

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

BANCORP HOLDINGS

PLAINTIFF

VS.

CASE NO. 4:07CV-1113 JMM

**CITIGROUP GLOBAL MARKETS, INC.
D/B/A SMITH BARNEY**

DEFENDANT

ORDER

Pending before the Court are defendant's Motion to Dismiss First Amended Complaint and plaintiff's Motion to Substitute Party or Dismiss Without Prejudice. For the reasons stated below, defendant's motion is denied (#8) and plaintiff's motion is granted (#14).

Defendant bring their motion pursuant to Federal Rule of Civil Procedure 12(b)(6) contending that plaintiffs have failed to state a claim because plaintiff cannot pursue tort claims assigned by a third party under Arkansas law and that the First Amended Complaint failed to allege fraud with specificity as required under Federal Rule of Civil Procedure 9(b).

Plaintiff seeks permission pursuant to Federal Rule of Civil Procedure to substitute the real party in interest, Heartland Community Bank and contends that allegations made in the First Amended Complaint are sufficient under Rule 9(b) to allege fraud.

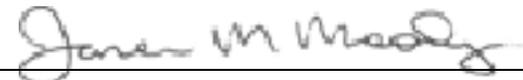
Plaintiff's request to substitute Heartland Community Bank as the real party in interest is granted. *See* Federal Rule of Civil Procedure 17(a).

The Court has reviewed the complaint and finds that plaintiff has plead with specificity the elements of fraud as required under Federal Rule of Civil Procedure 9(b) as the complaint

gives specific examples of the circumstances giving rise to its fraud claim.

Plaintiff is directed to file conventionally with the Clerk of the Court an original and two copies of the amended complaint naming the real party in interest.

IT IS SO ORDERED THIS 8 day of February, 2008.

A handwritten signature in cursive script, reading "James M. Moody", written in black ink. The signature is positioned above a horizontal line.

James M. Moody
United States District Judge