

CARY, AMES & FRYE

000025

ATTORNEYS AT LAW

10 FIRST INTERSTATE PLAZA

401 B STREET

SAN DIEGO, CALIFORNIA 92101-4218

TELEPHONE (619) 699-2700

TELECOPIER (619) 236-1048

TELEX 2 910 335-1273

OTHER OFFICES

IN

LA JOLLA
EL CENTROWRITER'S DIRECT LINE
699-2684

FRANK A. FRYE (1933-1987)

REC'D S.E.C.

NOV 5 1987

80

November 4, 1987

VIA FEDERAL EXPRESS

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

PUBLIC AVAILABILITY DATE: 12-24-87

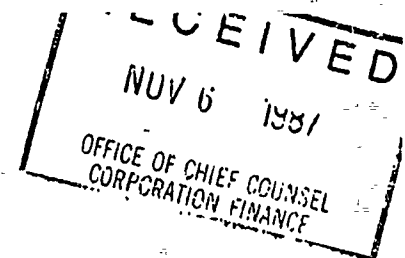
ACT	SECTION	RULE
1933	---	145
1933	---	147

Re: La Jolla Bancorp: Rule 145(d)

Ladies and Gentlemen:

On behalf of our client, La Jolla Bancorp, a California corporation ("Bancorp"), we respectfully request your advice as to whether the Division of Corporation Finance of the Securities and Exchange Commission would recommend any action with respect to the resale, pursuant to Securities and Exchange Commission Rule 145(d), of shares of Bancorp common stock acquired by the H.D. McNee Trust ("Trust") in a transaction exempt from registration under Section 3(a)(11) of the Securities Act of 1933, as amended (the "Act"), and Securities and Exchange Commission Rule 147.

Bancorp is a bank holding company, with wholly-owned subsidiaries of La Jolla Bank & Trust Company ("Bank") and LJT Mortgage Company, both of which are California corporations. The common stock of Bancorp is traded on the American Stock Exchange and Bancorp is a reporting company under Section 12 of the Securities Exchange Act of 1934, as amended. Pursuant to an agreement dated July 21, 1987 between Bancorp, Trust and Harold D. McNee, Jr. ("McNee"), Bancorp, Bank, or a subsidiary of either of them will acquire all of the issued and outstanding stock of H.D. McNee Realty Advisors, Inc., a California corporation ("Realty Advisors"). Realty Advisors is wholly owned by Trust and is engaged primarily in the business of mortgage



Office of Chief Counsel
November 4, 1987
Page 2

000026

banking and real estate investment services. In exchange for all the Realty Advisors' shares, Trust will receive shares of Bancorp common stock (the "Bancorp Shares"). The Bancorp Shares will be issued to Trust without registration under the Act, in reliance upon the exemption provided by Section 3(a)(11) of the Act and Securities and Exchange Commission Rule 147.

Bancorp, Bank, Trust, McNee and Realty Advisors are "persons resident" and "doing business within" California. The issuance of the Bancorp Shares to the Trust will comply with all requirements of Rule 147, including limitations on resales, and Trust has represented that the Bancorp Shares are being acquired for its trust account and that Bancorp Shares will not be resold or distributed to any person or entity which is not a resident of the State of California for a period of at least nine months from the date of issuance of the Bancorp Shares. The Bancorp Shares acquired by Trust will represent approximately 3% of the issued and outstanding shares of common stock of Bancorp. Neither Trust or McNee will be an affiliate of Bancorp or Bank after the transaction.

Rule 145(d) applies to the resale of registered securities received in a Rule 145 transaction. However, in Release 33-6099, the Securities and Exchange Commission stated that the Division of Corporation Finance would not recommend any enforcement action if the requirements of Rule 145(d) were followed with respect to resales of securities which were issued in a Rule 145 transaction but not registered because of the availability of the exemptions provided by Section 3(a)(9) or 3(a)(10) of the Act or Regulation A. While the position in Release 33-6099 did not cover resales under any other exemption, the staff of the Securities and Exchange Commission has permitted resales by affiliates of an acquired company of shares received in a Rule 145 transaction pursuant to the exemption under Section 3(a)(11). See, e.g., United Virginia Bankshares, Inc. (available February 13, 1978); Hungry Tiger, Inc. (available August 27, 1982). In the Hungry Tiger letter, the staff of the Division of Corporation Finance stated that they believed that Rule 145(d) would be available for resales of securities which were issued to a single entity in a transaction exempt from the registration requirements of the Act pursuant to Rule 147.

Office of Chief Counsel
November 4, 1987
Page 3

000027

In our opinion the resale policies reflected in the foregoing staff letters have equal force when applied to the acquisition of Realty Advisors. On behalf of Bancorp, we respectfully request your advice as to whether the Division of Corporation Finance would recommend any action to the Securities and Exchange Commission if the Trust, which is an affiliate of Realty Advisors but will not be an affiliate of Bancorp, resells the Bancorp Shares pursuant to the terms of Rule 145(d).

If for any reason you do not concur with our conclusions or require further information, please contact me at (619) 699-2684 or Douglas J. Rein at (619) 699-3524 prior to issuing any written response to this letter.

Very truly yours,



James E. Hoffmann

For
GRAY, CARY, AMES & FRYE

JEH/DJR/krm
1001LJM

cc: Pieter Van Leuven, Esq.

November 24, 1987

000028

RESPONSE OF THE OFFICE OF CHIEF COUNSEL
DIVISION OF CORPORATION FINANCE

Re: La Jolla Bancorp
Incoming letter dated November 4, 1987

On the basis of the facts presented, and noting in particular that the exchange of shares of the common stock of La Jolla Bancorp ("Bancorp") for all of the issued and outstanding shares of H.D. McNeely Realty Advisors, Inc. is a Rule 145(a)(2) transaction, this Division will not recommend any enforcement action to the Commission if H.D. McNeely Trust relies upon the provisions of Rule 145(d) in effecting resales of Bancorp shares acquired as a result of a Rule 147 offering. This position is conditioned upon the compliance of the transaction with all the provisions of Rule 147, including the nine month waiting period in paragraph (e) relating to the commencement of sales outside the state in which the offering was made.

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. Further, this view only expresses the position of the Division on enforcement action and does not purport to express any legal conclusion on the questions presented.

Sincerely,

Anne M. Krauskopf
Anne M. Krauskopf
Special Counsel