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2021 DEC -9 P 3: 02

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December 9, 2021

FILE NO:

BY HAND

PUBLIC

Hon. Bernard J. Logan, Clerk
State Corporation Commission
Tyler Building, 1st Floor
1300 East Main Street
Richmond, Virginia 23219

**Re: Application of Southern BancShares (N.C.), Inc.
To acquire more than five percent of the voting
Shares of Old Point Financial Corporation
Case No. BFI-2021-00111**

Dear Mr. Logan:

Enclosed for filing please find an original and one copy of the PUBLIC version of Southern BancShares (N.C.), Inc.'s ("Southern") *Petition for Reconsideration* of the Order of the State Corporation Commission dated November 19, 2021 in administrative Case Number **BAN20210165** disapproving the September 20, 2021 Application of Southern to Acquire up to 19.9% of the Outstanding Voting Common Stock of Old Point Financial Corporation pursuant to Virginia Code § 6.2-704.

An original and 15 copies of the CONFIDENTIAL version of Southern's Petition and a Motion for Confidential Treatment is being filed under separate cover.

Please feel free to contact me if there are any questions related to this filing.

Sincerely,



Timothy E. Biller

HUNTON
ANDREWS KURTH

December 9, 2021
Page 2

Enclosures

cc: Service List
Heather Eastep, Esq.

211220316

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December 2021, a true copy of the following Public Version of the Petition for Reconsideration was delivered by electronic mail to the following:

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COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

APPLICATION OF)
)
SOUTHERN BANCSHARES (N.C.), INC.) CASE NO. BFI-2021-0011
)
To acquire more than five percent of the voting)
Shares of Old Point Financial Corporation)

Petition for Reconsideration

Pursuant to 5 VAC 5-20-220, Southern BancShares (N.C.), Inc. (“Southern”) submits this Petition for Reconsideration of the Order of the State Corporation Commission (the “Commission”) dated November 19, 2021 (“Order”) in administrative Case Number BAN20210165 disapproving the September 20, 2021 Application of Southern to Acquire up to 19.9% of the Outstanding Voting Common Stock of Old Point Financial Corporation (“Old Point”) pursuant to Va. Code § 6.2-704 (the “Application”). In addition, Southern respectfully requests that, as contemplated in 5 VAC 5-20-220, the Commission suspend its Order while it considers this Petition and that the Commission incorporate into the record of this proceeding any documents in the record of Case No. BAN20210165, including the Application, that are not otherwise attached to this Petition.

Southern respectfully submits that the facts related to the Application, as further explained in this Petition, do not support a finding that an increase in Southern’s passive investment in Old Point that Southern seeks to make is prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of Old Point. In fact, given Southern’s unambiguous representations and commitments to the passive nature of the additional investments it seeks to make, Southern’s investments are aligned with the interests of depositors, creditors,

beneficiaries of fiduciary accounts, and the shareholders of Old Point as it can reasonably be expected that the increased demand for Old Point's shares would increase the value of Old Point's common stock. Ultimately, Southern's representations and commitments regarding the nature of its investment, the legal requirements for additional regulatory approval before Southern's intentions for its investment could change, and the existing statutory protections and limitations would protect the depositors, creditors, beneficiaries of fiduciary accounts, and shareholders of Old Point from any prejudicial impacts. At the same time, and as discussed in Southern's reply letter and more fully below, the objections raised by Old Point are simply without merit. The Commission's Bureau of Financial Institutions (the "Bureau") conducted a full review of Southern's Application on behalf of the Commission and the resulting record in BAN20210165, as further explained below, fully supports approval of the Application under the applicable statutory standards.

Accordingly, consistent with Va. Code § 6.2-705, Southern's additional passive investments in Old Point will not be prejudicial to any party and will likely benefit the depositors, creditors, beneficiaries of fiduciary accounts, and shareholders of Old Point through increases in the value of Old Point's common stock. Based on these factors, Southern respectfully asks that the Commission reconsider the Order and grant Southern's Application. The requirements of Va. Code §§ 6.2-704 and 705 should not, and are not intended to, provide a means for existing controlling shareholders of a bank holding company to pick and choose who may and who may not acquire shares of that company in the market. Instead, the clear intent of the statute is to ensure that investment by one bank holding company in another bank holding company does not result in harm to depositors and others with interests in either company. A passive investment such as the additional investments Southern seek to make at this time will not harm any legitimate interests

and instead would likely benefit the interests of the depositors, creditors, beneficiaries of fiduciary accounts, and shareholders of Old Point.

I. Background

Southern and Southern Bank

Southern is a bank holding company, headquartered in Mount Olive, North Carolina.¹ It is the sole shareholder of Southern Bank and Trust Company (“Southern Bank”), a community bank also headquartered in Mount Olive. Southern Bank is the successor to Bank of Mount Olive, which was organized in 1901. Since 1901, Southern Bank has provided financial services to small- to medium-sized businesses, professionals, and other individuals in its predominately rural and small town market areas, including commercial and consumer loan and deposit services, mortgage lending services, and wealth management services. As of June 30, 2021, Southern Bank had 59 branches and one loan production office, of which 49 branches were in eastern North Carolina and 10 branches and the loan production office were in Virginia.²

Southern entered the Virginia market over a decade ago when the Federal Deposit Insurance Corporation (the “FDIC”) requested that it purchase the assets and assume the liabilities of the Bank of Commonwealth upon the failure of the Bank of Commonwealth in September 2011. These resolutions are only granted to those financial institutions that are fundamentally sound and are well-regarded by their various Federal and State regulatory agencies.

¹ Population approx. 4,899. See <https://www.townofmountolivenc.org/>.

² Southern Bank has assets of over \$4.0 billion, over \$2.0 billion in loans and deposits in excess of \$3.0 billion. Southern Bank’s Virginia branches are located throughout the Hampton Roads region.

In 2016, Southern acquired Virginia-based Heritage Bankshares, Inc. and its subsidiary bank, Heritage Bank,³ following receipt of approval by each of the FDIC, the Board of Governors of the Federal Reserve System (“Federal Reserve”), the North Carolina Commissioner of Banks, and the Commission through the Bureau.

As a 120-year old community bank, Southern credits its growth and success to staying true to its roots - *a commitment to providing the citizens in North Carolina and Virginia with the best in banking products and services, while investing in the lives and communities of our fellow citizens “Down East.”*⁴

Southern is dedicated to the communities in which it serves. It has a long history of community and economic development in its markets, the genesis of which comes from its roots in small rural communities, most of which it still serves today. Southern Bank is consistently identified by the FDIC as a strong performer under the Community Reinvestment Act of 1977, in recognition of the Bank’s work in helping to meet the credit needs of the communities in which it does business, including low- and moderate-income (LMI) neighborhoods. Additionally, for over 20 years, Southern has funded and carefully nurtures a community charitable foundation with over \$18.0 million in assets which focuses on supporting charitable causes such as medical services, food scarcity and economic development in its markets.

Investment Opportunity

Like many other bank holding companies, Southern regularly makes passive investments in other financial institutions, holding these shares in its investment portfolio to generate value for its shareholders and strengthen its financial condition for the benefit of its depositors and other

³ As a result of the merger of Heritage Bank with and into Southern Bank, Southern Bank acquired five branches located in Norfolk, Virginia Beach, and Chesapeake.

⁴ See “About – Our History” on <https://www.southernbank.com/about/our-story>.

customers.⁵ Southern believes that Old Point's common stock is significantly undervalued, and earlier this year determined to increase its investment in what it considers to be a significantly undervalued stock.⁶

Prior Consultation with Banking Regulators; Cooperation with Old Point

Upon deciding to make additional passive investments in Old Point common stock, Southern consulted with staff at the Bureau and the Federal Reserve Bank of Richmond ("FRB-R") concerning applicable regulatory notices and/or applications to insure that Southern complied with the spirit and letter of the relevant banking laws and regulations. As part of this consultation process, Southern provided the FRB-R with a preliminary draft of the FR-Y3N Notification (the "Notification") for its review and consideration.⁷ Having received limited comments from staff at the FRB-R, Southern filed the Notification on September 17, 2021. On September 20, 2021, Southern filed the Application and submitted a check for the \$10,000.00 application fee to the Bureau.

Prior to filing the Notification and the Application, Southern's Chief Executive Officer, Drew M. Covert, contacted Old Point's Chief Executive Officer, President and Chairman, Robert F. Shuford, Jr., out of courtesy to give him advance notice of the filings. Southern also provided Old Point with a draft news release and at the request of Old Point made changes to the release to

⁵ For over 50 years, Southern has made multiple passive investments in other financial institutions.

⁶ As of November 8, 2021, Old Point common stock closed at \$21.83 per share, representing a discount of approximately 2.5% to Old Point's book price as of September 30, 2021; whereas, bank holding companies of comparable size typically trade within a range of 140% to 150% of book value. This represents approximately \$50 million of unrealized shareholder value. On October 26, 2021, Old Point announced that its Board of Directors authorized a program, effective October 19, 2021, to repurchase up to 10% of the Corporation's common stock through November 30, 2022 – presumably reflecting the Board's conclusion that Old Point's stock is undervalued.

⁷ A copy of the Notification was submitted to the Bureau as part of the Application. The streamlined notification process set out in the Federal Reserve's Form FR-Y3N Notification is reserved for "well-run" bank holding companies that are considered "well-capitalized" and "well-managed". See 12 CFR § 225.14

further emphasize Southern's intent to make additional *passive investment*. In cooperation with Old Point, Southern posted the release to its website, included as Exhibit A to this Petition, on September 17, 2021.⁸ In the news release, Southern clearly stated the reasons for its desire to increase its investment in Old Point and its intentions related to that investment:

For several decades Southern has invested in the common stock of other financial institutions and believes its investment in Old Point is a sound allocation of its assets. Old Point, founded in 1923, serves the Hampton Roads and Richmond regions of eastern Virginia. The Company views Old Point's long standing franchise in these growth markets and solid management team as a foundation for an attractive long-term return to its common shareholders.

Southern's investment in Old Point is passive and it has no plans to influence or impede the management, operations, or policies of Old Point. Southern has no current plans to seek representation on Old Point's Board of Directors and has not entered into voting or other agreements with any other party as it relates to the common shares of Old Point.

The news release, prepared in cooperation with Old Point, accurately reflected Southern's desire to make additional *passive investments* in Old Point – consistent with investments made by Southern in other financial institutions.

Following the filing of the Notification with the FRB-R and the Application with the Bureau, public notices were published.⁹ Other than comment letters dated October 22, 2021 from Mr. Shuford to the Bureau and FRB-R,¹⁰ Southern is not aware of any adverse public comments.

⁸ See <https://www.southernbank.com/about/financial-reports/news-releases> and Exhibit A.

⁹ Notices were published in the Daily Press, Hampton, Virginia and the Goldsboro New Argus, Goldsboro, North Carolina, newspapers of general circulation in the communities where the main offices of Old Point (and Old Point Bank) and Southern (and Southern Bank) are located, respectively.

¹⁰ A copy of the confidential letter from Robert F. Shuford, Jr. to the Bureau dated October 22, 2021 (the "Shuford BFI Letter") is attached as Confidential Exhibit B. A copy of the redacted letter from Robert F. Shuford, Jr. to FRB-R (the "Shuford FRB-R Letter") is attached as Exhibit C.

Southern responded to questions from Bureau staff as they processed the Application.¹¹ On November 5, 2021, the Bureau sent a copy of the Shuford BFI Letter to counsel for Southern, requesting that Southern file a written response with the Bureau so that the Bureau could consider the response in recommending whether the Commission enter an order approving the Application. On November 11, 2021, Southern provided a detailed response to the Shuford BFI Letter.¹² Through its counsel, Southern was advised on November 16, 2021, that the Bureau had completed its review and no additional information was required in order for the Bureau to complete its report and make its recommendation to the Commission. On November 19, 2021, the Commission issued its Order disapproving the Application, notwithstanding the recommendation of the Bureau that the Application be approved.

II. Petition for Reconsideration

A. Legal Standard applicable to the Commission's consideration of the Application

Southern's Application was filed pursuant to Va. Code § 6.2-704, which provides that an out-of-state bank holding company, such as Southern, may acquire either control or more than five percent of the voting shares of a Virginia bank holding company only if the out-of-state bank holding company files an Application with the Commission for approval of such acquisition and the Commission does not disapprove the application after the investigation prescribed by Va. Code § 6.2-705.

Va. Code § 6.2-705 A requires the Commission to conduct an investigation of any application pursuant to § 6.2-704 prior to approving or disapproving the application. This Code

¹¹ A copy of a letter from counsel for Southern dated October 27, 2021 is attached as Exhibit D.

¹² A copy of a letter from counsel for Southern dated November 11, 2021 is attached as Confidential Exhibit E.

section specifically sets forth the issues that the Commission is to consider in its investigation of such an application, specifically:

1. The proposed acquisition would be detrimental to the safety and soundness of the applicant or of the Virginia financial institution or Virginia financial institution holding company that the applicant seeks to control or the stock of which is to be acquired;
2. The applicant, its directors and officers, if applicable, and any proposed new directors and officers of the Virginia financial institution or Virginia financial institution holding company that the applicant seeks to control or the stock of which is to be acquired, are qualified by character, experience, and financial responsibility to control and operate a Virginia financial institution;
3. The proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of the applicant or of the Virginia financial institution holding company or any Virginia financial institution that the applicant seeks to control or the stock of which is to be acquired; and
4. The acquisition is in the public interest.¹³

Importantly, the Commission did not find, and the record would not support, that the Application should be disapproved under either prong 1, 2, or 4 above. Indeed, with respect to §6.2-705 A 1, the acquisition would not have any negative effect on either entity as Southern has sufficient financial resources for the contemplated additional passive investments and the only impact on Old Point would be the potential increased market value of Old Point's common stock from increased demand; a benefit to the safety and soundness of Old Point. In addition, because Southern does not seek any controlling influence over Old Point, the qualifications of the persons listed under §6.2-705 A 2 are not applicable and, even if they were, Southern and its directors and officers are well qualified as related to financial institutions. The Commission would have found as much when it approved Southern's acquisition of Heritage Bancshares, Inc. in 2016 as discussed

¹³ Va. Code § 6.2-705 A.

above. Further, under Va. Code, §6.2-705 A 4, the Commission did not find that there is any adverse impact on the public interest from the acquisition and Southern submits that the potential increase in the value of Old Point's common stock from the additional demand for the shares is in the public interest.

The Order did find, however, “[b]ased on the information and assertion submitted by Southern and Old Point at this time” that:

the ‘proposed acquisition would be prejudicial to the interests of the depositors, creditors, beneficiaries of fiduciary accounts or shareholders of . . . any Virginia financial institution that the applicant seeks to control or the stock of which is to be acquired.’¹⁴

While Virginia, and other jurisdictions with similar provisions, does not have substantial case law on the relevant considerations under §6.2-705 A 3, a plain reading of the statute shows that the intent is to ensure that approval of the Application under §6.2-704 would not have a prejudicial impact on depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of Southern or Old Point. This means that the acquisition being approved would not “injure or impair” the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of Southern or Old Point.¹⁵ An example in which Commission disapproval of the Application might be warranted under A 3 would be if Southern’s contemplated investment would impair Southern’s ability to meet its financial obligations to its depositor or creditors—which, as shown in Southern’s Application, is not even remotely the case with the investment currently before the Commission. As further discussed below, there is simply no way in which additional passive investments in Old Point by Southern would impair or injure the interests of any of Old Point’s depositors, creditors, beneficiaries of fiduciary accounts, or shareholders. While Old Point, through one of its

¹⁴ Order at 1 (quoting Va. Code §6.2-705 C).

¹⁵ Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/prejudicial>.

controlling shareholders, raised objections to the acquisition, these objections and the omitted material facts discussed in Southern's reply and below plainly reveal that Old Point and its controlling shareholder are simply seeking to use the Commission process to decide who can and cannot acquire shares of Old Point in the market.¹⁶ This is not the intent of the statute nor an appropriate reason to support disapproval of market transactions under the Commission's authority.

B. Southern's additional passive investment in Old Point will not prejudice the interests relevant under the Virginia Code.

1. Currently, there are at least four shareholders with greater than 5% ownership in Old Point; in contrast Southern will not exercise control over Old Point

As of April 12, 2021, Old Point already had at least four shareholders holding greater than 5%, namely (i) Mr. Shuford (9.4%), (ii) James Reade Chisman (5.7%), (iii) PL Capital Advisors, LLC (9.4%) and (iv) FJ Capital Management, LLC (9.8%). Except for FJ Capital, each of these large shareholders also enjoys Board representation. Additionally, Mr. Shuford is also Chairman of the Board of Directors, Chief Executive Officer and President of Old Point.¹⁷ Importantly, each of these shareholders either occupies "control" status with Old Point or has the ability to do so.

Further, based on an August 17, 2021 filing with the SEC, PL Capital Advisors, LLC's ownership has recently increased to 9.9% of Old Point's common stock. In that filing PL Capital Advisors, LLC disclosed that it may make further purchases to increase its aggregate holdings up to 14.999% of Old Point's common stock based on an agreement reached with Old Point.¹⁸

¹⁶ Indeed, as noted below, one of Old Point's existing shareholders, who holds a seat on Old Point's Board of Directors, recently filed disclosures with the SEC indicating an intent to acquire up to 14.9% of Old Point's common stock based on a recent agreement with Old Point.

¹⁷ See Proxy Statement filed with the SEC on April 15, 2021.

¹⁸ See Schedule 13D/A filed with the SEC on August 17, 2021, attached as Exhibit F.

In contrast to these four greater than 5% shareholders who already hold significant control of Old Point or have the ability to do so, Southern has made explicit representations and undertakings to the Bureau and the FRB-R that it has made and desires to further make *passive investments* in Old Point and that it has no plans to seek to influence or impede the management, operations, or policies of Old Point or seek Board representation.

Additionally, in the event that Southern were to hold in excess of 10% of Old Point's common stock, Southern would then be considered an "interested shareholder" under Article 14 of the Virginia Stock Corporation Act (the "VSCA"). As a consequence, Old Point would be prohibited from engaging in "affiliated transactions" with Southern for a period of three years unless "approved by the affirmative vote of a majority (but not less than two) of the disinterested directors and by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by [Southern]." Even after the end of the three-year period, subject to certain exceptions, Old Point would still be prohibited from engaging in "affiliated transactions" with Southern unless "approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by [Southern]." These anti-takeover provisions, as well as the control share acquisition provisions set forth in Article 14.1 of the VSCA, provide considerable and meaningful protections against Southern or any other shareholder seeking to exercise a controlling influence over Old Point.¹⁹

The presence of these four shareholders with greater than 5% ownership, the control exercised by most of these shareholders, Southern's unambiguous representations that its investments will be passive, and the statutory protections that apply should Southern's ownership

¹⁹ See Confidential Exhibit E, pages 2-3.

interest increase to above 10% all confirm that Southern's desire to make additional passive investments will not prejudice any of the interests contemplated in Va. Code §6.2-705 A 3.

2. *Southern wishes to make additional Passive Investments in Old Point*

Pursuant to the Application, and as repeated in Southern's news release and subsequent correspondence to the Bureau:

- (i) Southern's proposed investment in Old Point is passive;
- (ii) Southern wishes to acquire and hold the Old Point stock for investment purposes – just as it holds shares of other financial institutions;
- (iii) Southern has no plans to seek to influence or impede the management, operations, or policies of Old Point; and
- (iv) Southern has no current plans to seek to elect a director of Old Point or Old Point National Bank (“Old Point Bank”); to influence the management or policies of Old Point or Old Point Bank, or to seek to acquire Old Point.²⁰

Southern's additional investments would be effected through purchases of shares on the open market and privately negotiated transactions with current shareholders of Old Point. No specific arrangements to invest in shares, however, have been made or are contemplated at this time, and the rate at which Southern invests in additional shares will be determined by a combination of the availability of shares and the price(s) at which such shares are available for purchase. These matters are largely outside of Southern's control and therefore Southern cannot reasonably estimate how long it would take Southern to increase its investment to 19.9% of the common stock, or indeed whether it will ever succeed in doing so.²¹

Accordingly, the intention for Southern's investments to be passive are clear and unambiguous. Southern is only seeking to begin making additional purchases of shares on the market, cannot reasonably estimate the time it will take to make these purchases, and does not

²⁰ See, for example, Exhibit D and Confidential Exhibit E.

²¹ See Exhibit D; letter from counsel for Southern dated December 1, 2021 to the FRB-R, which is attached as Exhibit G.

know that it would be able to acquire the full 19.9% of Old Point's shares contemplated in the Application. Acquiring additional shares through passive investments in this manner will not prejudice the interests contemplated in Va. Code §6.2-705 A 3.

3. *Southern may not change its investment intent or otherwise withdraw its representations and undertakings without the subsequent approvals of the Commission and the Federal Reserve*

Southern has repeatedly and consistently made certain important representations and undertakings in its Application and subsequent correspondence with the Bureau as to its investment intent, the purpose of the investment and the absence of any intent or plans to seek to exercise control over Old Point (*See* Section B(2), above). Should the Commission approve the Application, the Commission will be entitled to rely upon these representations and undertakings made in Southern's Application and its other filings and pleadings.²² Put another way, Southern will be bound to fully comply with the representations and undertakings it submitted in support of the Application and it fully intends to do so. In the event that circumstances were to change, Southern will be required to submit a new application to the Commission for consideration before Southern may retract or otherwise modify its prior representations and undertakings.²³

Likewise, should the Federal Reserve issue a non-objection to the Notification, the Federal Reserve may rely on the representations and undertakings contained in the Notification. Southern

²² *Cf., e.g.,* 20 VAC 5-20-20 (the Commission's rule regarding good faith pleading and practice); *Shipe v. Hunter*, 280 Va. 480, 484, 699 S.E.2d 519, 521 (2010) (“[f]or protection of the public from harassment by frivolous, oppressive, fraudulent or purely malicious litigation, the General Assembly has chosen to hold attorneys and pro se litigants to a high degree of accountability for the assertions they make in judicial proceedings.”).

²³ Pursuant to § 6.2-705 of the Virginia Code, the Commission may “*impose such conditions on the acquisition as the Commission may deem advisable to effectuate the purposes of this chapter.*” It is anticipated that should the Commission approve the Application, its order would include a condition stating that the approval is made in reliance upon the representations and undertakings of Southern made in its Application and other correspondence to the Commission related to the Application, which representations and undertakings may not be withdrawn or otherwise modified except with the subsequent approval of the Commission.

would be required to submit a new FR-Y3N Notification to the Federal Reserve before withdrawing or otherwise amending its representations and undertakings.

Southern simply cannot (and has no intention to) represent one thing to the Commission and the Federal Reserve and do something different. Southern's intention is to increase its passive investments in Old Point. Should Southern seek to change this and seek to exercise a controlling influence over Old Point in the future, Southern would need to return to the Commission and the FRB-R and seek approval before it could do so. Assertions implying otherwise are simply baseless.

4. *There is no evidence of any prejudice to the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of either Southern or Old Point*

Southern Bank is a 120-year old community bank, dedicated to the communities in which it serves, including the Hampton Roads area in Virginia. Southern and Southern Bank enjoy excellent relations with their Virginia, North Carolina, and federal banking regulators, depositors, customers and shareholders.

As noted in the Commission's Order, the Bureau did not oppose Southern's Application. That is, after carefully reviewing the Application, additional supporting information provided by Southern, the Shuford BFI Letter, and Southern's response, the Bureau determined that additional passive investments by Southern would not prejudice the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of Southern or Old Point. Likewise, in 2015, the Bureau approved Southern's previous application to acquire Virginia-based Heritage Bankshares, Inc. and its subsidiary bank, Heritage Bank. There was no reason to withhold approval of the acquisition of Heritage Bankshares and Heritage Bank in 2015, and nothing has changed that should cause the Application (to acquire a passive interest in up to 19.9% of Old Point) to be denied in 2021.

In the course of the comment period, it is understood that the Bureau did not receive any comments from the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of either Southern or Old Point (adverse or otherwise), other than Mr. Shuford, Chairman, President, Chief Executive Officer and 9.4% shareholder of Old Point, whose interests are not representative of the aforementioned constituencies. Southern responded fully to the Shuford BFI Letter, satisfying the Bureau and causing the Bureau to recommend approval of the Application.

Moreover, shortly before raising objections to Southern's Application, Old Point and PL Capital Advisors, LLC reached an agreement permitting PL Capital Advisors, LLC to increase its investment (which is not passive) in Old Point to up to 14.999%.²⁴ It is not consistent with Va. Code § 6.2-704 for the Commission to disapprove Southern's proposed acquisitions based on the objections raised in the Shuford BFI Letter when, among other issues discussed above and in Southern's reply to those comments, the comments failed to disclose this recent agreement, which is entirely inconsistent with the assertions made in the Shuford BFI Letter regarding its current desire regarding ownership of its stock. The intent of Va. Code §6.2-704 is not to allow a bank holding company, or its controlling shareholders, to pick and choose those entities that can invest in the company. Instead, it is to protect the legitimate interests contemplated in that statute and preserve the soundness and safety of the financial institution, none of which are adversely impacted by the investment discussed in the Application.

Accordingly, the record confirms that an increase in Southern's passive investment in Old Point will not prejudice the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of Southern or Old Point.

²⁴ See Exhibit F.

III. Conclusion

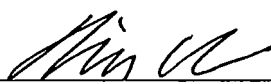
As noted throughout this Petition, the Bureau conducted a thorough review and investigation of Southern's Application on behalf of the Commission and the resulting record in BAN20210165, as further explained below, fully supports approval of the Application under the applicable statutory standards. This is because there simply is no evidence that shows the passive investments that Southern seeks to make would prejudice the interests of the depositors, creditors, beneficiaries of fiduciary accounts, or shareholders of Southern or Old Point.

For the reasons stated in this Petition, the statutory standard under Va. Code §6.2-704 *et al.* has been satisfied and the Application should be approved subject to any conditions deemed appropriate by the Commission to insure that the representations and undertakings of Southern are maintained. Accordingly, Southern respectfully requests that the Commission: (1) grant this Petition for Reconsideration; (2) suspend its November 19, 2021 Order issued in administrative Case No. BAN20210165 as contemplated in 5 VAC 5-20-220; (3) incorporate any documents in the record of administrative Case No. BAN20210165 with this docket; and (4) issue an Order approving Southern's Application.

Respectfully submitted,

SOUTHERN BANCSHARES (N.C.). INC.

December 9, 2021



By Counsel

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Counsel for Southern BancShares (N.C.), Inc.

EXHIBIT A



News Releases

SEPTEMBER 17, 2021 SOUTHERN BANCSHARES (N.C.), INC. SEEKS REGULATORY APPROVAL TO INCREASE ITS INVESTMENT IN OLD POINT FINANCIAL CORPORATION

NEWS RELEASE For Immediate Release

September 17, 2021

Contact: David L. Sauls, Jr.
Southern BancShares (N.C.), Inc.
919.658.7013

MOUNT OLIVE, N.C.- Southern BancShares (N.C.), Inc. (the "Company" or "Southern") (OTC Pink: SBNC), the holding company for Southern Bank and Trust Company, announced today that it has filed applications with the Federal Reserve Board of Richmond and the Virginia Bureau of Financial Institutions to increase its ownership interest in the common shares of Old Point Financial Corporation ("Old Point") (NASDAQCM: OPOF). The Company and its affiliates currently own approximately 4.9% of the outstanding common shares of Old Point. The Company is seeking regulatory approval to acquire up to 19.9% of Old Point's common shares.

For several decades Southern has invested in the common stock of other financial institutions and believes its investment in Old Point is a sound allocation of its assets. Old Point, founded in 1923, serves the Hampton Roads and Richmond regions of eastern Virginia. The Company views Old Point's long standing franchise in these growth markets and solid management team as a foundation for an attractive long-term return to its common shareholders.

Southern's investment in Old Point is passive and it has no plans to influence or impede the management, operations, or policies of Old Point. Southern has no current plans to seek representation on Old Point's Board of Directors and has not entered into voting or other agreements with any other party as it relates to the common shares of Old Point.

About Southern BancShares (N.C.), Inc.

The Company, headquartered in Mount Olive, North Carolina and with consolidated assets of \$4.3 billion, is the holding company for Southern Bank and Trust Company, which was founded in 1901 and maintains 59 branches located in eastern North Carolina and southeastern Virginia.

JUNE 23, 2021 SOUTHERN BANCSHARES (N.C.), INC. ANNOUNCES PROMOTION OF DAN R. ELLIS, JR. TO CHIEF FINANCIAL OFFICER

NEWS RELEASE For Immediate Release

June 23, 2021

Contact: Dan R. Ellis, Jr.
Southern BancShares (N.C.), Inc.
919.658.7082

MOUNT OLIVE, N.C.-(PR NEWS WIRE)-Southern BancShares (N.C.), Inc. (the "Company") (OTC Pink: SBNC), the holding company for Southern Bank and Trust Company (the "Bank"), announced today that it has completed the private placement of \$80 million of 3.125% Fixed-to-Floating Rate Subordinated Notes due 2031 (the "Notes") to qualified institutional buyers and accredited investors. Until June 30, 2026, the Notes will bear interest at a fixed annual rate of 3.125%, payable semi-annually in arrears. Thereafter, the Notes will bear interest at a floating rate equal to the three-month term SOFR plus 241 basis points, payable quarterly in arrears.

The Notes are structured to qualify as Tier 2 capital for regulatory purposes. The Company intends to use the net proceeds of the offering for general corporate purposes. The Company may redeem the Notes in whole or in part, beginning on June 30, 2026, at a redemption price equal to 100% of the principal amount of the Notes redeemed, plus accrued and unpaid interest. Note holders have no redemption rights.

Raymond James & Associates, Inc. served as the exclusive placement agent for the Notes offering. Ward and Smith, P.A. served as legal counsel to the Company and Wyrick Robbins Yates & Ponton LLP served as legal counsel to the placement agent.

This press release is for informational purposes only and shall not constitute an offer to sell or the solicitation of an offer to buy any securities. The notes offered and sold in the private placement have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any state securities laws, and may not be offered or sold in the United States absent registration, or an applicable exemption from registration under the Securities Act and applicable state securities laws. The indebtedness evidenced by the notes are not deposits and are not insured by the Federal Deposit Insurance Corporation or any other government agency or fund.

About Southern BancShares (N.C.), Inc.

The Company is headquartered in Mount Olive, North Carolina and is the holding company for the Bank, which was founded in 1901 and maintains 59 branches located in eastern North Carolina and southeastern Virginia.

Help Center

31 Lost or Stolen
Debit or ATM Card
1.855.ASK.SBANK (1.855.275.7226)

Lost or Stolen
Credit Card
1.800.543.9000

24 Hour Emergency Roadside Assistance
Lock your keys in your car? Car won't start? Call 1.833.278.1576. It's free to use up to \$80 in service charges. (For GOLD acco BaZing Only.)

Reorder Checks
[Click Here](#). Safe & Secure check ordering through Deluxe, our preferred check printer.



Cardholder Agreement
[Click Here](#)

ID Theft Coverage
Receive reimbursement of qualified direct costs associated with recovering your identity.
[Log in to BaZing to learn more.](#)

Customer Care Center
1.855.ASK.SBANK (1.855.275.7226)
Mon-Fri 8am-7pm
Sat 9am-1pm
Closed Sun & federal holidays

Cell Phone Protection
If your phone is broken or stolen, [log in to BaZing to file a claim](#). Up to \$400 per claim to repair or replace (max \$800 per year).

Universal Card Fee Schedule
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CONFIDENTIAL
EXHIBIT B

CONFIDENTIAL

Redacted in its Entirety

EXHIBIT C



Robert F. Shuford, Jr.
Chairman, President, & Chief Executive Officer



October 22, 2021

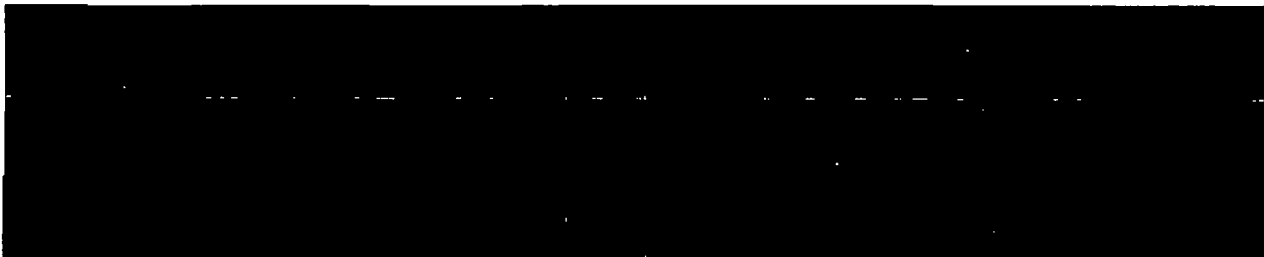
Attn: Adam M. Drimer, Assistant Vice President
Federal Reserve Bank of Richmond
701 East Byrd Street
Richmond, VA 23261

Re: The Application by Southern BancShares to Acquire up to 19.9% of the Voting Shares of Old Point Financial Corporation

Dear Assistant Vice President Drimer:

As the target of Southern Bancshares (N.C.), Inc.'s ("Southern") proposed acquisition of up to 19.9% of our outstanding common stock, Old Point Financial Corporation ("Old Point") appreciates the opportunity to provide the Federal Reserve Bank of Richmond (the "Federal Reserve") with our comments on this very important matter. We are, therefore, providing this interim comment letter; although, we have filed a contemporaneous request to extend the comment period. As is evident from the discussion below, there are significant open questions of fact and legal analysis that need to be addressed, which supports our request for an extension of the public comment period.

After careful consideration and analysis, Old Point objects to Federal Reserve approval of the proposed acquisition for the reasons set forth herein.



III. Southern's Presence as Old Point's Largest Shareholder is Likely to Significantly Reduce Old Point's Strategic Opportunities.

Under Section 3(c) of the Bank Holding Company Act (the "BHCA"), the Federal Reserve must consider the future prospects of Old Point and Old Point National Bank of Phoebus when evaluating Southern's application. Old Point believes that Southern's acquisition of 19.9% of our outstanding common stock would negatively impact Old Point's future prospects significantly.

In order to comply with its fiduciary duties, the Board of Directors of Old Point regularly evaluates its strategy of operating as an independent bank holding company against the strategic alternatives available to Old Point and its shareholders. Based on advice from Old Point's financial and legal advisors, Old Point believes that if Southern acquires 19.9% of Old Point's outstanding common stock, the number and range of strategic alternatives available to Old Point would significantly decline.

As the largest shareholder, Southern could threaten to vote against any proposal that would dilute its ownership in Old Point or result in Southern not controlling Old Point, without regard to the

financial, operational or strategic considerations of such a proposal. [REDACTED]

Additionally, potential strategic partners could be hesitant to enter into a transaction with Old Point if Southern acquires 19.9% of Old Point's outstanding common stock. By entering into a transaction with Old Point, any strategic partner would "inherit" Southern as a significant shareholder in the combined organization. This inheritance likely would make a transaction less attractive and riskier for potential strategic partners.

Finally, Southern has significant liquid assets. It could use these liquid assets in conjunction with its 19.9% ownership position to launch a "stalking bid" in the face of any other strategic proposal.

The combined effect of these factors likely would be to limit the bank holding companies that would meaningfully discuss a strategic transaction with Old Point in the event that Southern acquires 19.9% of Old Point's outstanding common stock. Reducing the possibility and number of strategic alternatives available to Old Point would considerably restrict our future prospects and likely have a negative effect on our shareholders.

IV. Southern is Likely to Have Significant Influence Over a Critical Portion of Old Point's Corporate Strategy and Policies Regarding Strategic Alternatives.

Under 12 C.F.R. Part 225 ("Regulation Y"), "control" is defined, in part, as "[t]he power to exercise, directly or indirectly, a controlling influence over the management or policies" of another company.¹

Congress added this controlling influence prong to address concerns that a company could structure an investment in a bank below the two bright-line thresholds set forth in the definition of control while still having the "power directly or indirectly to direct or cause the direction of the management or policies of any bank."² Historically, the Board of Governors of the Federal Reserve has interpreted controlling influence "not to require that an investor is able to exercise complete domination or absolute control over all aspects of the management and policies of a company."³ Instead, the Board has found that a controlling influence may exist at "lower levels of influence, including where a company is not able to determine the outcome of a significant matter under consideration."⁴ Thus, a controlling influence only requires "the mere potential for manipulation."⁵

As discussed above, Southern's proposal likely would result in significantly fewer strategic alternatives being available to Old Point. Consequently, Southern would have significant influence over a critical portion of Old Point's corporate strategy and policies regarding the evaluation of

¹ 12 C.F.R. § 225.2(e).

² *Bank Holding Company Act Amendments: Hearing on H.R. 6778 Before H. Comm. On Banking & Currency, 91st Cong. 87 (1969).*

³ "Control and Divestiture Proceedings," 85 Fed. Reg. 12398, 12399 (Mar. 2, 2020).

⁴ *Id.*

⁵ *Interamericas Investments, Ltd. v. Bd. Of Governors of the Fed. Reserve Sys.*, 111 F.3d 376, 383 (5th Cir. 1997).

strategic alternatives, providing Southern with the opportunity to manipulate Old Point. As a result, Southern's proposal is significantly more likely to result in circumstances whereby Southern is able to exercise a controlling influence over Old Point's available strategic transactions than as described in Southern's brief disclosure in Item 3, "Convenience and Needs."

V. *Southern has not Given any Assurance that it will Comply with the Standards for a Non-controlling Investment.*

Southern has given neither Old Point nor, based on the public portion of Southern's application, the Federal Reserve any assurance that it will comply with Regulation Y's standards for a non-controlling investment or that it will refrain from taking action that would lead to a presumption of control under Regulation Y's updated control standards.

In March 2020, the Board of Governors of the Federal Reserve adopted its final rule expanding the presumptions used in determining whether a company has the ability to exercise a controlling influence over another company for purposes of the BHCA. In the final rule release, the Board noted that it did not "intend to obtain the standard-form passivity commitments going forward in the ordinary course."⁶ However, the Board stated that it will continue to obtain control-related commitments "in special situations."⁷

Old Point believes that Southern's proposal is the rare circumstance that justifies the use of passivity commitments [REDACTED]

[REDACTED] Southern's proposal is likely to result in Southern having significant influence over a critical portion of Old Point's strategy and policies regarding the evaluation of strategic alternatives. Southern's influence over these matters is likely to create substantial divergence between the interests of Southern and Old Point's other shareholders since Southern's primary concern may not be the financial, operational or strategic considerations of possible alternatives. Given these factors, it is inappropriate that Southern's application outlines no standard of conduct that it will adhere to as a shareholder of Old Point and gives no assurance that Southern will not attempt to use its acquisition of Old Point's common stock to increase its leverage over Old Point [REDACTED]

At the very least, Old Point believes that it would be appropriate to obtain from Southern commitments that it will not (i) attempt to exercise any controlling influence over Old Point's management or policies, including over Old Point's strategic alternatives, or (ii) pursue any relationship with Old Point that would trigger a rebuttable presumption of control under Regulation Y.

⁶ "Control and Divestiture Proceedings," 85 Fed. Reg. 12398, 12419 (Mar. 2, 2020).

⁷ *Id.*

VI. As a "Contested Situation," the Federal Reserve Should Pay Special Attention to Assuring that the BHCA's Statutory Criteria are Met.

Section 3(c) of the BHCA requires the Federal Reserve to review each application on its merits in light of the BHCA's competitive standards, the financial and managerial resources and future prospects of the companies and banks concerned, and the convenience and needs of the community to be served. The Board of Governors of the Federal Reserve previously has acknowledged that "contested situations" between an applicant and the entity that is the target of the application may cause "uncertainty in the analysis of certain of the effects of the proposed acquisition on the statutory factors."⁸ In such cases, the Board must, therefore, pay "special attention to assuring that the statutory criteria are met."⁹

[REDACTED] we believe this is such a case where special attention is required to assure that the criteria set forth in Section 3(c) of the BHCA are met. To that end, we request that the Federal Reserve, Southern and Old Point explore entering into a stipulation such that Old Point can receive access to portions of Southern's application that are normally not made available to the public. The Board of Governors of the Federal Reserve has taken this approach in the past in the context of an application to acquire the stock of a bank holding company.¹⁰ Receiving this access will allow Old Point to meaningfully comment on sections of the application that are key to the Federal Reserve's consideration in a situation where uncertainty in the analysis of the statutory factors under the BHCA may arise.

If you have any questions or if you need further information, please contact me at [REDACTED]

[REDACTED]
Robert F. Shurford, Jr. ✓
Chairman, President, & Chief Executive Officer
Old Point Financial Corporation

cc: Jacob A. Lutz III, Troutman Pepper Hamilton Sanders LLP
Seth A. Winter, Troutman Pepper Hamilton Sanders LLP
Adrianna C. ScheerCook, Troutman Pepper Hamilton Sanders LLP

⁸ *The Bank of New York Company, Inc.*, Fed. Res. Bull. 257 (Apr. 1988).

⁹ *Id.*

¹⁰ *See, e.g., id.*

EXHIBIT D



IAIN MACSWEEN
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, NC 27401

T 336.271.3192
F 336.232.9192
IMACSWEEN@BROOKSPIERCE.COM

21122055

October 27, 2021

VIA EMAIL ONLY (Edward.Gresham@scc.virginia.gov)

Edward Gresham
Senior Financial Analyst
Virginia Bureau of Financial Institutions
1300 East Main Street, Suite 800
Richmond, Virginia 23218-0640

Re: Application by Southern BancShares (N.C.), Inc., dated September 20, 2021 (the "Application")

Dear Mr. Gresham:

I refer to the above-referenced Application, and our telephone conversation on Monday during which you requested that I clarify certain items, as follows:

1. Stock Ownership: Southern BancShares (N.C.), Inc. ("Southern") currently owns 150,288 shares of Old Point Financial Corporation ("Old Point") common stock ("Common Stock")¹.
2. Reason for Proposed Purchases: Southern intends to acquire and hold shares of Common Stock for investment purposes. Southern does not have a current intent to seek to elect a director of Old Point or Old Point National Bank ("Bank"), to influence the management or policies of Old Point or the Bank, or to seek to acquire Old Point.
3. Expected Timeframe for Purchases: Southern intends to make a long-term investment in the Common Stock through purchases of shares on the open market and privately negotiated transactions with current shareholders of Old Point. No specific arrangements to acquire shares of Common Stock have been made or are contemplated at this time, and the rate at which Southern acquires shares of Common Stock will be determined by a combination of the availability of shares of Common Stock² and the price(s) at which such shares are available for purchase. These matters are largely outside of Southern's control and therefore Southern cannot reasonably estimate how long it will take Southern to acquire 19.9% of the Common Stock, or indeed whether it will ever succeed in doing so.

Should you have any additional questions, please contact the undersigned at (336) 271-3192 or by email at IMacSween@brookspierce.com.

Sincerely,

Iain MacSween
Direct Dial: (336) 271-3192
Email: imacsween@brookspierce.com

cc: David Sauls, Southern BancShares (N.C.), Inc.
Adam M. Drimer, The Federal Reserve Bank of Richmond
Katherine Bosken, North Carolina Commissioner of Banks
John Henrie, FDIC Regional Director
Patrick Brennan, Office of the North Carolina Commissioner of Banks
Anne Servaes, FDIC Case Manager

¹ Unchanged from the ownership disclosed in the Application. See "Section I - Introduction, Overview".
² As of September 13, 2021, the average daily trading volume of Old Point's stock was only 2,422 shares.

CONFIDENTIAL
EXHIBIT E

CONFIDENTIAL

Redacted in its Entirety

EXHIBIT F

21122206153

SC 13D/A 1 cmw321.htm
CUSIP No. 680194107

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE 13D/A
Amendment No. 6**

Under the Securities Exchange Act of 1934

OLD POINT FINANCIAL CORPORATION

(Name of Issuer)

Common Stock, \$5.00 par value

(Title of Class of Securities)

680194107

(CUSIP Number)

Mr. John W. Palmer
PL Capital Advisors, LLC
750 Eleventh Street South
Suite 202

Naples, FL 34102

(239)-777-0187

(Name, Address and Telephone Number of Person
Authorized to Receive Notices and Communications)

- with copies to -

| | |
|------------------------|----------------------|
| Phillip M. Goldberg | Peter D. Fetzer |
| Foley & Lardner LLP | Foley & Larder LLP |
| 321 North Clark Street | 777 East Wisconsin |
| Suite 2800 | Avenue |
| Chicago, IL 60654-5313 | Suite 3800 |
| (312) 832-4549 | Milwaukee, WI 53202- |
| | 5306 |
| | (414) 297-5596 |

August 12, 2021

(Date of Event Which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition that is the subject of this Schedule 13D, and is filing this schedule because of §240.13d-1(e), §240.13d-1(f) or §240.13d-1(g), check the following box .

CUSIP No. 680194107

21122000

| | | |
|---|---|--|
| 1 | NAME OF REPORTING PERSON PL Capital Advisors, LLC | |
| 2 | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP <input checked="" type="checkbox"/> (a) <input type="checkbox"/> (b) | |
| 3 | SEC USE ONLY | |
| 4 | SOURCE OF FUNDS WC | |
| 5 | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) <input type="checkbox"/> | |
| 6 | CITIZENSHIP OR PLACE OF ORGANIZATION Delaware | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH | 7 | SOLE VOTING POWER 0 |
| | 8 | SHARED VOTING POWER 519,857 |
| | 9 | SOLE DISPOSITIVE POWER 0 |
| | 10 | SHARED DISPOSITIVE POWER 519,857 |
| 11 | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 519,857 | |
| 12 | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/> | |
| 13 | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 9.9% | |
| 14 | TYPE OF REPORTING PERSON IA | |

CUSIP No. 680194107

21122050

| | | |
|---|--|---|
| 1 | NAME OF REPORTING PERSON Richard J. Lashley | |
| 2 | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP | (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/> |
| 3 | SEC USE ONLY | |
| 4 | SOURCE OF FUNDS AF | |
| 5 | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) <input type="checkbox"/> | |
| 6 | CITIZENSHIP OR PLACE OF ORGANIZATION U.S. | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH | 7 | SOLE VOTING POWER 0 |
| | 8 | SHARED VOTING POWER 519,857 |
| | 9 | SOLE DISPOSITIVE POWER 0 |
| | 10 | SHARED DISPOSITIVE POWER 519,857 |
| 11 | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 519,857 | |
| 12 | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/> | |
| 13 | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 9.9% | |
| 14 | TYPE OF REPORTING PERSON IN | |

CUSIP No. 680194107

211220056

| | | |
|---|--|---|
| 1 | NAME OF REPORTING PERSON John W. Palmer | |
| 2 | CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP | (a) <input checked="" type="checkbox"/> (b) <input type="checkbox"/> |
| 3 | SEC USE ONLY | |
| 4 | SOURCE OF FUNDS AF | |
| 5 | CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e) <input type="checkbox"/> | |
| 6 | CITIZENSHIP OR PLACE OF ORGANIZATION U.S. | |
| NUMBER OF SHARES BENEFICIALLY OWNED BY EACH REPORTING PERSON WITH | 7 | SOLE VOTING POWER 0 |
| | 8 | SHARED VOTING POWER 519,857 |
| | 9 | SOLE DISPOSITIVE POWER 0 |
| | 10 | SHARED DISPOSITIVE POWER 519,857 |
| 11 | AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON 519,857 | |
| 12 | CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES <input type="checkbox"/> | |
| 13 | PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11) 9.9% | |
| 14 | TYPE OF REPORTING PERSON IN | |

CUSIP No. 680194107**Item 1. Security and Issuer**

This amended and restated Schedule 13D (this "Schedule 13D") relates to the common stock, \$5.00 par value ("Common Stock"), of Old Point Financial Corporation (the "Company" or "Old Point"). The address of the principal executive offices of the Company is 101 East Queen Street, Hampton, VA 23669.

Item 2. Identity and Background

- (a) This Schedule 13D is filed jointly by (collectively, the "Reporting Persons"): (1) PL Capital Advisors, LLC, a Delaware limited liability company and Securities and Exchange Commission (the "SEC") registered investment adviser under the Investment Advisers Act of 1940 ("PL Capital Advisors"); (2) Richard J. Lashley, a managing member of PL Capital Advisors; and (3) John W. Palmer, a managing member of PL Capital Advisors. The Joint Filing agreement of the Reporting Persons is attached as Exhibit 1 to Amendment No. 1 to the Schedule 13D, as filed with the SEC on December 31, 2015.
- (b) The principal business address of the Reporting Persons is 750 Eleventh Street South, Suite 202, Naples, FL 34102.
- (c) The principal business of PL Capital Advisors is to serve as an investment manager or adviser to various investment partnerships, funds and managed accounts (collectively, the "Clients"). The principal occupation of Messrs. Lashley and Palmer is investment management through their ownership and control over the affairs of PL Capital Advisors. PL Capital Advisors has sole voting and dispositive power over the Common Stock held by the Clients, which is deemed shared with the two Managing Members of PL Capital Advisors, and the Clients do not have the right to acquire voting or dispositive power over the Common Stock within sixty days.
- (d)-(e) During the last five years, none of the Reporting Persons (i) has been convicted in a criminal proceeding (excluding traffic violations or similar misdemeanors) or (ii) has been a party to a civil proceeding of a judicial or administrative body of competent jurisdiction and as a result of such proceedings was or is subject to a judgment, decree, or final order enjoining future violations of, or prohibiting or mandating activities subject to, federal or state securities laws or finding any violations with respect at such laws.
- (f) Mr. Lashley and Mr. Palmer are both citizens of the United States.

Item 3. Source and Amount of Funds or Other Consideration

In aggregate, PL Capital Advisors, on behalf of its Clients and affiliates (collectively, referred to herein as the "PL Capital Group"), owns 519,857 shares of Common Stock of the Company acquired at an aggregate cost of \$8,843,115, including brokerage commissions. These shares were acquired using the Clients' available working capital.

From time to time, members of the PL Capital Group may purchase Common Stock on margin provided by Goldman Sachs & Co., on such firms' usual terms and conditions. All or part of the shares of Common Stock owned by members of the PL Capital Group may from time to time be pledged with one or more banking institutions or brokerage firms as collateral for loans made by such entities to members of the PL Capital Group. Such loans, if any, generally bear interest at a rate based upon the federal funds rate plus a margin. Because other securities are held in the margin accounts, it is not possible to determine the amounts, if any, of margin used to purchase the shares of Common Stock reported herein. Such indebtedness, if any, may be refinanced with other banks or broker-dealers.

CUSIP No. 680194107**Item 4. Purpose of Transaction**

This is the PL Capital Group's sixth amendment to its initial Schedule 13D filing. In the aggregate, the PL Capital Group owns 9.9% of the Company's Common Stock, based upon the number of outstanding shares of Common Stock, 5,244,635, reported as the number of outstanding shares as of June 30, 2021, in the Company's Current Report on Form 8-K. The PL Capital Group acquired the Common Stock because it believes the Common Stock is undervalued.

The PL Capital Group, the Company and Company Director William Keefe entered into Amendment No. 1 to the Settlement Agreement, effective as of August 12, 2021, amending the Settlement Agreement to permit the PL Capital Group to acquire up to 14.9% of the Company's Common Stock, subject to satisfactory regulatory approval, and extending the Settlement Agreement to run through the Company's annual shareholder meeting in 2022. A copy of the original Settlement Agreement, dated March 16, 2016, was previously filed as an exhibit. Among other things, Amendment No. 1 provides that each party to the Settlement Agreement has the right to terminate the amended Settlement Agreement upon 5 days written notice to the other party at any time after the Company's 2022 Annual Meeting, provided however that termination may not occur during the period between the notice deadline for director nominations pursuant to the Company's bylaws and the conclusion of such Annual Meeting. A copy of Amendment No. 1 to the Settlement Agreement is attached as Exhibit 99.4 to this filing and is incorporated herein by reference.

The Reporting Persons intend to monitor the performance and corporate governance of the Company, as well as the actions of the Company's management and board. As they deem necessary, the Reporting Persons will assert their stockholder rights.

Unless otherwise noted in this amended Schedule 13D, no Reporting Person has any plans or proposals, which relate to, or would result in, any of the matters referred to in paragraphs (b) through (j), inclusive of Item (4) of Schedule 13D. The Reporting Persons may, at any time and from time to time, review or reconsider their positions and formulate plans or proposals with respect thereto. The Reporting Persons may make further purchases of shares of Common Stock, although they have no present intention of increasing their aggregate holdings above 14.999% of the Company's outstanding Common Stock. The Reporting Persons may dispose of any or all the shares of Common Stock which they hold on behalf of the Clients.

Item 5. Interest in Securities of the Company

The percentages used in this Schedule 13D are calculated based upon the number of outstanding shares of Common Stock, 5,244,635, reported as the number of outstanding shares as of June 30, 2021, in the Company's Current Report on Form 8-K filed with the SEC on July 27, 2021.

Because Messrs. Palmer and Lashley are the Managing Members of PL Capital Advisors, the investment manager or adviser to the Clients, they are deemed to share the voting and dispositive power over the shares of Common Stock managed by PL Capital Advisors on behalf of the Clients. The Clients do not have the right to obtain voting or dispositive power over any of the shares of Common Stock within sixty days, and are therefore not deemed to beneficially own the shares of Common Stock, pursuant to Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended. PL Capital Advisors, Mr. Palmer, and Mr. Lashley do not own any shares of Common Stock of the Company directly.

The Reporting Persons did not effect any transactions in the Common Stock within the past 60 days.

Item 6. Contracts, Arrangements, Understandings or Relationships with Respect to Securities of the Company.

CUSIP No. 680194107

PL Capital Advisors is the investment manager on behalf of the Clients. Each of the Clients has granted to PL Capital Advisors the sole and exclusive authority to vote and dispose of the shares of Common Stock held on their behalf pursuant to a management agreement. PL Capital Advisors is entitled to a fee for managing and advising these Clients, generally based upon a percentage of the Clients' capital. Affiliates of PL Capital Advisors, including PL Capital, LLC and Goodbody/PL Capital LLC, serve as the general partner of various partnerships managed and advised by PL Capital Advisors, including Financial Edge Fund, L.P., Financial Edge-Strategic Fund, L.P., PL Capital/Focused Fund, L.P., and Goodbody/PL Capital, L.P., each a Delaware limited partnership. For serving as the general partner of these partnerships, PL Capital Advisors' affiliates are entitled to an allocation of a portion of net profits, if any, generated by the partnerships.

Other than the foregoing arrangements and relationships and the Joint Filing Agreement filed as Exhibit 1 to Amendment No. 1 to this Schedule 13D, as filed with the SEC on December 31, 2015, there are no contracts, arrangements, understandings or relationships among the persons named in Item 2 hereof and between such persons and any person with respect to any securities of the Company.

Item 7. Material to be Filed as Exhibits

| <u>Exhibit No.</u> | <u>Description</u> |
|--------------------|---|
| 99.1 | Joint Filing Agreement* |
| 99.2 | Nomination Letter from Richard Lashley to Old Point Financial Corporation dated December 30, 2015.* |
| 99.3 | Settlement Agreement dated March 16, 2016* |
| 99.4 | Amendment No. 1, dated August 12, 2021, to Settlement Agreement |

*Previously filed.

211220158

CUSIP No. 680194107

SIGNATURES

After reasonable inquiry and to the best of our knowledge and belief, we certify that the information set forth in this statement is true, complete and accurate.

Dated: August 12, 2021

PL CAPITAL ADVISORS, LLC

| | | |
|-----|---------------------------|-------------------------------|
| By: | <u>/s/ John W. Palmer</u> | <u>/s/ Richard J. Lashley</u> |
| | John W. Palmer | Richard J. Lashley |
| | Managing Member | Managing Member |

By: /s/ John W. Palmer
John W. Palmer

By: /s/ Richard J. Lashley
Richard J. Lashley

EX-99.4 2 cmw321a.htm

AMENDMENT NO. 1 TO SETTLEMENT AGREEMENT

THIS AMENDMENT NO. 1 (this "Amendment") to the SETTLEMENT AGREEMENT, which was entered into as of March 16, 2016 (the "Agreement"), is made and entered into as of August 12, 2021, by and among (a) Old Point Financial Corporation, a Virginia corporation (the "Company"); (b) Financial Edge Fund, L.P., a Delaware limited partnership, Financial Edge-Strategic Fund, L.P., a Delaware limited partnership, PL Capital/Focused Fund, L.P., a Delaware limited partnership, PL Capital, LLC, a Delaware limited liability company ("PL Capital"), PL Capital Advisors, LLC, a Delaware limited liability company ("PL Capital Advisors"), Goodbody/PL Capital, L.P., a Delaware limited partnership, Goodbody/PL Capital, LLC, a Delaware limited liability company ("Goodbody/PL LLC"), John W. Palmer and Richard J. Lashley, as Managing Members of PL Capital, PL Capital Advisors and Goodbody/PL LLC (collectively, the "PL Capital Group"); and (c) Mr. William F. Keefe ("Mr. Keefe"). The Company, the PL Capital Group and Mr. Keefe are each referred to herein as a "Party" and collectively, as the "Parties."

PREAMBLE

Since the execution of the Agreement, the Parties have determined that it is in the best interest of all Parties to update the provisions of the Agreement specified herein.

In consideration of their mutual promises and obligations hereunder, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I AMENDMENT

Section 1.01 Standstill; Beneficial Ownership. Section 4(a) of the Agreement is hereby deleted in its entirety and replaced with the following:

(a)(i) acquire, offer or agree to acquire, or acquire rights to acquire (except by way of stock dividends or other distributions or offerings made available to holders of voting securities of the Company generally on a pro rata basis), directly or indirectly, whether by purchase, tender or exchange offer, through the acquisition of control of another person, by joining a group, through swap or hedging transactions or otherwise, any voting securities of the Company or any voting rights decoupled from the underlying voting securities which would result in the ownership, control or other beneficial ownership interest in more than 14.99% of the then-outstanding shares of the Common Stock in the aggregate; or (ii) knowingly sell, offer or agree to sell, all or substantially all, through swap or hedging transactions or otherwise, the voting securities of the Company or any voting rights decoupled from the underlying voting securities held by the PL Capital Group, Mr. Keefe and their respective Representatives to any Third Party which would result in such Third Party, together with its Representatives, having any beneficial ownership interest of 5.0% or more of the then-outstanding shares of Common Stock (except for Schedule 13G filers that are mutual funds, pension funds or index funds with no known history of activism).

Section 1.02 Standstill; Transactions. Section 4(g) of the Agreement is hereby deleted in its entirety and replaced with the following:

(g) effect or seek to effect, offer or propose to effect, cause or participate in, or in any way assist or facilitate any other person to effect or seek, offer or propose to effect or participate in, any acquisition of more than 14.99% of any securities, or any material assets or businesses, of the Company or any of its subsidiaries; any tender offer or exchange offer, merger, acquisition, share exchange or other business combination involving more than 14.99% of any of the voting securities or any of the material assets or businesses of the Company or any of its subsidiaries; or any recapitalization, restructuring, liquidation,

dissolution or other extraordinary transaction with respect to the Company or any of its subsidiaries or any material portion of its or their businesses.

Section 1.03 Termination. The first sentence of Section 12 of the Agreement is hereby deleted in its entirety and replaced with the following:

Each Party shall have the right to terminate this Agreement by giving at least five (5) Business Days' written notice to the Other Party at any time after the close of business on the date immediately following the date of the 2022 Annual Meeting (the date of such termination, the "Termination Date"); *provided, however*, that the Termination Date may not be in any time period between the notice deadline pursuant to the Bylaws for the nomination of director candidates for election to the Board for an Annual Meeting with respect to any Annual Meeting and the conclusion of such Annual Meeting.

ARTICLE II MISCELLANEOUS

Section 2.01 Definitions. Capitalized terms used herein but not defined herein shall have the meanings set forth in the Agreement, as amended hereby.

Section 2.02 Continuation. The Agreement is hereby modified to reflect the terms of this Amendment and shall continue in full force and effect. All other provisions of the Agreement not specifically modified herein shall remain in full force and effect.

Section 2.03 Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same agreement. This Amendment and any signed agreement or instrument entered into in connection with this Amendment may be executed by facsimile signature or other electronic transmission signature and such signature shall constitute an original for all purposes. No party to any such agreement or instrument shall raise the use of facsimile machine or email delivery of a ".pdf." format data file to deliver a signature to any such agreement or instrument or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or e-mail delivery of a ".pdf" format data file as a defense to the formation of a contract and each party forever waives any such defense.

Section 2.04 Governing Law. This Amendment shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia without regard to its conflict of law principles.

Section 2.05 Amendment or Modification. Any amendment or modification of the terms and conditions set forth in the Agreement, as amended by this Amendment, must be agreed to in a writing signed by each Party.

Section 2.06 Representations and Warranties of the PL Capital Group and of Mr. Keefe. Mr. Keefe represents and warrants that he is *sui juris* and of full capacity. Each member of the PL Capital Group and Mr. Keefe represent and warrant that they have full power and authority to execute, deliver and carry out the terms and provisions of this Amendment and to consummate the transactions contemplated by the Agreement as amended by this Amendment, and that this Amendment has been duly and validly executed and delivered by each member of the PL Capital Group and Mr. Keefe, constitutes a valid and binding obligation and agreement of each member of the PL Capital Group and Mr. Keefe and is enforceable against each member of the PL Capital Group and Mr. Keefe in accordance with its terms. Each member of the PL Capital Group and Mr. Keefe represent and warrant that they have not formed, are not members of, any group with any other person and do not act in concert with any other person. Each member of the PL Capital Group represents and warrants that it has not, directly or indirectly, compensated or agreed to, and shall not, compensate the PL Capital Designee for his service as a director of the Company with any cash, securities (including any rights or options convertible into or exercisable for or exchangeable into securities or any profit sharing agreement or arrangement) or other form of compensation directly or indirectly related to the Company or its securities,

except for the PL Capital Group's agreement to indemnify and reimburse Mr. Keefe as described in the Nomination Notice.

Section 2.07 Representations and Warranties of the Company. The Company hereby represents and warrants that it has the power and authority to execute, deliver and carry out the terms and provisions of the Agreement as amended by this Amendment and to consummate the transactions contemplated hereby and thereby, and that this Amendment has been duly and validly authorized, executed and delivered by the Company, constitutes a valid and binding obligation and agreement of the Company and is enforceable against the Company in accordance with its terms.

Section 2.08 Resignation Letter of PL Capital Designee. Prior to the execution of this Amendment, the PL Capital Designee has executed and delivered to Old Point an irrevocable resignation as director in the form attached hereto as Exhibit A.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized officers as of the day and year first above written.

OLD POINT FINANCIAL CORPORATION

By: /s/ Robert F. Shuford Jr.
Name: Robert F. Shuford, Jr.
Title: Chairman

FINANCIAL EDGE FUND, L.P.,

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member, PL Capital LLC, General Partner

FINANCIAL EDGE-STRATEGIC FUND, L.P.

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member, PL Capital LLC, General Partner

PL CAPITAL/FOCUSED FUND, L.P.

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member, PL Capital LLC, General Partner

PL CAPITAL, LLC

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member

PL CAPITAL ADVISORS, LLC

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member

GOODBODY/PL CAPITAL, L.P.

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member, Goodbody PL Capital LLC, General Partner

GOODBODY/PL CAPITAL, LLC

By: /s/ Richard J. Lashley
Name: Richard J. Lashley
Title: Managing Member

JOHN W. PALMER

/s/ John W. Palmer
John W. Palmer

RICHARD J. LASHLEY

/s/ Richard J. Lashley
Richard J. Lashley

WILLIAM F. KEEFE

/s/ William F. Keefe
William F. Keefe

21122059

August 12, 2021

Board of Directors
Old Point Financial Corporation
1 West Mellen Street
Hampton, Virginia 23663

Re: Resignation

Ladies and Gentlemen:

This irrevocable resignation is delivered pursuant to that certain Settlement Agreement dated as of March 15, 2016, as amended to date (the "Agreement"), by and among (a) Old Point Financial Corporation, a Virginia corporation (the "Company"); (b) Financial Edge Fund, L.P., a Delaware limited partnership, Financial Edge-Strategic Fund, L.P., a Delaware limited partnership, PL Capital/Focused Fund, L.P., a Delaware limited partnership, PL Capital, LLC, a Delaware limited liability company ("PL Capital"), PL Capital Advisors, LLC, a Delaware limited liability company ("PL Capital Advisors"), Goodbody/PL Capital, L.P., a Delaware limited partnership, Goodbody/PL Capital, LLC, a Delaware limited liability company ("Goodbody/PL LLC"), John W. Palmer and Richard J. Lashley, as Managing Members of PL Capital, PL Capital Advisors and Goodbody/PL LLC (collectively, the "PL Capital Group"); and (c) Mr. William F. Keefe ("Mr. Keefe"). Capitalized terms used herein but not defined shall have the meaning set forth in the Agreement.

Effective immediately upon (i) such time as the PL Capital Group's ownership in the Company falls below 5% of the outstanding Common Stock or (ii) the Termination Date, I hereby irrevocably resign from my position as a director of the board of directors of the Company (the "Board") and of The Old Point National Bank of Phoebus (the "Bank Board") and from any and all committees of the Board and of the Bank Board on which I serve. I acknowledge that upon such resignation I shall have no rights to nominate, recommend, appoint or participate in a Board or Bank Board vote in respect of any replacement director.

Very truly yours,

/s/ William F. Keefe

Name: William F. Keefe

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9502172

EXHIBIT G



December 1, 2021

Via Email

Federal Reserve Bank of Richmond
Attn: Adam M. Drimer
701 East Byrd Street
Richmond, Virginia 23261

Re: Old Point Financial Corporation

Dear Mr. Drimer:

We are providing this letter on behalf of our client, Southern BancShares (N.C.), Inc. ("Southern"), in response to the comment letter of Robert F. Shuford, Jr., Chairman, President and Chief Executive Officer of Old Point Financial Corporation ("Old Point"). Mr. Shuford's letter asserts three arguments he contends support Old Point's objection to Southern's request for non-objection to its proposal to passively invest in up to 19.9% of the outstanding common stock of Old Point. First, Old Point contends that an investment at such a level would limit Old Point's strategic alternatives. Second, Old Point contends that the Board of Governors should discard its carefully crafted revisions to Regulation Y (and the detailed guidance to the concepts underlying those revisions discussed in the Board's Final Rule on Control and Divestiture Proceedings, September 30, 2020 (the "Final Rule")), in order to protect Old Point's strategic alternatives. Last, Old Point asserts, without offering any basis in fact, that Southern's clear statements in its Notification on Form FR Y-3N that it "does not have a current intent to seek to elect a director of Old Point or the Bank, to influence the management or policies of Old Point or the Bank, or to seek to acquire Old Point" and that it has "no current intent to influence the management or policies of Old Point or the Bank or to acquire Old Point by merger or any similar transaction" cannot be trusted as "any assurance that [Southern] will comply with Regulation Y's standards for a non-controlling investment or that it will refrain from taking actions that would lead to a presumption of control under Regulation Y's updated control standards."¹ All three contentions are solely about Old Point's theory that it is the Board's obligation to preserve Old Point's

¹ Southern notes that it filed its Notification on Form FR Y-3N on September 18, 2021 and the Federal Reserve Bank of Richmond acknowledged receipt of the Notification on September 23, 2021. On November 1, 2021, counsel for Southern was notified that the Notification had been transferred from Delegated Action to the Board. Southern has not been advised that any required information has been omitted from the Notification or that any additional information is necessary for the Notification to be complete.

Writer's Direct Dial: 336-271-3123

Fax: 336-232-9123

Email: rsinger@brookspierce.com

Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P.

Attorneys and Counselors at Law

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opportunities to be acquired by a third party when and how its controlling shareholders desire. Each contention is addressed below.

A. Reduction of Old Point's Strategic Alternatives.

This contention is quite simply factually inaccurate.

1. Omitted Disclosure of Relevant Statutory Provisions.

Old Point's comment letter fails to disclose to the Board a number of highly relevant statutory provisions. Southern owns 150,288 shares of Old Point common stock (less than 3.0% of the total shares issued and outstanding²) and desires to increase its investment in what it considers to be a significantly undervalued stock³. Indeed, in the event that Southern were to invest in additional shares of Old Point common stock such that Southern holds in excess of 10% of Old Point's common stock, then Southern would be considered an "interested shareholder"⁴ under Article 14 of the Virginia Stock Corporation Act (the "VSCA"). As a consequence, Old Point would be prohibited from engaging in "affiliated transactions"⁵ with Southern for a period

² Based on 5,244,635 shares of common stock issued and outstanding, as disclosed in Old Point's Quarterly Report on Form 10-Q filed with the SEC on August 16, 2021.

³ As of November 8, 2021, Old Point common stock closed at \$21.83 per share, representing a discount of approximately 2.5% to Old Point's book price as of September 30, 2021; whereas, bank holding companies of comparable size typically trade within a range of 140% to 150% of book value. This represents approximately \$50 million of unrealized shareholder value. On October 26, 2021, Old Point announced that its Board of Directors authorized a program, effective October 19, 2021, to repurchase up to 10% of the Corporation's common stock through November 30, 2022. One can only assume that the Old Point Board has also concluded that Old Point's stock is undervalued.

⁴ Defined in § 13.1-725 of the Virginia Code as any person that is: 1. The beneficial owner of more than 10 percent of any class of the outstanding voting shares of the corporation; however, the term "interested shareholder" shall not include the corporation or any of its subsidiaries, any savings, employee stock ownership, or other employee benefit plan of the corporation or any of its subsidiaries, or any fiduciary with respect to any such plan when acting in such capacity. For the purpose of determining whether a person is an interested shareholder, the number of voting shares deemed to be outstanding shall include shares deemed owned by the interested shareholder through application of subdivision 3 under the definition of "beneficial owner" but shall not include any other voting shares that may be issuable pursuant to any contract, arrangement, or understanding, upon the exercise of any conversion right, exchange right, warrant, or option, or otherwise; or 2. An affiliate or associate of the corporation and at any time within the preceding three years was an interested shareholder of such corporation.

⁵ Defined in § 13.1-725 of the Virginia Code as any of the following transactions: 1. Any merger of the corporation or any of its subsidiaries with any interested shareholder or with any other corporation that immediately after the merger would be an affiliate of an interested shareholder that was an interested shareholder immediately before the merger; 2. Any share exchange pursuant to § 13.1-717 in which any interested shareholder acquires one or more classes or series of voting shares of the corporation or any of its subsidiaries; 3. Except for transactions in the ordinary course of business, (i) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions) to or with any interested shareholder of any assets of the corporation or of any of its subsidiaries having an aggregate fair market value in excess of five percent of the corporation's consolidated net worth as of the date of the corporation's most recently available financial statements, or (ii) any guaranty by the corporation or any of its subsidiaries (in one transaction or a series of transactions) of indebtedness of any interested shareholder in an amount in excess of five percent of the corporation's consolidated net worth as of the date of the corporation's most recently available financial statements; 4. The sale or other disposition by the corporation or any of its subsidiaries to an interested shareholder (in one transaction or a series of transactions) of any voting shares of the corporation or any of its subsidiaries having an aggregate market value in excess of five percent of the aggregate market value of all outstanding voting shares of the corporation except pursuant to

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of three years unless “approved by the affirmative vote of a majority (but not less than two) of the disinterested directors and by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by [Southern]”⁶. Even after the end of the three year period, subject to certain exceptions, Old Point would be prohibited from engaging in “affiliated transactions” with Southern unless “approved by the affirmative vote of the holders of two-thirds of the voting shares other than shares beneficially owned by [Southern]”⁷. These anti-takeover provisions, as well as the control share acquisition provisions set forth in Article 14.1 of the VSCA, provide considerable and meaningful protections against Southern seeking to exercise a controlling influence over Old Point.

The following summary of these anti-takeover provisions was prepared by Old Point and is taken from Old Point’s Registration Statement on Form S-4/A, as filed with the Securities and Exchange Commission (the “SEC”) on January 26, 2018:

Old Point

Virginia law contains provisions regulating “affiliated transactions.” In general, this law prohibits a Virginia corporation from engaging in affiliated transactions with any holder of more than 10% of any class of its outstanding shares, referred to herein as an interested stockholder, for a period of three years following the date that such person became an interested stockholder unless certain conditions are satisfied. A Virginia corporation may include in its articles of incorporation initially filed with the VSCC a provision opting out of the affiliated transactions statute. The stockholders of a Virginia corporation may also adopt an amendment to the corporation’s articles of incorporation or bylaws opting out of the affiliated transactions statute.

Virginia law also contains provisions relating to control share acquisitions, which are transactions causing the voting strength of any person acquiring beneficial ownership of shares of a Virginia public corporation to meet or exceed certain threshold percentages (20%, 33 1/3% or 50%) of the total votes entitled to be cast for the election of directors. A Virginia corporation may include in its articles of incorporation or bylaws a provision opting out of the control

Citizens National

The National Bank Act does not require supermajority voting for transactions with interested stockholders. In addition, as discussed above, Citizens National has elected to be governed by the corporate governance provisions of Virginia law, including the affiliated transactions statute and the control share acquisition statute discussed in this proxy statement/prospectus.

Citizens National’s articles of incorporation and bylaws are silent with respect to the affiliated transactions statute and the control share acquisition statute. Therefore, such statutes apply to affiliated transactions between Citizens National and an interested stockholder and certain other acquisitions of Citizens National’s common stock, respectively.

a share dividend or the exercise of rights or warrants distributed or offered on a basis affording substantially proportionate treatment to all holders of the same class or series of voting shares; 5. The dissolution, domestication, or conversion of the corporation if proposed by or on behalf of an interested shareholder; or 6. Any reclassification of securities, including any reverse stock split, or recapitalization of the corporation, or any merger of the corporation with any of its subsidiaries or any distribution or other transaction, whether or not with or into or otherwise involving an interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions), of increasing by more than five percent the percentage of the outstanding voting shares of the corporation or any of its subsidiaries beneficially owned by any interested shareholder.

⁶ § 13.1-725.1 of the Virginia Code.

⁷ § 13.1-726 of the Virginia Code.

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share acquisition statute.

Old Point's articles of incorporation and bylaws are silent with respect to the affiliated transactions statute and the control share acquisition statute. Therefore, such statutes apply to affiliated transactions between Old Point and an interested stockholder and certain other acquisitions of Old Point's common stock, respectively.

2. Southern's Interests Are Aligned With Those of Other Old Point Shareholders.

Old Point inaccurately implies that Southern's interests differ significantly from those of Old Point's other shareholders. Southern believes that Old Point's shares are undervalued and wishes to invest in additional shares of Old Point common stock. If Southern were permitted to invest in additional shares of Old Point common stock, it is anticipated that such additional demand would increase the price of Old Point's common stock, thus benefitting Old Point's other shareholders – with whom Southern's interests are fully aligned. Southern desires to invest in, not control, Old Point. To repeat statements made by Southern in its Notification to the Board:

- *Southern does not have a current intent to seek to elect a director of Old Point or the Bank, to influence the management or policies of Old Point or the Bank, or to seek to acquire Old Point; and*
- *Southern has no current intent to influence the management or policies of Old Point or the Bank or to acquire Old Point by merger or any similar transaction.*

As explained above, in the event Southern becomes an "interested shareholder" (i.e. holding in excess of 10% of Old Point's common stock), statutory anti-takeover protections will become effective, protecting Old Point and its other shareholders should the interests of Southern and Old Point's other shareholders not be aligned. However, as a shareholder seeking to experience an increase in the value of its passive investment, Southern considers that its interests are fully aligned with Old Point's other non-controlling shareholders.

3. Omitted Disclosure of Controlling Shareholders.

Old Point initially contends that its commitment is to remain independent; however, it subsequently claims that if Southern were to acquire 19.9% of Old Point's shares, such ownership may "reduc[e] the possibility and number of strategic alternatives available to Old Point ... [and] considerably restrict [Old Point's] future prospects and likely have a negative effect on [Old Point's] shareholders." No factual support for this claim is offered. And, here again critical factual information is omitted. Old Point already has a number of large shareholders, some of whom have significant influence and control over Old Point through

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Board representation and/or management positions. Based on Old Point's most recent proxy statement, at least four shareholders own more Old Point shares than Southern, namely (i) Mr. Shuford (9.4%), (ii) James Reade Chisman (5.7%), (iii) PL Capital Advisors, LLC (9.4%) and (iv) FJ Capital Management, LLC (9.8%). Except for FJ Capital, each of these large shareholders also enjoys Board representation, and of course Mr. Shuford is also Chairman of the Board of Directors, Chief Executive Officer and President of Old Point.⁸ Based on a more recent filing with the SEC, PL Capital Advisors, LLC currently owns 9.9% of Old Point's common stock. In that filing this shareholder disclosed that it may make further purchases to increase its aggregate holdings up to 14.999% of Old Point's common stock.⁹

As stated in its Notification, Southern intends to make a long-term, passive investment in Old Point through purchases of shares on the open market and privately negotiated transactions with current shareholders of Old Point. However, no specific arrangements to invest in shares have been made or are contemplated at this time, and the rate at which Southern invests in additional shares will be determined by a combination of the availability of shares and the price(s) at which such shares are available for purchase. These matters are largely outside of Southern's control and therefore Southern cannot reasonably estimate how long it would take Southern to increase its investment to 19.9% of the common stock, or indeed whether it will ever succeed in doing so. Meantime, there are at least four shareholders who own more shares than Southern, each of whom already exercise significant control over Old Point and its management and policies. Southern has repeatedly stated that it has no current intent to influence the management or policies of Old Point or the Bank or to acquire Old Point by merger or any similar transaction. Additionally, Southern does not have a current intent to seek to elect a director of Old Point or the Bank. Further, in the event that Southern were able to increase its investment to more than 10% of Old Point's common stock, its ability to influence or control Old Point will be significantly reduced pursuant to the statutory anti-takeover protections discussed above, effectively mitigating or eliminating the potential for Southern to influence Old Point and/or affect its strategic opportunities. Moreover, any influence that Southern may have in the future as a larger shareholder will be substantially mitigated or eliminated by the existence of these other large shareholders, three of whom also enjoy Board and/or management representation.

B. Request For Board Protection of Old Point in the Market.

Old Point's second reason for objection is, in essence, that the Board should discard the provisions of Regulation Y, the detailed guidance in the Final Rule, deem Southern's passive investment a "special situation" and thereby preserve Old Point's strategic market opportunities for a sale to a third party. This contention is utterly without merit.

Old Point provides no support for its assertion that should Southern be able to increase its passive investment to 19.9% of Old Point's outstanding shares there would be an adverse impact

⁸ See Proxy Statement filed with the SEC on April 15, 2021.

⁹ See Schedule 13D/A filed with the SEC on August 17, 2021.

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on Old Point's "sale of the company" alternatives. Indeed, as noted above, there are other large shareholders in control positions whose actual influence upon Old Point would mitigate or eliminate any such impact. Moreover, this contention argues for a result that would be contrary to the provisions of the Bank Holding Company Act (the "Act") and upend the policy concepts underlying Regulation Y.

- Southern is unaware that even if some sort of adverse impact upon Old Point's strategic alternatives were to exist, the Board has been charged by the Act or its own Regulation Y to intervene in the market for the purpose of protecting those alternatives.
- The Act and Regulation Y address the maximum permissible levels of voting stock ownership (25%) and weight of total equity ownership (33.3%). Regulation Y specifies lower levels that, when coupled with other indicia (e.g. board representation, interlocked management, certain limiting contractual relationships, etc.) would give rise to presumptions of control over the management or policies of a bank holding company. The maximum amount of Southern's passive investment does not rise to these maximum permissible levels. Moreover, it has disclaimed any current intent to seek any such agreements, positions or other indicia or to seek to influence Old Point's management or policies. Acceptance of Old Point's contention would place the Board in the position of a market arbiter, not a bank holding company regulator. At what level of passive voting stock investment would Regulation Y cease to be applicable? What would be the policy basis for such discarding of Regulation Y? Would the level of ownership vary based on objective or subjective criteria? Would a bank holding company be able to advise the Board "we are now ready to sell the company; we would like a favored acquirer to start accumulating our stock; please change your analyses"?

C. Southern's Statements Can Be Accepted With Assurance.

Southern is offended by the contention that its statements cannot be accepted with assurance. Southern has repeatedly, accurately, and truthfully stated that it has no current intent to influence the management or policies of Old Point, to seek Board representation or to acquire Old Point by merger or any similar transaction. Southern quite simply complies with applicable laws and regulations. It agrees that it is required to comply with the Board's Regulation Y and all other applicable laws and regulations relative to its investment in Old Point common stock, including the Final Rule which sets forth a detailed framework for determining whether there exists a presumption of control. It has done so.


Southern recognizes that in the event it were to change its intent from one of acquiring shares as a passive investment to one seeking to exercise a "control influence", the Act and Regulation Y will require it to file a new Notification on Form FR Y-3N and receive a non-objection from the Federal Reserve Bank of Richmond or the Board before it may seek to exert

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such an influence. Southern can assure the Board it would continue to comply with the Act and Regulation Y in such a circumstance.

Southern's Notification seeks a non-objection to a passive investment. The level of investment does not reach the maximum permissible levels established in the Act and Regulation Y. None of the non-stock control "indicia" set forth in Regulation Y is present. There is no basis for Old Point's objection. To the contrary, Old Point utilizes misstatements, material omissions and unsupported (and unsupportable) conclusory hyperbole in an effort to entice the Board to intervene on its behalf outside of the Act and Regulation Y. This effort should not cause the Board to defer action which is clearly required by the Act and Regulation Y. A non-objection should be granted to Southern.

Sincerely,



Robert A. Singer

cc: Drew Covert
David Sauls
Board of Governors
Office of the Comptroller of the Currency
Katherine Bosken, N.C. Commissioner of Banks
Robert F. Shuford, Jr.
Iain MacSween