).
- 5.7 Unforeseeable Financial Emergency. A Participant who experiences an Unforeseeable Financial Emergency may petition the Committee in writing to receive a partial or full payout from the Plan upon demonstration that he or she has suffered an Unforeseeable Financial Emergency, and that the distribution is necessary to alleviate the financial hardship created by the Unforeseeable Financial Emergency. The payout shall not exceed the lesser of: (i) Participant's Account Balance or (ii) the amount reasonably needed to satisfy the Unforeseeable Financial Emergency. If the petition for a payout is approved by the Committee, the payout shall be made within 60 days of the date of approval. Upon the Committee's determination that a Participant has experienced an Unforeseeable Financial Emergency, the Participant's existing deferral election shall be cancelled pursuant to Article IV.

- 5.8 Rules Applicable to Installment Payments. If a Payment Schedule specifies installment payments, payments will be made beginning as of the payment commencement date for such installments and shall continue to be made in each subsequent payment period until the number of installment payments specified in the Payment Schedule has been paid. The amount of each installment payment shall be determined by dividing (a) by (b), where (a) equals the Account Balance in the month preceding the month of payment and (b) equals the remaining number of installment payments. For purposes of Section 5.8, installment payments will be treated as a single payment.
- 5.9 Modifications to Payment Schedules. A Participant may modify the Payment Schedule elected by him or her with respect to an Account, consistent with the permissible Payment Schedules available under the Plan for the applicable payment event, provided such modification complies with the requirements of this Section 5.9.
- (a) *Time of Election.* The modification election must be submitted to the Committee not less than 12 months prior to the date payments would have commenced under the Payment Schedule in effect prior to modification (the “Prior Election”).
 - (b) *Date of Payment under Modified Payment Schedule.* The date payments are to commence under the modified Payment Schedule must be no earlier than five (5) years after the date payment would have commenced under the Prior Election. Under no circumstances may a modification election result in an acceleration of payments in violation of Code Section 409A. If the Participant modifies only the form, and not the commencement date for payment, payments shall commence on the fifth anniversary of the date payment would have commenced under the Prior Election.
 - (c) *Irrevocability; Effective Date.* A modification election is irrevocable when filed and becomes effective 12 months after the filing date.
 - (d) *Effect on Accounts.* An election to modify a Payment Schedule is specific to the Account or payment event to which it applies, and shall not be construed to affect the Payment Schedules or payment events of any other Accounts.

ARTICLE VI

Valuation

- 6.1 Valuation. Deferrals shall be credited to appropriate Accounts on the date such Compensation would have been paid to the Participant absent the Deferral Election and Distribution Form. The Accounts are not credited with earnings. Therefore, the value of an Account will always equal the dollar amount a Participant has deferred into the Plan.

ARTICLE VII
Administration

7.1 Plan Administration. This Plan shall be administered by the Committee or its designee, which shall have discretionary authority to make, amend, interpret and enforce all appropriate rules and regulations for the administration of this Plan and to utilize its discretion to decide or resolve any and all questions, including but not limited to eligibility for benefits and interpretations of this Plan and its terms, as may arise in connection with the Plan. Claims for benefits shall be filed with the Committee and resolved in accordance with the claims procedures in Article X.

7.2 Administration Upon Change in Control. Upon a Change in Control affecting the Company, the Committee, as constituted immediately prior to such Change in Control, shall continue to act as the Committee. The Committee, by a vote of a majority of its members, shall have the authority (but shall not be obligated) to appoint an independent third party to act as the Committee.

The Bank shall, with respect to the Committee identified under this Section: (i) pay all reasonable expenses the Committee, (ii) indemnify the Committee (including individuals serving as Committee members) against any costs, expenses and liabilities including, without limitation, attorneys' fees and expenses arising in connection with the performance of the Committee's duties hereunder, except with respect to matters resulting from the Committee's gross negligence or willful misconduct, and (iii) supply full and timely information to the Committee on all matters related to the Plan, any Trust, Participants, Beneficiaries and Accounts as the Committee may reasonably require.

7.3 FICA and Other Taxes.

(a) Deferrals. The Bank or an Affiliate, as applicable shall withhold the Participant's share of FICA and other employment taxes that apply to the Deferral from that portion of the Participant's compensation that is not deferred hereunder.

(b) Distributions. The Bank, or the Trustee, shall withhold from any payments made to a Participant under this Plan all federal, state and local income, employment and other taxes required to be withheld in connection with such payments, in amounts and in a manner to be determined in the sole discretion of the Bank to the extent permissible under Code Section 409A and regulations issued thereunder.

7.4 Indemnification. The Bank shall indemnify and hold harmless each employee, officer, director, agent or organization, to whom or to which are delegated duties, responsibilities, and authority under the Plan or otherwise with respect to administration of the Plan, including, without limitation, the Committee, its delegees and its agents, against all claims, liabilities, fines and penalties, and all expenses reasonably incurred by or imposed upon him or it (including but not limited to reasonable attorney fees) which arise as a result of his, her or its actions or failure to act in connection with the operation and administration

of the Plan to the extent lawfully allowable and to the extent that such claim, liability, fine, penalty, or expense is not paid for by liability insurance purchased or paid for by the Bank.

- 7.5 Delegation of Authority. In the administration of this Plan, the Committee may, from time to time, employ agents and delegate to them such administrative duties as it sees fit, and may from time to time consult with legal counsel who may be legal counsel to the Bank.
- 7.6 Binding Decisions or Actions. The decision or action of the Committee in respect of any question arising out of or in connection with the administration, interpretation and application of the Plan and the rules and regulations thereunder shall be final and conclusive and binding upon all persons having any interest in the Plan.

ARTICLE VIII

Amendment and Termination

- 8.1 Amendments. The Bank, by action taken by the Committee, may amend the Plan at any time and for any reason, provided that any such amendment shall not reduce the vested Account Balances of any Participant accrued as of the date of any such amendment or restatement (as if the Participant had incurred a voluntary Separation from Service on such date).
- 8.2 Termination. The Bank, by action taken by its Board of Directors, may terminate the Plan and pay Participants and Beneficiaries their Account Balances in a single lump sum at any time, to the extent and in accordance with Treas. Reg. Section 1.409A-3(j)(4)(ix).
- 8.3 Accounts Taxable Under Code Section 409A. The Plan is intended to constitute a plan of deferred compensation that meets the requirements for deferral of income taxation under Code Section 409A. See Section 11.10 of the Plan.

ARTICLE IX

Informal Funding

- 9.1 General Assets. Obligations established under the terms of the Plan may be satisfied from the general funds of the Bank, or a trust described in this Article IX. No Participant, spouse or Beneficiary shall have any right, title or interest whatever in assets of the Bank. Nothing contained in this Plan, and no action taken pursuant to its provisions, shall create or be construed to create a trust of any kind, or a fiduciary relationship, between the Bank and any Participant, spouse, or Beneficiary. To the extent that any person acquires a right to receive payments hereunder, such rights are no greater than the right of an unsecured general creditor of the Bank.
- 9.2 Trust. The Bank may, in its sole discretion, establish a grantor trust, commonly known as a rabbi trust, as a vehicle for accumulating assets to pay benefits under the Plan. Payments under the Plan may be paid from the general assets of the Bank or from the assets of any such Trust. Payment from any such source shall reduce the obligation owed to the Participant or Beneficiary under the Plan.

ARTICLE X

Claims

- 10.1 Filing a Claim. Any controversy or claim arising out of or relating to the Plan shall be filed in writing with the Committee, which shall make all determinations concerning such claim. Any claim filed with the Committee and any decision by the Committee denying such claim shall be in writing and shall be delivered to the Participant or Beneficiary filing the claim (the "Claimant"). Notice of a claim for payments shall be delivered to the Committee within 90 days of the latest date upon which the payment could have been timely made in accordance with the terms of the Plan and Code Section 409A and, if not paid, the Participant or Beneficiary must file a claim under this Article X not later than 180 days after such latest date. If the Participant or Beneficiary fails to file a timely claim, the Participant forfeits any amounts to which he or she may have been entitled to receive under the claim.
- (a) *In General.* Notice of a denial of benefits (other than claims based on disability) will be provided within 90 days of the Committee's receipt of the Claimant's claim for benefits. If the Committee determines that it needs additional time to review the claim, the Committee will provide the Claimant with a notice of the extension before the end of the initial 90-day period. The extension will not be more than 90 days from the end of the initial 90-day period and the notice of extension will explain the special circumstances that require the extension and the date by which the Committee expects to make a decision.
- (b) *Disability Benefits.* Notice of denial of claims based on disability will be provided within forty-five (45) days of the Committee's receipt of the Claimant's claim for disability benefits. If the Committee determines that it needs additional time to review the disability claim, the Committee will provide the Claimant with a notice of the extension before the end of the initial 45-day period. If the Committee determines that a decision cannot be made within the first extension period due to matters beyond the control of the Committee, the time period for making a determination may be further extended for an additional 30 days. If such an additional extension is necessary, the Committee shall notify the Claimant prior to the expiration of the initial 30-day extension. Any notice of extension shall indicate the circumstances necessitating the extension of time, the date by which the Committee expects to furnish a notice of decision, the specific standards on which such entitlement to a benefit is based, the unresolved issues that prevent a decision on the claim and any additional information needed to resolve those issues. A Claimant will be provided a minimum of 45 days to submit any necessary additional information to the Committee. In the event that a 30-day extension is necessary due to a Claimant's failure to submit information necessary to decide a claim, the period for furnishing a notice of decision shall be tolled from the date on which the notice of the extension is sent to the Claimant until the earlier of the date the Claimant responds to the request for additional information or the response deadline.

(c) *Contents of Notice.* If a claim for benefits is completely or partially denied, notice of such denial shall be in writing. Any electronic notification shall comply with the standards imposed by Department of Labor Regulation 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). The notice of denial shall set forth the specific reasons for denial in plain language. The notice shall: (i) cite the pertinent provisions of the Plan document, and (ii) explain, where appropriate, how the Claimant can perfect the claim, including a description of any additional material or information necessary to complete the claim and why such material or information is necessary.

10.2 Appeal of Denied Claims. A Claimant whose claim has been completely or partially denied shall be entitled to appeal the claim denial by filing a written appeal with a committee designated to hear such appeals (the “Appeals Committee”). A Claimant who timely requests a review of the denied claim (or his or her authorized representative) may review, upon request and free of charge, copies of all documents, records and other information relevant to the denial and may submit written comments, documents, records and other information relating to the claim to the Appeals Committee. All written comments, documents, records, and other information shall be considered “relevant” if the information: (i) was relied upon in making a benefits determination, (ii) was submitted, considered or generated in the course of making a benefits decision regardless of whether it was relied upon to make the decision, or (iii) demonstrates compliance with administrative processes and safeguards established for making benefit decisions. The review shall take into account all comments, documents, records, and other information submitted by the Claimant relating to the claim, without regard to whether such information was submitted or considered in the initial benefit determination. The Appeals Committee may, in its sole discretion and if it deems appropriate or necessary, decide to hold a hearing with respect to the claim appeal.

(a) *In General.* Appeal of a denied benefits claim (other than a disability benefits claim) must be filed in writing with the Appeals Committee no later than 60 days after receipt of the written notification of such claim denial. The Appeals Committee shall make its decision regarding the merits of the denied claim within 60 days following receipt of the appeal (or within 120 days after such receipt, in a case where there are special circumstances requiring extension of time for reviewing the appealed claim). If an extension of time for reviewing the appeal is required because of special circumstances, written notice of the extension shall be furnished to the Claimant prior to the commencement of the extension. The notice will indicate the special circumstances requiring the extension of time and the date by which the Appeals Committee expects to render the determination on review. The review will take into account comments, documents, records and other information submitted by the Claimant relating to the claim without regard to whether such information was submitted or considered in the initial benefit determination.

(b) *Disability Benefits.* Appeal of a denied disability benefits claim must be filed in writing with the Appeals Committee no later than 180 days after receipt of the

written notification of such claim denial. The review shall be conducted in accordance with applicable Department of Labor regulations.

The Appeals Committee shall make its decision regarding the merits of the denied claim within 45 days following receipt of the appeal (or within 90 days after such receipt, in a case where there are special circumstances requiring extension of time for reviewing the appealed claim). If an extension of time for reviewing the appeal is required because of special circumstances, written notice of the extension shall be furnished to the Claimant prior to the commencement of the extension. The notice will indicate the special circumstances requiring the extension of time and the date by which the Appeals Committee expects to render the determination on review. Following its review of any additional information submitted by the Claimant, the Appeals Committee shall render a decision on its review of the denied claim.

- (c) *Contents of Notice.* If a benefits claim is completely or partially denied on review, notice of such denial shall be in writing. Any electronic notification shall comply with the standards imposed by Department of Labor Regulation 29 CFR 2520.104b-1(c)(1)(i), (iii), and (iv). Such notice shall set forth the reasons for denial in plain language.

The decision on review shall set forth: (i) the specific reason or reasons for the denial, (ii) specific references to the pertinent Plan provisions on which the denial is based, and (iii) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to and copies of all documents, records, or other information relevant (as defined above) to the Claimant's claim.

- 10.3 Claims Appeals Upon Change in Control. Upon a Change in Control involving the Bank, the Appeals Committee, as constituted immediately prior to such Change in Control, shall continue to act as the Appeals Committee. The Bank may not remove any member of the Appeals Committee, but may replace resigning members if 2/3rds of the members of the Board of Directors and a majority of Participants and Beneficiaries with Account Balances consent to the replacement.

The Appeals Committee shall have the exclusive authority at the appeals stage to interpret the terms of the Plan and resolve appeals under the Claims Procedure.

The Bank shall, with respect to the Appeals Committee identified under this Section: (i) pay its proportionate share of all reasonable expenses and fees of the Appeals Committee, (ii) indemnify the Appeals Committee (including individual committee members) against any costs, expenses and liabilities including, without limitation, attorneys' fees and expenses arising in connection with the performance of the Appeals Committee hereunder, except with respect to matters resulting from the Appeals Committee's gross negligence or willful misconduct, and (iii) supply full and timely information to the Appeals Committee on all matters related to the Plan, any rabbi trust, Participants, Beneficiaries and Accounts as the Appeals Committee may reasonably require.

- 10.4 Legal Action. A Claimant may not bring any legal action, including commencement of any arbitration, relating to a claim for benefits under the Plan unless and until the Claimant has followed the claims procedures under the Plan and exhausted his, her or their administrative remedies under Sections 10.1 and 10.2. No such legal action may be brought more than twelve (12) months following the notice of denial of benefits under Section 11.2, or if no appeal is filed by the applicable appeals deadline, twelve (12) months following the appeals deadline.

If a Participant or Beneficiary prevails in a legal proceeding brought under the Plan to enforce the rights of such Participant or any other similarly situated Participant or Beneficiary, in whole or in part, the Bank shall reimburse such Participant or Beneficiary for all legal costs, expenses, attorneys' fees and such other liabilities incurred as a result of such proceedings. If the legal proceeding is brought in connection with a Change in Control involving the Bank, the Participant or Beneficiary may file a claim directly with the trustee for reimbursement of such costs, expenses and fees. For purposes of the preceding sentence, the amount of the claim shall be treated as if it were an addition to the Participant's or Beneficiary's Account Balance and will be included in determining the Bank's trust funding obligation under Section 9.2.

- 10.5 Discretion of Appeals Committee. All interpretations, determinations and decisions of the Appeals Committee with respect to any claim shall be made in its sole discretion, and shall be final and conclusive.

ARTICLE XI General Provisions

- 11.1 Assignment. No interest of any Participant, spouse or Beneficiary under this Plan and no benefit payable hereunder shall be assigned as security for a loan, and any such purported assignment shall be null, void and of no effect, nor shall any such interest or any such benefit be subject in any manner, either voluntarily or involuntarily, to anticipation, sale, transfer, assignment or encumbrance by or through any Participant, spouse or Beneficiary. The Bank may assign any or all of its liabilities under this Plan in connection with any restructuring, recapitalization, sale of assets or other similar transactions affecting the Bank without the consent of the Participant.
- 11.2 No Legal or Equitable Rights or Interest. No Participant or other person shall have any legal or equitable rights or interest in this Plan that are not expressly granted in this Plan. Participation in this Plan does not give any person any right to be retained in the service of the Bank. The right and power of the Bank to dismiss or discharge an Employee is expressly reserved. The Bank makes no representations or warranties as to the tax consequences to a Participant or a Participant's beneficiaries resulting from a deferral of income pursuant to the Plan.
- 11.3 Not a Contract of Employment. Nothing contained in the Plan will give any Employee the right to be retained in the employment of the Company, Bank or an Affiliate of the

Company or the Bank, or affect the right of the Company, the Bank or any Affiliate of the Company or the Bank to dismiss any Employee.

- 11.4 Notice. Any notice or filing required or permitted to be delivered to the Committee under this Plan shall be delivered in writing, in person, or through such electronic means as is established by the Committee. Notice shall be deemed given as of the date of delivery or, if delivery is made by mail, as of the date shown on the postmark on the receipt for registration or certification. Written transmission shall be sent by certified mail to the Committee at the headquarters of the Bank.

Any notice or filing required or permitted to be given to a Participant under this Plan shall be sufficient if in writing or hand-delivered, or sent by mail to the last known address of the Participant.

- 11.5 Headings. The headings of Sections are included solely for convenience of reference, and if there is any conflict between such headings and the text of this Plan, the text shall control.

- 11.6 Invalid or Unenforceable Provisions. If any provision of this Plan shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provisions hereof and the Committee may elect in its sole discretion to construe such invalid or unenforceable provisions in a manner that conforms to applicable law or as if such provisions, to the extent invalid or unenforceable, had not been included.

- 11.7 Lost Participants or Beneficiaries. Any Participant or Beneficiary who is entitled to a benefit from the Plan has the duty to keep the Committee advised of his or her current mailing address. If benefit payments are returned to the Plan or are not presented for payment after a reasonable amount of time, the Committee shall presume that the payee is missing. The Committee, after making such efforts as in its discretion it deems reasonable and appropriate to locate the payee, shall stop payment on any uncashed checks and may discontinue making future payments until contact with the payee is restored. If the Committee is unable to locate the Participant or Beneficiary after five years of the date payment is scheduled to be made the Participant's Account will be forfeited, provided that a Participant's Account shall not be credited with Earnings following the first anniversary of such date on which payment is to be made and further provided, however, that such benefit shall be reinstated, without further adjustment for interest, if a valid claim is made by or on behalf of the Participant or Beneficiary for all or part of the forfeited benefit.

- 11.8 Facility of Payment to a Minor. If a distribution is to be made to a minor, or to a person who is otherwise incompetent, then the Committee may, in its discretion, make such distribution: (i) to the legal guardian, or if none, to a parent of a minor payee with whom the payee maintains his or her residence, or (ii) to the conservator or committee or, if none, to the person having custody of an incompetent payee. Any such distribution shall fully discharge the Committee, the Bank, and the Plan from further liability on account thereof.

- 11.9 Governing Law. To the extent not preempted by ERISA, the laws of the State of New York shall govern the construction and administration of the Plan.

11.10 Compliance With Code Section 409A; No Guarantee. This Plan is intended to be administered in compliance with Code Section 409A and each provision of the Plan shall be interpreted consistent with Code Section 409A. Although intended to comply with Code Section 409A, this Plan shall not constitute a guarantee to any Participant or Beneficiary that the Plan in form or in operation will result in the deferral of federal or state income tax liabilities or that the Participant or Beneficiary will not be subject to the additional taxes imposed under Code Section 409A. The Bank shall have no legal obligation to a Participant with respect to taxes imposed under Code Section 409A.