



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

Licensing Department
250 E Street, S.W.
Washington, D.C. 20219

**Conditional Approval #922
September 2009**

August 28, 2009

William J. Sweet, Jr., Esq.
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D. C. 20005

Re: Application to establish a new national bank, NewBank, National Association
Application Control Number: 2009-WO-01-0012

Dear Mr. Sweet:

The Office of the Comptroller of Currency (“OCC”) hereby grants preliminary conditional approval to the application to establish a new national bank with the title of NewBank, National Association (the “Bank”). This approval is granted after a thorough review of the application, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the application and by the Bank’s representatives during the application process. This approval is also subject to the conditions set out herein.

The OCC’s decision to grant preliminary conditional approval is made with the understanding that the Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (“FDIC”).

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until pre-opening requirements are met. Until final approval is granted, the OCC has the right to modify, suspend, or rescind this preliminary conditional approval if the OCC deems any interim development warrants such action.

Background

The primary proponents of the proposed Bank are two individuals who will serve as directors (one of whom will serve as Chairman of the Board and the other as Chief Executive Officer) and five private equity firms. The proponents proposed an ownership structure in which (1) the two individuals, the five private equity firms, and others (collectively, “Investors”) would own interests in a newly formed holding company (“Holdco”) organized as a Delaware limited liability company, (2) Holdco would own a newly formed intermediate holding company (“Interco”) organized as a Delaware corporation, and (3) Interco would own all of the outstanding stock of the Bank. The Investors will contribute up to \$1 billion of cash capital to Holdco; substantially all of the capital will be invested in the common stock of the Bank. The OCC understands that Holdco and Interco will apply to the Board of Governors of the Federal Reserve System to become bank holding companies and acquire the Bank.

The Bank is being organized for the purpose of assuming liabilities and purchasing assets from the FDIC acting as the receiver of a depository institution, inasmuch as only chartered depository institutions may assume deposit liabilities from the FDIC.¹ The Investors desire to have the opportunity to assume liabilities and purchase assets from the FDIC as receiver of a depository institution. The Investors, through commitments to purchase interests in Holdco, will invest funds to enable the Bank to assume liabilities and purchase assets from the FDIC. The applicant represents that sufficient capital will be injected to ensure the Bank substantially exceeds the amount needed to be well-capitalized when it opens for business and thereafter.

Since the Bank would not commence operations until after its bid for a particular institution is accepted by the FDIC, the specific size, scope, and activities of the Bank will not be determined until it acquires the business of a specific failed institution from the FDIC. Thus, the organizers could not include a detailed specific comprehensive business plan in the charter application before receiving preliminary conditional approval.² However, based upon the information provided in the application, including in particular the experience of proposed key management of the Bank, the OCC concluded the Bank could receive preliminary conditional approval, subject to the requirement that the Bank follow an organizing process that includes OCC review as it considers potential acquisition transactions. This will enable the OCC to address particular safety and soundness issues raised by a proposed acquisition as the Bank proceeds with an

¹ The organizers anticipate that the Bank’s first transaction would be an assumption of liabilities and purchase of assets from the FDIC as receiver of a failed institution. Other transactions with troubled institutions could occur later.

² The applicants provided a preliminary business plan based on (1) the general size and type of assets of a failed institution they would seek to have the Bank acquire from the FDIC and (2) their plans for operating the Bank with such assets. If the Bank subsequently expands the range of failed institutions whose business it would be interested in acquiring from the FDIC, the Bank will supplement the preliminary business plan and provide any other relevant information to the OCC in accordance with the Organizing Conditions in Appendix A.

acquisition. Accordingly, the OCC has determined that the application meets the regulatory factors for preliminary conditional approval.

It is anticipated that the OCC would grant final approval for the Bank and approve a purchase and assumption transaction under the Bank Merger Act the first time that the Bank's bid to acquire a failed institution is accepted by the FDIC. Final approval and authorization for the proposed Bank to open will not be granted until all pre-opening requirements are met. In addition, in connection with final approval and the Bank's commencing business, the OCC will require the Bank to enter a written Operating Agreement that will require the Bank to submit a Comprehensive Business Plan acceptable to the OCC. The Plan must detail the proposed business and operations of the Bank, and the Bank must obtain the OCC's written supervisory non-objection to the Plan. After receiving the OCC's non-objection, the Bank must implement and adhere to the Plan. Any significant deviation from the Plan will require prior notice to the OCC and receipt of a separate, written OCC non-objection to the changes.

Officers and Directors

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

<u>Name</u>	<u>Title</u>
Peter E. Raskind	Organizer, Director, Chairman of the Board
R. Brad Oates	Organizer, Director, Chief Executive Officer
Richard E. Thornburgh	Organizer, Director
Barry S. Sternlicht	Organizer, Director
Richard C. Perry	Organizer, Director
Karl I. Peterson	Director
Allen Koranda	Director
Dale Roskom	Chief Financial Officer
T. Kevin Fox	Chief Operating Officer

We have not completed our background checks for some of the above individuals. Continued service of these individuals will be dependent on satisfactory completion of the background investigation process.

Prior to opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers, executive officers or directors appointed or elected before the person assumes the position. For a two-year period after the Bank commences business (or such longer period specified in the Operating Agreement), the Bank must file an *Interagency Biographical and Financial Report* with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

Organizing Steps and Requirements

The “Charters” booklet in the *Comptroller’s Licensing Manual* provides guidance for organizing your bank. The booklet is located at the OCC’s web site:

<http://www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf>.

As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward Articles of Association and the Organization Certificate to Senior Licensing Analyst David Reilly in this office. As a “body corporate,” or legal entity, you may begin taking those steps necessary to obtain final approval. The Bank may not begin the business of banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new national banks. In addition to the standard requirements for all new national banks, the Bank must also follow the requirements required by the conditions below and set out in Appendix A. The Bank must meet these requirements before the OCC will issue final approval and the Bank is allowed to commence business. The Board of Directors also must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

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

<http://www.occ.treas.gov/corpapps/corpapplic.htm>.

Conditions

This approval is subject to the following conditions:

- A. During its organization, the Bank shall follow the requirements specified in Appendix A regarding the Bank’s first acquisition (the “Initial Acquisition”).
- B. If the Bank receives final OCC approval for an Initial Acquisition, the Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within one (1) business day after receiving final OCC approval, commencing business, and consummating the Initial Acquisition.

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.

Conclusion

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. Our approval is based on the representations made in the application, other submissions, and other information available to the OCC as of this date. Until final approval is granted, the OCC may modify, suspend, or rescind this preliminary conditional approval if a material change in the information on which the OCC relied occurs prior to final approval or if the OCC deems any other interim development warrants such action. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If the Bank has not commenced business and consummated an Initial Acquisition within eighteen (18) months from the preliminary conditional approval date, this approval expires, unless extended by the OCC.

Any information required to be submitted to the OCC by the Organizing Conditions in Appendix A and any questions concerning this preliminary conditional approval should be directed to Senior Licensing Analyst David Reilly at 202-874-5060. You should include the application control number on any correspondence related to this filing.

Sincerely,

Lawrence E. Beard

Lawrence E. Beard
Deputy Comptroller, Licensing

Attachment:
Appendix A: Organizing Conditions

Enclosures:
Standard Requirements
Minimum Policies and Procedures
Survey Letter

APPENDIX A

Organizing Conditions for NewBank, National Association (In Organization)

Updating Preliminary Information

- (1) In the application, the organizers provided information that the OCC relied on in determining to proceed in granting preliminary conditional approval. This information included:
- (a) the amount and sources of capital that would be available to the Bank;
 - (b) the proposed Investors who would own interests in Holdco, and indirectly in Interco and the Bank, and the respective holdings of each Investor;
 - (c) the identity, background information, and banking experience of the initial directors and senior executive officers of the Bank;
 - (d) the overall strategic plan of the organizers and Investors for the Bank;
 - (e) any planned relationships and transactions between the Bank and affiliates and other related parties; and
 - (f) a preliminary business plan outlining intended product and business lines, retail branching plans, and capital, earnings and liquidity projections.

Until the Bank completes its first acquisition, the Bank shall inform the OCC immediately of any material changes in the preliminary information included in the application, and shall update the OCC periodically (at least monthly) regarding the status of the preliminary information.

- (2) The Bank shall notify and periodically update the OCC on the status of the applications with the Board of Governors of the Federal Reserve System by Holdco and Interco, and on the status of the Bank's application with the FDIC for deposit insurance.

Initial Acquisition

- (3) At the time the Bank first identifies a potential initial acquisition transaction in which the Bank would assume liabilities and acquire assets (a) from the FDIC as receiver of a failed institution, (b) as part of a transaction in which the FDIC provides assistance pursuant to 12 U.S.C. § 1823(c)(2), (c) as part of a transaction pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c)(3), (4) & (6) (the "BMA"), involving the probable failure of one or more insured depository institutions, (d) as part of a transaction pursuant to the 10-day/5-day emergency provisions of the BMA, or (e) in any other manner (collectively, an "Acquisition Transaction"), the Bank shall promptly notify the OCC in writing of the contemplated initial Acquisition Transaction.

(4) The Bank's notice to the OCC shall include an Acquisition Business Plan setting out the Bank's plans for the initial capitalization, operations, and business of the target institution, with a particular focus on the initial period of 60 days after the acquisition. (If the Bank then succeeds in acquiring the institution, the Bank will be required subsequently to submit a comprehensive long-term business plan.) The Acquisition Business Plan at a minimum shall include the following, to the extent this information is available and known to the Bank:

- (a) the name of the potential acquired institution, and information regarding the institution's size, locations, business lines, and asset composition;
- (b) the proposed transaction, including: (i) the terms on which the FDIC is offering the failed institution (whole bank purchase and assumption, insured deposit purchase and assumption, or insured deposit transfer), (ii) any unique characteristics of the transaction, including but not limited to any loss sharing agreements between the acquirer and the FDIC, (iii) the timing of the FDIC's bid process, and (iv) the type of bid the Bank is contemplating making;
- (c) the amount and composition of the initial capital the Investors plan to have in the Bank if it succeeds in acquiring the institution, and any plans and sources for raising additional capital;
- (d) the Bank's plans for the initial operations and business of the acquired institution, with particular attention to stabilizing the institution, reversing asset quality deterioration, establishing an adequate allowance for loan losses, providing adequate management and staff, mitigating deposit run-off and otherwise improving any deterioration in liquidity, improving revenue, and controlling expenses;
- (e) the Bank's assessment of the quality of existing assets and business lines that would be acquired in the acquisition, and the Bank's plans for future operations, including which business lines of the acquired institution it will continue and which it will not, what new products and services are planned, and what the projected size of each business line would be;
- (f) the Bank's assessment of management of the acquired institution, in particular identifying whether any senior executive officers will be retained, and whether additional persons will be needed to fill remaining senior officer positions;
- (g) the Bank's assessment of (i) the acquired institution's control structures, risk management function, and policies and procedures, technology infrastructure, and vendor relationships, (ii) the degree to which they would need to be developed and improved, and (iii) what the Bank would put in place to achieve that improvement;

- (h) the Bank's identification of the activities and functions that are or will be outsourced to third parties (including data processing), identification of all vendors (noting whether any are or will be affiliates of the proposed institution), and a description of the planned oversight and management program of the various relationships; and
- (i) a *pro forma* balance sheet of the Bank as of the first day after the acquisition, and financial projections for a three-year period.

(5) After notifying the OCC of its contemplated initial Acquisition Transaction and submitting the Acquisition Business Plan, the Bank may proceed to submit a bid to the FDIC, enter a definitive agreement, submit applications, or otherwise continue its efforts for the Acquisition Transaction only after receiving the non-objection of the OCC to continue.

(6) If the Bank decides to continue with the contemplated initial Acquisition Transaction, the Bank shall immediately provide to the OCC the following items:

- (a) a copy of its bid to the FDIC, if applicable;
- (b) a copy of the Purchase and Assumption Agreement and any other documents used to effect the acquisition;
- (c) the Bank's Interagency Bank Merger Act Application for OCC approval to engage in the purchase and assumption or merger;
- (d) the Bank's Articles of Association and By-Laws to be in effect after consummation of the Acquisition Transaction;
- (e) a request for a directors' residency and/or citizenship waiver, if needed, and an Interagency Biographical and Financial Report for any proposed director or senior executive officer not previously submitted to the OCC; and
- (f) any other information or documents needed to complete the file prior to the OCC's granting final approval for the establishment of the Bank and approval for the Bank's completion of the purchase and assumption or merger.¹

(7) If the Bank wins the bid for an acquisition from the FDIC as receiver of a failed institution, if applicable, or if it otherwise becomes clear the Bank will be proceeding to complete the initial Acquisition Transaction, the Bank shall immediately notify the OCC, and update any of the items in paragraph (4) if necessary, and shall submit any necessary applications

¹ The OCC may allow the Bank to combine the steps set out in conditions (3), (4), (5), and (6) if the FDIC has a shortened timeframe for submitting bids or if other circumstances requiring a shortened timeframe exist. In such cases, the OCC will advise the Bank how to meet the requirements, and supply the information included, in conditions (3) through (6).

not previously submitted and request OCC approval for the Bank to commence business and approval for the purchase and assumption or merger.

Subsequent Developments

(8) Within one (1) business day after consummation of the purchase and assumption for the initial Acquisition Transaction, the Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC.

(9) If for any reason the Operating Agreement is not yet in effect after an initial Acquisition Transaction and the Bank contemplates entering a subsequent Acquisition Transaction, then the Bank shall follow the procedures above for any such subsequent Acquisition Transaction.