



Comptroller of the Currency
Administrator of National Banks

Washington D.C. 20219

February 08, 2008

**Conditional Approval #925
November 2009**

Mr. Stephen L. Smith
Senior Vice President and Assistant General Counsel
National City Corporation
One National City Center, Suite 845E
Indianapolis, Indiana 46255

Subject: Application to convert MidAmerica Bank, fsb, Clarendon Hills, Illinois, a federal savings bank, into a national bank to be known as MidAmerica Bank, National Association. Immediately following the conversion, MidAmerica Bank, National Association will merge into National City Bank, Cleveland, Ohio with the latter as the surviving entity.

OCC Control Nos.: 2007-CE-01-0008 and 2007-CE-02-0014

Dear Mr. Smith:

The OCC hereby grants conditional approval for MidAmerica Bank, fsb, Clarendon Hills, Illinois (MidAmerica), to convert to a national bank, with retention of all of its branches, under the title of MidAmerica Bank, National Association, Clarendon Hills, Illinois (MidAmerica Bank), and to MidAmerica Bank's merger immediately thereafter into National City Bank, Cleveland, Ohio (NatCity), with NatCity retaining MidAmerica Bank's main office and branches as branches. This approval is granted based on a thorough evaluation of all information in the record and available to the Office of the Comptroller of the Currency (OCC), relevant to the applicable statutory and policy factors, including representations and commitments made in the application and by the bank representatives.

MidAmerica and NatCity are affiliates¹ and the deposits of both are insured by the Federal Deposit Insurance Corporation. MidAmerica has 59 branches in Illinois² and 24 branches in Wisconsin. NatCity intends to retain as branches MidAmerica's main office and all of

¹ National City Corporation, Cleveland, Ohio, the parent holding company of NatCity, became the parent holding company of MidAmerica on September 17th, 2007, through its acquisition of MAF Bancorp, Clarendon Hills, Illinois, then the parent holding company of MidAmerica. This transaction was pursuant to approval on August 28, 2007, by the Federal Reserve Board under 12 U.S.C. § 1843.

² In addition, under Office of Thrift Supervision (OTS) procedures, MidAmerica has authorization to establish one additional branch in Illinois, but this branch has not yet been opened.

MidAmerica's branches following the merger. NatCity has branches in Illinois but none in Wisconsin.³

I. Conversion

The conversion of an FSB from a federal savings bank charter to a national bank charter is permissible under 12 U.S.C. § 1464(i)(5)(A). Moreover, OCC and OTS regulations also permit the direct conversion of a federal savings bank to a national bank.⁴ Title 12 U.S.C. § 1464(i)(5)(A) provides:

Any Federal savings association chartered and in operation before November 12, 1999, with branches in operation before such date in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency . . . into 1 or more national . . . banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States

To rely on this provision, the OCC must determine that the resulting national bank will “meet all financial, management, and capital requirements” applicable to it.⁵

The OCC has determined that the conversion of MidAmerica to a national bank charter is permitted under section 1464(i)(5)(A). MidAmerica was chartered prior to November 12, 1999, and prior to that date operated branches in one or more states. Moreover, the OCC has determined that MidAmerica satisfies applicable financial, management and capital requirements as imposed by section 1464(i)(5)(B)(i). Approval of the conversion also is consistent with OCC and OTS regulations.⁶

³ This approval replaces Conditional Approval 823 issued by the OCC on September 21, 2007, approving the transactions discussed herein. The OCC nullified Conditional Approval 823 pursuant to 12 C.F.R. § 5.13(h)(2) because NatCity as of the date of that approval had not submitted a copy of the interstate merger application to the state bank supervisor of Wisconsin, a state that would become a host state of NatCity as a result of the merger, as required by 12 U.S.C. § 1831u(b)(1)(A)(ii) and (B).

⁴ 12 C.F.R. § 5.24 (OCC) and 12 C.F.R. § 552.2-7 (OTS).

⁵ 12 U.S.C. § 1464(i)(5)(B)(i).

⁶ In deciding a conversion application, OCC regulations provide that the OCC takes into account whether the institution can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. 12 C.F.R. § 5.24(d)(1). The regulations further provide that an application may be denied if a significant supervisory, CRA, or compliance concern exists with the applicant; approval is inconsistent with applicable law, regulation, or policy; or the applicant fails to provide necessary information that the OCC has requested. 12 C.F.R. §§ 5.24(d) and 5.13(b). Finally, the regulations provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator. 12 C.F.R. § 5.24(d). The OCC has determined that the converting bank will operate safely and soundly, and in compliance with applicable law, regulations, and policies. In addition, there are no significant supervisory, CRA, or compliance concerns that would form a basis to deny the conversion, and there is no evidence that MidAmerica is attempting to convert in order to escape supervisory action from its current regulator. MidAmerica also has complied with applicable OTS procedures with respect to the conversion. See Letter by Thomas A. Barnes, OTS Central Region Director. (October 5, 2007). In addition, we note that the Federal Reserve Bank of Cleveland advised National City Corporation that it does not object to the consummation of the conversion without the filing by National City

In addition, the OCC authorizes MidAmerica Bank to retain MidAmerica's branches in Wisconsin and Illinois following the conversion. Twenty-two of the 24 Wisconsin branches were in operation prior to November 12, 1999; consequently, the OCC authorizes MidAmerica Bank to retain those branches following its conversion from a federal savings bank charter under 12 U.S.C. § 1464(i)(5)(A) as set forth above.⁷ With the retention of these branches, MidAmerica Bank will be "situated" in Wisconsin for purposes of 12 U.S.C. § 36(c).⁸ Section 36(c) provides that a national bank situated in a state may branch to the same extent that state banks may branch within that state and subject to state law limitations applicable to branching by state banks. Wisconsin permits full intrastate branching subject only to the requirement that in approving a branch, the regulator consider the financial and managerial resources and future prospects of the bank establishing the branch.⁹ Consequently, following consideration of 12 U.S.C. § 36(c) and applicable state law standards, the OCC authorizes MidAmerica Bank to retain the two additional Wisconsin branches that MidAmerica operated prior to the conversion.¹⁰ Following its conversion, the OCC also authorizes MidAmerica Bank to retain all of MidAmerica's branches in Illinois.¹¹

Corporation of a formal application under the Bank Holding Company Act. Letter by Paul E. Kaboth, Assistant Vice President, Federal Reserve Bank of Cleveland, to Thomas A. Plant, Senior Vice President and Assistant General Counsel, National City Corporation (November 5, 2007).

⁷ We note that section 1464(i)(5)(A) does not require that branches to be retained by a converting federal savings bank have been in operation as branches of the converting institution prior to November 12, 1999. Rather, to be retained, a branch must have been "in operation before such date of enactment." Prior to November 12th, 1999, the 22 branches were in operation as branches of St. Francis Bank, a federal savings bank acquired by MidAmerica by merger in 2003.

⁸ For these purposes, a national bank is "situated" in each state in which it has its main office or a branch. *Seattle Trust and Savings Bank v. Bank of California, N.A.*, 492 F.2d 48 (9th Cir.), cert. denied, 419 U.S. 844 (1974).

⁹ Wisc. Stat. Ann. § 221.0302 (West 2001 & Supp. 2007).

¹⁰ One of the two was established by St. Francis Bank in Oak Creek, Wisconsin, in 2003 prior to its merger into MidAmerica, and the other was established by MidAmerica in Pewaukee, Wisconsin, in 2005.

¹¹ Because MidAmerica's main office is in Illinois and, following the conversion, MidAmerica Bank's main office will continue to be the in Illinois, MidAmerica Bank may retain all of its 59 branches in Illinois under the authority of 12 U.S.C. § 36(c). Illinois permits full intrastate branching and imposes no restrictions, with one recently-adopted exception -- bank branches that did not conduct business prior to May 10, 2007 may not be on or adjacent to the premises of an affiliate engaged in any commercial activities that are not permissible for a bank holding company, financial holding company, or a subsidiary of a bank holding company or a financial holding company. Ill. Comp. Stat. Ann., ch. 205, para. 5/5(15)(a); Ill. Pub. Act. No. 095-0526, codified at 205 Ill. Comp. Stat. Ann. 5/21.5 (West 2007). Because none of the 59 existing MidAmerica branches in Illinois were established on or after May 10th, 2007, this limitation is irrelevant to those branches. The applicant, however, does represent that MidAmerica has one approved but unopened branch that it seeks to retain in Illinois at 73rd Street and Stoney Island in Chicago. The applicant has represented that this branch will not be located on or adjacent to an affiliate engaged in commercial activities; thus, it does not run afoul of the newly-adopted Illinois statute.

II. Merger

The merger of MidAmerica Bank into NatCity following the conversion is permissible as an interstate merger under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (the “Act”). Under the Act, banks with main offices in different states may merge provided that neither state opted out of interstate mergers before June 1, 1997.¹² Neither Ohio nor Illinois opted out. The Act also applies certain other standards to mergers. These include standards relating to the age of the target bank, filings with relevant states, expanded CRA compliance, deposit concentration standards, and management and capital requirements.¹³ The merger satisfies these requirements to the extent applicable. Age limitations are satisfied because MidAmerica Bank, including its period of existence as a federal savings bank, has been in existence for more than five years, the maximum age that the Act permits state laws to impose on banks being acquired under the Act.¹⁴ With respect to filing requirements, the Act requires that a bank that files an application for an interstate merger shall submit a copy of the application to the State bank supervisor of a host state that will result from the transaction.¹⁵ NatCity has represented that it has provided a copy of the application to Wisconsin. Consequently, the Act’s filing requirements are satisfied.¹⁶ The OCC also has concluded that the applicants meet the capital and management standards set forth in the Act.¹⁷ Finally, following the merger, the OCC authorizes NatCity to retain as branches MidAmerica Bank’s main office and all of the branches that MidAmerica Bank retained following the conversion of MidAmerica to a national bank charter.¹⁸

¹² 12 U.S.C. §§ 215a-1(a) and 1831u(a)(1).

¹³ 12 U.S.C. § 1831u(a)(5) and (b)(1)-(4).

¹⁴ *Id.* at § 1831u(a)(5).

¹⁵ *Id.* at § 1831u(b)(1)(a)(ii).

¹⁶ The Act also requires compliance by an applicant with certain filing requirements imposed by a state that will become a host state of the bank as a result of an interstate merger. *Id.* at § 1831u(b)(1)(A)(i). Wisconsin imposes filing requirements where a target bank is organized under state law or, if it is a national bank, has its principal office in Wisconsin. Wisc. Stat. Ann. 221.0901(3)(c)1. These requirements, however, do not apply to this transaction where MidAmerica Bank, at the time of the merger into NatCity, will be a national bank with its principal or main office in Illinois. In addition, because NatCity already has branches in Illinois, Illinois will not become a host state of NatCity as a result of this transaction. Consequently, the Act does not require any filing by NatCity with Illinois.

¹⁷ The Act requires that each bank involved in the transaction is adequately capitalized as of the date the application was filed, and that the resulting bank, NatCity in this case, will continue to be adequately capitalized and adequately managed upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4). The Act also imposes deposit concentration limits and expanded CRA requirements on interstate mergers; however, these are inapplicable to the proposed transaction because it involves affiliated banks. *Id.* at § 1831u(b)(2)(E) and (3).

¹⁸ 12 U.S.C. § 1831u(d)(1). This provision states that a bank that results from an interstate merger transaction (that is, a merger involving banks with main offices in different states) “may, subject to the approval of the appropriate Federal banking agency, retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.” *See also* 12 U.S.C. § 36(d) (“A national bank resulting from an interstate merger transaction . . . may maintain and

III. Operating subsidiaries

Following the conversion and merger, NatCity proposes to retain as operating subsidiaries MidAmerica Re, Inc. which reinsures a portion of mortgage insurance risk on loans originated by MidAmerica, and MidAmerica Investment Services, Inc. (“Investment Services”), which is the holding company for MidAmerica Re, Inc. NatCity may retain both of these subsidiaries since they are they are engaged in permissible national bank operating subsidiary activities under 12 C.F.R. § 5.34(e)(5)(v)(A) and (Q).¹⁹

IV. Nonconforming activity

Applicant has advised the OCC that MidAmerica, as a federal savings bank, has pledged assets to secure private deposits. Pledging deposits to secure private deposits is not a permissible activity for a national bank. Consequently, MidAmerica Bank and NatCity following the conversion and merger have undertaken not to pledge assets to secure private deposits and within two years after consummation of the conversion to either divest any private accounts that are secured by assets pledged by MidAmerica or bring the accounts into compliance with laws governing national banks.

V. Other statutory standards

A. Bank Merger Act

The OCC, as required, reviewed the proposed merger transactions under the criteria of the Bank Merger Act,²⁰ and applicable OCC regulations and policies. Among other matters, we found that the proposed transactions would not have any anticompetitive effects.²¹ The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities . . .”²² The OCC considered these factors and found them to be consistent with approval under the statutory provisions.

operate a branch in a State other than [the state where its main office is located] . . . in accordance with section 1831u of this title.”). NatCity also is authorized under 12 U.S.C. § 36(c) to operate the approved but unopened branch in Chicago. *See, supra*, n. 11

¹⁹ In addition, Investment Services will also own MidAmerica Insurance Agency, Inc. (Insurance Agency). The applicant has advised that effective December 21, 2007, all of the assets of Insurance Agency were sold to an unrelated third party and the company is now dormant. NatCity may continue to hold this company directly or through Investment Services, but will need to comply with applicable procedures under 12 C.F.R. Part 5 if it seeks to have the company engage in any activity.

²⁰ 12 U.S.C. § 1828(c).

²¹ As previously noted, NatCity and MidAmerica became affiliates on September 17, 2007.

²² 12 U.S.C. § 1828(c)(11).

B. Community Reinvestment Act

The Community Reinvestment Act (CRA) requires the OCC to take into account the records of the institutions proposing to engage in a conversion or a merger in helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating conversion and merger applications.²³ The OCC considers the CRA Performance Evaluation of each institution involved in the transaction. A review of the records of these applicants, and other information available to the OCC as a result of its regulatory responsibilities, revealed no evidence indicating that the applicants’ records of helping to meet the credit needs of their communities, including LMI neighborhoods, are less than satisfactory. Consequently, the OCC has determined that the record of compliance by the applicants with the CRA is consistent with approval of the conversion and the merger.

VI. Conclusion

Enclosed is a list of authorized branches. The list includes one unopened branch (Stoney Island) that is authorized but remains unopened. You are reminded that you must notify this office within 10 days after opening that branch. If the branch is not opened within 18 months of the date of this letter, the authorization and approval for the unopened branches shall automatically terminate unless the OCC grants an extension of the time period.

After a thorough review of all information available, and reliance upon the representations and commitments made in the application and by the MidAmerica’s representatives, OCC finds that the conversion application meets the requirements for approval to convert to a national banking association pursuant to 12 C.F.R. § 5.24 as follows:

Title: MidAmerica Bank, National Association
Location: 55th Street & Holmes Avenue, Clarendon Hills, Illinois

This conversion and merger approvals are subject to the following condition:

Within two years after the conversion, MidAmerica Bank or NatCity, as appropriate, shall either divest any private accounts that are secured by assets pledged by MidAmerica or bring the accounts into compliance with laws governing national banks.

The condition of this approval is a condition "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 condition is enforceable under 12 U.S.C. § 1818.

The district office must be advised in writing in advance of the desired effective date for the merger so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice’s injunction period and any other required regulatory approval.

²³ 12 U.S.C. §§ 2903(a)(2) and 2902(3)(A) and (E); 12 C.F.R. § 25.29(a)(3) and (4).

The OCC will issue a letter certifying consummation of the merger when we receive:

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved the transaction.
- An executed merger agreement with Articles of Association for the resulting bank attached.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.
- Documentation that all other conditions that the OCC imposed have been met.

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 filings 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.

All correspondence regarding this application should reference the control number. If you have any questions, contact me (312)360-8863.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller, Licensing

Enclosure: Survey Letter