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

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

**Conditional Approval #623  
March 2004**

February 19, 2004

Geoffrey Randall, Esquire  
Shutts & Bowen LLP  
201 South Biscayne Boulevard  
Suite 1500  
Miami, Florida 33131

Re: Commercebank Trust Company, N.A. (Proposed), Coral Gables, FL (Charter #24470)  
Trust Company Charter Application No. 2003-SW-01-0012  
Operating Subsidiary Application No. 2003-SW-08-0017  
Citizenship Waiver Application No. 2003-SW-12-0200

Dear Mr. Randall:

The Office of the Comptroller of the Currency (“OCC”) has reviewed your application to establish a new national trust bank, which will engage solely in fiduciary activities with the title of Commercebank Trust Company, National Association (“Bank”). On February 19, 2004, the OCC granted preliminary conditional approval of your charter application after a determination that your proposal met certain regulatory and policy requirements. In addition, your request to establish the new bank as an operating subsidiary of Commercebank, N.A. is approved.

These approvals are granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the application and by the Bank’s representatives. We also made our decision to grant preliminary conditional approval with the understanding that the proposed Bank will apply for Federal Reserve membership.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until all pre-opening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this preliminary conditional approval should the OCC deem any interim development to warrant such action.

If the Bank is not opened for business within 18 months from the preliminary conditional approval date, this approval expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances and when the OCC determines that the delay is beyond the applicant's control. The applicant is expected to proceed diligently, consistent with its application, for the Bank to open for business as soon as possible.

This preliminary approval is subject to the following conditions:

1. The Bank must be capitalized with at least \$5.0 million net of organizational expenses.
2. If the Bank fails to maintain Tier 1 capital in the amount of \$4.5 million, the Bank shall be deemed "undercapitalized," for purposes of 12 U.S.C. §1831o and 12 CFR 6, and the OCC shall have the authority to take any action authorized under all provisions of 12 U.S.C. §1831o and 12 CFR 6 applicable to an undercapitalized national bank. For purposes of 12 U.S.C. §1831o(e)(5), an action "necessary to carry out the purpose of this section" shall include restoration of the Bank's capital so that it is not "undercapitalized," and any other action deemed advisable by the OCC to address the Bank's capital deficiency or the safety and soundness of its operations.
3. The Bank: (i) shall give the South Florida Field Office at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from its business plan or operations<sup>1</sup> and (ii) shall obtain the OCC's written determination of no objection before the Bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank's notice.
4. The Bank must notify all potential technology-related vendors in writing of the OCC's examination and regulatory authority under 12 U.S.C. §1867(c). All final technology-related vendor contracts must stipulate that the performance of services provided by the vendors to the Bank is subject to the OCC's examination and regulatory authority. The provisions of 12 CFR 9 would be applicable to any fiduciary activities contracted out to vendors.
5. All transactions between the Bank and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. §371c, 12 U.S.C. §371c-1, or other applicable Federal law. The Board of Directors of the Bank annually shall review and approve the service agreements, and any other transactions with foreign and domestic

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<sup>1</sup> If such deviation is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.

These conditions of approval are conditions “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. As such, the conditions are enforceable under 12 U.S.C. §1818.

You are reminded that the Bank must establish and maintain a Fiduciary Audit Committee consistent with the requirements of 12 CFR 9.9(c).

Please be advised that the OCC is currently reviewing its capital and liquidity policy with respect to national trust banks. Should there be a change in our policy as a result of the review, we will advise you accordingly. In addition, if the Bank’s future assets under management increase significantly, or if the Bank assumes additional risk, the OCC may conclude that increased capital is required.

The OCC poses no objection to the following persons serving as executive officers and/or directors as proposed in the application:

- Guillermo Villar - Board Chairman
- Millar Wilson - Director, President
- Alberto Peraza - Director, Secretary
- Anthony Perea - Director, Trust Manager
- Norma Duenas - Director

The OCC hereby grants waiver of the United States’ citizenship requirement under 12 U.S.C. §72 for Guillermo Villar and for Norma Duenas to serve as members of the board of directors of the Bank. We understand that after their election, 60 percent of the bank’s board of directors will meet the citizenship requirements of 12 U.S.C. §72. This waiver is based upon a review of all available information, including the filing, subsequent correspondence and telephone conversations, and the Bank’s representation that this waiver will not affect the board’s responsibility to direct the Bank’s operations in a safe and sound manner. The OCC reserves the right to withdraw or modify this waiver and, at its discretion, to request additional information at any time in the future.

Prior to the Bank’s opening, the Bank must obtain the OCC’s prior written determination of no objection for any additional executive officers or directors appointed or elected before the person assumes the position. Also, for a two-year period after the Bank commences business, the Bank must file an Interagency Biographical and Financial Report with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming

such position.

The “Corporate Organization” booklet in the *Comptroller’s Licensing Manual* provides guidance for organizing your bank. The booklet may be found at the OCC's web site: [www.occ.treas.gov/corpbook/group1/public/pdf/corpgorg.pdf](http://www.occ.treas.gov/corpbook/group1/public/pdf/corpgorg.pdf). The booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward Articles of Association and the Organization Certificate to this office for our review and acceptance. As a “body corporate” or legal entity, you may begin taking those steps necessary for obtaining final approval. The Bank may not engage in fiduciary activities until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new national banks. The Bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation. The OCC has granted an exemption to the standard requirement for a new national bank to engage an independent external auditor for the first three years of operations. This exemption is subject to the following requirements: a) the Bank remains a subsidiary of Commerce Bank, N.A., the Bank’s parent, and the Bank’s financial statements are included in the audited financial statements of the parent; and b) adequate audit coverage is maintained at the Bank level. If any of these requirements are not met within the first three years of operations, the exemption may be withdrawn at the OCC’s discretion.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the *Comptroller’s Licensing Manual*, which is available only in electronic form at our web site: <http://www.occ.treas.gov/corpapps/corppapplic.htm>.

This preliminary 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 (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.

Please direct any questions concerning this preliminary conditional approval to Licensing Representative John O. Stein at (404) 588-4550, e-mail [john.stein@occ.treas.gov](mailto:john.stein@occ.treas.gov), or write to the address reflected above.

Geoffrey Randall, Esquire  
February 19, 2004  
Page 5

A separate letter is enclosed requesting your feedback on how we handled your applications. We would appreciate your response so we may improve our service.

Yours truly,

*/s/ Karen H. Bryant*

Karen H. Bryant  
Licensing Manager

Enclosures:     Standard Requirements  
                  Minimum Policies and Procedures  
                  Survey