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

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Southern District Licensing  
500 North Akard, Suite 1600  
Dallas, Texas 75201-3323

**Conditional Approval #886  
December 2008**

November 14, 2008

Ms. Claudia G. Motta  
McConnell Valdes LLC  
270 Munoz Rivera Avenue  
San Juan, Puerto Rico 00918

Re: Application by Banco Popular, N.A., for a Change in the Composition of its Assets  
(OCC Application Control No.: 2008-SO-12-0204)

Application to Merge Banco Popular, N.A., into Popular North America, Inc.  
(OCC Application Control No.: 2008-SO-12-0203)

Dear Ms. Motta:

The Office of the Comptroller of Currency (“OCC”) hereby conditionally approves the above referenced applications. These approvals are granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by the bank’s representatives during the application process. These approvals are also subject to the conditions set out herein.

**The Transactions**

These applications are part of a series of transactions that will wind down the operations of Banco Popular, National Association, Orlando, Florida (“BPNA”), transfer its remaining business to affiliated entities, and terminate its national charter. BPNA is an insured national bank with its main office in Florida. Its operations in Florida are limited to originating mortgage loans which are sold on an on-going basis to a third-party buyer pursuant to a standing agreement. It also maintains a full-service branch in Culebra, Puerto Rico. It has a subsidiary, Popular Insurance, Inc., which is an agreement corporation with its main office in Culebra and conducts an insurance agency business.

The series of transactions consist of the following steps. First, prior to the transactions that are the subject of these applications, BPNA will sell its remaining mortgage loans to the third-party

buyer and terminate its loan production operation. Its employees would be transferred to its affiliate, Banco Popular North America, a New York state-chartered member bank.

Second, BPNA will transfer the assets and liabilities associated with the Culebra branch, including all of BPNA's deposits, to its affiliate, Banco Popular de Puerto Rico ("BPPR") in a purchase and assumption transaction ("Culebra P&A Transaction"). BPPR is a Puerto Rico-chartered member bank and is the lead bank in the Popular, Inc. banking group. BPNA's sale of these remaining assets and all its deposits in the Culebra P&A Transaction constitutes a fundamental change in its asset composition under 12 C.F.R. § 5.53. BPNA applied to the Office of the Comptroller of the Currency ("OCC") for approval for a fundamental change in its asset composition under 12 C.F.R. § 5.53.<sup>1</sup> It is planned that immediately after the P&A, the insured status of BPNA will be terminated under 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2.

Third, BPNA will merge into its nonbank affiliate Popular North America, Inc., ("PNA"). BPNA applied to the OCC for approval for BPNA to merge into PNA under 12 U.S.C. § 215a-3, after the consummation of the Culebra P&A Transaction and the termination of BPNA's status as an insured bank (the "Merger"). PNA is the immediate parent of BPNA and owns all of BPNA's outstanding shares. PNA is an indirect wholly-owned subsidiary of Popular, Inc. PNA is a Delaware corporation. After the Merger, Popular Insurance, Inc., will be a subsidiary of PNA.

## **Discussion**

### **A. Fundamental Change in Asset Composition**

BPNA applied to the OCC for prior approval of a fundamental change in its asset composition under 12 C.F.R. § 5.53. Under section 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. In the Culebra P&A Transaction with BPPR, BPNA will sell all its deposits and many of its remaining assets.

The principal purpose of adopting 12 C.F.R. § 5.53 was to address supervisory concerns raised by so called "dormant" bank charters by providing the OCC with regulatory oversight and a means to monitor them. BPNA plans to merge into its nonbank affiliate, PNA. Thus, OCC concerns over the continuation of "dormant" charters are addressed, and so OCC approval of BPNA's application is consistent with the language and purpose of section 5.53.

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<sup>1</sup> BPPR filed an application with the Federal Reserve Bank of New York for approval of the Culebra P&A Transaction under the Bank Merger Act, 12 U.S.C. § 1828(c).

## **B. Merger of BPNA into PNA**

In this Merger, BPNA will merge into its immediate parent, PNA. PNA will be the surviving entity, and BPNA will cease to exist. This Merger is authorized under 12 U.S.C. § 215a-3. Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”<sup>2</sup> The statute does not limit its scope to mergers in which the national bank is the surviving entity, and so a merger *into* a nonbank affiliate is within its scope. The OCC’s implementing regulation, discussed below, expressly provides for mergers into a nonbank affiliate. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank. BPNA will not be an insured bank at the time of the Merger.<sup>3</sup>

The OCC’s regulations implementing 12 U.S.C. § 215a-3 set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which the nonbank affiliate is the resulting entity. *See* 12 C.F.R. § 5.33(g)(5). The regulation requires that the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. The regulation also imposes the following additional requirements that: (1) the bank comply with the procedures of 12 U.S.C. § 214a as if it were merging into a state bank, (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization, and (3) shareholders of the national bank who dissent from the merger have the dissenters’ rights set out in 12 U.S.C. § 214a. The regulation also provides that the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank’s customers, and may deny a merger if it would have a negative effect in any such respect.

The OCC reviewed the proposed Merger of BPNA into PNA and found that all requirements were satisfied. The OCC approves the Merger of BPNA into PNA.

### **Conditions**

These approvals are subject to the following conditions:

1. The Merger may not occur until after the Culebra P&A Transaction and after BPNA’s status as an insured bank has been terminated.

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<sup>2</sup> 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000).

<sup>3</sup> Because the Merger of BPNA into PNA will occur only after BPNA is no longer an insured bank, the Merger is not subject to review under the Bank Merger Act, 12 U.S.C. § 1828(c).

2. If the Merger of BPNA into PNA does not occur within five (5) calendar days after the Culebra P&A Transaction, BPNA shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national bank.

These conditions of approval are conditions “imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request” within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

### **Conclusion**

Accordingly, the OCC approves BPNA’s applications for a fundamental change in asset composition and for the Merger of BPNA into PNA. These approvals are subject to the conditions set out above. This conditional approval is also granted based on the information and representations made in the application. In particular, the approvals are based on BPNA’s representation that the Merger will occur shortly after the Culebra P&A Transaction and the termination of BPNA’s status as an insured bank. In addition, our approval is contingent on BPNA and the other parties receiving all other required regulatory approvals.

The OCC will not issue a letter certifying the consummation of the transactions until we have received:

1. Confirmation that BPNA is no longer FDIC insured, including a copy of BPNA’s certification to the Federal Deposit Insurance Corporation under 12 C.F.R. § 307.2.
2. BPNA’s charter certificate, and certification that all OCC Reports of Examination and any other OCC documents have been returned to the OCC or destroyed.
3. A copy of the final Certificate of Merger filed with the Delaware Secretary of State.

If all the steps of the transaction are not consummated within ninety (90) days of this letter, this conditional approval shall automatically terminate, unless the OCC grants an extension of the time period.

This conditional approval, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Banco Popular, N.A.  
Orlando, Florida  
ACN: 2008-SO-12-0203 and -0204  
November 14, 2008  
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A separate letter is enclosed requesting your feedback on how we handled your application. We would appreciate your response so we may improve our service.

You should include the application control numbers on any correspondence related to these filings. If you have any questions, contact Senior Licensing Analyst Joseph Burbridge at 214-720-7043.

Sincerely,

*signed*

Karen H. Bryant  
Director for District Licensing

Enclosure (Survey Letter)