
FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, DC 20429

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):
May 17, 2019

OPUS BANK

(Exact name of registrant as specified in its charter)

California
(State or other jurisdiction of
incorporation)

33-0564430
(IRS Employer
Identification No.)

1990 MacArthur Blvd.,
12th Floor
Irvine, CA 92612
(Address, including zip code, of principal executive office)

Registrant's telephone number, including area code: (949) 250-9800

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 communication 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:

| <u>Title of each class</u> | <u>Trading symbol(s)</u> | <u>Name of each exchange on which registered</u> |
|----------------------------|--------------------------|--|
| Common Stock, no par value | OPB | Nasdaq Global Select Market |

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

On May 17, 2019, Mr. Mark Cicirelli notified Opus Bank (the “Company”) that he is resigning from the Company’s Board of Directors (the “Board”), effective immediately. Mr. Cicirelli is not resigning due to any disagreement with the Company on any matter related to the Company’s operations, policies or practices. Mr. Cicirelli was originally nominated to serve as a member of the Company’s Board by Elliott Associates, L.P. (“Elliott”) pursuant to the Amended and Restated Stock Subscription Agreement, dated as of June 25, 2010, by and among the Company, Elliott and the other signatories thereto (as amended, the “Subscription Agreement”).

Pursuant to the terms of the Subscription Agreement, Elliott has the right to designate an individual to fill the vacancy resulting from the resignation of Mr. Cicirelli. Accordingly, Elliott designated Mr. Mal Durkee to fill the vacancy created by Mr. Cicirelli’s resignation and, on May 17, 2019, the Board appointed Mr. Durkee as a Class III member of the Board, with such appointment to be effective immediately. Mr. Durkee is not employed by or otherwise affiliated with Elliott or any of its affiliates. The Board also appointed Mr. Durkee to serve as a member of the Company’s Risk Oversight Committee.

In accordance with a Director Compensation Reimbursement Agreement, dated May 17, 2019, entered into between the Company and Elliott Management Corporation (the “Reimbursement Agreement”), Mr. Durkee will receive compensation for his service as a director of the Board in accordance with the Company’s non-employee director compensation practices, as described in the Company’s definitive proxy statement on Schedule 14A filed with the Federal Deposit Insurance Corporation on March 14, 2019 and which is incorporated herein by reference. Pursuant to the Reimbursement Agreement, Elliott will reimburse the Company for such compensation paid by the Company to Mr. Durkee within thirty (30) days of receipt by Elliott of an invoice detailing such payment submitted by the Company. The foregoing description of the Reimbursement Agreement is qualified in its entirety by the full text of such agreement, which is attached hereto as Exhibit 10.1 and is incorporated herein by reference.

In connection with his appointment to the Board, Mr. Durkee also entered into the Company’s standard indemnification agreement, the form of which is attached as Exhibit 10.15 to the Company’s Registration Statement on Form 10 filed with the Federal Deposit Insurance Corporation on March 10, 2014 and which is incorporated herein by reference. Mr. Durkee has also entered into an agreement with Elliott to provide secondary indemnification and out-of-pocket expense reimbursement to Mr. Durkee in connection with his service on the Company’s Board. Pursuant to this agreement, Elliott has agreed to indemnify and/or advance expenses or losses otherwise eligible for indemnification, advancement or insurance coverage under Mr. Durkee’s indemnification agreement with the Company or any directors’ and officers’ (“D&O”) insurance policy maintained by the Company for Mr. Durkee’s benefit if and to the extent that the Company or any applicable D&O insurer is unable or unwilling to provide the indemnification, advancement or insurance payments to which Mr. Durkee is entitled. Under the agreement, Elliott has also agreed to reimburse Mr. Durkee for any reasonable out-of-pocket expenses he incurs in connection with his service on the Board as Elliott’s designee if and to the extent the Company is unable or unwilling to provide reimbursement for the expenses.

Other than as disclosed above, (i) there are no arrangements or understandings between Mr. Durkee and any other persons pursuant to which he was appointed as a director of the Company, and (ii) Mr. Durkee has no direct or indirect material interest in any related party transaction required to be disclosed pursuant to Item 404(a) of Regulation S-K.

Item 7.01 Regulation FD Disclosure.

On May 17, 2019, the Company issued a press release announcing the director changes described in Item 5.02 of this Current Report on Form 8- K.

A copy of the press release is included as Exhibit 99.1 to this report. The information furnished pursuant to Item 7.01 of this Current Report on Form 8- K, including Exhibit 99.1, shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, or otherwise subject to liabilities under that Section, nor shall it be deemed incorporated by reference in any registration statement or other filings of the Company with the Federal Deposit Insurance Corporation, except as shall be set forth by specific reference in such filing.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 10.1 | Director Compensation Reimbursement Agreement, dated May 17, 2019, between the Company and Elliott Management Corporation |
| 99.1 | Press Release issued by Opus Bank on May 17, 2019 |

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, thereunto duly authorized.

Dated: May 17, 2019

Opus Bank

By: /s/ Kevin L. Thompson

Name: Kevin L. Thompson

Title: Executive Vice President and Chief Financial
Officer

Exhibit No. 10.1

Director Compensation Reimbursement Agreement, dated May 17, 2019, between the Company and Elliott Management Corporation

Director Compensation Reimbursement Agreement

This DIRECTOR COMPENSATION REIMBURSEMENT AGREEMENT, dated as of May 17, 2019, is entered into by and between Opus Bank (the “**Company**”), and Elliott Associates, L.P. and Elliott International, L.P. (the “**Investor**”).

WHEREAS, pursuant to its rights as a significant investor, the Investor has designated Mal Durkee (the “**Director**”) for service as a member of the Board of Directors of the Company (the “**Board**”);

WHEREAS, the Company and the Investor desire to enter into an agreement regarding the Director’s compensation for his service on the Board; and

NOW, THEREFORE, in consideration of the premises and subject to the terms and conditions set forth herein, the parties hereto agree as follows:

1. *Compensation.* Throughout the period during which (i) the Director provides services as a member of the Board and (ii) the Investor remains a significant investor entitled to nominate a director of the Company (the “**Service Period**”), the Company shall pay the Director the compensation payable to a non-employee director who is not nominated by a significant investor, in accordance with the terms of the Company’s then current director compensation, as in effect from time to time (the “**Compensation**”), at the same time and in the same form as such Compensation is paid to the non-employee directors who are not nominated by a significant investor. As of the date hereof, such compensation consists of: (a) an annual retainer of \$70,000 per year, (b) a fee of \$2,500 for each Board meeting attended (either in person or telephonically), and (c) a restricted stock unit award with a grant date fair value of \$60,000. A copy of the Company’s director compensation in effect on the date hereof is attached hereto as Exhibit A.

2. *Reimbursement of Expenses.* Promptly after each payment of Compensation by the Company to the Director with respect to services rendered during the Service Period, the Company shall submit to the Investor an invoice detailing such payment. The Investor shall reimburse the Company for such Compensation within thirty (30) days of receipt of such invoice from the Company. For the avoidance of doubt, Compensation paid to the Director in the form of an equity award granted by the Company shall be reimbursed based on the grant date fair value of any such equity award.

3. *Forfeited Equity Awards.* In the event that any equity award granted by the Company to the Director is forfeited for any reason, the Company shall repay to the Investor the amount of any unamortized expense of such equity award as of the date of the forfeiture. Such repayment shall be made within thirty (30) days of any such forfeiture.

IN WITNESS WHEREOF, the Company and the Investor have duly executed this Agreement as of the date first above written.

OPUS BANK

By: /s/ Paul G. Greig
Name: Paul G. Greig
Title: Chairman of the Board

ELLIOTT ASSOCIATES, L.P.

By: Elliott Capital Advisors, L.P., General Partner

By: Braxton Associates, Inc., General Partner

By: /s/ Elliot Greenberg
Name: Elliot Greenberg
Title: Vice President

ELLIOTT INTERNATIONAL, L.P.

By: Hambledon, Inc., its General Partner

By: Elliott International Capital Advisors Inc., as attorney-in-fact

By: /s/ Elliot Greenberg
Name: Elliot Greenburg
Title: Vice President

Director Compensation

Exhibit No. 99.1

Press Release issued by Opus Bank on May 17, 2019



OPUS BANK ANNOUNCES APPOINTMENT OF MAL DURKEE TO ITS BOARD OF DIRECTORS

– Replaces Mark Cicirelli as Elliott Management Corporation Representative –

IRVINE, Calif. – May 17, 2019 – Opus Bank (“Opus”) (NASDAQ: OPB) announced today that G Malpass (“Mal”) Durkee has been appointed to Opus’ Board of Directors, effective May 17, 2019, and appointed a member of the Risk Oversight Committee. Mr. Durkee replaces Mark Cicirelli, who concurrently resigned from Opus’ Board of Directors, effective May 17, 2019. Opus’ Board membership remains at nine.

Paul G. Greig, Chairman of the Board of Opus Bank, stated, “On behalf of Opus, I thank Mark for his enduring commitment to Opus since his joining the Board in 2012. We are grateful for Mark’s valuable contributions throughout his tenure and wish him the best.”

Mr. Greig added, “I am pleased to welcome Mal and look forward to working with him as a member of Opus’ Board. I have great confidence that Opus will benefit greatly from his deep and broad financial institution advisory knowledge, including in the development and execution of significant strategic initiatives with a number of the nation’s most prestigious financial services firms.”

Mr. Durkee currently serves as a Strategic Advisor to financial services companies, fintechs, and institutional investors. From 2010 to 2013, Mr. Durkee served as Partner of Corporate Advisory Group at Perella Weinberg Partners LP, where he focused on providing strategic and financial advice to depository institutions. From 2009 to 2010, Mr. Durkee served as Special Advisor to the Chairman and CEO of The Hartford. From 2008 to 2009, Mr. Durkee served as a Managing Director and Co-Head of North American Banks at Morgan Stanley. From 1995 to 2007, Mr. Durkee served at Merrill Lynch, last serving as Managing Director, Head of Depository Practice. Mr. Durkee began his career in the financial services industry in 1986 at Security Pacific National Bank, where he served as a Vice President within the Strategic Planning Group. Mr. Durkee holds a B.A. in Economics from Occidental College.

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Opus Bank is an FDIC insured California-chartered commercial bank with \$7.7 billion of total assets, \$5.5 billion of total loans, and \$6.1 billion in total deposits as of March 31, 2019. Opus Bank provides commercial and retail banking products and solutions to its clients in western markets from its headquarters in Irvine, California and through 47 banking offices, including 28 in California, 16 in the Seattle/Puget Sound region in Washington, two in the Phoenix metropolitan area of Arizona and one in Portland, Oregon. Opus Bank offers a suite of treasury and cash management and depository solutions, and a wide range of loan products, including commercial, healthcare, media and entertainment, corporate finance, multifamily residential, commercial real estate and structured finance, and is an SBA preferred lender. Opus Bank offers commercial escrow services and facilitates 1031 Exchange transactions through its Escrow and Exchange divisions. Additionally, Opus Bank’s wholly-owned subsidiary, PENSCO Trust Company, has approximately \$14 billion of custodial IRA assets and approximately 48,000 client accounts, which are comprised of self-directed investors, financial institutions, capital raisers and financial advisors. Opus Bank is an Equal Housing Lender. For additional information about Opus Bank, please visit our website: www.opusbank.com.



Forward-Looking Statements

This release may include forward-looking statements related to Opus' plans, beliefs and goals, which involve certain risks, and uncertainties that could cause actual results to differ materially from those in the forward-looking statements. The forward-looking information presented in this press release is not a guarantee of future events, and actual events may differ materially from those made in or suggested by the forward-looking information contained in this press release. Forward-looking statements generally can be identified by the use of forward-looking terminology such as "intend" or "expect" or variations thereon or similar terminology. All such statements speak only as of the date made, and Opus undertakes no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise.

Contact:

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SVP, Dir. of Corporate Strategy/Communications
Telephone: (949) 251-8146

Source: Opus Bank