

FEDERAL DEPOSIT INSURANCE CORPORATION
WASHINGTON, D.C. 20429

FORM 8-K

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

May 15, 2019

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 principal 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))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$1.667 par value	TOWN	NASDAQ Global Select Market

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On May 15, 2019, TowneBank (the “Company”) amended the Change in Control Employment Agreements, dated as of January 1, 2003 and amended and restated as of December 31, 2008 (the “Change in Control Agreements”), entered into with G. Robert Aston, Jr., Executive Chairman of the Company, and J. Morgan Davis, President and Chief Executive Officer of the Company. The amendments to the Change in Control Agreements (the “Amended Agreements”) revise the agreements in the following two respects:

- (i) to eliminate all excise tax gross-up payments the executive would have received upon termination of employment without “cause” or for “good reason” following a change in control (as such terms are defined in the Amended Agreements); and
- (ii) to remove the ability of the executive to receive severance compensation upon his termination of employment following a change in control without “good reason” during a 90 day “window period” following the first anniversary of the change in control.

The term of the Amended Agreements was also reset to extend through December 31, 2021 in order to coincide with the revised term of each executive’s current employment agreement.

In lieu of the excise tax gross-up, the Amended Agreements provide that the severance payments and benefits are automatically cutback to the safe harbor limit to avoid the imposition of any golden parachute excise taxes, *unless* the executive is in a better net after-tax position if he pays the excise taxes and his net after-tax position exceeds the safe harbor amount by at least \$25,000. If that is the case, the severance benefits are not adjusted and the executive receives the full severance benefit. In either case, the Company bears no obligation under the Amended Agreements to pay any golden parachute excise taxes.

Pursuant to the Amended Agreements, in the event of a change in control of the Company, the Company or its successor must continue to employ the executive for a term of three years after the date of the change in control. During such period, the executive will be entitled to retain commensurate authority, responsibilities, and compensation benefits. The Amended Agreements require the Company or its successor to pay the executive a base salary at least equal to his base salary for the immediate prior year, and a bonus at least equal to the highest annual bonus paid or payable to him in the two years prior to the change in control.

If the executive is terminated without “cause” or resigns for “good reason” during the three-year period after the change in control, he will be entitled to a cash severance payment in an amount equal to (i) the Company’s accrued obligations, which include his base salary earned through the termination date, any accrued but unpaid bonuses or benefits at the time termination, and a pro-rated bonus based on the number of days worked in the year of termination; and (ii) a salary continuance benefit, which is equal to 2.99 times the sum of (a) his annual base salary in effect at the termination date, plus (b) the highest annual bonus paid or payable to him in the two years prior to the change in control. If the executive is terminated with “cause” or he resigns without “good reason,” the Company will have no further obligations to the executive after the date his employment ends.

Copies of the amendments to the Change in Control Agreements are attached to this Current Report on Form 8-K as Exhibits 10.1 and 10.2 and are incorporated by reference herein.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

The following exhibits are filed herewith:

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
10.1	First Amendment to the Amended and Restated Change in Control Employment Agreement, dated May 15, 2019, between TowneBank and G. Robert Aston, Jr.
10.2	First Amendment to the Amended and Restated Change in Control Employment Agreement, dated May 15, 2019, between TowneBank and J. Morgan Davis.

SIGNATURES

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

TowneBank
(Registrant)

Date: May 15, 2019

By: /s/ George P. Whitley
George P. Whitley
Senior Executive Vice President
and Chief Legal Officer

FIRST AMENDMENT TO THE
AMENDED AND RESTATED CHANGE IN CONTROL AGREEMENT

This First Amendment, adopted and made effective as of May 15, 2019, is made to the Change in Control Agreement, dated as of January 1, 2003 and as amended and restated as of December 31, 2008 (the “Agreement”), between TowneBank (the “Bank”) and G. Robert Aston, Jr. (the “Officer”).

The parties wish to amend the Agreement in order to: (i) align the term of the Agreement with the term of the Officer’s Employment Agreement, dated as of January 1, 2003 and amended as of March 28, 2018 (the “Employment Agreement”); (ii) revise the definition of “Good Reason” in Section 5(c) of the Agreement; and (iii) remove the excise tax gross-up provision in Section 6(e) of the Agreement.

The parties, intending to be legally bound, agree as follows:

1. Section 2 is amended and restated in its entirety as follows:

2. Term of the Agreement. This Agreement will expire on December 31, 2021; provided that on December 31, 2019 and on each December 31st thereafter (each such December 31st is referred to as the “Renewal Date”), this Agreement will be automatically extended for an additional calendar year so as to terminate three years from such Renewal Date. This Agreement will not, however, be extended if the Bank gives written notice of such non-renewal to the Officer no later than September 30 before the Renewal Date (this term and any renewal term of this Agreement is referred to as the “Change in Control Period”).

2. Section 5(c) is amended and restated in its entirety as follows:

(c) Good Reason. The Officer’s employment may be terminated during the Employment Period by the Officer for Good Reason. For purposes of this Agreement, “Good Reason” means:

- (i) a material reduction in the Officer’s duties or authority;
- (ii) a material adverse change in the Officer’s overall working environment;
- (iii) a failure by the Bank to comply with any of the provisions of Section 4(b);
- (iv) the Bank’s requiring the Officer to be based at any office or location other than that described in Section 4(a)(ii);

(v) the failure by the Bank to comply with and satisfy Section 7(b);

(vi) the Officer is directed by the Board of Directors or an officer of the Bank or any affiliated company to engage in conduct that is unethical, illegal or contrary to the Bank's good business practices; or

(vii) the Bank fails to honor any term or provision of this Agreement;

Any good faith determination of Good Reason made by the Officer shall be conclusive.

3. Section 6(e) is amended and restated in its entirety as follows:

(e) Possible Reduction in Payments and Benefits.

Notwithstanding any other provision of this Agreement or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company or its affiliates to the Officer or for his benefit pursuant to the terms of this Agreement or otherwise (the "Covered Payments") constitute parachute payments ("Parachute Payments") within the meaning of Section 280G of Code and would, but for this Section 6(e), be subject to the excise tax imposed under Section 4999 of the Code (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the "Excise Tax"), then prior to making the Covered Payments, a calculation shall promptly be made comparing (i) the Net Benefit (as defined below) to the Officer of the Covered Payments after payment of the Excise Tax (the "Full Net Benefit Amount") to (ii) the Net Benefit to the Officer if the Covered Payments are limited to the extent necessary to avoid being subject to the Excise Tax (the "Reduced Net Benefit Amount").

If, and only if, the Full Net Benefit Amount does not exceed the Reduced Net Benefit Amount by at least \$25,000, then the Covered Payments will be reduced to the Reduced Net Benefit Amount in order to ensure that no portion of the Covered Payments is subject to the Excise Tax. Otherwise, no reduction of or adjustment to the Covered Payments shall be made. "Net Benefit" shall mean the present value of the Covered Payments net of all federal, state, local, foreign income, employment and excise taxes. For purposes of illustration only, if the Reduced Net Benefit Amount is \$1,000,000, the Full Net Benefit Amount must be equal to at least \$1,025,000 in order for the Covered Payments *not* to be reduced so as to avoid being subject to the Excise Tax.

Any such reduction shall be made in accordance with Section 409A of the Code and the following:

(i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Section 409A of the Code shall be reduced first; and

(ii) all other Covered Payments shall then be reduced as follows: (A) cash payments shall be reduced before non-cash payments; and (B) payments to be made on a later payment date shall be reduced before payments to be made on an earlier payment date.

Any determination required under this Section 6(e), including whether any payments or benefits are Parachute Payments, shall be made in writing in good faith by an independent accounting firm or independent tax counsel selected by the Bank that is reasonably acceptable to the Officer (the “Tax Advisor”), which shall provide detailed supporting calculations to the Bank and the Officer as requested by the Bank or the Officer. The Bank and the Officer shall provide the Tax Advisor with such information and documents as the Tax Advisor may reasonably request in order to make a determination under this Section 6(e). For purposes of making the calculations and determinations required by this Section 6(e), the Tax Advisor may rely on reasonable, good faith assumptions and approximations concerning the application of Section 280G and Section 4999 of the Code. The Tax Advisor’s determinations shall be final and binding on the Bank and the Officer. The Bank shall be responsible for all fees and expenses incurred by the Tax Advisor in connection with the calculations required by this Section 7.

It is possible that after the determinations and selections made pursuant to this Section 6(e) the Officer will receive Covered Payments that are in the aggregate more than the amount provided under this Section 6(e) (an “Overpayment”) or less than the amount provided under this Section 6(e) (an “Underpayment”).

(i) In the event that: (A) the Tax Advisor determines, based upon the assertion of a deficiency by the Internal Revenue Service against either the Bank or the Officer which the Tax Advisor believes has a high probability of success, that an Overpayment has been made or (B) it is established pursuant to a final determination of a court or an Internal Revenue Service proceeding that has been finally and conclusively resolved that an Overpayment has been made, then the Officer shall promptly pay any such Overpayment to the Bank.

(ii) In the event that: (A) the Tax Advisor, based upon controlling precedent or substantial authority, determines that an Underpayment has occurred or (B) a court of competent jurisdiction determines that an Underpayment has occurred, any such Underpayment will be paid promptly by the Bank to the Officer or for his benefit.

4. All references to the term “Window Period” in the Agreement shall be disregarded.

5. In all other respects, the Agreement shall remain in full force and effect. This Amendment may be executed in any number of counterparts.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to the Agreement effective as of the date first written above.

TOWNEBANK

By: /s/ W. Ashton Lewis
W. Ashton Lewis
Chairman, Compensation Committee

OFFICER

/s/ G. Robert Aston, Jr.
G. Robert Aston, Jr.

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