



**Conditional Approval #1200
August 2018**

July 06, 2018

Patrick S. Brown
Sullivan & Cromwell LLP
1888 Century Park East
Los Angeles, CA 90067-1725

Re: Application to Merge Zions Bancorporation with and into ZB, National Association
Charter No. 4341
OCC Control No. 2018-HQ-215a3-302725

Dear Mr. Brown:

The Office of the Comptroller of Currency (“OCC”) hereby conditionally approves the application to merge Zions Bancorporation, Salt Lake City, Utah (“Bancorporation”) with and into ZB, National Association, Salt Lake City, Utah (“ZB” or the “Bank”), under 12 U.S.C. § 215a-3 (the “Merger”). This approval is granted based on a thorough evaluation of the application, other materials supplied by the Bank’s representatives, and other information available to the OCC, including the representations and commitments made in the application and during the application process by the Bank’s representatives. This approval is also subject to the conditions set out herein.

Background

ZB is a national banking association with its main office in Salt Lake City, Utah, and branches throughout Utah and several other states. It is a wholly-owned direct subsidiary of Bancorporation. ZB is insured by the Federal Deposit Insurance Corporation (“FDIC”). ZB applied to the OCC for approval to merge Bancorporation into ZB under 12 U.S.C. § 215a-3.¹

¹ The Merger is also subject to approval by the FDIC under the Bank Merger Act, and ZB applied to the FDIC and published notice of the Merger under the Bank Merger Act. See 12 U.S.C. § 1828(c)(1)(A) (no insured bank “shall merge or consolidate with any noninsured bank or institution” without the approval of the FDIC). ZB Bank is an insured bank; Bancorporation is not an insured depository institution.

ZB proposed the Merger as a means of streamlining its corporate and regulatory structure by removing its holding company and operating as a stand-alone national bank.² Following the consummation of the Merger, Bancorporation will cease to exist and ZB will be the surviving entity. The Merger will not involve the acquisition of any branch offices or deposits. In the Merger, the Bank is proposing to acquire ownership of a Bancorporation subsidiary, Amegy Holding Texas, Inc. (“Amegy”), and will hold Amegy as an operating subsidiary. The Bank is proposing to amend its articles of association as part of the Merger in connection with replacing Bancorporation common and preferred stock with corresponding Bank common and preferred stock and changing the Bank’s name. In its application, ZB notified the OCC, as required by 12 U.S.C. § 30(a) and 12 C.F.R. § 5.42(d), that, as of the effective time of the Merger, ZB plans to change its name to “Zions Bancorporation, National Association.”

Discussion

A. The Merger

Twelve U.S.C. § 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: “[u]pon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”³ For purposes of section 215a-3, a nonbank affiliate of a national bank includes any company (other than a bank or Federal savings association) that controls the national bank.⁴ The Bank is the direct wholly-owned subsidiary of Bancorporation. Therefore, the proposed Merger is within the scope of section 215a-3.

The OCC’s regulation implementing 12 U.S.C. § 215a-3 sets out substantive and procedural requirements for the merger of a national bank with its nonbank affiliate in which the national bank is the resulting entity. The regulation requires that the law of the state under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers.⁵ Bancorporation is a Utah corporation. The Utah Revised Business Corporation Act authorizes a Utah corporation to merge with a foreign entity (one organized under the laws of another state or country), with the foreign entity as the surviving company.⁶

² The OCC is responding separately in an Interpretive Letter to ZB’s April 4, 2018 letter requesting confirmation regarding ZB’s authority to engage in a variety of corporate practices involving capital stock issuances and repurchases as a standalone national bank.

³ 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000).

⁴ See 12 C.F.R. § 5.33(d)(9).

⁵ 12 C.F.R. § 5.33(g)(4)(i).

⁶ Utah Code Ann. § 16-10a-1107. As a national banking association, ZB is organized under the laws of the United States and is therefore considered a foreign entity under section 16-10a-1107.

The regulation implementing section 215a-3 also requires that: (1) the bank comply with the procedures of 12 U.S.C. § 215a as if the nonbank affiliate were a state bank, (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization, and (3) shareholders of the nonbank affiliate who dissent from the merger have the dissenters' rights prescribed by the law of the state of its organization.⁷ ZB represents that ZB and Bancorporation have complied, or will comply prior to consummation of the Merger, with these requirements.

The OCC regulations governing mergers and other business combinations generally also set out policy considerations applicable whenever the OCC evaluates any business combination. These considerations are: the capital level of any resulting national bank, the conformity of the transaction to applicable law, regulation, and supervisory policies, the purpose of the transaction, its impact of the transaction on the safety and soundness of the bank, and any effect of the transaction on the bank's shareholders, depositors, other creditors, and customers.⁸ The OCC has considered these factors and found them consistent with approval of the Merger.

Accordingly, the Merger is authorized under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33.⁹

B. Issuance of common stock and preferred stock by ZB

Currently Bancorporation has common stock and several series of preferred stock outstanding. In connection with the Merger, ZB plans to issue common stock of ZB to the common stockholders of Bancorporation in like amounts and on similar terms to replace their holding company stock. Similarly, ZB plans to issue preferred stock so that each share of each series of preferred stock of Bancorporation would be converted into an equal number of shares of preferred stock of ZB. National banks may issue common shares.¹⁰ National banks may issue preferred stock with the approval of the OCC and approval by a majority of its shareholders.¹¹

To authorize preferred stock, a national bank also amends its articles of association to add provisions specifying the terms of the preferred stock.¹² In its application, ZB submitted drafts of the revised articles of association with the provisions for preferred stock. The OCC has reviewed the revised articles and grants approval under 12 U.S.C. § 51a. ZB represents that it will follow the requirements of 12 U.S.C. § 51a when it formally amends its articles of

⁷ 12 C.F.R. § 5.33(g)(4)(ii)-(iv).

⁸ 12 C.F.R. § 5.33(e)(1)(i).

⁹ This application is not the first transaction in which the OCC approved the merger of a national bank's bank holding company into the bank under 12 U.S.C. § 215a-3. See *Decision on the Application to Merge Stockmens Financial Corporation into Stockmens National Bank in Cotulla* (OCC Corporate Decision No. 2001-33, November 29, 2001).

¹⁰ 12 U.S.C. § 57; 12 C.F.R. § 5.46(g)(1). An increase in permanent capital through the issuance of common stock requires OCC and shareholder approval.

¹¹ 12 U.S.C. § 51a; 12 C.F.R. § 5.46(g)(1).

¹² 12 U.S.C. § 51a; 12 C.F.R. § 5.46(g)(2).

association to authorize the new classes of preferred stock, and that it will submit the amendment of the articles of association with an accompanying corporate resolution certifying shareholder action as required by 12 U.S.C. § 21a.

The issuance of ZB common stock and preferred stock in exchange for Bancorporation common stock and preferred stock constitutes an increase in permanent capital at ZB requiring OCC and shareholder approval under 12 C.F.R. § 5.46. The Bank's merger application included the information needed for an application for a change in permanent capital under 12 C.F.R. § 5.46. The OCC finds the change in capital to be consistent with the standards of 12 C.F.R. § 5.46(f). Therefore, the OCC approves the Bank's application to change its permanent capital.¹³

C. ZB's acquisition of Amegy as an operating subsidiary

At the time of the Merger Bancorporation will have one subsidiary, Amegy. Through the Merger, Amegy will become a subsidiary of ZB. The activities of Amegy consist of holding investments in a number of investment funds, as discussed further below. Holding and managing investment assets of the bank is a common activity for operating subsidiaries of national banks.¹⁴ Accordingly, ZB may acquire Amegy as an operating subsidiary.¹⁵

D. ZB's holding of equity investments now held by Bancorporation and Amegy

Bancorporation currently holds a number of equity investments, either directly or through its subsidiary, Amegy. After the Merger, these investments will be held by ZB, either directly or through Amegy. The OCC's regulations require a national bank applying for approval for a merger to identify equity investments to be acquired in the merger,¹⁶ and to identify any that are nonconforming – not permissible for a national bank -- that will not be disposed of or discontinued prior to the consummation of the transaction.¹⁷ The regulation further provides the OCC generally requires a national bank to divest or conform nonconforming assets, or discontinue nonconforming activities, within a reasonable period of time after the transaction. The determination of what is a "reasonable period of time" depends on the facts and circumstances. It is usually not more than two years after consummating the transaction.¹⁸

¹³ When the Merger is consummated and the ZB common and preferred stock is issued, ZB will file the required notice of the completion of the increase under 12 C.F.R. § 5.46(i)(3) to certify a change in permanent capital.

¹⁴ See, e.g., 12 C.F.R. § 5.34(e)(5)(v)(A).

¹⁵ However, as discussed in the next section, some of the investments held by Amegy are not permissible for a national bank. Those impermissible investments, just as impermissible investments now held directly by Bancorporation that will become directly held by ZB after the Merger, must be disposed of in a reasonable period after the Merger, as set out in the next section.

¹⁶ 12 C.F.R. § 5.33(e)(3).

¹⁷ 12 C.F.R. § 5.33(e)(5).

¹⁸ See *Comptroller's Licensing Manual, Business Combinations* (November 2017) at page 49.

In its application, ZB identified equity holdings at Bancorporation and Amegy that consist of stock in the Federal Agricultural Mortgage Corporation and investments in approximately 21 investment funds.

1. Federal Agricultural Mortgage Corporation (“Farmer Mac”) Shares

ZB currently holds shares of Class A Voting Common Stock of Farmer Mac (“Class A Stock”). The OCC determined it was permissible for national banks to hold stock in Farmer Mac in amounts necessary to participate in the Farmer Mac lending programs.¹⁹ ZB’s holding of the Class A Stock is consistent with that authority. Bancorporation holds shares of Class C Non-Voting Stock of Farmer Mac (“Class C Stock”). ZB intends to retain its shares of Class A Stock and also proposes to acquire and retain all Bancorporation Class C Stock through the Merger.

ZB believes that it would be permissible for it to retain the Class C Stock and argues the precedent in Interpretive Letter 427 should be extended to permit more than the minimum amount of Farmer Mac stock needed to participate in Farmer Mac programs. However, based on current precedent, the Class C Stock is not a permissible investment for a national bank. ZB may continue to hold the stock for up to two years, consistent with OCC policy to permit national banks resulting from a merger to have a reasonable period of time to demonstrate that an activity conforms to activities permissible for a national bank or to divest any nonconforming activities. Accordingly, if it is determined not to be permissible, ZB must divest the Class C Stock within two years after the date of the Merger.

2. Investments in funds

Bancorporation, either directly or through its subsidiary Amegy, currently has investments in 21 funds that will become holdings of ZB after the Merger. Four of the funds are permissible investments for a national bank.²⁰ ZB may retain those investments. ZB identified all of the remaining funds as impermissible for national banks and requested to be able to retain them as nonconforming assets for a reasonable period after the Merger.

Most of the remaining funds are illiquid funds that are considered an investment in a “covered fund” as defined in the Volcker Rule (“Volcker Funds”).²¹ On February 27, 2017, the Federal

¹⁹ See OCC Interpretive Letter No. 427 (May 9, 1988) (“Interpretive Letter 427”).

²⁰ Two are small business investment companies in which national banks are permitted to invest pursuant to 15 U.S.C. § 682(b)(1). Two other funds meet the requirements for public welfare investments under 12 U.S.C. § 24(Eleventh). All four funds are also exempt from the covered funds prohibition in the Volcker Rule. See 12 C.F.R. § 44.10(c)(11).

²¹ The Volcker Rule prohibits “banking entities,” including national banks, from sponsoring or holding ownership interests in “covered funds”. A “covered fund” means any issuer that would be an investment company, as defined in the Investment Company Act of 1940, but for section 3(c)(1) or 3(c)(7) of that Act, and certain similar commodity pools and foreign funds. 12 C.F.R. § 44.10(b).

Reserve Bank of San Francisco (“Federal Reserve”) granted approval to Bancorporation for an extended time period to dispose of or conform certain funds including the Volcker Funds to the requirements of the Volcker Rule (“Federal Reserve Extension”). ZB has requested that it be given a “reasonable period of time,” consistent with the time period provided in the Federal Reserve Extension (until no later than July 21, 2022) to divest or conform these funds. Given the illiquid nature of the Volcker Funds and the extended time period Bancorporation was granted by the Federal Reserve in the Federal Reserve Extension, the OCC agrees that it would be a reasonable period of time within the meaning of Section 5.33(e)(5) for ZB to divest or conform the Volcker Funds in accordance with the Federal Reserve Extension and in no event later than July 21, 2022.

Three of the remaining funds are also illiquid, but they are not covered funds as defined in the Volcker Rule and were not included in the Federal Reserve Extension (“Other Illiquid Funds”). Accordingly, ZB must conform or divest those funds within two years after the date of the Merger.

E. Transactions with Affiliates

A national bank merging with an affiliate must ensure that the transaction complies with the requirements of Sections 23A and 23B of the Federal Reserve Act (12 U.S.C. §§ 371c and 371c-1) and regulations promulgated by the Board of Governors of the Federal Reserve System implementing those requirements (“Regulation W”). Pursuant to Regulation W, a merger of an affiliate into a member bank constitutes a purchase of assets of an affiliate by a member bank to the extent of any consideration paid or liabilities assumed.²² A purchase of assets from an affiliate is a covered transaction under Regulation W.²³ Regulation W subjects covered transactions with affiliates to a number of requirements, including quantitative limits;²⁴ safety and soundness requirements;²⁵ prohibition on the purchase of low-quality assets;²⁶ and the market terms requirement.²⁷ After the Merger, the total amount of all ZB’s covered transactions, including liabilities assumed in the Merger, will be less than 10 percent of ZB’s capital stock and surplus. The OCC reviewed the Merger and found that it also satisfies the other requirements of Section 23A and 23B of the Federal Reserve Act and Regulation W.

²² 12 C.F.R. § 223.3(dd).

²³ 12 C.F.R. § 223.3(h)(3).

²⁴ 12 C.F.R. §§ 223.11 and 223.12.

²⁵ 12 C.F.R. § 223.13.

²⁶ 12 C.F.R. § 223.15.

²⁷ 12 C.F.R. § 223.51.

Section 1818 Conditions

The OCC reviewed the proposed Merger and related matters and approves the Merger and related matters. This approval is subject to the following conditions:

1. ZB shall divest the Class C Non-Voting Stock of Farmer Mac within two years after the date of the consummation of the Merger, unless the OCC determines it is permissible for ZB to retain such shares.
2. ZB shall divest, or conform to the requirements for a national bank to hold investments, its holdings of the Volcker Funds within the period set out in the Federal Reserve Extension but in no event later than July 21, 2022.
3. ZB shall divest, or conform to the requirements for a national bank to hold investments, its holdings of the Other Illiquid Funds within two years after the date of the consummation of the Merger.

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.

Consummation Guidance

The OCC must be advised in writing in advance of the desired effective date for the merger so that we may issue the certification letter for the merger. We will issue a letter certifying consummation of the merger when we receive the following:

- An executed copy of the amended Bank articles of association and a copy of the amended Bank bylaws.
- Certification that any state filing requirements have been met.
- Secretary’s certificates for the Bank and Bancorporation, certifying that board of directors’ and shareholders’ approvals have been obtained.
- Receipt of any other required regulatory approvals including a copy of the FDIC’s approval of the merger.

If the Merger is not consummated within six months of the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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.

All correspondence and documents concerning this transaction should reference the OCC Control number. We have enclosed a letter requesting your feedback on how we handled your application. If you have any questions, contact Carla Holiman at (202) 649-6339 or by email at Carla.Holiman@occ.treas.gov.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller, Licensing

Enclosures: Survey Letter