



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

Washington, D.C. 20219

**Conditional Approval #859
July 2008**

June 13, 2008

Mr. Andrew Karp, Esq.
Legal Department
The Bank of New York Mellon Corporation
One Wall Street
New York, New York 10286

Re: Applications by Mellon Bank, N.A., and Certain Affiliates to Combine and Reorganize Their Banking and Trust Business Lines.

Application Control Numbers: 2008-NE-05-0041, 2008-NE-05-0042, 2008-NE-02-0006, 2008-NE-02-0007, 2008-NE-02-0008, 2008-NE-12-0069, 2008-NE-12-0070, 2008-NE-12-0085, 2008-NE-02-0009, 2008-NE-01-0007, 2008-NE-08-0007, 2008-NE-02-0013, 2008-NE-12-0065

Notification by Mellon Bank, N.A., of a Change in its Corporate Title.
Control Number: 2008-NE-04-0002

Dear Mr. Karp:

The Office of the Comptroller of the Currency (“OCC”) hereby grants conditional approval to the above-referenced applications, which are set out and described in Section I-B below, for the reasons and subject to the requirements set forth herein. This conditional approval is granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by the applicants’ representatives during the application process. This approval is also subject to the conditions set out herein.

I. INTRODUCTION

A. Overview

The Bank of New York Mellon Corporation (“BNYM Co”) conducts banking and trust operations through seven separately chartered depository institutions and ten non-depository trust companies, only some of which are involved in the applications filed with the OCC. BNYM Co is engaged in a comprehensive reorganization of its bank and trust subsidiaries. The intent of the reorganization is to separate its two principal business lines into two different institutions. Most

of BNYM Co's wealth management services for high net worth individuals ("WM Banking Business") will be consolidated in Mellon Bank, N.A., Pittsburgh, Pennsylvania ("MBNA"). Most of BNYM Co's institutional banking business, including asset management, asset servicing, issuer services, and treasury services for institutional customers ("Institutional Banking Business"), will be consolidated into BNYM Co's principal bank subsidiary, The Bank of New York, New York, New York ("BNY"), a New York state-chartered bank. A few other charters will be maintained in other states, such as California, Delaware, and Illinois.

MBNA, BNYM Co, and certain affiliates filed applications with the OCC for many of the steps involved in the reorganization. There are also applications to the Federal Reserve Bank of New York ("FRB-NY"), the New York State Banking Department ("NYSBD"), and the Federal Deposit Insurance Corporation ("FDIC") for certain steps in the reorganization. Notices describing the transactions were published in newspapers in the relevant markets on March 17, March 31, and April 11, 2008. The public comment period closed on April 17, 2008. The OCC received no comments. The series of steps is intended to occur in immediate succession.

B. The OCC Applications

1. MBNA branches

MBNA applied to establish two *de novo* branches in Radnor and Ligonier, Pennsylvania, under 12 U.S.C. § 36(c), for the conduct of Institutional Banking Business ("Radnor and Ligonier Institutional Branches"). (Application Control Numbers ("ACN"): 2008-NE-05-0041 and 0042)

2. Mergers of three affiliated trust companies and an affiliated bank into MBNA

Applications were filed to effect the merger of three state-chartered, non-depository trust companies -- Mellon Trust of California, Los Angeles, California ("MTC"), Mellon Trust of New York, LLC, New York, New York ("MTNY"), and Mellon Trust of Washington, Seattle, Washington ("MTW") -- and a bank -- Mellon Trust of New England, N.A., Boston, Massachusetts ("MTONE") -- into MBNA. These applications are the following:

- Applications to establish three interim national banks with fiduciary powers (the "Three Interim Banks"), under 12 U.S.C. § 21 *et seq.*, in California (Mellon California Interim National Bank—"Interim California"), in New York (Mellon New York Interim National Bank—"Interim New York") and in Washington State (Mellon Washington Interim National Bank—"Interim Washington"), and to merge MTC, MTNY, and MTW (each a "Target Bank" and, collectively, the "Target Banks") into the Interim Bank in its state, under 12 U.S.C. §§ 215a and 1828(c) (the three "Intrastate Mergers").¹ The Three

¹ Applications for approval under 12 U.S.C. § 215a were made to the OCC. Applications for approval under the Bank Merger Act for the three Intrastate Mergers were made to the FDIC, since these are mergers of a noninsured

Interim Banks will not open for business but will facilitate the Intrastate Mergers and the subsequent interstate merger. (ACN: 2008-NE-02-0006, 0007, and 0008)

- Applications for waivers of directors' residency requirements for all five directors for each of the Three Interim Banks. (ACN: 2008-NE-12-0069, 0070 and 0085)
- An application for the national banks resulting from the three Intrastate Mergers and for MTONE to merge into MBNA, under 12 U.S.C. §§ 215a-1, 1828(c) and 1831u (the "Interstate Merger"). The main office and the Everett, Massachusetts, branch of MTONE will be retained as branches of MBNA, and the main offices and trust offices of the three banks resulting from the Intrastate Mergers will be retained as trust offices of MBNA. (ACN: 2008-NE-02-0009)

3. Separation of Institutional Banking Business and WM Banking Business at MBNA

Applications were filed to separate the Institutional Banking Business of MBNA from the WM Banking Business of MBNA and move the Institutional Banking Business into a separate national bank charter. These applications are the following:

- An application to establish an interim national bank with fiduciary powers, BNY Mellon Interim Institutional National Bank, Pittsburgh, Pennsylvania ("Mellon Institutional Bank" or "MIB"), under 12 U.S.C. § 21 *et seq.*, as an operating subsidiary of MBNA. (ACN: 2008-NE-01-0007 and 2008-NE-08-0007)
- The Institutional Banking Business of MBNA will be moved to MIB (the "MIB Transaction"). This includes MIB's assumption of certain deposit liabilities from MBNA, and so an application was made to the OCC for approval under the Bank Merger Act, 12 U.S.C. § 1828(c)(2)(A). MIB also will acquire the Radnor and Ligonier Institutional Branches of MBNA in Pennsylvania and MBNA's Everett branch in Massachusetts acquired in the Interstate Merger with MTONE. MIB will also acquire a number of MBNA's domestic and foreign subsidiaries.² (ACN: 2008-NE-02-0013)

institution (the state trust companies) into an insured bank (the Three Interim Banks). 12 U.S.C. § 1828(c)(1)(A). An interim national bank is an insured depository institution upon the issuance of its charter by the OCC. *See* 12 U.S.C. § 1815(a)(2).

² MBNA's foreign branches will be closed, combined with a BNY branch or moved to MIB (and then to BNY). After the reorganization, MBNA will have no foreign branches. Mellon Overseas Investment Corporation, MBNA's Edge Act subsidiary, and its other foreign subsidiaries will be moved to MIB (and then to BNY). The banks represent that any required filings with respect to the foreign branches and foreign subsidiaries have been or will be made to the FRB-NY, the NYSBD, foreign bank regulators, and any other required regulatory authority.

- MBNA will change its corporate title to BNY Mellon, National Association (“BNY Mellon”) and filed notice to the OCC under 12 U.S.C. § 30(a) and 12 C.F.R. § 5.42. (ACN: 20008-NE-04-0002)

4. Reduction in Permanent Capital

An application was filed, under 12 U.S.C. § 59 and 12 C.F.R. § 5.46, for MBNA/BNY Mellon to reduce permanently its capital by distributing its 100% ownership interest in MIB to its parent bank holding company, BNYM Co.³ (ACN: 2008-NE-12-0065)

II. DISCUSSION

A. MBNA’s Pennsylvania *de novo* Branch Applications

MBNA applied to establish two *de novo* branches in Radnor and Ligonier, Pennsylvania, under 12 U.S.C. § 36(c), for the conduct of Institutional Banking Business, (“Radnor and Ligonier Institutional Branches”). Under 12 U.S.C. § 36(c), a national bank may establish and operate branches in the state in which it is situated to the same extent as the state affirmatively authorizes its own state banks to establish and operate branches. Pennsylvania permits statewide branching without any geographic limitation. *See* 7 Pa. Stat. Ann. § 904(c). State law also contains several evaluative factors. *See* 7 Pa. Stat. Ann. § 103. The OCC finds the evaluative factors are satisfied, and the branches are legally permissible under 12 U.S.C. § 36(c). Accordingly, the OCC approves the applications by MBNA for the Radnor and Ligonier Institutional Branches.⁴

B. Mergers of Three Trust Companies and MTONE into MBNA

1. The Three Interim Banks and the Intrastate Mergers

The Three Interim Banks are being established to facilitate the business combination that will occur in the Intrastate Mergers and then the Interstate Merger into MBNA. Interim California, Interim New York, and Interim Washington applied to the OCC for approval to merge MTC,

³ MIB then will be immediately merged into BNY, and BNY will retain, as branches, MIB’s main office in Pittsburgh, the Radnor and Ligonier Institutional Branches, and the Everett branch. This transaction is not subject to OCC approval. BNY filed applications for this interstate merger with the FRB-NY and the NYSBD.

⁴ After the reorganization transactions are completed, the Radnor and Ligonier Institutional Branches will be branches of BNY for the conduct of Institutional Banking Business. They will operate at the same locations as WM Banking Business branches of MBNA. The applicants represent that the branches will be operated in accordance with applicable law, including 12 C.F.R. § 7.3001 (national bank sharing space), and that the banks will segregate their respective branches in an appropriate manner to avoid customer confusion as to which bank the customer is transacting with.

MTNY, and MTW with and into each interim bank, under 12 U.S.C. § 215a. Interim California and MTC are both located in California. Interim New York and MTNY are both located in New York. Interim Washington and MTW are both located in Washington. A national or state bank may merge into a national bank located in the same state under 12 U.S.C. § 215a. National banks may exercise fiduciary powers under 12 U.S.C. § 92a.

The Target Banks are state-chartered trust companies. In a merger with a state bank under section 215a, the merger shall not be in contravention of the state law under which the bank is incorporated. *See* 12 U.S.C. § 215a(d). None of these three states prohibit the merger of a state-chartered trust company into a national bank. The applicants represent that none of the state-chartered trust companies has subsidiaries, assets, or activities impermissible for a national bank. Each interim bank will retain the main office and trust offices of the state trust company.

The applications also requested waivers of the directors' residency requirements for all five directors for each of the Three Interim Banks under 12 U.S.C. § 72. Under 12 U.S.C. § 72, the majority of the board of directors of a national bank must reside in the state in which the bank is located or within 100 miles of the location of the office of the association. The OCC has the authority to waive the residency requirement. Given that the Three Interim Banks will not open for business and are merely established to facilitate the Intrastate Mergers and the Interstate Merger described below, waiver of the director residency requirements in this circumstance is warranted. The directors must comply with the citizenship and stock ownership requirements.

Accordingly, the formation of the Three Interim Banks with fiduciary powers and the mergers of the three state trust companies into them are legally authorized.⁵ The OCC approves the Intrastate Mergers. The OCC also approves the request for directors' residency waivers. These approvals are based on the representation that the Three Interim Banks will be immediately merged into MBNA.

2. The Interstate Merger

a. Authority for the Interstate Merger

In the Interstate Merger, Interim California, Interim New York, Interim Washington, and MTONE will be merged into MBNA. This is a merger between insured banks with different home states. Such mergers are authorized under 12 U.S.C. § 1831u(a)(1), which was adopted as

⁵ The Intrastate Mergers may constitute covered transactions under 12 U.S.C. § 371c to the extent that each trust company has liabilities that are becoming liabilities of the interim bank. The applicants have requested to use the exemption for internal corporate reorganizations, 12 C.F.R. § 223.41(d). By letter dated March 14, 2008, to the OCC and the FRB-NY, the applicants made the request, demonstrated compliance with the requirements of section 223.41(d), and made the commitments required under section 223.41(d). A similar request was made to the FRB-NY for the same exemption for the merger of two New York state trust companies into BNY.

part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the “Riegle-Neal Act”).

An application to engage in an interstate transaction under 12 U.S.C. § 1831u is subject to certain requirements set forth in the Riegle-Neal Act, except that some of the requirements do not apply to transactions between affiliated banks. The OCC finds that the Interstate Merger satisfies these requirements. The proposed merger satisfies the age requirement. An interstate merger may not be approved if it would permit “an out-of-State bank . . . to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host state.”⁶ In the proposed Interstate Merger, only Massachusetts is a “host state” because it is the only state in which MBNA seeks to establish and maintain a branch by retaining the main office of MTONE and its branch in Everett, Massachusetts, as branches. Massachusetts imposes a three-year age requirement. *See* Mass. Gen. Laws Ann. ch., 167, § 39B. MTONE was chartered more than three years ago. Consequently, the proposed Interstate Merger complies with the Riegle-Neal Act age requirement.⁷

The OCC also finds that the other requirements of the Riegle-Neal Act – (1) the filing requirements, (2) the deposit concentration limits, (3) the special community reinvestment compliance provisions, and (4) the capital and management skills requirements – either are satisfied or are not applicable because the Interstate Merger is a transaction between affiliated bank. *See* 12 U.S.C. §§ 1831u(b)(1), 1831u(b)(2)(E), 1831u(b)(3) and 1831u(b)(4).

b. MBNA’s retention of branches, trust offices, and subsidiaries

Upon consummation of the Interstate Merger, MBNA proposes to retain its existing main office as its main office and to retain all its existing branches in Delaware, Maryland, New Jersey, and Pennsylvania and the main office of MTONE in Boston and MTONE’s branch in Everett, Massachusetts, as branches.

The Riegle-Neal Act provides that, subject to the approval of the OCC, following an interstate merger, the resulting bank may “retain and operate, as a main office or a branch, any office that

⁶ 12 U.S.C. § 1831u(a)(5)(A). The maximum age requirement, however, that a state is permitted to impose is five years. 12 U.S.C. § 1831u(a)(5)(B). A “host state” is defined as a state, other than the home state of a bank in which the bank seeks to establish and maintain a branch. 12 U.S.C. § 1831u(g)(5).

⁷ MBNA does not propose to retain the main offices and trust offices of the Three Interim Banks as branches, but only as trust offices that will not receive deposits, pay checks, or lend money. Since MBNA does not propose to establish and maintain branches in those states, California, New York, and Washington are not host states for this Interstate Merger, and so the Riegle Neal Act age requirement does not apply with respect to them. The applicants represent that MTC, MTNY and MTW have all been in existence for more than five years. Each interim bank would have the age of its Target Bank under 12 U.S.C. § 1831u(a)(6). Thus, the Riegle-Neal Act age requirement would be met for the Three Interim Banks, even if the age requirement did apply.

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any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.” 12 U.S.C. §§ 36(d) and 1831u(d)(1). Thus, MBNA as the resulting bank may retain and operate its own main office in Pennsylvania and its existing branches and the main office and Everett branch of MTONE as branches. MBNA also may retain and operate each of the main offices of Interim California, Interim New York, and Interim Washington and any of the banks’ trust offices as trust offices. *See* 12 C.F.R. § 9.7(c).

MTONE has six subsidiaries that will become operating subsidiaries of MBNA in the Interstate Merger. They are currently operating subsidiaries of a national bank and engage only in activities permissible for an operating subsidiary of a national bank. MBNA may acquire and retain them in the Interstate Merger.⁸

The Interstate Merger is legally authorized under the Riegle-Neal Act. The OCC approves the Interstate Merger.

C. Separation of Institutional Banking Business and WM Banking Business at MBNA

In this part of the reorganization, the Institutional Banking Business of MBNA will be separated from the WM Banking Business, the Institutional Banking Business will be moved into a new national bank, MIB, and the WM Banking Business will remain at MBNA.

1. Formation of MIB as an operating subsidiary of MBNA

The OCC can approve the establishment of an interim national bank to facilitate a “business combination.”⁹ MIB is being established as a step in the internal business reorganization to facilitate the separation of the Institutional Banking Business of MBNA and the merger of that business into BNY. The OCC is authorized to grant trust powers to a national bank, pursuant to 12 U.S.C. § 92a, when not in contravention of state or local law. Pennsylvania permits its state banking institutions to engage in fiduciary activities. *See* 7 Pa. Stat. Ann. § 402.

MIB will be established as an operating subsidiary of MBNA, under 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34. For a moment in time prior to its distribution up to BNYM Co and its merger into BNY, MIB will contain the Institutional Banking Business that had been conducted in MBNA. MIB will not independently operate or conduct any business. The Institutional Banking

⁸ Four of the six subsidiaries are part of the Institutional Banking Business and will be allocated to MIB when the business lines are separated, and will then become subsidiaries of BNY when MIB merges into BNY.

⁹ *See* 12 U.S.C. § 24(Seventh); 12 C.F.R. § 5.33(d)(7), (e)(4) & (f)(2). *Cf.* 12 U.S.C. §§ 1831u(a)(6) (use of interim shell banks in interstate mergers) and 1815(a)(2) (insured status for interim Federal depository institutions).

Business assets, liabilities, and activities held by MIB prior to its merger into BNY are legally permissible for a national bank and its operating subsidiary.¹⁰

The OCC has previously authorized the establishment of a full-service national bank as an operating subsidiary of another national bank for a moment in time as a part of an internal corporate reorganization.¹¹ Accordingly, the establishment of MIB as an interim national bank that is an operating subsidiary of MBNA for a moment in time is legally permissible.

2. Movement of the Institutional Banking Business from MBNA to MIB

In the MIB Transaction, MIB will acquire assets and liabilities, including deposit liabilities, from MBNA. National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from other institutions, including assuming the deposit liabilities from other institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh).¹² Such transactions are commonplace in the banking industry. No nonconforming or impermissible assets or activities will be acquired by MIB. MIB's acquisition of the Institutional Banking Business is legally permissible.¹³

MIB will acquire from MBNA the Radnor and Ligonier Institutional Branches in Pennsylvania. MIB's main office will be in Pittsburgh, Pennsylvania. As discussed above, a national bank in Pennsylvania may establish branches within the state of Pennsylvania under 12 U.S.C. § 36(c).¹⁴ MIB also will acquire from MBNA the former MTONE branch in Everett, Massachusetts. This would be MIB's first branch in Massachusetts. A national bank may not acquire, establish or operate a branch in a state other than its home state or a state in which the bank already has a

¹⁰ It is the same business currently conducted by MBNA. A national bank may conduct its legally authorized activities either directly or indirectly through an operating subsidiary. *See* 12 C.F.R. § 5.34.

¹¹ *See, e.g., Decision on Applications involving TCF Financial Corp. and certain of its Subsidiary Depository Institutions* (OCC Corporate Decision No. 97-13, February 24, 1997) (pages 2 and 15 note 19).

¹² *See, e.g., City National Bank of Huron v. Fuller*, 52 F.2d, 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). *See also* 12 U.S.C. § 1828(c) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

¹³ As discussed below, MBNA and MIB are using a procedure in Pennsylvania Business Corporation Law to effect the movement of the Institutional Banking Business. However, for national bank regulatory purposes, as a matter of national bank powers analysis, the transaction is the functional equivalent of a traditional purchase and assumption transaction.

¹⁴ A national bank may establish and operate branches in the state in which it is situated to the same extent as the state affirmatively authorizes its own state banks to establish and operate branches. 12 U.S.C. § 36(c). The authority to establish branches under section 36(c) is not limited to *de novo* establishment; it also applies to branches obtained through acquisition. *See State of Washington v. Heimann*, 633 F.2d 886, 889-90 (9th Cir. 1980).

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branch unless the acquisition is authorized under 12 U.S.C. § 1831u or under other sections not relevant to this transaction. 12 U.S.C. § 36(e). Section 1831u authorizes interstate merger transactions. Such transactions can include the acquisition of single branches, if the law of the state in which the branch is located permits out-of-state banks to acquire a branch without acquiring the bank. *See* 12 U.S.C. § 1831u(a)(4)(A).¹⁵ Massachusetts law permits an out-of-state bank that does not have a branch in Massachusetts to purchase a branch in Massachusetts without the purchase of the entire bank.¹⁶ The Riegle-Neal Act requirements discussed above with respect to the Interstate Merger between MBNA and MTONE also apply to MIB's acquisition of the Everett branch. The OCC finds that the Riegle-Neal requirements either are satisfied or do not apply because this is a transaction between affiliated banks.

MIB also will acquire from MBNA a number of domestic and foreign subsidiaries. All of these subsidiaries are currently subsidiaries of MBNA or MTONE. Inasmuch as they are currently subsidiaries of a national bank, they previously have been determined to be permissible for a national bank. Review of the descriptions of activities confirms that conclusion.

Thus, MIB's acquisition of MBNA's Institutional Banking Business (including the Radnor and Ligonier Institutional Branches, the Everett branch, and the subsidiaries) is legally permissible. The OCC approves the formation of MIB as an operating subsidiary of MBNA and the MIB Transaction.

3. Use of Pennsylvania Corporate Procedures to Effect Movement of the Institutional Banking Business from MBNA to MIB

MBNA proposes to effect the separation of the two business lines between itself and MIB by using a procedure contained in Pennsylvania's Business Corporation Law under which a corporation may divide into two or more corporations, rather than by using other mechanisms for moving assets and liabilities (including selected business lines) between banks (the "Division"). Federal banking law does not expressly address the authority of national banks to effect a division, however, pursuant to 12 U.S.C. § 93a, the OCC has issued a regulation authorizing national banks to elect to follow state corporate governance procedures when not inconsistent

¹⁵ In such transactions, the branch is treated as an insured bank the home State of which is the State in which the branch is located. 12 U.S.C. § 1831u(a)(4)(B). Thus, while MBNA and MIB have the same home state (Pennsylvania), this transaction is treated as a transaction between banks with different home states because the Everett branch is treated as a bank with Massachusetts as its home state.

¹⁶ *See* Mass. Gen. Laws Ann. ch. 167, § 39C. The Massachusetts statute has a reciprocity requirement. Pennsylvania satisfies it. *See* 7 Pa. Stat. Ann. § 904. Massachusetts also allows *de novo* interstate branches as well as interstate single branch acquisitions. *See* Mass. Gen. Laws Ann. ch. 167, § 39C. Thus, even if section 1831u(a)(4) were not applicable to authorize MIB to acquire the branch, MIB would have authority to establish a branch in Everett under 12 U.S.C. § 36(g).

with federal banking law and safe and sound banking practices. The OCC regulation provides that:

To the extent not inconsistent with applicable Federal banking statutes or regulations, or bank safety and soundness, a national bank may elect to follow the corporate governance procedures of the law of the state in which the main office of the bank is located, the law of the state in which the holding company of the bank is incorporated, the Delaware General Corporation Law, Del. Code Ann. Tit. 8 (1991, as amended 1994, and amended thereafter), or the Model Business Corporation Act (1984, as amended 1994, and as amended thereafter). A national bank shall designate in its bylaws the body of law selected for its corporate governance procedures.

12 C.F.R. § 7.2000(b). Both MBNA and MIB have their main offices in Pennsylvania. Pursuant to 12 C.F.R. § 7.2000(b), MBNA has adopted in its by-laws the corporate governance procedures of the Commonwealth of Pennsylvania. The draft by-laws for MIB in the application similarly adopt the corporate governance procedures of the Commonwealth of Pennsylvania. The Pennsylvania Business Corporation Law (“PBCL”) provides that a domestic business corporation may divide itself into two or more corporations (the “Division Statute”). The Division Statute authorizes a business to carry out, by use of corporate documents under a statutory procedure, a transfer of assets and assumption of liabilities that would otherwise have been effected by assignments of contracts and leases, deeds, purchases and sales of assets, and instruments of assumption.¹⁷

a. The Division Statute constitutes corporate governance procedures

The Division Statute constitutes a “corporate governance procedure” under 12 C.F.R. § 7.2000(b). Although the term “corporate governance procedures” is not defined in § 7.2000, the OCC has stated that the term “corporate governance procedures” is meant to refer to “those matters involving the operation and mechanics of the bank’s internal organization, including

¹⁷ 15 Pa. C.S.A. § 1951-1957. Under the Division Statute, the assets and liabilities of the dividing corporation are deemed allocated to and vested in the resulting corporations according to the allocation specified in the Plan of Division, upon the division’s becoming effective, without any further action required. 15 Pa. C.S.A. § 1957(b)(1). Any new corporation resulting from the division holds the assets and liabilities allocated to it as the successor to the dividing corporation, and such assets and liabilities will not be deemed to have been assigned. 15 Pa. C.S.A. § 1957(b)(4). A conflict of laws provision provides that the effect of the division of MBNA will be governed by Pennsylvania law. 15 Pa. C.S.A. § 1957(h). There is a specified procedure for the dividing corporation to follow including the filing of the Articles of Division and Plan of Division with the Pennsylvania Department of State. 15 Pa. C.S.A. §§ 1954 & 1955. Since MBNA is a national bank, it is filing the Articles of Division and Plan of Division with the OCC instead of the Pennsylvania Department of State. For a general summary of the Division Statute, see Vincent F. Garrity, Jr., *Some Distinctive Features of the New Pennsylvania Business Corporation Law*, 45 Business Lawyer 57, 72-74 (1989).

relations among the owners-investors, directors and officers, as distinct from the bank's banking powers and activities and its relationships with customers and third parties."¹⁸ The OCC has previously authorized national banks to follow "corporate governance procedures" under state law permitting reverse stock splits, share exchanges and the issuance of blank check preferred stock.¹⁹ Because dividing a national bank involves "the operations and mechanics of a bank's internal organization and the interests of its owner-investors," the division of MBNA under the Division Statute is within the "corporate governance procedures" authorized under 12 C.F.R. § 7.2000(b). In addition, MBNA represents that the division will result in no practical change in the relationships with customers and third parties, which will continue to be managed by the same people and business units within the corporate structure of the same bank holding company, BNYM Co. Moreover, because MIB will become a wholly-owned subsidiary of MBNA as the initial result of the division, the division will constitute the functional equivalent of the creation by MBNA of a wholly-owned subsidiary and movement of assets and liabilities thereto, which is clearly within the commonly understood meaning of "corporate governance procedures."

b. The Division Statute is not inconsistent with Federal banking law and bank safety and soundness.

The Division Statute is not inconsistent with federal banking statutes and regulations, and bank safety and soundness. National banks have often transferred business lines to subsidiaries or affiliates within a bank holding company organization by way of a contribution of capital or purchase and assumption arrangement. A division transaction is a mechanism, available under Pennsylvania's Business Corporation Law, to achieve what banks generally undertake through separate purchase and assumption transactions. While federal banking law is silent concerning division transactions, MBNA's use of a division to achieve the same result it could obtain by other methods is not inconsistent with federal banking law or safety and soundness, provided MBNA complies with applicable federal banking law in carrying out the Division and the Division is implemented safely and soundly.

To meet the requirement in 12 C.F.R. § 7.2000(b) that a national bank's adoption of alternative corporate governance must not be inconsistent Federal banking law or bank safety and soundness, MBNA represents that it will comply with all applicable Federal banking laws and regulations in effecting the division. MBNA also represents that the two national banks resulting from the division will remain subject to the Federal banking laws and regulations governing national banks, including safety and soundness.²⁰

¹⁸ OCC Conditional Approval No. 696 (June 9, 2005).

¹⁹ *See, e.g.*, OCC Conditional Approval No. 670 (December 27, 2004); OCC Interpretive Letter No. 879 (November 10, 1999); OCC Interpretive Letter No. 921 (December 13, 2001).

²⁰ Safe and sound banking practices require that insured banks maintain adequate capital and operate in compliance with national banking laws, regulations and guidelines establishing standards for safety and soundness. *See, e.g.*,

In allocating assets and liabilities to the resulting national banks MIB and MBNA, MBNA will assure that each resulting national bank is adequately capitalized, will have adequate earnings and asset growth for its size, and that interest rate, credit, liquidity, transaction, compliance, and strategic risks facing each of the resulting national banks have been adequately mitigated under the plan of division. Further, the division will not impact MBNA's institutional knowledge or its ability to achieve compliant national bank operations. Also, certain shared services agreements will be put in place between MBNA (as the surviving bank) and BNY (as successor to MIB), and the establishment and maintenance of these shared services agreements will serve to foster consistency of policies and procedures as between the banks in such areas as risk identification and mitigation and compliance.

To further ensure that the division is not inconsistent with safety and soundness, MBNA's Plan of Division filed with the OCC will contain a "savings clause," the type of which is normally included in agreements relating to business combinations and asset transfers, including those involving banking institutions. The savings clause will provide that in the event that the allocation of any given contract to MIB (other than to MBNA as the surviving national bank) is found to breach that contract, the allocation of that contract will have no effect and the contract will remain an asset of the surviving national bank until the action necessary to avoid the breach (*e.g.*, the obtaining of a third party consent) is complete. During that period, while the contract will remain the property of the surviving national bank, the bank to which the contract was allocated (MIB) will have the economic benefits and burdens of the contract as provided in the Plan of Division.

Finally, the applicants represent that BNYM Co will agree to indemnify MBNA and MIB in respect of liabilities that arise from a decision that the division was not permissible and from other liabilities to affected parties arising from the division (the "Indemnity Agreement"). This representation has been incorporated into an enforceable condition of the OCC approval as described below.

Accordingly, for the reasons above, MBNA's reliance on Pennsylvania law to effect a division as the mechanism to separate the Institutional Banking Business from the WM Banking Business and allocate the Institutional Banking Business to MIB, while retaining the WM Banking Business in MBNA, is authorized under 12 C.F.R. § 7.2000(b).

12 C.F.R. § 6.4 and 12 C.F.R. Part 30, Appendix A. The safety and soundness standards applicable to insured banks require, among other things, that banks maintain adequate internal control and information systems, internal audit systems, loan documentation, credit underwriting, interest rate exposure, asset growth, asset quality and earnings. *See, e.g.*, 12 C.F.R. Part 30, Appendix A. In terms of internal controls and information systems, internal audit systems, documentation and credit underwriting, MIB and MBNA (as the surviving bank) will have the same systems, documentation and criteria as MBNA currently has.

4. Change in Corporate Title

MBNA will change its corporate title to BNY Mellon, National Association (“BNY Mellon”). A national bank, upon written notice to the OCC, may change its name, as long as the new name includes the word “National.” 12 U.S.C. § 30(a); 12 C.F.R. § 5.42. The application provides notice and also includes a draft of the revised Articles Association with the new name. OCC approval for the change in name is not required.

D. Reduction in Permanent Capital Other Than by Means of a Dividend

Immediately after the separation of MBNA’s Institutional Banking Business and its movement to MIB, MBNA (renamed BNY Mellon) will distribute MIB up to BNYM Co. MBNA applied for OCC approval to change its capital structure by permanently reducing its capital surplus to reflect the distribution, pursuant to 12 U.S.C. § 59 and 12 C.F.R. § 5.46. The application satisfies the requirements of 12 C.F.R. § 5.46(i)(1). The OCC approves the capital reduction.

E. The Bank Merger Act

The Interstate Merger and the assumption of deposits by MIB in the MIB Transaction are subject to OCC review and approval under the Bank Merger Act. 12 U.S.C. § 1828(c)(2)(A). The OCC reviewed the transactions under the criteria of the Bank Merger Act and applicable OCC regulations and policies. We found the proposed transactions would not have any anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and the effectiveness of the insured depository institution involved in combating money laundering activities. We considered these factors and found them consistent with approval under the statutory provisions.

F. The Community Reinvestment Act

MBNA’s establishment of the Radnor and Ligonier Institutional Branches, the Interstate Merger, and the MIB Transaction are subject to OCC review under the Community Reinvestment Act (“CRA”). 12 U.S.C. §§ 2902(3) & 2903(a)(2); 12 C.F.R. § 25.29. The CRA requires the OCC to take into account the applicants’ record of helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating certain applications. The OCC considers the CRA performance evaluation of each institution involved in the transaction. Both MBNA and MTONE, the only two banks involved in these transactions for which CRA compliance has been evaluated, have an “Outstanding” rating. Both banks are designated as “wholesale banks” under the regulation. 12 C.F.R. §§ 25.12(x) and 25.25. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet

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the credit needs of their communities, including LMI neighborhoods, is less than satisfactory. Approval of the transactions is consistent with the Community Reinvestment Act.

III. CONSUMMATION REQUIREMENTS AND PROCEDURES

Please notify the OCC in writing 10 days in advance of the desired effective date for the transactions so we may issue the necessary authorizations and certification letters. The effective date must follow the receipt of any other required regulatory approvals. Also, the following requirements must be satisfied prior to the effective date.

With respect to **MBNA's establishment of the Radnor and Ligonier Institutional Branches**, this letter also serves as authorization for MBNA to establish the branches (branch number 142619A and branch number 142621A, respectively). The bank has represented that the branches will open at the end of June 2008, shortly before the other transactions. Within 10 days after opening, the bank must advise the OCC of the opening date, so the OCC may complete its records. Reference the CAIS control number in your letter.

With respect to the **Intrastate Mergers**, please ensure that you have submitted the following prior to your desired consummation date:

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
2. A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained.
3. An executed merger agreement and, if necessary, the Amended Articles of Association of the resulting banks.

With respect to the **Interstate Merger**, please ensure that you have submitted the following prior to your desired consummation date:

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
2. A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained.
3. An executed merger agreement and, if necessary, the Amended Articles of Association of the resulting bank.

With respect to the **MIB Transaction**, please ensure that you have submitted the following prior to your desired consummation date:

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
2. A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.
3. A copy of the Amended Articles of Association of the resulting banks.
4. An executed Articles of Division and Plan of Division of MBNA.

With respect to the **reduction in capital**, a reduction in capital stock requires approval by shareholders owning at least two-thirds of the bank's capital stock and, if necessary, amendments to the Articles of Association. The bank must submit a Secretary's Certificate, certifying that shareholder approval has been obtained. Also following the completion of the transaction, the bank must advise the OCC of the effective date of the decrease.

With respect to the **change in MBNA's corporate title**, OCC approval is not required. However, inasmuch as the name of the bank appears in MBNA's Articles of Association, the bank must amend its articles pursuant to 12 U.S.C. § 21a. The bank must submit a Secretary's Certificate, certifying that shareholder approval for the amendment of the Articles has been obtained. The bank must advise the OCC of the effective date of the change in title.

IV. CONDITIONS

This approval is subject to the following conditions:

1. If the merger of MIB into BNY does not consummate immediately after the MIB Transaction and the distribution of MIB to BNYM Co, MBNA and MIB shall immediately notify the OCC, obtain OCC approval for the continued operation of MIB as a separate national bank, comply with any conditions or requirements imposed in connection with such approval, and submit a plan to complete the merger with BNY, merge MIB back into MBNA, or otherwise address MIB's status in a manner acceptable to the OCC as soon as possible.
2. MBNA and MIB shall (a) enter into, and thereafter implement and adhere to, an Indemnity Agreement with BNYM Co, on terms acceptable to the OCC, under which BNYM Co shall indemnify MBNA and MIB (or their successors) for any liabilities arising from the Division or use of the Division Statute, (b) promptly take all actions to exercise their rights and enforce the terms of the Indemnity

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Agreement, and (c) immediately notify the OCC if any claim that would be covered by the Indemnity Agreement is asserted against the bank.

These conditions of approval are conditions "imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request" within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

V. CONCLUSION

If these transactions are not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

These approvals, 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.

If you have any questions, contact Gabriel Butler, Licensing Analyst, at 212.790.4055. Please include the application control numbers in all correspondence.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller, Licensing

Enclosure: Survey Letter