



Comptroller of the Currency
Administrator of National Banks

May 21, 2002

**Conditional Approval #524
June 2002**

Louis J. Dunham, Spokesperson
Infinity Bank NA
2001 Palm Beach Lakes Boulevard, Suite 100
West Palm Beach, Florida 33409

Subject: Proposed Infinity Bank NA, West Palm Beach, FL; Charter Application
CAIS Control No. 2001-SE-01-0012

Dear Mr. Dunham:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national bank with the title of Infinity Bank NA, West Palm Beach, Florida (Infinity or bank). After a thorough evaluation of all information available, including the representations and commitments made in the application and by the proposed bank's representatives, including letters dated April 19 and 23, 2002 (amendments), we find that your proposal meets the requirements for preliminary conditional approval.

We also made our decision to grant preliminary conditional approval with the understanding that the proposed national bank will apply for membership in the Federal Reserve System and obtain insurance from the Federal Deposit Insurance Corporation.

This preliminary conditional approval is subject to the following conditions:

1. Infinity: (i) shall give the OCC's South Florida Field Office at least sixty (60) days prior written notice of its intent to significantly deviate or change from its business plan or operations, 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.¹ The bank also must provide a copy of such written notice to the FDIC's Atlanta Regional Office during the first three years of operation.
2. Prior to commencing business, Infinity's Board of Directors must execute a binding written agreement with the OCC setting forth certain actions that the bank will take in the event that the OCC determines that the bank has failed or is unable to comply with

¹If such deviation or change is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

the conditions that are detailed in this preliminary conditional approval letter or in the final approval letter. Pursuant to the written agreement, the bank will be obligated to, among other things, develop a corrective action plan should it fail to meet its business plan, or alternatively, to develop a new business plan. In addition, the written agreement will require that the bank develop a plan for the sale, merger, or liquidation of the bank if the corrective action plan or new business plan fails to achieve the respective objectives. The written agreement shall remain in existence for the bank's first three (3) years of operation, or until the bank reports four (4) consecutive quarters of "minimum acceptable profitability (to be defined in the agreement)," whichever is later in time.

3. A majority of the members of Infinity's Board of Directors shall not be: (1) officers or employees of Infinity; (2) shareholders, directors, officers, or employees of e-primefinancial plc (UK); (3) directors, officers, or employees of e-primefinancial (USA) Inc., or (4) shareholders, directors, officers, or employees of any other company affiliated with Infinity, e-primefinancial (USA) Inc., or e-primefinancial plc (UK).
4. A majority of the members of the Audit Committee of Infinity's Board of Directors shall not be: (1) officers or employees of Infinity; (2) shareholders, directors, officers, or employees of e-primefinancial plc (UK); (3) shareholders, directors, officers, or employees of e-primefinancial (USA) Inc.; or (4) shareholders, directors, officers, or employees of any other company affiliated with Infinity, e-primefinancial (USA) Inc., or e-primefinancial plc (UK).
5. The Chief Executive Officer, the Chief Financial Officer, and the Chief Lending Officer of Infinity must reside within commuting distance of the main office.

These conditions of approval are "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.

Infinity's initial paid-in capital, net of organizational and preopening expenses, shall be no less than \$23 million. Infinity has indicated that it intends to raise capital via an offering circular or private placement. Any offering circular or private placement documents must be submitted to OCC's Southeastern District Licensing Office prior to its use. The manner in which capital is raised must not deviate from that described in the application and amendments without prior written notification to the OCC.

If the capital for the new bank is not raised within 12 months from the date of this letter, or if the new bank is not opened for business within 18 months from the date of this letter, the OCC's preliminary conditional approval expires. Generally, 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 organizers are expected to proceed diligently, consistent with their application, for the bank to open for business as soon as possible.

The OCC reserves the right to object to any person or company proposing to own 5 percent or more of e-primefinancial (USA) Inc., prior to any authorization for the bank to commence operations.

This is preliminary conditional approval only. Final approval will not be granted until and unless the Federal Reserve Board acts favorably on e-primefinancial (USA) Inc.'s application to acquire this new bank.

Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary conditional approval should the OCC deem any interim development to warrant such action.

Refer to the "Corporate Organization" booklet (enclosed) in the *Comptroller's Corporate Manual* for the instructions on organizing your bank. 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 acceptable Articles of Association and the Organization Certificate to this office. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC. The draft stock option plan and employment agreements should be submitted in final form to ensure they meet the OCC policy guidelines.

After reading the instructions for the organization of a new national bank, it is suggested that the spokesperson or a designated correspondent visit the Southeastern District Licensing Office to discuss the organizing process. We feel such a visit can save time and prevent some of the pitfalls that have delayed or prevented other banks from opening.

Enclosed are standard requirements that must be met before the bank will be allowed to commence business. Management must ensure that the applicable policies and procedures are established and adopted by the board of directors before the bank begins operation. Applicable standard requirements also must be satisfied before the bank will be allowed to commence business.

In addition to the procedural requirements for all new national banks, the following requirements must be satisfied prior to the bank's request for a preopening examination and before the OCC will grant final charter approval:

1. The bank must submit to the OCC's South Florida Field Office for review and prior written determination of no supervisory objection a complete description of the bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items:

- Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

2. The bank must have performed an independent security review and test of its electronic banking platform. The bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirements listed herein. The review must be conducted by an objective, qualified independent source (Reviewer). The scope should cover:

- All access points, including the Internet, Intranet, or remote access.
- The adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access.

By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, see “The Internet and the National Bank Charter” booklet of the *Comptroller’s Corporate Manual*, pages 37-38, 74-75. The booklet may be found at the publications portion of the OCC’s website, www.occ.treas.gov/netbank/letters.htm.

3. The bank must have a security program in place that complies with the “Interagency Guidelines Establishing Standards for Safeguarding Customer Information” specified at 12 C.F.R. Part 30, Appendix B.

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

President, Chief Executive Officer, and Cashier:	Louis J. Dunham
Chief Financial Officer:	Nigel J. Duxbury
Chief Technology Officer:	Keith J. Mullins
Chief Lending Officer:	David G. Cogswell

Prior to opening, additional executive officers are subject to the OCC’s prior review and clearance. Also for a period of two years after the bank has opened for business, the bank must file and the OCC issue a letter of no objection to any new executive officer or director prior to that person assuming such position. See 12 C.F.R. 5.20 (g)(2).

The OCC poses no objection to the following person(s) serving as directors as proposed in the application:

Louis J. Dunham, Philip H. Ward III, Patrick G. Constantinides, Janet B. Craft, Frank Pattillo, Dennis M. Tierney, Nigel J. Duxbury, and Keith J. Mullins.

The OCC grants your waiver request of the citizenship qualifications of 12 U.S.C. 72 for Nigel Duxbury and Keith Mullins to be members of Infinity's board of directors. This waiver is granted based upon a review of all available information, including the filing (and 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, sound, and legal 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.

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, 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.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.

You should direct any questions concerning this preliminary conditional approval to Cheryl Martin at 202-874-4614.

Sincerely,

/s/

Alan Herlands
Director for Licensing Operations

Enclosures: "Corporate Organization" Booklet
Standard Requirements
Minimum Policies and Procedures