



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

Central District Office
One Financial Place, Suite 2700
440 South LaSalle Street
Chicago, Illinois 60605

November 21, 2008

**Corporate Decision #2008-09
December 2008**

Ms. Karen J. Canon
Associate General Counsel
U.S. Bank National Association
U.S. Bancorp Center
800 Nicollet Mall, BC-MN-H21N
Minneapolis, Minnesota 55402

Re: Application for U.S. Bank, National Association, Cincinnati, Ohio to Acquire Assets and Liabilities from Downey Savings and Loan Association, F.A., Newport Beach, California
Application Control Number: 2008-CE-02-038

Dear Ms. Canon:

The Office of the Comptroller of the Currency (“OCC”), for the reasons discussed below, hereby approves the application of U.S. Bank, National Association, Cincinnati, Ohio (“US Bank”) to acquire assets and liabilities from Downey Federal Savings and Loan Association, Newport Beach, California (“Downey”). This approval is granted following review of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by representatives of US Bank during the application process. As discussed below, the transaction may be consummated immediately upon approval.

PROPOSAL

Downey, a federal savings association with deposits insured by the Federal Deposit Insurance Corporation (“FDIC”), was closed by the Office of Thrift Supervision on November 21, 2008, and the FDIC was appointed as receiver. The FDIC sought bids from potential acquirers to acquire Downey. US Bank was the winning bidder. Downey has branches in Arizona and California. US Bank is a national bank with deposits insured by the FDIC. It has branches in several states, including California and Arizona.

ANALYSIS

Authority for the transactions and branch retention

National banks have long been authorized to purchase assets and assume liabilities of other depository institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh).¹ Consequently, US Bank may acquire deposits and assets of Downey as proposed.² Moreover, as authorized by 12 U.S.C. § 36(c), and applicable intrastate branching laws of California and Arizona as applied to national banks under § 36(c),³ the OCC concludes that US Bank has authority to retain and operate as branches the main office and branches of Downey in California and Arizona.

Bank Merger Act

The OCC reviewed the proposed purchase and assumption transaction between US Bank and Downey under the factors set forth in the Bank Merger Act (“BMA”),⁴ and applicable OCC regulations and policies. The OCC considered these factors and found them consistent with approval. In addition, the OCC finds that it must act immediately under the standards set forth in the BMA to approve the proposed acquisition by US Bank of Downey.⁵

Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicants’ record of helping to meet the credit needs of the community, including low-and-moderate-income (“LMI”) neighborhoods, when evaluating certain applications, including transactions that are subject to the BMA.⁶ The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

¹ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

² With respect to any assets, subsidiaries, or activities that Downey holds or engages in that are not permitted for national banks, US Bank has represented in its application that it will divest itself of any such nonconforming or impermissible assets, subsidiaries, or activities, acquired from Downey within two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.

³ Cal. Fin. Code § 500 and Ariz. Rev. Stat. § 6-190.

⁴ 12 U.S.C § 1828(c).

⁵ 12 U.S.C. § 1828(c)(3). Consequently, certain procedural requirements of the BMA are inapplicable to the transaction. 12 U.S.C. § 1828(c)(3), (4)(C), and (6).

⁶ 12 U.S.C. § 2903; 12 C.F.R. §§ 5.33(e)(1)(iv), 25.29.

Consummation guidance

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transaction will have been received prior to the consummation of the transaction. Within seven days of consummation of the transaction, please provide the OCC Central District Licensing Department with copies of: a Secretary's Certificate for US Bank certifying that a majority of the board of directors of US Bank approved the transaction and an executed a purchase and assumption agreement.

This 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 U.S., any agency or entity of the U.S., or any officer or employee of the U.S., 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 U.S.

If you have questions regarding this letter, please contact me at 312-360-8867 or at carolina.ledesma@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

Signed

Carolina M. Ledesma
Acting Director for District Licensing