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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

## **Conditional Approval #368 April 2000**

### **DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO CHARTER POINTPATHBANK, NATIONAL ASSOCIATION, COLUMBUS, GEORGIA APRIL 3, 2000**

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#### **I. DESCRIPTION OF THE PROPOSAL**

On August 17, 1999, Synovus Financial Corp., (“Synovus”), filed an application with the Office of the Comptroller of the Currency (“OCC”) to charter a new full-service national bank.<sup>1</sup> Synovus will own 100 percent of the Bank. The proposed bank will be headquartered in Columbus, Georgia, and will be titled pointpathbank, National Association (“Bank”). The Bank has applied to the Federal Deposit Insurance Corporation (“FDIC”) for deposit insurance and will apply to become a member of the Federal Reserve System. No public comments were received with respect to the application.

The Bank will not have any traditional banking offices accessible to the public but will deliver products and services to its customers through a variety of electronic delivery channels. The Bank will operate from an office building located at 500 11th Street in Columbus.<sup>2</sup> Customers will conduct banking transactions through automated teller machines (“ATMs”), through the Internet via a transactional Web site, and through the Bank’s toll free customer service line.

The business strategy for the Bank is to provide a full array of traditional banking products and services to Internet consumers. The Bank’s initial credit products will include unsecured revolving lines of credit, unsecured installment loans, overdraft protection, credit cards, and mortgages. Using a third-party vendor, the Bank will offer private label mortgages that will be sold in the secondary market. Credit scoring will be used to make

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<sup>1</sup> The Organizers of the Bank are J. Richard Alexander, Richard E. Anthony, G. Sanders Griffith, III, Richard Ussery, and Lisa L. White, all of whom are currently involved as an officer and/or director of Synovus or one of its affiliates.

<sup>2</sup> The building will continue to house operational functions for Synovus and its lead bank, Columbus Bank and Trust. The location is not a customer-accessible office of Columbus Bank and Trust.

the credit decisions on credit cards, revolving lines of credit, installment loans, and overdraft protection. The Bank's initial deposit-related products and services will include interest checking with bill payment, money market accounts, savings accounts and certificates of deposit. Customers will apply for both loan and deposit accounts online with follow-up documents sent through the mail.<sup>3</sup> The Bank will also offer insurance and financial calculators through third-party Weblinks.<sup>4</sup> The Bank will introduce additional products and services in the future, such as individual retirement accounts, electronic statement options, online check reordering, travel points credit card reward program, and investment services.<sup>5</sup>

The bank will solicit business from all qualified consumers. In addition, the bank will market to consumers who are planning to be married or who are recently married, and will then try to create a relationship that will span the financial life of those customers. The Bank represented that it will be operated in compliance with the Equal Credit Opportunity Act and Fair Housing Act. In addition, the Bank represented that it will utilize advertising materials that will appeal to the general public, as well as materials that are targeted to the foregoing customers.

An important component of the Bank's business approach is to establish strategic alliances with third parties. In this regard, the Bank plans to build an electronic commerce Web page with hyperlinks to third-party Web sites offering a wide variety of financial and nonfinancial products and services considered useful to customers, such as insurance and financial calculators. In offering these hyperlinks, the Bank will be acting in a finder capacity, thus bringing together buyers and sellers of products and services, and will generate fee income.<sup>6</sup> The Bank may also negotiate arrangements with the linked third-

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<sup>3</sup> Customers will return through the mail physical documents that may be necessary for legal or operational reasons. This may include signature cards and associated deposit account agreements. The OCC expects national banks to exercise appropriate caution and due diligence when opening accounts using the Internet, mail, and other non-traditional means. Internal systems and controls should address the risks associated with such accounts and include appropriate procedures to verify customer information as part of the account opening process and to monitor for fraud after an account has been opened. Pursuant to special preopening requirement number two, we will ensure that the Bank has developed and implemented satisfactory internal systems and controls in this area prior to its opening.

<sup>4</sup> The financial calculators can provide information and guidance on topics such as home financing, auto financing, credit lines, savings, retirement, insurance or budgeting.

<sup>5</sup> Sometime in the future the bank may establish a page or pages on the Bank Web site with hyperlinks to third party Web sites that would enable customers to access expanded information and services not provided by the bank. The Bank will consult with the OCC as its plans for this aspect of its operation become more defined.

<sup>6</sup> The OCC has found that national banks may, as part of the finder authority (*see* 12 C.F.R. 7.1002), establish hyperlinks between the bank's retail Web site and the Web sites of third parties. *See* Conditional Approval No. 221 (December 3, 1996), <http://www.occ.treas.gov/interp/dec/conda221.pdf> (National banks, in the exercise of their finder authority, may establish hyperlinks between their home pages and the Internet pages of third-party

party Web sites whereby the third-parties will offer reduced rates to Bank customers for products and services.<sup>7</sup>

The marketing strategy reflects a heavy reliance upon the success of attracting customers from specific Web sites. It plans to deliver its products and services, efficiently and conveniently, to its customers through electronic delivery channels. The Bank will attract customers primarily through publications and Web-based advertising through banner ads and the rental of "real estate" on the Web sites with which it has strategic alliance agreements.

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providers, so that bank customers will be able to access those non-bank Web sites from the bank site) and Interpretive Letter No. 875 (October 31, 1999) (National banks may operate a "virtual mall," *i.e.*, a bank-hosted set of Web pages with a collection of links to third-party Web sites organized as to product type and available to bank customers, so that bank customers can shop for a range of financial and non-financial products and services via links to sites of third-party vendors, and merchants can electronically confirm payment authorization before shipping goods).

The OCC expects that the Bank will take reasonable steps to clearly distinguish between products and services that are offered by the Bank and those offered by a third party or Bank affiliate. Bank customers should be able to identify when they are dealing with the Bank and when they are not, and the Bank should indicate that it does not provide, endorse, or guarantee any of the products or services available through the third-party Web sites. Internet technology provides multiple methods to provide such clarity to potential customers; examples include simple text and dialogue boxes. See OCC Banking Bulletin 94-13 (February 24, 1994), <http://www.occ.treas.gov/ftp/bulletin/93-13.pdf>, and "Technology Risk Management: PC Banking," OCC Bulletin 98-38, p. 17 (August 24, 1998); <http://www.occ.treas.gov/bullst98.htm>. The OCC will consult with the Bank on its electronic finder operations as they become more well defined.

<sup>7</sup> See Conditional Approval No. 347 (January 29, 2000), *supra*. Interpretive Ruling 7.1002, 12 C.F.R. § 7.1002, provides that a national bank's role as a finder includes, "without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for a transaction that the parties themselves negotiate and consummate." The plain language of the Interpretive Ruling supports the Bank's negotiating arrangements with linked merchants to provide reduced rates to Bank customers. One aspect of "making inquiries as to interest" includes inquiring whether a merchant would be willing to provide a discount for Bank customers. Moreover, the Bank, in "otherwise bringing parties together," may reasonably choose to bring together with Bank customers only those merchants who are willing to provide a discount. In other words, one part of making inquiries and bringing parties together is negotiating with merchants as to the terms of compensation for the finder. A reduced rate to be offered to Bank customers can be a form of compensation for the Bank because it will help attract customers to the Bank's services or Web site. *Cf.* Letter from Lee Walzer, Attorney, Securities, Investments & Fiduciary Practices Division (August 24, 1992) (unpublished) (bank may negotiate with merchant for finder's fee).

Nor does negotiating arrangements with the linked merchants to provide reduced rates to Bank customers cause the Bank to become involved in the negotiations of the parties and thereby exceed its proper role as finder. The Bank's negotiations with a merchant and the merchant's negotiations with potential buyers are temporally discrete events. The Bank's negotiations with a merchant are completed well before the commencement of any merchant-buyer negotiations. The customer is not a party to these discussions. Indeed, a bank's role as finder stops with the commencement of negotiations between the merchant and buyer. As such, the Bank does not participate in the negotiations between the parties or the consummation of the transaction between the parties.

The Bank's main office will be situated in an office in Columbus, Georgia. The Bank will service all customers through electronic delivery channels. Telephone and Internet banking services will be available 7 days a week, 24 hours a day. Customer service representatives will be available at all times.

The Bank will perform some key operational functions internally while contracting with third-party service providers for the provision of other functions. The Bank or an affiliate will provide item processing, Web hosting, credit and fraud checking, credit and debit card services, gift card services, and customer service. The Bank will likely outsource to a third-party service provider for data processing, Internet access services, hosting and processing mortgage loan operations, and insurance.

As discussed further below, the Bank will be evaluated initially as a large bank for Community Reinvestment Act ("CRA") purposes. As a large bank, the Bank's CRA performance will be evaluated under the lending, investment, and service tests. This branchless Bank plans to delineate the three Georgia counties within the Columbus multistate Metropolitan Statistical Area, the area around the Bank's main office, as the initial assessment area.

## **II. LICENSING FACTORS**

### **A. Policy Considerations**

Under its Corporate Activities regulations (12 C.F.R. § 5.20), the OCC considers whether the proposed bank: (A) has organizers who are aware of, and understand, national banking laws and regulations; (B) has competent management, including the board of directors, with ability and experience relevant to the types of services to be provided; (C) has capitalization that is sufficient to support the projected volume and type of business; (D) can reasonably be expected to achieve and maintain profitability; and (E) will be operated in a safe and sound manner.

In evaluating this charter proposal, the OCC performed a thorough assessment of the Organizers and the proposed operating plan. This included a field investigation comprised of interviews with the Organizers and proposed officers and directors; review of affiliated Synovus' business record; review of proposed operations; and evaluation of its proposed information systems architecture and approach to security and controls. We also conducted a detailed financial and business plan analysis using regulatory and industry data and research.

#### *Organizers and Management*

The OCC's analysis concluded that the organizers and proposed management and directorate are knowledgeable of, and understand, national banking laws and regulations

and safe and sound operations. All of the organizers are currently associated with Synovus and will serve as directors. The proposed President and Chief Executive Officer, Lisa White, has 17 years of banking experience at Synovus and the necessary attributes to implement the operating plan. The organizers have assembled a competent management team with satisfactory experience to run the proposed operations in a safe and sound manner. Based on our review of their backgrounds, the management and directorate for the proposed Bank possess experience relevant to the proposed products and services. This conclusion also incorporates the fact that Synovus is a large, sophisticated, well-managed organization with Internet banking operations in its existing banking subsidiaries.

### *Capital Considerations*

Proposed capital is sufficient to support the projected volume and type of business. Synovus plans to provide initial capital to the Bank of \$9.8 million in cash. Based upon the Bank's growth and earnings projections, the initial capitalization should ensure that the Tier 1 leverage ratio exceeds eight percent throughout the first year of operations. The projections also evidence risk-based capital ratios that are well in excess of the minimum regulatory requirements.<sup>8</sup> In addition, the Bank has represented that it will maintain a Tier 1 capital ratio of at least 8 percent for the first three years of operation. Based on our review, Synovus has the financial capacity to make the necessary capital injections to maintain the Bank's capital at a well-capitalized level. Furthermore, the Bank will develop and maintain a comprehensive business contingency plan that includes realistic plans for raising additional capital in the future, if needed.

### *Earnings Considerations*

The financial projections show the Bank becoming profitable within three years using realistic growth, income, and expense assumptions. It is reasonable to expect that the proposed Bank can achieve and maintain profitability in line with these projections. As mentioned previously, the proposed Bank will provide products and services to the general public, as well as focus on a niche market. The Bank plans to offer directly or indirectly banking products and services to meet all of its customers' personal banking needs, including loans, deposits, bill payment, as well as act as a finder to enable unaffiliated third parties to provide products and services, such as insurance. The Bank will underwrite and carry its own lines of credit, installment loans, and credit cards, thus generating loan interest income. Further, the Bank plans to generate non-interest income from the sale of mortgages and finders fees from the third-party product and service providers. On the funding side, the Bank will be subject to the market conditions for Internet-only banks, which tend to price their deposits higher than traditional "brick and mortar" banks.

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<sup>8</sup> See 12 C.F.R. Part 3.

There are reasonable prospects that the Bank will attract its proposed customer base. Individuals are already displaying a strong desire for Internet banking services. Several recent studies estimate that online banking households in the United States currently total between 6 million and 8 million and project they could grow to 20 million or more in the next few years.<sup>9</sup>

### *Safety and Soundness Considerations*

The OCC is satisfied that the Bank will be operated in a safe and sound manner. Based upon preliminary review, the Organizers have established a good foundation of personnel, policies, and controls that will be adopted by the Bank. The OCC will confirm this during the preopening examination that will be broad in scope and conducted by an interdisciplinary team. This examination will include an evaluation of the Bank's final plans to identify, monitor, and control all relevant risks, notably transaction risk stemming from Bank's use of technology and other operational factors, credit risk, interest rate risk, liquidity risk, strategic risk, reputation risk, and compliance risk.

As part of the operating plan, the proposed Bank has developed a description of its information systems architecture. This includes a discussion of the technologies used and key elements for the security policies, internal controls, and audit procedures. Based upon our review of the plans, the OCC is satisfied with the plans to date, but will undertake further review during the organizational phase of the Bank. Prior to receiving final charter approval, we are requiring the Bank to submit the final information systems and operations architecture and the information systems risk assessment and management plan for our review and approval. The Bank must also successfully undergo a comprehensive security review by an objective and qualified source. This review should demonstrate that the information system has adequate physical and logical protection against unauthorized internal and external access. The Bank should adhere to current and future OCC issuances on technology risk management.<sup>10</sup>

As discussed above, the Bank has submitted draft plans to perform some key operational functions internally, while contracting with third-party service providers for the provision of other functions. Prior to receiving final charter approval, we are requiring the Bank to finalize such plans and establish acceptable policies and processes for vendor management, including with respect to operational oversight and quality assurance.

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<sup>9</sup> Compilation of studies by Gartner Group, Forrester Research, Inc., Piper Jaffray, and Data Quest.

<sup>10</sup> See "Internet Banking," Comptroller's Handbook (October 1999) and "Technology Risk Management: PC Banking," OCC Bulletin 98-38 (August 24, 1998). Additionally, the OCC plans to release a Bulletin on intrusion risks and intrusion response policies and procedures in the near future.

Based upon our review of the Bank's method of formulating a lending plan and credit policy, we are satisfied that the Organizers will put into place the necessary and appropriate personnel, policies, procedures, underwriting standards, management information systems, and controls. Nonetheless, we will undertake an in-depth review of this area during the organizational phase of the Bank. The Bank will use credit scoring models developed by an industry leader to make decisions on certain consumer loans. Prior to granting final charter approval, we are requiring that the Bank submit for review and approval a comprehensive description of its final lending plan and credit policy with respect to all stages of the lending process.

The proposed Bank intends to minimize potential fraud losses by applying robust account opening and fraud management techniques. The Organizers understand the need for strong risk management in this area, and will develop the specific internal systems and controls during the organizational phase of the Bank. The systems and controls will likely include a combination of automated and manual procedures to verify a customer's true identity and account worthiness when a new customer relationship is established. Consistent with the standard requirement for all new bank charters, the Bank will develop and implement comprehensive Bank Secrecy Act and anti-money laundering policies and procedures. We will evaluate the Bank's policies, systems, and controls in this area prior to opening.

The OCC recognizes that the market segment comprised of "Internet-only" financial institutions largely remains in its infancy. Accordingly, the market competitors, individually and as a group, have not yet achieved consistent and sustained growth and profitability. Furthermore, the marketing, delivery, and pricing of Internet banking products and services continues to evolve. To help manage and control the interest rate, funding, and overall strategic risks of this marketplace, we are requiring that the Bank develop a comprehensive business contingency plan and integrate it into the business and strategic plans and the capital and funds management policies. The objective of the business contingency plan is to help ensure that the Bank can prudently, efficiently, and effectively manage potential scenarios where the loan or deposit mixes, interest rates, operating expenses, marketing costs, and/or growth rates differ significantly from the original plans. This includes access to additional capital in the future, if situations dictate, and contingency funding plans that address strategies for managing potential liquidity fluctuations. The Bank should update the business contingency plan periodically, including as the Bank becomes more complex and as industry conditions change.

The proposed Bank will implement a comprehensive privacy policy.<sup>11</sup> The Organizers represent that the policy will inform the customer what information is being collected, why it is being collected, how it is being used, and with whom it is shared. The Bank will provide a direct link to its privacy policy from the home page of its Web site and from Web pages where personal information is collected.<sup>12</sup> The Bank will maintain internal controls, including technological firewalls, to preclude unauthorized access to or disclosure of customer information. In addition, management will be integrally involved in privacy policy development, and the Bank will develop and implement processes, including audit, to ensure employee understanding and adherence to its stated policy.

At the preopening examination, the OCC will review the Bank's policies, procedures, and controls for ensuring compliance with consumer protection laws and regulations. This review will include confirmation that adequate policies have been implemented in these areas. The OCC also expects that the Bank's policies and procedures will comply with current and future guidance and regulations issued by the OCC or the FFIEC and other applicable law with respect to customer privacy, consumer protection, and electronic banking.<sup>13</sup>

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<sup>11</sup> The OCC has issued guidance for national banks on examples of effective practices for informing customers over the Internet about bank policies for the collection and use of personal information. The guidance discusses examples of effective practices for the development of bank privacy policies and measures for ensuring adherence to those policies. See "Guidance to National Banks on Web Site Privacy Statements," OCC Advisory Letter 99-6, May 4, 1999, <http://www.occ.treas.gov/advlst99.htm>. On February 22, 2000, a notice of proposed rulemaking titled, "Privacy of Consumer Financial Information," was published as Part II of the Federal Register at 65 FR 8770. The OCC is requesting comment on the proposed privacy rule, published jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, that implements the requirements imposed by the recently enacted Gramm-Leach-Bliley Act. Under that Act, a financial institution must provide its customers with a notice of its privacy policies and practices at the time of establishing a customer relationship. A financial institution also must provide a consumer, prior to disclosing nonpublic personal information about that consumer to certain nonaffiliated third parties, with a notice of its privacy policies and practices and a notice of the consumer's right to opt out of the information sharing. See also OCC Bulletin 2000-6 (Privacy of Financial Information), March 2, 2000.

<sup>12</sup> The policy states that the Bank collects confidential customer data to determine customer suitability for providing products and services. Customers of the Bank will be provided the opportunity to "opt out" of affiliate sharing of information at the opening of each new account. The Bank will not share confidential customer information with third parties, including Web link alliances, except under limited circumstances or when requested by the customer. One such circumstance includes sharing with a service provider when it is a necessary step in completing a customer transaction. In those cases, the Bank will ensure that the service provider's privacy policies are similar to the Bank's. In addition, information will be shared when required or allowed by law, such as, reporting to credit bureaus or responding to a judicial subpoena.

<sup>13</sup> See OCC Bulletin 98-31 (FFIEC Guidance on Electronic Financial Services and Consumer Compliance), OCC Bulletin 98-38 (Technology Risk Management: PC Banking), OCC Bulletin 99-35 (Regulation DD; Truth in Savings - Interim Rule; Electronic Delivery Disclosures), and OCC Advisory Letter 99-3 (Fair Credit Reporting Act).



Finally, the Organizers represent that the Bank will not indicate in any of its marketing efforts or materials that the OCC has approved or endorsed the security, functionality, or effectiveness of the Bank's products or services.

The OCC believes that the Bank has a reasonable chance for success and can be adequately supervised using established safety and soundness and bank information system examination procedures.<sup>14</sup> Before the Bank receives its final charter approval, the OCC will conduct a thorough preopening examination of the Bank, including its information systems environment, policies, procedures, controls, and compliance with all standard and special preopening requirements and conditions.<sup>15</sup>

## **B. Legal Considerations**

### **1. Chartering authority**

The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*, and 12 C.F.R. § 5.20. The OCC has conducted a thorough review of this application in light of the factors set forth in these statutory and regulatory provisions and has determined that there is no impediment under applicable laws and regulations to granting preliminary charter approval.<sup>16</sup>

### **2. Authority over vendors**

As discussed, the Bank has indicated in its application that certain functions of its internal operations will be contracted out to various vendors. The process of subcontracting activities that the Bank would otherwise perform for itself implicates the requirements of the

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<sup>14</sup> See "Internet Banking," Comptroller's Handbook (October 1999).

<sup>15</sup> The Bank's operating plan, including any future enhancements, additions, or changes, will provide the context for the supervisory review during the preopening examination. Major deviations from the operating plan, including increases in the riskiness of the operations, or changes in the composition of the board of directors, ownership, or executive officers that the OCC has not approved may result in an amendment to or withdrawal of preliminary conditional approval.

<sup>16</sup> With regard to chartering a national bank, the National Bank Act requires that: articles of association and an organization certificate must be drafted and filed with the OCC, 12 U.S.C. §§ 21-23; the required amount of capital must be paid in, 12 U.S.C. § 53; certain requirements relating to directors must be satisfied, 12 U.S.C. §§ 71-73; and the OCC must be notified when these things have been accomplished, 12 U.S.C. § 26. As is typical with new charter proposals, these requirements will be satisfied after the OCC grants preliminary approval. We note that the Bank also must obtain deposit insurance from the FDIC and the establishment of the Bank must be approved by the Federal Reserve System under the Bank Holding Company Act. The Bank has filed an application for deposit insurance with the FDIC, and represents that it will soon file its bank holding company application with the Federal Reserve Bank of Atlanta.

Bank Service Company Act, 12 U.S.C. 1861 *et seq* (“BSCA”).<sup>17</sup> In particular, 12 U.S.C. 1867(c) states, in part, that

[n]otwithstanding subsection (a) of this section, whenever a bank that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of such a bank that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this chapter, whether on or off its premises - (1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself on its own premises . . . .

Pursuant to this statute, services performed for the Bank by contract or otherwise, will be subject to the examination and regulation of the OCC. The Bank has represented that it will notify potential vendors, in writing, of the OCC’s examination and regulatory jurisdiction should they contract with the Bank. This understanding regarding OCC jurisdiction will be included in all vendor contracts. Accordingly, subcontracting functions to a vendor will not frustrate the OCC’s ability to regulate all aspects of the Bank that could affect its safe and sound operations.<sup>18</sup>

### **3. Other Legal Matters**

There are no branching issues raised in this application, since the Bank will not operate any other offices other than its main office. *See generally* 12 U.S.C. § 36(c).

With respect to affiliate transactions, the Bank has represented that it will ensure that senior management is aware of the provisions of 12 U.S.C. §§ 371c and 371c-1 and will appropriately train them to identify potential insider transactions that may be subject to the affiliate transaction statutes. Additionally, it is anticipated that, prior to engaging in any proposed transaction with an affiliate, an officer of the Bank will review any such transaction to ensure compliance with the affiliate transaction statutes.

### **C. Community Reinvestment Act Considerations**

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<sup>17</sup> The BSCA requires that the Bank notify the OCC of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first. 12 U.S.C. § 1867(c)(2).

<sup>18</sup> Elements of the services to be provided to the Bank may be performed by third-party vendors through the parent bank holding company, Synovus. These services will constitute activities pursuant to the BSCA. To the extent that third-party vendors perform these services for the Bank through the BHC, the third-party vendors will be subject to federal banking regulation and examination to the same extent as if such services were being performed by the Bank itself. Similarly, to the extent that the BHC itself performs services for the Bank, those services will be subject to the BSCA.

Under the Community Reinvestment Act (“CRA”) and its implementing regulations, the OCC must take into account a proposed insured national bank’s description of how it will meet its CRA objectives. (See 12 U.S.C. §§ 2902(3) and 2903(a)(2) and 12 C.F.R. § 25.29(b)). Twelve C.F.R. § 5.20(h)(5)(ii) requires an organizing group to submit a CRA statement that demonstrates its plans to achieve CRA objectives as part of its proposed operating plan. The Bank has provided an operating plan that includes such a description. The Bank will be evaluated initially as a large bank for CRA purposes because it will be affiliated with a holding company that has total banking and thrift assets greater than \$1 billion.<sup>19</sup> As a large bank, its CRA performance will be evaluated under the lending, investment and service tests set forth at 12 C.F.R. §§ 25.22 through 25.24. Because it will be evaluated as a large bank under CRA, the Bank will collect and report the data required under 12 C.F.R. § 25.42.

The Bank plans to help meet the credit needs of its assessment area through lending activities, qualified investments, and retail and community development banking services. The Bank will initially offer directly unsecured personal installment loans and lines of credit and overdraft lines of credit. The Bank’s affiliate, Columbus Bank and Trust, will issue pointpathbank VISA credit cards for the Bank. The Bank, on a daily basis, will purchase the receivables and service the credit card accounts. These consumer loan products will be evaluated under the lending test.

The Bank will also make available through its Web site private-labeled, fixed- and adjustable-rate home mortgage loans through a third-party provider.<sup>20</sup> Although funded by the Bank, the home mortgage loans will not be reportable by the Bank under the Home Mortgage Disclosure Act. Making home mortgage loans available to its customers will be considered as a retail banking service under the service test.

The Bank recognizes that, as an Internet bank with a national marketing scope, it will likely be limited in the number of loans originated within its defined assessment area. Therefore, the Bank intends to maintain a strong commitment to community development lending. The Bank will draw on ties already established by its holding company to community organizations to facilitate its community development lending. For example, the holding company has established a relationship with the Georgia Affordable Housing Corporation (GAHC), a statewide organization that was formed to assist financial institutions in creating financing mechanisms that would encourage the development of multifamily housing for low- and moderate-income households throughout Georgia.

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<sup>19</sup> The Bank’s charter application indicates that once the Bank has opened and operated for some time, it intends to develop and seek approval for a CRA strategic plan.

<sup>20</sup> See footnote 7, *supra*.

For consideration under the investment test, the Bank intends to make qualified investments in small business investment companies and in instruments such as securities backed by home mortgage loans to low- and moderate-income individuals. The Bank also plans to make cash and in-kind contributions to organizations that have established and demonstrated a commitment to community and economic development.

As community development services evaluated under the service test, the Bank intends to provide technical assistance to the GAHC and other organizations, as appropriate, to assist housing sponsors, local governments, and others in finding resources necessary to make affordable housing and community and economic development projects work in its communities. The Bank also may partner with local community organizations to provide personal computers and Internet service to low- and moderate-income individuals to allow them access to financial services electronically in an attempt to help meet the financial needs of currently “unbanked” individuals.

As set forth in 12 C.F.R. § 25.41(c)(2), the Bank must delineate assessment areas that “include geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans . . . .” The Bank’s main office will be located in Columbus, Georgia, and it will not have any branches or deposit-taking ATMs. As such, the Bank’s plan to designate the three Georgia counties (Chattahoochee, Harris, and Muscogee) of the Columbus (GA) multistate metropolitan statistical area as its initial assessment area is appropriate.

Based upon the foregoing, the OCC believes that the Bank’s plan for meeting its CRA objectives is consistent with preliminary approval of this charter application.

### **III. PREOPENING REQUIREMENTS AND SUPERVISORY CONDITIONS**

In all cases, following review of a new bank charter application, the OCC decides whether to grant preliminary approval, preliminary conditional approval, or disapproval to the request. Preliminary approval indicates permission to proceed with the organization of the bank according to the plan set forth in the application. The organizational steps of a new national bank generally include hiring management and staff, establishing premises, purchasing computers and other equipment, selecting vendors, developing and implementing policies, procedures, and controls, and raising capital. Preliminary approval is not an assurance, however, that the OCC will grant a new national bank charter. Once the OCC grants preliminary approval to a charter proposal, the organizing group must satisfy certain procedural requirements, and, in some cases, special requirements before the OCC will grant final charter approval. In addition, the OCC sometimes imposes conditions that will remain in place after the bank opens.

In response to this proposal, the OCC grants preliminary conditional approval subject to several preopening requirements and on-going conditions. These supplement the procedural requirements for a new national bank referenced in the transmittal letter to the Bank's spokesperson. The preopening requirements provide a framework for steps that the proposed Bank must successfully complete before the OCC can render a decision on final charter approval. The on-going conditions primarily establish certain checks and safeguards to ensure that the Bank, once open, will maintain adequate capital and operate in an overall safe and sound manner. The prior approval of significant operating plan changes condition expire after three years. The OCC will monitor the Bank's future actions and performance through the normal supervisory process.

In addition to the procedural requirements for all new national banks, the following requirements must be satisfied before the OCC will grant final charter approval:

1. The Bank's initial Tier 1 capital, net of any and all organizational and preopening expenses, must be no less than \$9.8 million.
2. The Bank must submit to the OCC for review and approval a complete description of the Bank's final information systems architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items: vendors and vendor contracts; Internet banking security policies; operating processes, including, but not limited to, vendor management, customer authentication, security mechanisms, and business resumption plans; personnel; internal controls; and internal audit plans.
3. The Bank must submit to the OCC for review and approval a comprehensive description of the Bank's final lending plan and credit policy. This should include, but not be limited to, loan types, size, and pricing/profitability models; underwriting standards including credit scoring cutoffs and change strategies; credit origination procedures; collateralization and collection policies and procedures; credit scoring model validation, performance monitoring, and redevelopment procedures; management information systems; and loan review.
4. The Bank must develop a business contingency plan and integrate it into the business and strategic plans and funds management policy. The Bank must submit the business contingency plan to the OCC for review and approval. The objective of the business contingency plan is to help ensure that the Bank can prudently, efficiently, and effectively manage potential scenarios where the loan or deposit mixes, interest rates, operating expenses, marketing costs, and/or growth rates differ significantly from the operating plan. This includes access to additional capital in the future if situations dictate and a contingency funding plan that address strategies for managing potential liquidity fluctuations. The Bank should update the business

contingency plan periodically, including as the Bank becomes more complex and as industry conditions change.

5. The Bank must have performed an independent security review and test of its Internet bank 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. This review must be conducted by an objective, qualified internal or external source ("Reviewer"). The scope must cover adequacy of physical and logical protection against unauthorized external access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access. In addition, the review must assess the adequacy of internal security. By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. The report must critique the effectiveness of security policies and controls and confirm, with reasonable certainty, that unauthorized internal or external data and network access or access attempts are detected and recorded. As part of its decision to grant final charter approval, the OCC will consider the results of the report as well as any subsequent actions by the Bank or service provider to implement any recommendations or to remedy any noted security or control deficiencies.
6. The Bank must develop and implement a bank-wide disaster recovery contingency plan pursuant to OCC and FFIEC interagency guidelines.
7. The Bank will demonstrate to the OCC, through marketing plans and materials, that it will solicit business from, and make credit available to, all qualified customers on a nondiscriminatory basis.
8. The Bank must implement an independent internal audit function that is appropriate for its size and for the scope of its activities. The internal audit function should be supervised and staffed by individuals with sufficient technology and consumer lending expertise to identify the risks inherent in the Bank's operations and to assess the effectiveness of internal controls.

Final approval will be subject to the following conditions:

1. The Bank must notify all potential vendors in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 1867(c). All final 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.
2. The Bank must obtain prior approval from the OCC's Assistant Deputy Comptroller - Midsize Banks (located in New Jersey Field Office in Short Hills, New Jersey) before any significant deviations or changes from the proposed operating plan occur

during the first three years of operation. The Bank must notify the Assistant Deputy Comptroller - Midsize Banks sixty days prior to any proposed significant deviation or change. The Bank must also provide a copy of such notice to the FDIC's Regional Office in Atlanta.

The above-listed conditions of this approval shall be 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(b)(1).

## **V. CONCLUSION**

The charter proposal satisfies the applicable statutory requirements of the National Bank Act and the policy standards of the OCC, as set forth in 12 C.F.R. § 5.20. For the reasons set forth above, including the representations and commitments made by the Organizers, it is my conclusion that this proposed national bank has a reasonable likelihood of success. Accordingly, the application is preliminarily approved, subject to the requirements and conditions outlined in this Decision and the transmittal letter.

/s/

Julie L. Williams  
First Senior Deputy Comptroller and  
Chief Counsel

**04-03-2000**

Date

Application Control Number: 1999-SE-01-0022