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August 17, 1987

1934 Act
§ 16(b)

By Hand

PUBLIC AVAILABILITY DATE: 12-23-87

ACT	SECTION	RULE
1934	16(b)	16b- 3

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
450 Fifth Street, N.W.
Washington, D.C. 20549

Re: Hibernia Corporation 1983 Stock Option Plan -- Rule 16b-3 under Securities Exchange Act

Gentlemen and Ladies:

On behalf of Hibernia Corporation ("Corporation"), we request that you concur in our opinion that certain amendments to the Hibernia Corporation 1983 Stock Option Plan ("Plan") will not require the approval of the Corporation's shareholders in order for the Plan to continue to satisfy the conditions of Rule 16b-3 promulgated under the Securities Exchange Act of 1934, as amended ("Exchange Act"). A copy of the Plan as in effect prior to the amendments is attached as Exhibit 1. A copy of the Plan as amended (with the amendments indicated) is attached as Exhibit 2.

The Corporation

The Corporation is a Louisiana corporation registered as a bank holding company under the Bank Holding Company Act of 1956, as amended. As of March 31, 1987, the Corporation reported total consolidated assets of approximately $4.4 billion and shareholders' equity of approximately $265 million, and was ranked among the largest bank holding companies headquartered in Louisiana. The Corporation's Class A

common voting stock, no par value ("Common Stock"), is registered pursuant to Section 12(g) of the Exchange Act, is traded in the over-the-counter market, and is quoted in the NASDAQ National Market System. Approximately 17,139,135 shares of Common Stock were outstanding at March 31, 1987.

The Plan

The Plan authorizes the grant to key employees of the Corporation and its subsidiaries of incentive stock options ("ISOs") and non-qualified stock options ("NSOs") covering a total of 1,210,000 shares of Common Stock (as adjusted for stock dividends and stock splits), provided that ISOs and NSOs covering, in the aggregate, no more than 10% of the shares subject to the Plan may be granted to any one key employee. The Plan is administered by the Executive Compensation Committee ("Committee") of the Board of Directors of the Corporation ("Board"). All of the members of the Committee (currently six in number) are "disinterested persons" within the meaning of Rule 16b-3(d)(3). For purposes of this letter, we request that you assume that the Plan satisfies all of the other requirements of Rule 16b-3.

Options granted under the Plan, whether ISOs or NSOs, are granted in the amounts and at the times determined by the Committee. The Committee also may determine the time when each option may be exercised within the limits set forth in the Plan. The Plan provides that no options granted thereunder may be exercised during the first six months following the date of grant. Thereafter, an ISO may be exercised at any time during its term, subject to the "sequential exercise rule" imposed by the Internal Revenue Code on ISOs granted prior to 1987. However, under the Plan prior to its amendment, an NSO could not be exercised during the first full year from its date of grant, and it thereafter became exercisable as to one-third of the shares subject to the option in three equal cumulative annual installments.

The Amendment

Subject to staff concurrence in our view that shareholder approval of the amendments is not required under Rule 16b-3 or receipt of shareholder approval of the amendments in the event the staff does not concur with our opinion, the Board on July 21, 1987 amended the Plan to remove the staggered vesting limitation applicable to NSOs granted to officers and directors of the Corporation.[1] As a result, each NSO granted under the Plan would become exercisable in full six months following its grant except as otherwise provided by the Committee with respect to a specific grant. The amendment would apply to all NSOs outstanding on July 21, 1987 or granted thereafter.

In all other respects, with the exception of certain technical amendments and amendments intended to conform the Plan to recent changes in tax law (as to which the staff's views are not being requested), the Plan remains unchanged. In particular, the amendments do not change provisions of the Plan governing option exercise price, the maximum number of shares that may be placed under option pursuant to the Plan or the maximum number of shares as to which any individual employee may receive options.

Discussion

It is our opinion that shareholder approval of the above-described amendment is not required by

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[1] The Board also has amended the Plan to remove the staggered vesting provision for persons who are not subject to Section 16(b), but, in reliance upon the staff's position regarding "bifurcation" of stock option plans, such amendment is not subject to receipt of the letter requested hereby or to receipt of shareholder approval. See footnote 143 of Exchange Act Release No. 18114, infra; footnote 8 of Exchange Act Release No. 19756 (May 11, 1983); PNC Financial Corp (available March 12, 1987); Sovran Financial Corporation (available October 29, 1986).

Rule 16b-3. Rule 16b-3(a) requires shareholder approval of a stock option plan amendment only if the amendment would:

> (A) materially increase the benefits accruing to participants under the plan;
>
> (B) materially increase the number of securities which may be issued under the plan; or
>
> (C) materially modify the requirements as to eligibility for participation in the plan.

Because the proposed amendment does not affect the number of securities issuable under the Plan or the Plan's eligibility requirements, the only question regarding shareholder approval is whether the amendment materially increases the benefits accruing to Plan participants. In our opinion, the amendment does not.

In determining whether an amendment will materially increase plan benefits, the staff has focused on whether the amendment will "result in any additional remuneration for directors and officers not already contemplated by the Plan." Exchange Act Release No. 18114, Question 101 (September 23, 1981), 17 C.F.R. § 241.18114, reprinted in 4 Fed. Sec. L. Rep. (CCH) ¶ 26,062, at p. 19,063-38 (1986) [hereinafter cited as Release No. 18114]. The remuneration provided by a stock option plan, generally speaking, is a function of the number of shares as to which the participant receives options and the spread between the option exercise price and fair market value of the underlying stock on the date of exercise. The maximum number of shares covered by stock options, whether ISOs or NSOs or any combination thereof, granted to any participant is fixed by the Plan at 10% of the shares subject to the Plan. That number is not affected by the amendment. The amendment also does not affect the option exercise price, which remains fixed as of the date the option is granted. Accordingly, the Plan as amended does not provide any participant with additional remuneration not contemplated by the Plan as approved by the Corporation's shareholders.

The principal purpose of the amendment is to permit the grant of NSOs on essentially the same terms as ISOs, in large part in response to recent changes in the tax law that make the tax advantages of ISOs over NSOs relatively less significant to optionees than they were prior to such changes. At the same time, NSOs continue to provide the Corporation with a tax deduction at the time of exercise, which is generally not available to the Corporation in connection with an ISO.[2] Accordingly, the Board sought by the amendment to be able to grant NSOs on basically the same terms as already authorized for ISOs, which allows the Corporation to secure the more favorable tax treatment available for NSOs without imposing on optionees the longer NSO vesting schedule provided for in the Plan.

The staff previously has taken the position that an amendment permitting grant of NSOs under a plan that provided only for ISOs would not require shareholder approval. E.g., PNC Financial Corp (available March 12, 1987); JLG Industries, Inc. (available June 9, 1986). Presumably, this position is based on the fact that "[h]istorically, . . . the [SEC] staff has not considered the tax implications of employee benefit plans in determining the applicability of the shareholder approval requirement of Rule 16b-3(a)." Release No. 18114, supra, Question 102, at p. 19,063-39. We believe that the staff should take the same position with respect to the more modest amendment at issue here. We note in this regard that the Plan prior to amendment already contemplated the grant of both ISOs and NSOs. The amendment merely conforms the terms under which the different types of options can be granted.

We note also that the SEC staff has indicated in a variety of contexts that employee benefit plan

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[2] We note that to the extent it prompts the Committee to grant NSOs rather than ISOs, the amendment would have the effect of reducing the after-tax cost of the Plan to the Corporation, and as such should not be viewed as the type of amendment considered to require shareholder approval. Cf. Release No. 18114, supra, Question 100 n.143 (whether amendment will "materially increase the cost of the Plan to the company" considered in evaluating need for shareholder approval under Rule 16b-3).

amendments that accelerate the vesting of benefits previously contemplated by the plan may be adopted without shareholder approval. For instance, adoption of an amendment providing for acceleration of the exercisability of options upon a change of control has been deemed not to require shareholder approval under Rule 16b-3. See, e.g., Motorola Inc. (available December 1, 1986); United States Shoe Corporation (available Nov. 17, 1986); Zayre Corp. (available May 24, 1985); Phelps Dodge Corp. (available Oct. 11, 1984). The staff has taken a similar position with respect to amendments that provide for accelerated excercisability upon termination of employment due to death, disability or retirement. See, e.g., Fireman's Fund Corp. (available March 9, 1987); Southwest Forest Industries, Inc. (available Oct. 30, 1986); United Virginia Bankshares, Inc. (available August 2, 1982).

Acceleration of excercisability and vesting outside the context of stock options also has been deemed not to be a material increase in benefits. See, e.g., Brown Group, Inc. (available February 11, 1983), involving acceleration of the exercisability of stock appreciation rights; Elco Industries (available September 12, 1983), involving early termination of vesting periods for performance awards; and GATX Corporation (available July 16, 1984), involving accelerated exchangability of stock rights for common stock and termination of restrictions on such common stock.

In summary, the removal of the NSO vesting schedule does not result in any additional remuneration to Plan participants not contemplated by the original Plan. Rather, it simply permits the Corporation to put grantees of NSOs on an equal footing with grantees of ISOs, and therefore is the kind of tax-related amendment that the staff historically has considered not to require shareholder approval for purposes of Rule 16b-3. Moreover, the amendment merely involves an acceleration of benefits already contemplated by the Plan and not a material increase in benefits as that term is construed by the staff.

Conclusion

Based on the foregoing, we believe that the amendment described herein would not materially increase

the benefits accruing to Plan participants within the meaning of Rule 16b-3(a) and, accordingly, that shareholder approval of the amendment should not be required for the Plan to continue to satisfy the conditions of Rule 16b-3. We therefore request that the staff advise us that it concurs in our conclusion.

Please direct any questions or requests for further information concerning the foregoing to the undersigned at 872-8757 or to Richard M. Graf of this firm at 728-3550. If you do not concur with our conclusions, we request a conference with the staff prior to any adverse written response to this letter.

In accordance with Release 33-6269, seven copies of this letter are enclosed herewith.

Very truly yours,

Steven Kaplan

Steven Kaplan

Enclosure

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RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: Hibernia Corp.
Incoming letter dated August 17, 1987

Based on the facts presented, it is the view of this Division that the proposed amendments to the Company's 1983 Stock Option Plan need not be submitted to shareholders for approval in order to maintain compliance with Rule 16b-3.

Because this position is based upon the representations made to the Division in your letter, it should be noted that any different facts or conditions might require a different conclusion.

Sincerely,

Gloria F. Smith-Hill

Gloria F. Smith-Hill
Special Counsel