



**Conditional Approval 1080
October 2013**

September 27, 2103

Richard K. Kim, Esq.
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, NY 10019

Re: Application by CertusBank, National Association, Easley, South Carolina to make a non-controlling equity investment in Monarch Business and Wealth Management Holdings, LLC, New York, New York
Application Control No: 2013-NE-Subs & Equities-135459

Dear Mr. Kim:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application by CertusBank, National Association, Easley, South Carolina (“Bank”), to directly acquire a 35 percent non-controlling equity interest in Monarch Business and Wealth Management Holdings, LLC, New York, New York (“Company”), a Delaware limited liability company. For reasons set forth below, we conclude that the Bank is legally authorized to acquire and hold that interest in the Company, in a manner described herein.

Background

On August 15, 2013, the Bank entered into an Interest Purchase Agreement (as amended and supplemented from time to time “Agreement”) by and among the Bank; the Company; Monarch Wealth and Business Management LLC, a Delaware limited liability company; Asset Alliance Wealth Management, LLC, a Delaware limited liability company; Novel Ideas LLC, a Delaware limited liability company; Najen LLC, a Delaware limited liability company (together “Sellers”); Barry Klarberg, an individual and CertusHoldings, Inc., a Delaware corporation and a bank holding company.

Pursuant to this Agreement, the Bank will acquire 35% of the membership interest of the Company for an aggregate consideration of approximately \$6.8 million, subject to certain price adjustments.

The Company has four subsidiaries. The Company and three subsidiaries offer wealth management products and services, including family office advisory services, wealth planning/investment advice, tax advice and planning, bill payment support services,

insurance and risk management advice, business, planning, estate planning, charitable giving advisory services, and concierge type services. In addition, the Company and subsidiaries are also engaged in finder and branding activities. The fourth subsidiary engages in activities related to a client of the Company.¹

Discussion

The OCC traditionally has recognized the authority of national banks to organize and perform any of their lawful activities in a reasonable and convenient manner not prohibited by law. In a number of interpretive letters, the OCC has concluded that national banks are legally permitted to make a non-controlling investment in an enterprise provided four criteria or standards are met. These standards, which have been distilled from our previous decision in the area of permissible non-controlling investments for national banks and their subsidiaries, are:

- 1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).
- 2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.
- 3) The bank's loss exposure must be limited as a legal matter and the bank must not have open-ended liability for the obligations of the enterprise.
- 4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

Based upon the facts presented, the Bank's investment in the Company satisfies these four standards.

- 1) The activities of the enterprise in which the investment is made must be limited to activities that are part of, or incidental to, the business of banking (or otherwise authorized for a national bank).

The proposed activities of the Bank that will be offered through the Company are legally permissible under 12 U.S.C. § 24(Seventh) as part of or incidental to the business of banking. National banks have express statutory authority to exercise fiduciary powers

¹ On September 24, 2013, the Bank amended the application to exclude the acquisition of the fourth subsidiary (the "Excluded Entity"). The Company will distribute the equity interest of the Excluded Entity to the current owners of the Company prior to the closing of the non-controlling equity investment by the Bank.

under 12 U.S.C. § 92a and to offer a variety of wealth management services in accordance with 12 C.F.R. Part 9. The services that are offered by the Company fall within the types of services that are permissible for national banks. See 12 C.F.R. § 7.1002, OCC Conditional Approval Letter number 535 (June 21, 2002) and OCC Interpretive Letters numbered 342 (May 22, 1985), 437 (July 27, 1988), 504 (May 18, 1990) and 904 (January 18, 2001). Thus, the Company's proposed activities are permissible.

- 2) The bank must be able to prevent the enterprise from engaging in activities that do not meet the foregoing standard, or be able to withdraw its investment.

This is an obvious corollary to the first standard. It is not sufficient that the entity's activities are permissible at the time a bank initially acquires its interest; they must also remain permissible for as long as the bank retains an ownership interest.

The Bank has furnished the Interest Purchase Agreement that will be used to effect the acquisition by the Bank of an equity interest in the Company. That agreement includes the Limited Liability Company Agreement that will govern the operations of the Company by its manager and will provide that the Company may not, without the prior written consent of the Bank, engage in any activity other than the activities listed in 12 C.F.R. § 5.34(e)(5)(v) or any activities that are substantively the same as those contained in published OCC precedent for non-controlling investments by a national bank. Accordingly, the second standard is satisfied.

- 3) The bank's loss exposure must be limited as a legal matter and the bank must not have open-ended liability for the obligations of the enterprise

A primary concern of the OCC is that national banks should not be subjected to undue risk. Where an investing bank will not control the operations of the entity in which the bank holds an interest, it is important that the national bank's investment not expose it to unlimited liability.

The Company is a Delaware limited liability company. As a legal matter, the members of a Delaware limited liability company are not liable for the obligations or liabilities of the limited liability company solely by reason of being a member of the company. 6 Delaware General Code § 18-303

Therefore, for legal purposes, the Bank's potential loss exposure arising from its investment in the Company should be limited to the amount of the investment made by the Bank. Since that exposure will be quantifiable and controllable, the third standard is satisfied.

- 4) The investment must be convenient or useful to the bank in carrying out its business and not a mere passive investment unrelated to that bank's banking business.

A national bank's investment in an enterprise or entity must also satisfy the requirement that the investment have a beneficial connection to the bank's business, i.e., be convenient or useful to the investing bank's business activities, and not constitute a mere passive investment unrelated to that bank's banking business. The investment must benefit or facilitate that business and cannot be a mere passive or speculative investment.

In this instance, the ownership interest by the Bank in the Company is not merely evidence of a passive relationship, but rather is part of a business plan between the Bank and the Company to provide useful services to the Bank's wealth management customers. The Company would provide those customers with services that those customers might find beneficial and efficient to obtain through the Bank. Wealth management customers of the Bank will thus be benefited by being able to obtain a wider range of services from a single and convenient source, without having to incur the expense of developing these services themselves. Thus, the investment is not a mere passive investment unrelated to the Banks' banking business.

Accordingly, the fourth standard is satisfied.

Conclusion

Based upon the information and representations made on behalf of the Bank, for the reasons discussed above, we conclude that the Bank is legally permitted to make a non-controlling investment in the Company, subject to the following conditions:

- The Bank and Company and its subsidiaries will engage only in activities that are part of, or incidental to, the business of banking.
- The Bank shall ensure that the activities of the Company and its subsidiaries will be limited to those permissible for national banks or the Bank will divest its interest in the Company in the event it engages in an activity that is inconsistent with the condition above.

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- The Company and its subsidiaries will be subject to OCC regulation, supervision, and examination, pursuant to 12 U.S.C. §§ 1820a and 1831v.
- Prior to acquiring 35% control of the Company, the Bank must ensure that the Company no longer holds any interest in the Excluded Entity.
- The Bank must file an application and receive OCC prior approval before acquiring, or contractually committing to acquire, any additional interest in the Company.

The conditions of this 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.

This 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 Bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. 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 me at (212) 790-4055 or email sandya.reddy@occ.treas.gov.

Sincerely,

Sandya Reddy

Sandya Reddy
Acting Director for District Licensing