



**Comptroller of the Currency
Administrator of National Banks**

Southeastern District
Marquis One Tower, Suite 600
245 Peachtree Center Avenue, NE
Atlanta, Georgia 30303

February 26, 1997

**Conditional Approval #233
March 1997**

Mr. Benjamin W. Rawlins, Jr.
Chairman and Chief Executive Officer
Union Planters Corporation
Vice Chairman and Chief Executive Officer
Union Planters National Bank
P.O. Box 387
Memphis, Tennessee 38147

Re: Union Planters National Bank, Memphis, Tennessee (Bank)
Proposed Acquisition of PFIC Corporation as Operating Subsidiary
Application No. 97-SE-08-0005

Dear Mr. Rawlins:

This is in response to your January 20, 1997 letter in which you seek Office of the Comptroller of the Currency (OCC) approval for the Bank's plan to acquire, as an operating subsidiary (Subsidiary), PFIC Corporation and its subsidiaries (PFIC) pursuant to 12 C.F.R. § 5.34.

Based on the information and representations in the notification letter and other materials, we conclude that the proposed brokerage, investment advisory, annuities sales, and training and promotional activities are permissible for national banks and their operating subsidiaries and are consistent with prior OCC opinions. With respect to PFIC's life insurance sales activities, the Bank will be allowed a two-year transition period to establish the legal permissibility of these activities or to restructure the activities to bring them into compliance with national banking law. Accordingly, the Bank may proceed with its proposed acquisition pursuant to 12 C.F.R. § 5.34, subject to the conditions set forth below.

The Proposed Transaction

On February 3, 1997, the Bank's parent holding company, Union Planters Corporation (UPC) entered into an agreement to acquire all of the outstanding stock of PFIC from its shareholders. The agreement is structured as a merger between PFIC and an interim subsidiary of UPC, pursuant to which shares of PFIC will be converted into and exchanged for shares of UPC common stock. Simultaneously with the acquisition, UPC will contribute the shares of PFIC to the Bank, where PFIC will become a wholly-owned operating subsidiary, and continue its current business and operations.

At the conclusion of the transaction, the PFIC investment will be equal to less than one percent of the Bank's total equity capital. The Bank will remain well capitalized under the OCC's risk-based capital guidelines.

Activities of PFIC

PFIC is a privately held Tennessee corporation that is engaged in the business of marketing annuities and other investment products through approximately 100 financial institutions. PFIC has sixteen subsidiaries, one of which, PFIC Securities Corporation, is a registered broker-dealer and fifteen of which serve as insurance agencies.¹ These insurance agency subsidiaries sell primarily fixed annuities and some variable annuities. To meet the needs of certain customers, PFIC sells, from time to time, certain term life insurance products which represent less than 1% of the total gross revenues of PFIC.

PFIC's current activities include training and implementing programs with financial institutions that permit them to sell fixed and variable annuities and mutual funds to their customers. As a trainer, PFIC conducts on-site and off-site training and sales meetings and engages in activities designed to facilitate the financial institution's efforts to deliver non-traditional investment products to its customers. As implementer, PFIC, through its registered broker-dealer subsidiary, PFIC Securities Corporation, and its various licensed insurance agency subsidiaries, engages in a variety of arrangements with financial institutions to facilitate the sale of these investment products. PFIC also provides record-keeping and related materials to facilitate marketing efforts and compliance with applicable laws and regulations, and assists in developing promotional materials for the client financial institutions, which are designed to generate interest and sales opportunities.

PFIC services may range from providing the agency and personnel for a financial institution to assuring that institution or institution-affiliated personnel are properly licensed to engage directly in the activities. There are approximately 1,900 individuals offering insurance and securities products under various agreements with PFIC. Of those

¹See Appendix A for list of PFIC subsidiaries.

individuals, approximately 35 are full-time PFIC employees, approximately 90 are dual employees of PFIC (or a PFIC subsidiary) and the financial institution (or affiliate) offering the service, and the remainder are sole employees of the financial institution or its affiliate who are trained by PFIC. PFIC typically leases space in the financial institution, separate and apart from the operations of the financial institution, at which various annuity and investment services are offered. There are more than 500 PFIC investment centers at over 100 financial institutions throughout the country.

PFIC enters into a variety of contractual relationships with its client financial institutions with respect to the services it provides. On occasion, PFIC is compensated by administrative services agreements with the institutions, pursuant to which it is paid for training and other administrative services it performs. It also may enter into various arrangements regarding the sales commissions generated through its efforts, structured to comply with state law, governing the sale of insurance products through banks and financial institutions. In states that purport to prohibit banks or other financial institutions from owning or operating an insurance agency or having licensed agents, PFIC will own or operate the insurance agency or will provide licensed agents, and may enter into lease agreements with the financial institution to facilitate the sale of insurance products to customers.

PFIC also receives commissions and other forms of payments from the underwriters of the annuity products it markets through financial institutions. These commission arrangements are conducted in compliance with state law, which may require PFIC to obtain insurance agency or brokerage licenses.

PFIC Securities Corporation is a registered broker-dealer under the Securities Exchange Act of 1934, and where applicable, state securities laws. PFIC Securities also is a member of the National Association of Securities Dealers (NASD).² Thus, PFIC Securities Corporation is subject to applicable requirements of the federal securities laws and the NASD Rules of Fair Practice. It also will be subject to the NASD Rule regarding “Broker/Dealer Conduct on the Premises of Financial Institutions” if adopted.³ PFIC and various of its subsidiaries are licensed to sell insurance and are subject to the various rules and regulations of the states governing the sale of insurance products. Finally, because it markets exclusively through financial institutions, PFIC complies with the Interagency Statement on Retail Sales of Nondeposit Investment Products (February 15, 1994) (the Interagency Statement), jointly issued by the federal bank and thrift regulators.

Proposed Activities of Subsidiary

²The Bank will perform brokerage activities through PFIC Securities Corporation or Union Planters Brokerage Services, Inc., a wholly-owned subsidiary of the Bank, which has previously received approval to engage in full-service brokerage activities.

³See SEC Release No. 34-36980 (March 16, 1996).

Through the Subsidiary, the Bank will continue PFIC's business of marketing services for permissible investment products to retail customers of financial institutions. The Bank does not contemplate any significant changes in the manner in which PFIC conducts its business as described above. The Bank and its affiliates, which currently are clients of PFIC, will continue their relationships after the acquisition, with respect to the sale of annuities and securities products.⁴

The Subsidiary will sell annuities and other investment products such as mutual funds and certain equity and fixed income securities. With respect to the term life insurance that PFIC currently provides to meet the needs of certain customers, the Bank requests a two-year period in which to establish the permissibility of these activities or to otherwise bring them into compliance with national banking law. In addition, the Subsidiary will perform the training, promotional, and administrative services related to its role as third-party marketer. PFIC Securities Corporation will continue to provide brokerage and investment advisory services. Neither the Bank nor the Subsidiary, or any of their subsidiaries or affiliates will issue or underwrite investment products or underwrite any annuity products sold through any of the client financial institutions.

The Subsidiary will not have discretionary authority over any accounts. In addition, PFIC Securities will not provide brokerage services to the Bank's trust customers except where explicitly authorized by the customer and in accordance with all applicable laws, rules, and regulations, including 12 C.F.R. Part 9.⁵

At all locations at which the Subsidiary offers insurance and securities products, the transactions will be effected, and investment advice and recommendations proffered, only by duly registered representatives or properly licensed agents or subagents. Arrangements with each client financial institution will be clearly set forth in written agreements with the institution. Written agreements will exist also with various agents, registered representatives, and others involved in the sale and distribution of the annuities and investment products. The Bank also represents that, when the Subsidiary conducts activities through a financial institution involving the sale or distribution of annuities or securities products, the area in which the Subsidiary operates will be conspicuously, accurately, and separately identified; appropriate disclosures will be made to ensure that customers and other third parties understand the respective roles for the financial institution, the Subsidiary, and the employees or individuals involved; the arrangements with financial institutions do not constitute joint ventures or partnerships between the Subsidiary and its client financial institutions; all aspects of the arrangements will be conducted at arms's length; security issues arising from the activities of the Subsidiary on

⁴Certain transactions in this proposal may raise issues regarding the applicability of 12 U.S.C. §§ 371c and 371c-1. The Bank has represented that all transactions will be in compliance with these statutory requirements.

⁵See 61 Fed. Reg. 68544 (December 30, 1996).

financial institution premises will be addressed; the activities of the Subsidiary will not affect the safety and soundness of the client financial institution; the parties will comply with the Interagency Statement; all parties will be properly licensed and registered; and the assets and records of the parties will be appropriately maintained and segregated.⁶

The Subsidiary will be managed by a four-member board of directors, including the current president, chief financial officer, and vice president for operations of PFIC and a bank nominee. The Bank, as sole shareholder, will control the ultimate size and composition of the board of directors. The president and senior management of PFIC will continue in their respective roles as employees of the Subsidiary in accordance with employment contracts. These officers will operate under the direction of the board of directors. The Subsidiary will be subject to regulation, examination, and supervision by the OCC. The Bank will review and maintain the operations manuals and other written materials to assure compliance with regulatory requirements, and will use its internal audit function to monitor compliance by the Subsidiary with such requirement.

Analysis

National banks may acquire or establish an operating subsidiary to conduct activities that are part of or incidental to the business of banking. 12 C.F.R. § 5.34 (d)(1). The activities proposed for the Subsidiary, i.e., brokerage and investment advice, marketing and sale of annuities and other securities investment products, and related training, promotional, and administrative services, are permissible activities for national banks, and are consistent with previous opinions of the OCC. It is well established that national banks and their subsidiaries may perform brokerage services for their customers and sell mutual funds and annuities.⁷ The OCC also has approved the combination of investment advice and brokerage service.⁸

In Interpretive Letter Number 622, the OCC permitted a national bank subsidiary to own a broker-dealer that sold securities and fixed and variable annuities on the premises of

⁶These standards conform with Interpretive Ruling 7.3001, 12 C.F.R. § 7.3001, which sets forth the legal requirements and supervisory conditions governing the sharing of space and employees. See 61 Fed. Reg. 4849, 4868 (Feb. 9, 1996).

⁷See *Clarke v. Securities Industry Ass'n.*, 479 U.S. 388 (1987); *NationsBank v. Variable Annuity Life Insurance Company*, 115 S. Ct. 810 (1995); Interpretive Letter No. 499 (February 12, 1990), reprinted in [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83, 090; Interpretive Letter No. 403 (December 9, 1987) reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,627; Interpretive Letter No. 386 (June 19, 1987), reprinted in [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85, 610.

⁸See Interpretive Letter No. 403, *supra*; Interpretive Letter No. 386, *supra*.

unaffiliated financial institutions as third-party marketers.⁹ More recently, the OCC approved a national bank's acquisition of an operating subsidiary which would engage in third-party marketing of securities and annuities products, as well as brokerage, investment advisory, financial planning, and trust activities.¹⁰ The Bank's activities are consistent with those previously approved by the OCC. Moreover, the dual employee licensing arrangements are in accordance with OCC precedent¹¹, and will be conducted in compliance with the Depository Institutions Management Interlocks Act.¹²

As noted above, PFIC currently sells a small amount of life insurance products in connection with the financial services that it provides to customers. The Bank has requested a two-year transition period in which to establish the permissibility of these activities or to restructure them to bring them into compliance with national banking law. This transition period would enable the Bank to bring its newly acquired business into compliance, as necessary, within a commercially reasonable period, without incurring the disruption of a partial shutdown of insurance activity. In Conditional Approval No. 208, the OCC permitted a national bank a two-year transition period under almost identical circumstances, and finds the Bank's proposal to be reasonable. The OCC also has allowed such transition periods in other contexts.

Conclusion

On the basis of the representations specified in your notification letter and other submitted materials, as well as those in this response, the Bank may proceed with its proposal. This response is based solely on the facts as represented and any changes in the facts might require a different result. Our analysis also reflects current legal prudential standards and may be subject to revision as future developments warrant.

The following condition is a condition imposed in writing by the agency in connection with the granting of any application or other request within the meaning of 12 U.S.C. § 1818.

The Bank shall establish the legal permissibility of its insurance activities or restructure the activities to bring them

⁹See Interpretive Letter No. 622 (April 9, 1993), *reprinted in* [1993-1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,504.

¹⁰See OCC Conditional Approval No. 208 (June 29, 1996).

¹¹See Interpretive Letter No. 680 (July 26, 1995), *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,628.

¹²12 U.S.C. § 3201 *et seq.*

into compliance with national banking law within two years of the date of this approval.

Please feel free to contact me or John O. Stein II, Licensing Manager, Southeastern District, at (404) 588-4525 if you have any further questions.

Sincerely,

/s/

William J. Abernathy, Jr.
Director for Compliance
and Bank Analysis

Appendix A
Subsidiaries of PFIC Corporation

PFIC Corporation, a Tennessee corporation with its principal office in Brentwood, Tennessee, directly or indirectly owns the following subsidiaries which operate as insurance agencies, and are licensed, as required, under the laws of the various states:

PFIC Alabama Agency, Inc., Montgomery, Alabama

PFIC Georgia Agency, Inc., Brentwood, Tennessee

PFIC Agency New Mexico, Inc., Albuquerque, New Mexico

PFIC Agency, Inc. (Illinois), Brentwood, Tennessee

PFIC Arkansas Agency, Inc., Brentwood, Tennessee

PFIC Mississippi Agency, P.C., Brentwood, Tennessee

PFIC Michigan Agency, Inc., Brentwood, Tennessee

PFIC Wisconsin Agency, Inc., Brentwood, Tennessee

PFIC Louisiana Agency, Inc., Brentwood, Tennessee

PFIC Missouri Agency, Inc., Brentwood, Tennessee

PFIC Virginia Agency, Inc., Brentwood, Tennessee

PFIC Oregon Agency, Inc., Brentwood, Tennessee

PFIC Ohio Agency, Inc., Columbus, Ohio

PFIC Corporation of Kentucky, Louisville, Kentucky

Navigator Agency Inc., Austin, Texas

PFIC also has the following other subsidiary which is a registered broker-dealer:

PFIC Securities Corporation, Brentwood, Tennessee