

Comptroller of the Currency Administrator of National Banks

Washington, DC 20219

January 27, 2003

Conditional Approval #574 February 2003

Richard E. Dyer, President & CEO The First National Bank of Three Rivers P.O. Box 407 Three Rivers, Michigan 49093

Re: Operating Subsidiary (CAIS Control Number: 2002-CE-08-0029)

Dear Mr. Dyer:

This is in response to your application, filed on behalf of The First National Bank of Three Rivers, Three Rivers, Michigan ("Bank"), on July 25, 2002, and amended on October 31, 2002, to expand activities to be conducted through its Moore Street Insurance Agency ("Moore") a wholly owned operating subsidiary the Bank established on August 27, 1999. In addition, you have requested that the Bank be permitted to retain a noncontrolling investment made on May 16, 2000 by Moore in the Michigan Bankers Title of Mid Michigan, L.L.C. ("LLC").

I. Background

On August 27, 1999 the Bank acquired an insurance sales agency and established Moore, a wholly owned subsidiary, to hold that agency. The agency is located in a branch of the Bank in the city of Constantine, Michigan. The population of Constantine is less than 5,000. On May 16, 2000 the Bank, through Moore, acquired a 4.76% interest in Michigan Bankers Title of Mid Michigan, LLC ("Michigan Bankers Title"). Michigan Bankers Title is owned by a number of banks located in Michigan and engages in the sales of title insurance as agent. On July 25, 2002 the Bank applied to the OCC to seek approval to expand the activities of Moore to include the sale of annuities as agent.

II. Analysis

A. Establishment of an Operating Subsidiary and Sale of Insurance as Agent

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National banks may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. In addition, a national bank may act as an agent for a general insurance company in any place the population of which does not exceed five thousand inhabitants.² The OCC has interpreted section 92 to permit a branch office of a national bank to act as agent for insurance companies if the branch is located in a community having a population of fewer than 5,000, even though the main office of such bank is located in a community whose population exceeds 5,000.3 This authority to sell general insurance, as agent also existed on August 27, 1999 – the date the Bank acquired the general insurance agency and established Moore to hold it.

Here, Moore is located in Constantine, Michigan, a town with a population of fewer than 5,000. The Bank has a branch office in Constantine. Therefore, the Bank's sale of general insurance as agent through Moore is authorized by 12 U.S.C. § 92. Furthermore, the Bank's sales of insurance from its Constantine branch in August 1999 would have been authorized by 12 U.S.C. § 92 as well.

B. Ownership of Interest in a Title Insurance Agency

Section 303(b) of the Gramm Leach Bliley Act ("GLBA") provides that:

Notwithstanding any other provision of law (including section 6701 of this title), in the case of any State in which banks organized under the laws of such State are authorized to sell title insurance as agent, a national bank may sell title insurance as agent in such State, but only in the same manner, to the same extent, and under the same restrictions as such State banks are authorized to sell title insurance as agent in such State.4

State banks in Michigan are permitted to own in whole or in part title insurance agencies, and they have had this authority since before May 16, 2000. Section 487.14101(2)(d) of the Mich. Comp. Laws authorize state banks "to engage in any aspect of the insurance . . . business as agent . . . as provided under the insurance code of 1956, 1956 PA 218, Mich. Comp. Laws 500.100 to 500.8302, and to own an insurance agency in whole or in part as provided under that act." (Emphasis added). The Michigan law governing title insurers and title insurance agents is Chapter 73 of the Michigan insurance code of 1956, Mich. Comp. Laws section 500.7301 et. seq. Since a Michigan state bank could have acquired an interest in a title insurance agency as of May 2000 and could continue to hold such an interest today, the Bank could have acquired an interest in a Michigan title insurance agency in May 2000 and could continue to hold such interest pursuant to section 303(b)(1) of GLBA.⁶

⁵ Mich. Comp. Laws § 487.1410(2)(d).

¹ See 12 C.F.R. § 5.34(e)(1). ² See 12 U.S.C. § 92; 12 C.F.R. § 7.1001. ³ See 12 C.F.R. § 7.1001.

⁴ 15 U.S.C. § 6713(b)(1).

⁶ See OCC Conditional Approval #371, March 20, 2000.

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C. Annuities sales as agent

The OCC has previously approved of national banks engaging in the sale of fixed and variable annuities under the authority of 12 U.S.C. § 24(Seventh), and the Supreme Court has upheld that position. In addition, Bank has represented that it will comply with all regulations and guidelines for annuity sales as specified in section 413 of the OCC's Handbook on Retail Nondeposit Investment Sales. Thus, the Bank may sell annuities through Moore.

D. Noncontrolling Investment in an Limited Liability Partnership

In a variety of circumstances, the OCC has permitted national banks to own, either directly or indirectly through an operating subsidiary, a noncontrolling interest in an enterprise. The OCC has concluded that national banks are legally permitted to make such a noncontrolling investment provided four criteria or standards are met. These standards are:

- (1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).
- (2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.
- (3) The bank's loss exposure must be limited, as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.
- (4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

We conclude, as discussed below, that the Bank's investment in LLC will satisfy these four criteria.

1. The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).

The Bank proposes to make a noncontrolling investment in a firm engaged in title insurance activities. For the reasons stated above, Bank may permissibly engage in the insurance activities. Therefore, the first standard is met.

⁷ See, e.g., OCC Interpretive Letter #749, September 13, 1996; OCC Conditional Approval # 303, February 16, 1999; NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co., 130 L. Ed. 2d 740 (1995).

[§] See, e.g., Conditional Approval Letter No. 219 (July 15, 1996).

⁹ See Interpretive Letter No. 692 (November 1, 1995); Interpretive Letter No. 694 (December 13, 1995).

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2. The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest. The Bank has represented that, Moore, its wholly owned subsidiary, has the right to divest from LLC at any time. Accordingly, the second standard is satisfied.

- 3. The bank's loss exposure must be limited as a legal and accounting matter, and the bank must not have open-ended liability for the obligations of the enterprise.
- a. Loss exposure from a legal standpoint

A primary concern of the OCC is that national banks should not be subject to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose the bank to unlimited liability. The Bank has stated that its loss liability for the LLC will be limited to the amount of its investment.

b. Loss exposure from an accounting standpoint

In assessing a bank's loss exposure as an accounting matter, the OCC has previously noted that the appropriate accounting treatment for a bank's less than 20 percent ownership share or investment in a corporate entity is to report it as an unconsolidated entity under the equity or cost method of accounting. You have represented that the Bank will account for its ownership interest in LLC according to the equity method of accounting. Under the equity method of accounting, the Bank's financial statement will reflect its investment in the LLC. Investments made by the LLC are not consolidated with assets held by the Bank on the Bank's financial statement.

Therefore, for both legal and accounting purposes, the Bank's potential loss exposure arising from its investment in LLC should be limited to the amount of its investments. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

4. The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's business.

The Bank represents that its investment in LLC is convenient and useful to the Bank as an extension of its insurance business that is conducted in the Bank. The investment also is convenient and useful to the Bank in providing permissible title insurance products to the public. The investment is thus directly related to the Bank's insurance business. Accordingly, the fourth standard is satisfied.

III. Conclusion

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Based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, the OCC approves the bank's proposal for the subsidiary to conduct the following activities.

- Sell annuity products.
- Act as an insurance agent.
- Hold a 4.76% noncontrolling equity investment in LLC.

In addition, The OCC approves the noncontrolling equity investment in LLC subject to the following conditions:

- (1) the LLC will engage only in activities that are permissible for a national bank;
- (2) the Bank will withdraw from the LLC in the event that it engages in an activity that is inconsistent with condition (1);
- (3) the Bank will account for its investment in the LLC under the cost or equity method of accounting; and,
- (4) the LLC will be subject to OCC supervision and examination, subject to the limitations and requirements of section 45 of the Federal Deposit Insurance Act (12 U.S.C. § 1831v) and section 115 of the Gramm-Leach-Bliley Act (12 U.S.C. § 1820a).

Please be advised that the conditions of this approval are deemed to be "condition(s) 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, and, as such, may be enforced in proceedings under applicable law.

You are reminded that the bank must comply with the requirements of 12 CFR § 5 as they relate to future corporate filings by the bank. Please review especially 12 CFR § 5.34 and 12 CFR § 5.36 concerning operating subsidiaries and investment in subsidiaries and equities. Future failures to comply with 12 CFR § 5 may result in administrative action against the bank.

This approval, and activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding 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.

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If you have any questions, please contact Alfred Phillips, Senior Licensing Analyst at (202) 874-5060 or Dan Walters, Licensing Analyst at (312) 360-8872.

Sincerely,

Julie L. Williams

Julie L. Williams First Senior Deputy Comptroller & Chief Counsel

cc: Official File