

Approval or Conditional Approval Letter – Uninsured with a Nonbank Affiliate

[OCC LOGO]

Date

Name of Representative

Name of Bank

Address

City, State, ZIP Code

Re: Application Description, Charter Number, CAIS Control Number

Dear Mr. or Ms. (Name):

The Office of the Comptroller of the Currency (OCC) approves the application by (*insert name of bank*), to merge into its nonbank affiliate, (*name*), under 12 USC 215a-3 and 12 CFR 5.33(g)(5).

Background

On (*insert date*), the (*insert bank, city, state*) (bank), applied to the OCC for approval to merge into (*name of nonbank affiliate, city, state*) (nonbank), a nonbank affiliate, under 12 USC 215a-3 (the Merger), with (nonbank) as the surviving entity. As a result of the Merger, bank will cease to exist as a national bank.

[For national banks in liquidation.] [Provide a description of the bank, its products and activities.] The bank has been in liquidation under 12 USC 181 since (*insert date*). It has already sold most of its loans and other assets, and it transferred all of its deposits to another insured bank. Its remaining assets consist of cash, cash equivalents, and a small loan portfolio. Since (*insert date*), it is no longer insured by the Federal Deposit Insurance Corporation. The bank is a (*insert name of state*) corporation, with its principal place of business in (City), (State). **[If applicable]** It is a shell corporation, formed for the sole purpose of being the receiving entity in the Merger. The directors of (nonbank) are the same as the directors of the bank. In the Merger, shareholders of (Bank) will receive shares in (Nonbank) in exchange for their shares in the bank. (Nonbank) will continue in business to work down its loan portfolio. It will also assume any liabilities of (Bank), including contingent liabilities.

[For Trust Banks and Other Uninsured National Bank]

The bank is a national bank whose operations are limited to those of a trust company and related activities. It does not accept deposits and is not insured by Federal Deposit Insurance Corporation (FDIC). The bank is a (*State*) corporation, with its principal place of business in (City), (State). It was formed solely to be the receiving entity in the Merger. In the Merger, shareholders of the bank will receive shares in nonbank in exchange for their shares in the bank.

Discussion

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.”¹ 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 limits mergers of national banks into their nonbank affiliates to national banks that are not insured banks under the Federal Deposit Insurance Act.

The OCC recently adopted regulations implementing 12 USC 215a-3. The regulations 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 (refer to 12 CFR 5.33(g)(5)). In particular, the regulation provides:

With the approval of the OCC, a national bank that is not an insured bank as defined in 12 USC 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, 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 the merger if it would have a negative effect in any such respect.

The regulation imposes additional requirements that: (1) the bank comply with the procedures of 12 USC 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 USC 214a. *See id.* (12 CFR 5.33(g)(5)(ii)-(v)).

The proposed Merger is covered by, and meets the requirements of, 12 USC 215a-3 and 12 CFR 5.33(g)(5). First, the bank is not an insured bank, and [nonbank] is a nonbank affiliate. [How Bank status ended] does not accept deposits, and has never been insured by the FDIC. [Nonbank] is not a bank. The bank is an affiliate of Nonbank because [*describe*]. Refer to 12 CFR 5.33(d)(5), 5.33(d)(8)(definitions of control and nonbank affiliate). The bank and [Nonbank] are located in [*same or different*] states. However, there are no geographic limits on the authority to merge with a nonbank affiliate under section 215a-3.

Second, the law under which [NonBank] is organized allows it to merge with (Bank). (Nonbank) is a (Name of State) corporation. (State) permits its domestic corporations to merge

¹ 12 USC 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). Section 1206 was adopted to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See* S. Rep. No. 106-11, 106th Cong., 1st Sess. 8 (1999).

with a foreign corporation, with corporations organized under the law of another jurisdiction, with the (State) corporation as the survivor. [*insert state code cite.*]

Third, the bank has complied with the procedures of 12 USC 214a to the extent applicable. (Bank's) board of directors and shareholders have voted in favor of the Merger by at least the required margins.

Fourth, (Nonbank) represents that it will comply with the procedures for mergers by (State) corporations. The application contains a copy of a resolution of the board of directors of (Nonbank) approving the Merger. (Nonbank) and the bank represent it will comply with (State) state filing requirements for the merger, and the application contains a draft of the Articles of Merger that will be filed with the Secretary of State of (State).

Fifth, the bank has provided for dissenters' rights. Under 12 CFR 5.33(g)(5)(iv)(A), shareholders of the bank who dissent from the Merger have dissenters' rights as specified in 12 USC 214a for a merger into a state bank. The Proxy Statement and Agreement and Plan of Merger sent to the bank's shareholders provide and describe these dissenters' rights.

Finally, under the OCC's regulations, in reviewing mergers under section 215a-3, the OCC considers 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 the merger if it would have a negative effect in any such respect. The OCC reviewed the Merger with respect to these factors and determined approval of the Merger is warranted. In this regard, the bank has already disposed of most of its business and has been in (liquidation/uninsured) since (*insert date*). This reorganization serves to expedite that process in an orderly and efficient manner. [**If applicable, briefly describe how any remaining loan customers or identified creditors will be handled. The customers of the bank are the remaining loan customers. If applicable, insert:**] These parties will continue to be served by Nonbank Corporation which assumes all liabilities and assets upon consummation of the Merger. Further, we have included two preconsummation requirements to limit any potential adverse effects on these parties.

Nonbank Corporation represented that it will continue to maintain the books and records of (Bank) for a period of five years after the consummation of the merger and that if (Nonbank) Corporation should dissolve prior to the five years, the company will make arrangements for the continued maintenance of the bank's books and records.

Conclusion

Accordingly, the OCC approves (*bank's*) application to merge into (*nonbank*). This approval was granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and by the bank's representatives. However, (bank) may not consummate the Merger until it has satisfied the following requirements: [*List any additional preconsummation requirements.*]

The OCC must be advised in writing in advance of the desired effective date for the Merger so that we may issue the certification letter for the Merger. We will issue a letter certifying

consummation of the merger when we receive, in addition to the three requirements above, the following:

- The Charter of (*Bank*), all OCC Reports of Examination, and any other OCC documents in the possession of Bank.
- A copy of the final Articles of Merger filed with the Secretary of State of (*State*).
- Secretary's certificates for each institution, certifying that board of directors and shareholder approval have been obtained.

If the Merger is not consummated within one year of the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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 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. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence and documents concerning this transaction should reference the control number. We have enclosed a letter requesting your feedback on how we handled your application. We would appreciate your response to improve our service.

If you have any questions, contact (*name*) at (*telephone number*) or by email at (*email address*).

Sincerely,

—Signature—

Name and Title

Enclosures: Survey Letter