

**FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C. 20429**

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OF
THE SECURITIES EXCHANGE ACT OF 1934**

November 9, 2016

Date of Report (Date of earliest event reported)

TOWNE BANK

(Exact name of registrant as specified in its charter)

Virginia

(State or other jurisdiction of
incorporation)

35095

(FDIC Insurance Cert. No.)

54-1910608

(IRS Employer Identification
No.)

5716 High Street, Portsmouth, Virginia

(Address of principle executive offices)

23703

(Zip Code)

(757) 638-7500

(Registrant's telephone number, including area code)

No Change

(Former name or former address, if changed since last report)

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

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

ITEM 5.02. DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS.

On November 9, 2016, TowneBank (the “Company”) entered into a Transition and Consulting Agreement with Jacqueline B. Amato, Chairman and Chief Executive Officer of TowneBank Mortgage, a division of the Company, and a director of the Company (the “Consulting Agreement”). The Consulting Agreement provides for Ms. Amato’s transition to a consulting position with the Company for a term of five years beginning on January 1, 2017 and ending on December 31, 2021 (the “Consulting Term”). The Company previously disclosed Ms. Amato’s intent to retire at year end 2016 in a Current Report on Form 8-K filed with the Federal Deposit Insurance Corporation (the “FDIC”) on December 22, 2015.

Until December 30, 2016 (the “Transition Date”), Ms. Amato’s employment terms and compensation as Chairman and Chief Executive Officer of TowneBank Mortgage remain subject to the terms and conditions of the Employment Agreement, dated as of October 1, 2005, between the Company and Ms. Amato (the “Employment Agreement”). Pursuant to the terms of the Consulting Agreement, and effective as of the close of business on the Transition Date, the Employment Agreement will terminate provided that (i) all incentive and other performance-based compensation to which Ms. Amato is entitled under the Employment Agreement for 2016 will be paid on or before March 15, 2017, and (ii) the provisions relating to arbitration and the Company guaranteeing the payment and performance of TowneBank Mortgage under the Employment Agreement survive. A copy of the Employment Agreement was previously filed with the FDIC as an exhibit to the Company’s Current Report on Form 8-K filed on February 15, 2006.

Under the terms of the Consulting Agreement, Ms. Amato has agreed to retire and resign as an officer and employee of the Company on the Transition Date and thereafter provide consulting and advisory services to the Company during the Consulting Term as an independent consultant. During the Consulting Term, in exchange for Ms. Amato providing consulting and advisory services to the Company and complying with other agreements contained in the Consulting Agreement, including certain noncompetition and nonsolicitation covenants incorporated by reference from the Employment Agreement, she will receive an annual consulting fee as follows (the “Consulting Fee”): for 2017 - \$600,000; for 2018 - \$500,000; for 2019 - \$400,000; for 2020 - \$300,000; and for 2021 - \$200,000. As an independent contractor, Ms. Amato will not be entitled to participate in or receive any benefit or right as a Company employee under the employee benefit plans of the Company.

Upon her retirement, Ms. Amato will become Chairman Emeritus, TowneBank Mortgage. Ms. Amato will continue to serve as a director of the Company until her current term expires at the 2018 annual meeting of stockholders and thereafter subject to re-nomination by the Nominating Committee of the Company’s Board of Directors and election by stockholders. She also will serve as a director of Towne Financial Services, LLC during the Consulting Term.

The Consulting Agreement will terminate in the event of Ms. Amato’s death or if she becomes disabled, in which event the Company will have no further obligations or liabilities under the Consulting Agreement except to pay her or her estate or personal representative, as the case may be, any Consulting Fees that remain unpaid through the termination date. Pursuant to the terms of the Consulting Agreement, the Company may terminate the Consulting Agreement for cause, in which event Ms. Amato will not be entitled to receive any compensation or other benefits for any period after such termination. The Consulting Agreement may also be terminated by either the Company or Ms. Amato without cause. If the Company terminates the Consulting Agreement without cause, it will be required to pay Ms. Amato the Consulting Fee for the remainder of the Consulting Term, provided however, that if Ms. Amato engages in TowneBank Mortgage’s Business in the Market Area (as such terms are defined in the

Employment Agreement), the Company will not be required to pay Ms. Amato any Consulting Fees after the date she engages in any conduct or activity that otherwise would have been prohibited under the noncompetition provision in the Employment Agreement. If Ms. Amato terminates the Consulting Agreement without cause, she will be entitled to receive only the Consulting Fee that is accrued but unpaid as of the date she provided notice of termination to the Company.

The above description of the Consulting Agreement is qualified in its entirety by reference to the Consulting Agreement, which is included as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

ITEM 9.01. FINANCIAL STATEMENTS AND EXHIBITS.

(d) *Exhibits.*

The following exhibit is filed herewith:

<u>Exhibit No.</u>	<u>Description</u>
10.1	Transition and Consulting Agreement, dated as of November 9, 2016, entered into between TowneBank and Jacqueline B. Amato.

SIGNATURES

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

TOWNE BANK
(Registrant)

/s/ Clyde E. McFarland, Jr.

Clyde E. McFarland, Jr.
Senior Executive Vice President &
Chief Financial Officer

Date: November 15, 2016

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description</u>
10.1	Transition and Consulting Agreement, dated as of November 9, 2016, entered into between TowneBank and Jacqueline B. Amato.



November 9, 2016

G. ROBERT ASTON, JR.
CHAIRMAN & CEO

Ms. Jacqueline B. Amato
5306 Atlantic Avenue
Virginia Beach, Virginia 23451

Transition and Consulting Agreement

Dear Jackie:

This will set forth the terms of our agreement concerning your continued employment with TowneBank (the "Company") through December 30, 2016 and your transition to a consulting position with the Company for a term of five years as outlined in my earlier letter to you.

Unless the context otherwise requires, references in this Agreement to the "Company" also shall mean and refer to any business entity that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with the Company (each, an "Affiliate").

1. Employment. Your employment with the Company as Chairman and Chief Executive Officer of TowneBank Mortgage will remain subject to the terms and conditions of your Employment Agreement, dated as of October 1, 2005 (the "Employment Agreement"), through December 30, 2016 (the "Transition Date"). Your employment relationship with the Company and your salary, incentive compensation, benefits and other rights and obligations under the Employment Agreement will remain in effect until they terminate as of the close of business on the Transition Date pursuant to this Agreement, provided that any and all incentive and other performance based compensation to which you are entitled under the Employment Agreement for 2016 will be paid on or before March 15, 2017.

2. Transition.

(a) You will retire and resign as an officer and employee of the Company on December 30, 2016. The Board of Directors and Executive Management of the Company highly value having continued access to your unique financial and operational knowledge of TowneBank, TowneBank Mortgage and our affiliates. Accordingly and simultaneously with your resignation as an officer, the Company will engage you to provide consulting and advisory services to the Company in accordance with the terms and conditions of this Agreement

including your signing a release and waiver of claims in favor of the Company and its affiliates and their respective officers and directors in a form provided by the Company. The Transition Date will be considered the Expiration Date as defined in section 2 of the Employment Agreement. At the Transition Date, the Employment Agreement will terminate and be of no further legal force or effect, except as expressly provided for in sections 8 and 11 of this Agreement. After the Transition Date, you will no longer be considered an employee of the Company.

(b) You will continue to serve as a member of the corporate Board of Directors of the Company until the expiration of your current term at the 2018 annual meeting of shareholders. Your service as a board member beyond 2018 will be subject to your re-nomination by the Nominating Committee of the Board of Directors and, if nominated, your election by the shareholders of the Company.

3. Consulting Services. Beginning on January 1, 2017, you will serve as an independent consultant to the Chairman of the Board of TowneBank, the Chief Executive Officer of Towne Realty Group and the TowneBank Board of Directors. You will also serve as a member of the Towne Financial Services Board of Directors. As an independent consultant, you will render such consulting and advisory services as may be reasonably requested including, but not limited to, (i) providing advice, information, and assistance relating to the business operations of TowneBank and Towne Financial Services and its affiliated companies; (ii) providing business development, advice, and assistance relating to TowneBank and our affiliated companies, including their existing and potential customers; (iii) attending TowneBank and Towne Financial Services board and committee meetings and such other meetings with Company executives as reasonably requested by the Company; and (iv) providing advice and assistance with employee relations and retention. Such services shall be rendered at such times and on such schedules as shall be reasonably agreed to between us. You will not be required to maintain a record of hours worked or to work in accordance with any fixed schedule during the period that you render consulting services.

4. Consulting Term. The term for the consulting period will begin on January 1, 2017 and end on December 31, 2021 (the "Consulting Term"). Unless extended by mutual consent, this Agreement shall terminate, and all obligations of the Company hereunder shall cease, except as specifically set forth to the contrary, and be of no further force and effect if during the Consulting Term: (i) you die or become disabled; (ii) you are terminated pursuant to section 7(b) (Termination for Cause) below; or (iii) you terminate this Agreement pursuant to section 7(c) (Termination Without Cause) below.

5. Compensation and Business Expenses During the Consulting Term.

(a) Compensation. In consideration of all services rendered by you to the Company during the Consulting Term and in exchange for your promises and agreements contained in this Agreement, including the loyalty covenants set forth in section 8, we will pay you an annual consulting fee in accordance with the following schedule (the "Consulting Fee"): 2017 - \$600,000;

2018 - \$500,000; 2019 - \$400,000; 2020 - \$300,000; and 2021 - \$200,000. The Consulting Fee shall be payable on a monthly or more frequent basis as determined by us.

(b) No Benefits. As an independent contractor, you will not be entitled to participate in or receive any benefit or right as a Company employee under any Company employee benefit plans, including, without limitation, employee insurance, retirement, savings and security plans. You will be responsible for all income taxes, employment taxes and workers' compensation insurance associated with the compensation received under this Agreement and agree that the Company will not withhold or pay any of the foregoing in connection your services to the Company during the Consulting Term.

(c) Business Expenses: Office Space and Automobile. We will reimburse you or otherwise provide for or pay for all reasonable expenses incurred by you in furtherance of, or in connection with the business of the Company, subject to such reasonable documentation and other limitations as may be established by the Company. During the Consulting Term, we will provide you with office space and equipment as may be necessary for the performance of your duties under this Agreement, along with the use of a Company owned vehicle and all related expenses.

6. Supplemental Executive Retirement Plan Agreement. Under your Supplemental Executive Retirement Plan Agreement, effective as January 1, 2008 (the "SERP"), you are currently 100% vested in the retirement benefit. Accordingly, you will be entitled to an annual retirement benefit of \$60,000 under the SERP for a period of fifteen years beginning after the Transition Date, subject to the terms and conditions set forth in the SERP.

7. Termination.

(a) Death or Disability. During the Consulting Term, this Agreement shall terminate immediately upon your death or disability, in which event the Company shall have no further obligations or liabilities under this Agreement except to pay you or your estate or personal representative, as the case may be, any Consulting Fees that remain unpaid through the termination date of this Agreement. For purposes of this Section 7, you will be deemed "disabled" if you are unable to perform substantially all of your duties and responsibilities hereunder, which disability lasts for an uninterrupted period of at least ninety (90) days or a total of at least one hundred eighty (180) days in any calendar year (as determined by the opinion of an independent physician selected by the Company). In conjunction with determining disability for purposes of this Agreement, you (i) consent to any examination requested by the Company that is relevant to a determination of whether you are mentally and/or physically disabled, (ii) to furnish such medical information as may be reasonably requested, and (iii) to waive any applicable physician/patient privilege that may arise because of such examination.

(b) Termination by the Company For Cause. During the Consulting Term, we may terminate this Agreement for Cause at any time without further liability on the part of the Company. If we terminate this Agreement for Cause, you will have no right to receive compensation or other benefits under this Agreement for any period after such termination. Only the following shall constitute "Cause" for such termination:

- (i) conviction of, entering of a guilty plea or plea of no contest with respect to a felony, a crime of moral turpitude or any other crime with respect to which imprisonment is a possible punishment, or the commission of an act of embezzlement or fraud against the Company or any Affiliate;
- (ii) any material breach by you of this Agreement, after being advised in writing of such breach and being given a reasonable opportunity and period (as determined by the Company) to remedy such breach; or
- (iii) your engaging in conduct that, in the good faith judgment of the Company, is reasonably likely to result, or has resulted, in material injury to the Company, reputational, financial or otherwise

(c) Without Cause. During the Consulting Term, the Company or you may terminate this Agreement at any time, without cause, upon thirty (30) days written notice to the other party.

- (i) If you terminate this Agreement pursuant to this section 7(c), you shall have the right to receive only such compensation accrued but unpaid to the date of such notice and shall have no right to receive any other amounts under this Agreement.
- (ii) If we terminate this Agreement pursuant to this section 7(c), the Company shall continue to pay you the amounts provided for in section 5 for the duration of the Consulting Term on the dates on which such payments would have been made and to provide the other benefits provided for in this Agreement.

(d) Termination Prior to the Transition Date. If your employment is terminated for any reason before the Transition Date, the rights and obligations of the parties will be governed by the Employment Agreement based on the current term of employment ending on December 31, 2017 as a result of the Company's prior written notice to you of its election not to renew the term of the Employment Agreement for another calendar year.

8. Loyalty Covenants. In consideration of the compensation and benefits provided in this Agreement, the adequacy of which you acknowledge, you will continue to be bound by the Employment Agreement in the following respects:

(a) Through December 31, 2021, you will continue to be bound by the Noncompetition and Nonsolicitation covenants set forth in section 5(b) and (c) of the Employment Agreement, except as follows with respect to section 5(b) of the Employment Agreement. If, during the Consulting Term, we terminate this Agreement without Cause and you thereafter engage in the Mortgage Company's Business in the Market Area (as those terms are defined in section 5(b) of the Employment Agreement), we will not be required to pay you

any Consulting Fees after the date you engage in any conduct or activity that otherwise would have been prohibited under section 5(b) of the Employment Agreement.

(b) You will continue to be bound by the Confidentiality covenant set forth in section 5(d) of the Employment Agreement.

(c) The other provisions of section 5 of the Employment Agreement shall also remain in full force and effect.

9. Independent Contractor. In rendering consulting services hereunder during the Consulting Term, you will be acting solely as an independent contractor and not as an agent, employee or partner of the Company for any purpose. You will have no authority to bind the Company in any contractual manner or to represent to others that the relationship between the Company and you is other than as stated herein during the Consulting Term.

10. Controlling Law. This Agreement shall be interpreted under the laws of the Commonwealth of Virginia and shall be binding upon the parties and their successors and assigns.

11. Entire Agreement. With the exception of section 5 of the Employment Agreement which shall continue in full force as it is written in that agreement except as modified in section 8 of this Agreement -- and for which you acknowledge that your employment at the Company and the terms of this Agreement provide full and sufficient consideration -- this Agreement constitutes the entire Agreement of the parties, the terms of which may be changed only with the written consent of the parties. The parties agree that neither party has relied on any statement nor other communication made by the other party in regards to this Agreement other than what is contained in the Agreement.

12. Non-disparagement. During the Consulting Term, you will make no statements, whether written, oral or otherwise, disparaging the Company or any individual or entity affiliated with the Company in any way to any member of the press or the public at large related to your employment with the Company or related in any way to the Company's operations. The Company will not make any statement, whether written, oral, or otherwise, disparaging you to any member of the press or the public at large related to your employment at the Company.

13. Severability. The provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other paragraphs shall remain fully valid and enforceable. This Agreement shall survive the termination of any arrangements contained herein.

14. Interpretation. This Agreement shall not be construed more strictly against one party than another by virtue of the fact that it may have been drafted or prepared by counsel for one of the parties.

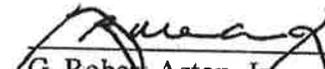
15. Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by either party in exercising, in whole or in

part, any right, power, or privilege under this Agreement will operate as a waiver of such right, power, or privilege.

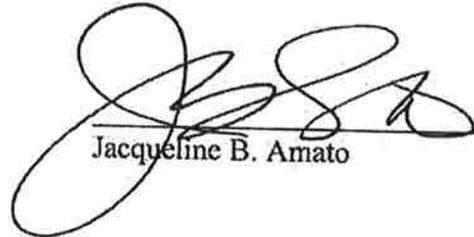
16. Successors. The Company will require any successor (whether direct or indirect, by purchase, merger or otherwise) to all or substantially all of the business and/or assets of the Company to assume expressly and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform it if no such succession had taken place.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year written above.

TOWNEBANK



G. Robert Aston, Jr.
Chairman and Chief Executive Officer



Jacqueline B. Amato