

# BALLSTON SPA BANCORP, INC.

## NOTICE OF ANNUAL MEETING OF SHAREHOLDERS



Thursday, May 11, 2017 11:00 a.m.

BSNB Corporate Plaza  
990 State Route 67  
Ballston Spa, NY 12020

### To the Holders of Shares of Common Stock

**NOTICE IS HEREBY GIVEN** that the 2017 Annual Meeting of Shareholders of Ballston Spa Bancorp, Inc. will be held at the BSNB Corporate Plaza, 990 State Route 67, Ballston Spa, New York, on Thursday, May 11, 2017 at 11:00 a.m. for the purpose of considering and voting upon the following matters:

1. The Election of the nine (9) Director nominees named in the accompanying Proxy Statement.
2. A proposal to amend our Certificate of Incorporation to increase the number of shares of our Common Stock authorized for issuance.
3. A proposal to amend our Certificate of Incorporation to establish a class of Preferred Stock.
4. A proposal to amend our Certificate of Incorporation to eliminate preemptive rights.
5. A proposal to amend our Certificate of Incorporation to eliminate cumulative voting rights.
6. A proposal to amend our Certificate of Incorporation to establish a classified Board of Directors.
7. A proposal to amend our Bylaws to establish a classified Board of Directors.

Management is not aware of any other business that may be properly brought before the Annual Meeting in accordance with the Bylaws of the Corporation.

Shareholders are entitled to assert dissenters' rights under Section 623 of the New York Business Corporation Law in connection with Proposal 4 above. In order to perfect those rights, you must comply in full with the requirements of Section 623 of the New York Business Corporation Law, a copy of which is attached.

Only those shareholders of record at the close of business March 17, 2017, shall be entitled to this Notice of Annual Meeting and to vote at the Annual Meeting.

Prior to the Annual Meeting, we will hold an information session for shareholders regarding the proposed amendments to our Certificate of Incorporation and Bylaws. The information session will be held at 5:00 p.m. on May 2, 2017 at BSNB Corporate Plaza, 990 State Route 67, Ballston Spa, NY 12020. **If you plan to attend the Annual Meeting or the information session or both, please RSVP by calling (518) 363-8113. If you have questions on any of the proposals, please contact me at (518) 363-8641 or Christopher R. Dowd at (518) 363-8112.**

By Order of the Board of Directors dated March 30, 2017,

A handwritten signature in black ink that reads "Tim E. Blow". The signature is written in a cursive, flowing style.

Timothy E. Blow  
Executive Vice President,  
Corporate Secretary and Chief Financial Officer

# **BALLSTON SPA BANCORP, INC.**

BSNB Corporate Plaza  
990 State Route 67  
Ballston Spa, NY 12020



## **PROXY STATEMENT 2017 ANNUAL MEETING OF SHAREHOLDERS**

**April 1, 2017**

The Board of Directors of Ballston Spa Bancorp, Inc. is soliciting the enclosed proxy for use in connection with the Annual Meeting of Shareholders to be held May 11, 2017. The matters to be acted upon at the Annual Meeting are set out in the preceding notice and are more fully described in this Proxy Statement. Your shares will only be voted if you properly execute and return the enclosed proxy card. If you do not specify your voting instructions on your executed proxy card, your shares will be voted “FOR” each of the Director nominees and “FOR” each of the other proposals.

The Board of Directors has fixed the close of business on March 17, 2017 as the record date for determination of shareholders entitled to notice of and to vote at the Annual Meeting. As of the record date, there were 742,663 shares of our Common Stock outstanding.

### **Annual Meeting Matters**

At the Annual Meeting, shareholders will be asked to consider and vote on the following matters:

1. The election of the nine (9) Director nominees for a term of office to expire at the 2018 Annual Meeting of Shareholders.
2. A proposal to amend our Certificate of Incorporation to increase the number of shares of our Common Stock authorized for issuance.
3. A proposal to amend our Certificate of Incorporation to establish a class of Preferred Stock.
4. A proposal to amend our Certificate of Incorporation to eliminate preemptive rights.
5. A proposal to amend our Certificate of Incorporation to eliminate cumulative voting rights.
6. A proposal to amend our Certificate of Incorporation to establish a classified Board of Directors.
7. A proposal to amend our Bylaws to establish a classified Board of Directors.

### **Purpose of the Proposed Amendments**

As further described in this Proxy Statement, the amendments to our Certificate of Incorporation and Bylaws are intended to modernize and update our governing documents, with a view towards including provisions comparable to those now used by similar community banks, and providing more ready access to the capital markets as needed. Having additional authorized shares or shares of Preferred Stock may also give the Board of Directors additional flexibility in dealing with potential hostile takeovers and may encourage persons desiring to acquire control of the Company to negotiate with the Board of Directors. We are not aware of any current efforts to take control from the Company. We last amended our Certificate of Incorporation in 1999.

### **Information Session**

Prior to the Annual Meeting, we will hold an information session for shareholders regarding the proposed amendments to our Certificate of Incorporation and Bylaws. The information session will be held at 5:00 p.m. on May 2, 2017 at BSNB Corporate Plaza, 990 State Route 67, Ballston Spa, NY 12020.

### **Shares Held in “Street Name” Through a Broker, Bank or Other Nominee**

If you hold your shares in “street name” as a customer of broker, bank or other nominee, it is important that you provide the broker, bank or other nominee with your voting instructions. Your broker, bank or other nominee does not have discretionary authority to vote any of your shares at the Annual Meeting without your instructions. Broker non-votes occur when brokers who hold their customers’ shares in street name do not receive instructions from their customers and are not permitted to vote on the matter. Broker non-votes will have no effect on any of

outcome of the vote on any of the proposals and will not be counted for purposes of determining the presence or absence of a quorum.

### **Quorum**

The presence, in person or by proxy, of at least a majority of the total number of shares of Common Stock outstanding and entitled to vote at the Annual Meeting is necessary to constitute a quorum. In the absence of a quorum, the Annual Meeting may be adjourned. Under New York law, abstentions are counted for purposes of determining the presence or absence of a quorum.

### **Required Vote**

You are encouraged to vote by returning your signed proxy to us as soon as possible. Voting by proxy will not affect your ability to attend the information session or Annual Meeting. Directors are elected by a plurality of the votes cast. The proposals to amend the Certificate of Incorporation require approval by a majority of the outstanding shares entitled to vote. The proposal to amend the Bylaws requires approval by a majority of the shares represented in person or by proxy and entitled to vote. Abstentions will have no effect on the vote for election of directors, but will count as votes against Proposals 2 through 7.

## **PROPOSAL 1: ELECTION OF DIRECTORS**

Our Bylaws provide that the number of Directors that constitute the Board of Directors shall be determined by the Board of Directors from time to time. The Board of Directors has presently fixed the number of Directors at nine.

The Board of Directors has nominated the Directors listed below for election to the Board of Directors for a one year term expiring at the 2018 Annual Meeting, and upon the election and qualification of their successors. Each of the nominees is a current member of our Board of Directors.

The nominees for election as Directors are willing to be elected and serve, but in the event that any nominee at the time of election is unable to serve or is otherwise unavailable for election, the Board of Directors may select a substitute nominee, and in that event the persons named in the enclosed proxy intend to vote for the person so elected.

### ***Robert E. Van Vranken, Esq.***

Mr. Van Vranken is an Attorney with a general practice in Burnt Hills, NY. He was elected to the Board of Directors in 1992 and currently serves as Chairman of the Board. He is the Chair of the Executive Committee and a member of the Compensation and Governance Committees.

Mr. Van Vranken is a Vice President of the Holland Society of New York.

### ***Christopher R. Dowd***

Mr. Dowd is the President and CEO of Ballston Spa National Bank. He was elected to the Board of Directors in 2004, and currently serves as a member of the Executive, Governance, Trust and Strategic Planning Committees.

Mr. Dowd is Chairman of the Board of Trustees for the Northeast Kidney Foundation, past-Chair and Board member with the Independent Bankers Association of New York State and is a past-Chair and Board member for the American Red Cross Northeastern New York Region. He is also a member of the Board for the Center for Economic Growth.

### ***Michael S. Dunn***

Mr. Dunn is Chief Information Officer of VER, an entertainment industry technology provider. He was elected to the Board of Directors in 2005, and currently serves as Chair of the Technology Committee and is a member of the Examining Committee.

***Beth A. Kayser, CPA***

Ms. Kayser is a Certified Public Accountant whose practice specializes in the preparation of small business and individual tax returns and financial statements. Ms. Kayser was elected to the Board of Directors in 2011, and is the Chair of the Examining Committee and a member of the Technology Committee.

Ms Kayser is a board member and Treasurer of the Heritage Home for Women in Schenectady, NY.

***Stephen J. Obermayer, CPA***

Mr. Obermayer is the Chief Financial Officer of BBL Construction Services, LLC and the President of BBL Hospitality, LLC. He is a Certified Public Accountant with experience in the financial services and construction industries. Mr. Obermayer was elected to the Board of Directors in 2012, and is the Chair of the Governance Committee and a member of the Executive and Strategic Planning Committees.

Mr. Obermayer is a board member for St. Peter's Hospital Foundation, the Capital District YMCA, Center for Economic Growth, Living Resources, and the Capital Region Chamber of Commerce.

***Timothy J. Provost***

Mr. Provost is a Principal at Sneeringer Monahan Provost Redgrave Title Agency, Inc. He was elected to the Board of Directors in 1999, and currently serves as Vice-Chairman of the Board. He is the Chair of the Trust Committee and a member of Governance, Examining and Executive Committees.

Mr. Provost is Chairman of the Board of Trustees of the Saratoga County YMCA and is a member of the Executive Committee of the New York State Land Title Association.

***Richard P. Sleasman***

Mr. Sleasman is the President and Managing Director of CBRE – Albany. He has more than 30 years of experience in commercial real estate brokerage and property management services. Mr. Sleasman was elected to the Board of Directors in 2016, and is a member of the Compensation, Trust and Strategic Committees.

Mr. Sleasman serves as immediate past-Chair of the Northeastern New York Red Cross Board as well as on the Executive Committee of the Capital Region Chamber of Commerce.

***Stephen E. Strader, MD***

Dr. Strader is a Physician at Capital Care. He was elected to the Board of Directors in 1998, and currently serves as the Chair of the Compensation Committee and is a member of the Examining and Technology Committees.

***Susan M. Watson, CPA***

Ms. Watson is a Certified Public Accountant with an expertise in estate and trust taxation. She is a partner in Watson, Peterson & Company CPAs PLLC. Ms. Watson was elected to the Board of Directors in 2007, and is the Chair of the Strategic Planning Committee and a member of the Compensation and Trust Committees.

Ms. Watson is a former member of the SCCC Paralegal Advisory Board and a former Trustee for the Heritage Home for Women in Schenectady, N.Y. She is also a former member of the WMHT Planned Giving Advisory Committee.

**PROPOSAL 2: AMENDMENTS TO OUR CERTIFICATE OF INCORPORATION TO INCREASE THE NUMBER OF SHARES OF OUR COMMON STOCK AUTHORIZED FOR ISSUANCE.**

The Board of Directors proposes an amendment to our Certificate of Incorporation to increase the number of shares of Common Stock that we have authority to issue from 1,000,000 shares to 4,000,000 shares. As of March 17, 2017, there were 768,000 shares issued, including 25,337 shares held in treasury, with 232,000 shares remaining available for issuance.

The Board has adopted a resolution authorizing the amendment to the Certificate of Incorporation, subject to approval of the proposal by the shareholders. If we obtain shareholder approval, we will amend Article Four of our Certificate of Incorporation will be amended to provide that the Company is authorized to issue up to 4,000,000 shares of its Common Stock with a par value of \$12.50 per share.

All shares of our Common Stock, including those currently authorized and those which would be authorized by the proposed amendment are equal in rank and have the same voting, dividend and liquidation rights. Shareholders of the Company presently have certain preemptive rights, or the right to purchase a proportionate share of additional shares issued by the Company. As is indicated elsewhere in this proxy statement, the Board of Directors is also proposing, for the reasons set forth below, that these preemptive rights be eliminated.

The Board of Directors believes that the amendment is desirable to increase the number of authorized shares of Common Stock available for issuance from time to time, without further action or authorization by the shareholders for corporate needs such as equity financing, stock splits and stock dividends, employee equity incentives or other corporate purposes as may be deemed by the Board of Directors to be in the best interest of the Company and its shareholders.

The proposed increase in the number of authorized shares of Common Stock will give us greater flexibility to raise additional capital and to respond more quickly to advantageous business opportunities. We do not have any current plans or commitments to issue additional shares.

The approval of this amendment to our Certificate of Incorporation requires the affirmative vote of a majority of the shares of Common Stock outstanding and entitled to vote on the matter. If the shareholders approve the amendment, we will execute and deliver a Certificate of Amendment to the New York State Secretary of State that would become effective upon filing.

The Board of Directors recommends a vote **FOR** the amendment of our Certificate of Incorporation to increase the authorized Common Stock from 1,000,000 shares to 4,000,000 shares.

### **PROPOSAL 3: AMENDMENTS TO OUR CERTIFICATE OF INCORPORATION TO ESTABLISH A CLASS OF PREFERRED STOCK**

The Board of Directors proposes an amendment to our Certificate of Incorporation to change the authorized number of shares and classes of capital stock by establishing a class of Preferred Stock consisting of two million (2,000,000) shares with a par value of \$12.50 per share. The Board has adopted a resolution authorizing the amendment to the Certificate of Incorporation, subject to approval of the proposal by the shareholders.

Currently, our Certificate of Incorporation authorizes the issuance of only Common Stock and does not authorize the issuance of any class of Preferred Stock. The proposed amendment will give the Board of Directors the express authority, without further shareholder approval (except as may be required by applicable law, regulatory authorities, or the rules of any stock exchange on which the Company's securities may then be listed), to issue shares of Preferred Stock from time to time in one or more series and to fix with respect to each series such voting powers, full or limited, or no voting powers, and such designations, preferences, limitations and relative rights (or qualifications, conditions or restrictions thereon) as the Board may determine. All the shares of any one series of Preferred Stock shall be identical in all respects.

The Board believes the flexibility to issue Preferred Stock is in the best interest of the Company and its shareholders, and believes that it is advisable to authorize such shares and have them available in connection with possible future transactions, such as equity financings, corporate mergers and acquisitions, as may be deemed feasible and in the best interests of the Company. We currently have no plans, arrangements or understandings for the issuance of the shares of Preferred Stock to be authorized pursuant to this proposal. We likewise do not have any current plans to use shares of Common Stock for anti-takeover purposes; however, the proposed amendment may have the effect of deterring or rendering more difficult attempts by third parties to obtain control of the Company if such attempts are not approved by the Board of Directors. We are not aware of any current efforts to obtain control of the Company.

The approval of this amendment to our Certificate of Incorporation requires the affirmative vote of a majority of the shares of Common Stock outstanding and entitled to vote on the matter. If the shareholders approve the amendment, we will execute and deliver a Certificate of Amendment to the New York State Secretary of State that would become effective upon filing.

The Board of Directors recommends a vote **FOR** the amendment of our Certificate of Incorporation to create a class of Preferred Stock consisting of 2,000,000 shares.

#### **PROPOSAL 4: AMENDMENT TO OUR CERTIFICATE OF INCORPORATION TO ELIMINATE PREEMPTIVE RIGHTS.**

The Board of Directors proposes an amendment to our Certificate of Incorporation to eliminate shareholder preemptive rights. The Board has adopted a resolution authorizing the amendment to the Certificate of Incorporation, subject to approval of the proposal by the shareholders.

Our Certificate of Incorporation provides shareholders with preemptive rights. Subject to certain limitations, shares of stock proposed to be issued by the Company must first be offered to the existing shareholders on a *pro rata* basis. Any shares not acquired by the shareholders may then be issued to any person for a consideration not less than the consideration set for the exercise of preemptive rights. Under applicable law, there are no preemptive rights with respect to (i) shares issued to effect a merger or offered for consideration other than cash; (ii) shares issued pursuant to options granted pursuant to a plan approved by shareholders; (iii) shares issued to satisfy conversion rights theretofore granted by the Company; or (d) treasury shares.

The existence of preemptive rights means that whenever the Company intends to offer and sell shares of its stock to the public for cash, each shareholder will be entitled to purchase a number of shares that will enable the holder to maintain his or her percentage of ownership upon completion of the offering. The original purpose of preemptive rights was to prevent a company or a majority of its shareholders from diluting a minority shareholder's interest without his or her consent. The elimination of preemptive rights will give the Board of Directors greater flexibility in raising additional capital if necessary and an enhanced ability to negotiate the most favorable terms in light of then prevailing circumstances and market conditions. The Board of Directors must approve the terms and conditions under which any shares are sold by the Company. It can be time consuming to notify each shareholder of the shareholder's preemptive rights, and the process can cause delays, increase the cost of raising capital and negatively impact pricing of capital to be issued. Similarly, there would be costs and delays associated with holding a meeting of shareholders for the purpose of releasing preemptive rights in respect of a proposed share issuance. The Board of Directors believes that having preemptive rights restricts the Company's ability to raise capital in an efficient manner. Therefore, the Board of Directors believes it is in the best interest of the Company to eliminate preemptive rights from the Certificate of Incorporation.

#### *Dissenters' Rights*

Shareholders are entitled to dissenters' rights in connection with the elimination of their preemptive rights. Shareholders who object to the amendment of the Certificate of Incorporation to eliminate preemptive rights are entitled to exercise their dissenters' rights and receive payment for the fair value of their shares.

Pursuant to Section 623 of the New York Business Corporation Law, shareholders desiring to exercise dissenters' rights (i) must file with the Company a written objection **prior** to the vote at the Annual Meeting and (ii) must not vote to approve the amendment related to the elimination of preemptive rights. The objection must include a notice of the objecting shareholder's election to seek dissenters' rights, such shareholder's name, residence address and the number of shares of Common Stock beneficially owned and a demand for payment of the fair value of such shares if the amendment is approved. The written objection must be in addition to and separate from any proxy or vote against or abstention from the proposal. Voting against or failing to vote for the amendment by itself does not constitute an election to dissent within the meaning of Section 623. Shareholders will be deemed to have waived their dissenters' rights if they fail to file a written objection before the vote to be taken at the Annual Meeting. A vote in favor of the proposal will constitute a waiver of the shareholder's election to seek dissenters' rights with respect to the shares so voted, will nullify any previously filed written notice of election to seek dissenters' rights and will be deemed a waiver of the shareholder's dissenter's rights.

Shareholders exercising their dissenters' rights must do so with respect to all shares held by them of record that they own beneficially. In addition to filing a written objection and notice of election to dissent, shareholders exercising their dissenters' rights must deliver to the Company the certificates representing their shares within one month of filing their notice of election to dissent. The Company shall note thereon the shareholder's notice of election to dissent and return the certificates to the shareholder. Upon the filing of the amendment of the Certificate of Incorporation with respect to preemptive rights with the New York State Secretary of State, dissenting shareholders will no longer have any of the rights of shareholders of the Company, except the right to be paid the fair value of their shares.

In the event that the amendment of the Certificate of Incorporation is approved, the Company will notify within 10 days of the Annual Meeting those shareholders that have filed a notice of election to dissent of the approval of the amendment. Within 15 days of the effective time of the amendment of the Certificate of Incorporation, but no later than 90 days after the Annual Meeting, the Company shall notify dissenting shareholders of the Company's calculation of the fair value of their shares and shall offer to purchase the shares at that price and, to shareholders that have delivered their certificates to the Company for notation, make an advance payment of 80% of such amount. If within 30 days after the making of such offer, the Company and any dissenting shareholder agree upon the price to be paid for his or her shares, final payment shall be made within 60 days after the making of such offer or the effective time of the amendment of the Certificate of Incorporation, whichever is later, upon the surrender of the certificates for any such shares represented by certificates.

In the event of disagreement as to the fair value of the shares, the Company will institute a court proceeding to determine the fair value in accordance with New York law. The court's determination of fair value will include an allowance for interest.

***The above summary is not intended to be complete and is qualified in its entirety by reference to Section 623 of the New York Business Corporation Law, the text of which is set forth in Exhibit A to this Proxy Statement. Any shareholder considering exercising dissenters' rights is advised to consult with counsel. Any dissenters' rights will not be available unless and until an Amendment to the Certificate of Incorporation implementing the elimination of preemptive rights is consummated.***

The approval of this amendment to the Certificate of Incorporation to eliminate preemptive rights requires the affirmative vote of a majority of the shares of Common Stock outstanding and entitled to vote on the matter. If the shareholders approve the amendment, we will execute and deliver a Certificate of Amendment to the New York State Secretary of State that would become effective upon filing. However, the Board of Directors reserves the right to abandon the amendment related to the elimination of preemptive rights without further action by the shareholders at any time prior to the filing of such amendment, even if the proposed amendment has been approved by the shareholders. By voting in favor of the amendment, the shareholders will also be expressly authorizing the Board of Directors to determine not to proceed to implement this amendment if it should so decide.

The Board of Directors recommends a vote **FOR** the amendment of our Certificate of Incorporation to eliminate preemptive rights.

#### **PROPOSAL 5: AMENDMENT TO OUR CERTIFICATE OF INCORPORATION TO ELIMINATE CUMULATIVE VOTING RIGHTS**

The Board of Directors proposes an amendment to our Certificate of Incorporation to eliminate cumulative voting rights. The Board has adopted a resolution authorizing the amendment to the Certificate of Incorporation, subject to approval of the proposal by the shareholders.

Currently, our Certificate of Incorporation provides shareholders with the right to accumulate votes in the election of Directors. Cumulative voting is a system of voting whereby each shareholder receives a number of votes equal to the number of shares that the shareholder holds as of the record date multiplied by the number of Directors to be elected. Each shareholder is entitled to cast all of the shareholder's votes for a single nominee or may distribute them among as many nominees as the shareholder determines.

Cumulative voting has the potential to allow a shareholder or group of shareholders representing a minority interest to “stack” votes in order to elect one or more Directors. There is a risk that a Director elected in this manner would be beholden to minority interests, which can lead to discord among Board members and may undermine the Board’s ability to work effectively in the best interest of all shareholders. Over time, cumulative voting has become less common for these reasons. The Board of Directors believes that cumulative voting is not in the best long-term interests of the Company and our shareholders.

The approval of this amendment to the Certificate of Incorporation to eliminate cumulative voting requires the affirmative vote of a majority of the shares of Common Stock entitled to vote on the matter. If the shareholders approve the amendment, we will execute and deliver a Certificate of Amendment to the New York State Secretary of State that would become effective upon filing.

The Board of Directors recommends a vote **FOR** the amendment of our Certificate of Incorporation to eliminate cumulative voting.

### **PROPOSAL 6: AMENDMENT TO OUR CERTIFICATE OF INCORPORATION TO ESTABLISH A CLASSIFIED BOARD OF DIRECTORS**

The Board of Directors proposes an amendment to our Certificate of Incorporation to establish a classified Board of Directors. The Board has adopted a resolution authorizing the amendment to the Certificate of Incorporation, subject to approval of the proposal by the shareholders.

Our Bylaws currently provide for the annual election of a single class of Directors. Under a classified board structure, Directors are divided into equal, or nearly equal, classes, and are elected to staggered terms. A typical class structure provides for three classes of Directors, and once fully implemented, one class of Directors is elected annually to a three year term. A classified Board of Directors helps to maintain continuity on the Company’s Board of Directors. By classifying the Board, the Company ensures that it always has a group of Directors with experience on the Board and familiarity with the Company’s operations. In addition, hostile acquirers have more difficulty gaining control of a company with a classified board, since control of the board cannot be obtained in a single proxy contest. The Board of Directors believes that the continuity of service that a classified board structure provides is in the best interests of the Company and its shareholders at this time.

If approved by the shareholders, the amendments to the Certificate of Incorporation would provide for the division of the members of the Board of Directors into three classes, with each class consisting of three directors. At the 2018 Annual Meeting of Shareholders, one class would be elected for a one year term expiring in 2019, the second class would be elected for a two year term expiring in 2020, and a third class would be elected for a three year term expiring in 2021. Beginning with the 2019 Annual Meeting of Shareholders, the class of directors up for election or reelection would be elected to three year terms.

As described below in Proposal 7, we are asking shareholders to approve the amendment of our Bylaws to establish a classified Board of Directors. We are also asking shareholders to approve a corresponding amendment to our Certificate of Incorporation. A Bylaw amendment on its own, without the provision in the Certificate of Incorporation, could allow a hostile acquirer to submit a shareholder proposal to amend the Bylaws to increase the number of Directors and fill the newly created directorships, thereby electing a majority of the Board at one annual or special meeting. The amendment to the Certificate of Incorporation would require the approval of the Board of Directors to make any future change to the classified board structure.

The approval of this amendment to the Certificate of Incorporation to establish a classified Board of Directors requires the affirmative vote of a majority of the shares of Common Stock outstanding and entitled to vote on the matter. If the shareholders approve the amendment, we will execute and deliver a Certificate of Amendment to the New York State Secretary of State that would become effective upon filing. However, the Board of Directors reserves the right to abandon the amendment related to the establishment of a classified Board of Directors without further action by the shareholders at any time prior to the filing of such amendment, even if the proposed amendment has been approved by the shareholders. By voting in favor of the amendment, the shareholders will also be expressly authorizing the Board of Directors to determine not to proceed to implement this amendment if it should so decide.

The Board of Directors recommends a vote **FOR** the amendment of our Certificate of Incorporation to establish a classified Board of Directors.

**PROPOSAL 7: AMENDMENT TO OUR BYLAWS TO  
ESTABLISH A CLASSIFIED BOARD OF DIRECTORS**

The Board of Directors proposes an amendment to our Bylaws to establish a classified Board of Directors. The Board has adopted a resolution authorizing the amendment to the Bylaws, subject to approval of the proposal by the shareholders.

As noted in Proposal 6 above, our Bylaws currently provide for the annual election of a single class of Directors. Under Section 704 of the New York Business Corporation Law, shareholder approval is required to amend our Bylaws to provide for a classified Board of Directors. The approval of the amendment to our Bylaws requires the affirmative vote of a majority of the shares of Common Stock present in person or represented by proxy and entitled to vote on the matter. If approved by the shareholders, we would amend our Bylaws to provide for a classified board structure as described above in Proposal 6. However, the Board of Directors reserves the right to abandon the amendment related to the establishment of a classified Board of Directors without further action by the shareholders at any time prior to the filing of such amendment, even if the proposed amendment has been approved by the shareholders. By voting in favor of the amendment, the shareholders will also be expressly authorizing the Board of Directors to determine not to proceed to implement this amendment if it should so decide.

For the reasons described in Proposal 6 above, the Board recommends a vote **FOR** the amendment of our Bylaws to establish a classified Board of Directors.

**Other Matters**

The Board of Directors is not aware of any other matters to be brought before the Annual Meeting. If other matters are properly brought before the Annual Meeting, it is the intention of the persons named in the proxy to vote in accordance with their best judgment.

**Available Information**

A copy of our 2016 Annual Report and may be accessed at: [www.bsnb.com/shareholderinformation.php](http://www.bsnb.com/shareholderinformation.php).

Copies of our Certificate of Incorporation and Bylaws are available upon request. Shareholders may submit requests to the attention of our Corporate Secretary at Ballston Spa Bancorp, Inc. BSNB Corporate Plaza , 990 State Route 67, Ballston Spa, NY 12020.

Ballston Spa National Bank is a subsidiary of Ballston Spa Bancorp, Inc. For general information, call (518) 885-6781.



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**IMPORTANT NOTICE OF INTERNET AVAILABILITY OF PROXY MATERIALS:**  
The 2016 Annual Report and Notice of 2017 Annual Meeting and Proxy Statement may be accessed at:  
[www.bsnb.com/shareholder-information.php](http://www.bsnb.com/shareholder-information.php)

§623. Procedure to enforce shareholder's right to receive payment for shares.

- (a) A shareholder intending to enforce his right under a section of this chapter to receive payment for his shares if the proposed corporate action referred to therein is taken shall file with the corporation, before the meeting of shareholders at which the action is submitted to a vote, or at such meeting but before the vote, written objection to the action. The objection shall include a notice of his election to dissent, his name and residence address, the number and classes of shares as to which he dissents and a demand for payment of the fair value of his shares if the action is taken. Such objection is not required from any shareholder to whom the corporation did not give notice of such meeting in accordance with this chapter or where the proposed action is authorized by written consent of shareholders without a meeting.
- (b) Within ten days after the shareholders' authorization date, which term as used in this section means the date on which the shareholders' vote authorizing such action was taken, or the date on which such consent without a meeting was obtained from the requisite shareholders, the corporation shall give written notice of such authorization or consent by registered mail to each shareholder who filed written objection or from whom written objection was not required, excepting any shareholder who voted for or consented in writing to the proposed action and who thereby is deemed to have elected not to enforce his right to receive payment for his shares.
- (c) Within twenty days after the giving of notice to him, any shareholder from whom written objection was not required and who elects to dissent shall file with the corporation a written notice of such election, stating his name and residence address, the number and classes of shares as to which he dissents and a demand for payment of the fair value of his shares. Any shareholder who elects to dissent from a merger under section 905 (Merger of subsidiary corporation) or paragraph (c) of section 907 (Merger or consolidation of domestic and foreign corporations) or from a share exchange under paragraph (g) of section 913 (Share exchanges) shall file a written notice of such election to dissent within twenty days after the giving to him of a copy of the plan of merger or exchange or an outline of the material features thereof under section 905 or 913.
- (d) A shareholder may not dissent as to less than all of the shares, as to which he has a right to dissent, held by him of record, that he owns beneficially. A nominee or fiduciary may not dissent on behalf of any beneficial owner as to less than all of the shares of such owner, as to which such nominee or fiduciary has a right to dissent, held of record by such nominee or fiduciary.
- (e) Upon consummation of the corporate action, the shareholder shall cease to have any of the rights of a shareholder except the right to be paid the fair value of his shares and any other rights under this section. A notice of election may be withdrawn by the shareholder at any time prior to his acceptance in writing of an offer made by the corporation, as provided in paragraph (g), but in no case later than sixty days from the date of consummation of the corporate action except that if the corporation fails to make a timely offer, as provided in paragraph (g), the time for withdrawing a notice of election shall be extended until sixty days from the date an offer is made. Upon expiration of such time, withdrawal of a notice of election shall require the written consent of the corporation. In order to be effective, withdrawal of a notice of election must be accompanied by the return to the corporation of any advance payment made to the shareholder as provided in paragraph (g). If a notice of election is withdrawn, or the corporate action is rescinded, or a court shall determine that the shareholder is not entitled to receive payment for his shares, or the shareholder shall otherwise lose his dissenters' rights, he shall not have the right to receive payment for his shares and he shall be reinstated to all his rights as a shareholder as of the consummation of the corporate action, including any intervening preemptive rights and the right to payment of any intervening dividend or other distribution or, if any such rights have expired or any such dividend or distribution other than in cash has been completed, in lieu thereof, at the election of the corporation, the fair value thereof in cash as determined by the board as of the time of such expiration or completion, but without prejudice otherwise to any corporate proceedings that may have been taken in the interim.
- (f) At the time of filing the notice of election to dissent or within one month thereafter the shareholder of shares represented by certificates shall submit the certificates representing his shares to the corporation, or to its transfer agent, which shall forthwith note conspicuously thereon that a notice of election has been filed and shall return the certificates to the shareholder or other person who submitted them on his behalf. Any shareholder of shares represented by certificates who fails to submit his certificates for such notation as herein specified shall, at the option of the corporation exercised by written notice to him within forty-five days from the date of filing of such notice of election to dissent, lose his dissenter's rights unless a court, for good cause shown, shall otherwise direct. Upon transfer of a certificate bearing such notation, each new certificate issued therefor shall bear a similar notation together with the name of the original dissenting holder of the shares and a transferee shall acquire no rights in the corporation except those which the original dissenting shareholder had at the time of transfer.
- (g) Within fifteen days after the expiration of the period within which shareholders may file their notices of election to dissent, or within fifteen days after the proposed corporate action is consummated, whichever is later (but in no case later than ninety days from the shareholders' authorization date), the corporation or, in the case of a merger or consolidation, the surviving or new corporation, shall make a written offer by registered mail to each shareholder who has filed such notice of election to pay for his shares at a specified price which the corporation considers to be their fair value. Such offer shall be accompanied by a statement setting forth the aggregate number of shares with respect to which notices of election to dissent have been received and the aggregate number of holders of such shares. If the corporate action has been consummated, such offer shall also be accompanied by (1) advance payment to each such shareholder who has submitted the certificates representing his shares to the corporation, as provided in paragraph (f), of an amount equal to eighty percent of the amount of such offer, or (2) as to each shareholder who has not yet submitted his certificates a statement

that advance payment to him of an amount equal to eighty percent of the amount of such offer will be made by the corporation promptly upon submission of his certificates. If the corporate action has not been consummated at the time of the making of the offer, such advance payment or statement as to advance payment shall be sent to each shareholder entitled thereto forthwith upon consummation of the corporate action. Every advance payment or statement as to advance payment shall include advice to the shareholder to the effect that acceptance of such payment does not constitute a waiver of any dissenters' rights. If the corporate action has not been consummated upon the expiration of the ninety day period after the shareholders' authorization date, the offer may be conditioned upon the consummation of such action. Such offer shall be made at the same price per share to all dissenting shareholders of the same class, or if divided into series, of the same series and shall be accompanied by a balance sheet of the corporation whose shares the dissenting shareholder holds as of the latest available date, which shall not be earlier than twelve months before the making of such offer, and a profit and loss statement or statements for not less than a twelve month period ended on the date of such balance sheet or, if the corporation was not in existence throughout such twelve month period, for the portion thereof during which it was in existence. Notwithstanding the foregoing, the corporation shall not be required to furnish a balance sheet or profit and loss statement or statements to any shareholder to whom such balance sheet or profit and loss statement or statements were previously furnished, nor if in connection with obtaining the shareholders' authorization for or consent to the proposed corporate action the shareholders were furnished with a proxy or information statement, which included financial statements, pursuant to Regulation 14A or Regulation 14C of the United States Securities and Exchange Commission. If within thirty days after the making of such offer, the corporation making the offer and any shareholder agree upon the price to be paid for his shares, payment therefor shall be made within sixty days after the making of such offer or the consummation of the proposed corporate action, whichever is later, upon the surrender of the certificates for any such shares represented by certificates.

- (h) The following procedure shall apply if the corporation fails to make such offer within such period of fifteen days, or if it makes the offer and any dissenting shareholder or shareholders fail to agree with it within the period of thirty days thereafter upon the price to be paid for their shares:
- (1) The corporation shall, within twenty days after the expiration of whichever is applicable of the two periods last mentioned, institute a special proceeding in the supreme court in the judicial district in which the office of the corporation is located to determine the rights of dissenting shareholders and to fix the fair value of their shares. If, in the case of merger or consolidation, the surviving or new corporation is a foreign corporation without an office in this state, such proceeding shall be brought in the county where the office of the domestic corporation, whose shares are to be valued, was located.
  - (2) If the corporation fails to institute such proceeding within such period of twenty days, any dissenting shareholder may institute such proceeding for the same purpose not later than thirty days after the expiration of such twenty day period. If such proceeding is not instituted within such thirty day period, all dissenter's rights shall be lost unless the supreme court, for good cause shown, shall otherwise direct.
  - (3) All dissenting shareholders, excepting those who, as provided in paragraph (g), have agreed with the corporation upon the price to be paid for their shares, shall be made parties to such proceeding, which shall have the effect of an action quasi in rem against their shares. The corporation shall serve a copy of the petition in such proceeding upon each dissenting shareholder who is a resident of this state in the manner provided by law for the service of a summons, and upon each nonresident dissenting shareholder either by registered mail and publication, or in such other manner as is permitted by law. The jurisdiction of the court shall be plenary and exclusive.
  - (4) The court shall determine whether each dissenting shareholder, as to whom the corporation requests the court to make such determination, is entitled to receive payment for his shares. If the corporation does not request any such determination or if the court finds that any dissenting shareholder is so entitled, it shall proceed to fix the value of the shares, which, for the purposes of this section, shall be the fair value as of the close of business on the day prior to the shareholders' authorization date. In fixing the fair value of the shares, the court shall consider the nature of the transaction giving rise to the shareholder's right to receive payment for shares and its effects on the corporation and its shareholders, the concepts and methods then customary in the relevant securities and financial markets for determining fair value of shares of a corporation engaging in a similar transaction under comparable circumstances and all other relevant factors. The court shall determine the fair value of the shares without a jury and without referral to an appraiser or referee. Upon application by the corporation or by any shareholder who is a party to the proceeding, the court may, in its discretion, permit pretrial disclosure, including, but not limited to, disclosure of any expert's reports relating to the fair value of the shares whether or not intended for use at the trial in the proceeding and notwithstanding subdivision (d) of *section 3101 of the civil practice law and rules*.
  - (5) The final order in the proceeding shall be entered against the corporation in favor of each dissenting shareholder who is a party to the proceeding and is entitled thereto for the value of his shares so determined.
  - (6) The final order shall include an allowance for interest at such rate as the court finds to be equitable, from the date the corporate action was consummated to the date of payment. In determining the rate of interest, the court shall consider all relevant factors, including the rate of interest which the corporation would have had to pay to borrow money during the pendency of the

proceeding. If the court finds that the refusal of any shareholder to accept the corporate offer of payment for his shares was arbitrary, vexatious or otherwise not in good faith, no interest shall be allowed to him.

- (7) Each party to such proceeding shall bear its own costs and expenses, including the fees and expenses of its counsel and of any experts employed by it. Notwithstanding the foregoing, the court may, in its discretion, apportion and assess all or any part of the costs, expenses and fees incurred by the corporation against any or all of the dissenting shareholders who are parties to the proceeding, including any who have withdrawn their notices of election as provided in paragraph (e), if the court finds that their refusal to accept the corporate offer was arbitrary, vexatious or otherwise not in good faith. The court may, in its discretion, apportion and assess all or any part of the costs, expenses and fees incurred by any or all of the dissenting shareholders who are parties to the proceeding against the corporation if the court finds any of the following: (A) that the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay; (B) that no offer or required advance payment was made by the corporation; (C) that the corporation failed to institute the special proceeding within the period specified therefor; or (D) that the action of the corporation in complying with its obligations as provided in this section was arbitrary, vexatious or otherwise not in good faith. In making any determination as provided in clause (A), the court may consider the dollar amount or the percentage, or both, by which the fair value of the shares as determined exceeds the corporate offer.
- (8) Within sixty days after final determination of the proceeding, the corporation shall pay to each dissenting shareholder the amount found to be due him, upon surrender of the certificates for any such shares represented by certificates.
- (i) Shares acquired by the corporation upon the payment of the agreed value therefor or of the amount due under the final order, as provided in this section, shall become treasury shares or be cancelled as provided in section 515 (Reacquired shares), except that, in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation may otherwise provide.
- (j) No payment shall be made to a dissenting shareholder under this section at a time when the corporation is insolvent or when such payment would make it insolvent. In such event, the dissenting shareholder shall, at his option:
  - (1) Withdraw his notice of election, which shall in such event be deemed withdrawn with the written consent of the corporation; or
  - (2) Retain his status as a claimant against the corporation and, if it is liquidated, be subordinated to the rights of creditors of the corporation, but have rights superior to the non-dissenting shareholders, and if it is not liquidated, retain his right to be paid for his shares, which right the corporation shall be obliged to satisfy when the restrictions of this paragraph do not apply.
  - (3) The dissenting shareholder shall exercise such option under subparagraph (1) or (2) by written notice filed with the corporation within thirty days after the corporation has given him written notice that payment for his shares cannot be made because of the restrictions of this paragraph. If the dissenting shareholder fails to exercise such option as provided, the corporation shall exercise the option by written notice given to him within twenty days after the expiration of such period of thirty days.
- (k) The enforcement by a shareholder of his right to receive payment for his shares in the manner provided herein shall exclude the enforcement by such shareholder of any other right to which he might otherwise be entitled by virtue of share ownership, except as provided in paragraph (e), and except that this section shall not exclude the right of such shareholder to bring or maintain an appropriate action to obtain relief on the ground that such corporate action will be or is unlawful or fraudulent as to him.
- (l) Except as otherwise expressly provided in this section, any notice to be given by a corporation to a shareholder under this section shall be given in the manner provided in section 605 (Notice of meetings of shareholders).
- (m) This section shall not apply to foreign corporations except as provided in subparagraph (e)(2) of section 907 (Merger or consolidation of domestic and foreign corporations).