



April 8, 2021

**Conditional Approval #1264
May 2021**

Mr. Larry Temple, Attorney
400 West 15th Street
Austin, Texas 78701

Subject: Operating Subsidiary; Substantial Change in Assets; and 215a-3 Merger with Non-Bank Affiliate Applications

Business Bank of Texas, National Association, Austin, Texas Charter No.: 24744
OCC Control Nos.: 2021-SO-Subs&Equities-319925; 2021-SO-5.53-319927; and
2021-SO-215a3-319928

Dear Mr. Temple,

The Office of the Comptroller of Currency (OCC) hereby conditionally approves the above referenced applications filed by Business Bank of Texas, National Association, Austin, Texas (Bank) to (1) acquire a new operating subsidiary known as Holding Corp. (Subsidiary) (2) change the composition of its assets, and (3) then merge with and into the nonbank subsidiary corporation, Holding Corp. Subsidiary is a shell corporation in Austin, Texas organized under Texas state law for the benefit of the shareholders of the Bank for the purpose of being the merger partner of the Bank. These approvals are granted after a thorough evaluation of the applications, other materials supplied by the Bank's representatives, and other information available to the OCC, including the representations and commitments made in the applications and during the applications process by the Bank's representatives. The OCC reviewed these proposals under the criteria of 12 CFR 5.34, 12 CFR 5.53, 12 USC 215a-3, and 12 CFR 5.33(g)(5) and deemed them consistent with approval.

The Transactions

The applications filed with the OCC on February 10, 2021 seek approval for the Bank to transfer substantially all of its assets and liabilities, including all of its insured deposits, to Lone Star Capital Bank, National Association, San Antonio, Texas (Buyer) in a purchase and assumption transaction,¹ and then, on the same business day, merge into Holding Corp., a nonbank subsidiary corporation thereby terminating the Bank's national bank charter, once the Bank is deinsured.

Discussion

¹12 CFR 5.53.

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A. Establishment of a New Operating Subsidiary

A national bank “may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking, as determined by the OCC, or otherwise under statutory authority.” 12 CFR 5.34(e). Based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank’s representatives, the OCC concludes that the activities of Subsidiary are legally permissible for national banks and their operating subsidiaries. Subsidiary qualifies as an operating subsidiary as the operating subsidiary meets the requirements set forth in 12 CFR 5.34(e)(2).

B. Fundamental Change in Asset Composition

The Bank applied to the OCC for prior approval of a fundamental change in its asset composition under 12 CFR 5.53. Pursuant to 12 CFR 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. In the purchase and assumption transaction with the Buyer, the Bank will transfer all or substantially all of its assets and all of its deposits.

The principal purpose of adopting 12 CFR 5.53 was to address supervisory concerns raised by so called “dormant” bank charters by providing the OCC with regulatory oversight and a means to monitor them. Following consummation of the purchase and assumption transaction, the Bank would become a “dormant” charter. The Bank, however, plans to merge into Subsidiary promptly after consummation of the purchase and assumption transaction. Thus, OCC concerns over the continuation of “dormant” charters are addressed, and so OCC approval of the section 5.53 application is consistent with the language and purpose of section 5.53.

C. Merger of Business Bank of Texas, National Association with and into Holding Corp.

In this merger, the Bank will merge into Subsidiary, which will be the surviving entity, and the Bank will cease to exist. The merger is authorized under 12 USC 215a-3. Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”² The statute does not limit its scope to mergers in which the national bank is the surviving entity, and so a merger *into* a nonbank subsidiary is within its scope. The OCC’s implementing regulation, discussed below, expressly provides for mergers into a nonbank subsidiary. However, the regulation limits these transactions to mergers involving a national

²12 USC215a-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).

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bank that is not an insured bank. The Bank will not be an insured bank at the time of the merger.

The OCC's regulations implementing 12 USC 215a-3 set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank subsidiary in which the nonbank subsidiary is the resulting entity.³ The regulation requires that the law of the state or other jurisdiction under which the nonbank subsidiary is organized allow the nonbank subsidiary to engage in such mergers. Subsidiary is organized under the law of Texas where Subsidiary is organized, which permits the merger with domestic corporations with the Subsidiary as the survivor.⁴

The OCC regulation also requires that: (1) the bank comply with the procedures of 12 USC 214a as if it were merging into a state bank, (2) the nonbank subsidiary follow the procedures for mergers of the law of its state of organization, (3) shareholders of the national bank who dissent from the merger have the dissenters' rights set out in 12 USC. 214a, and (4) the rights of dissenting shareholders and appraisal of the stock of dissenting shareholders in the nonbank subsidiary shall be determined in the manner prescribed by the law of the state or other jurisdiction in which the nonbank subsidiary was organized. The Bank meets applicable procedural requirements under section 214a and Subsidiary is in the process of complying with the procedures for mergers by the State of Texas for domestic corporations.

The OCC's regulation also provides that the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the Bank, and any effect on the Bank's customers, and may deny a merger if it would have a negative effect in any such respect. The OCC reviewed the proposed merger with respect to these factors and determined that approval of the merger is warranted.

Conditions

These approvals are subject to the following conditions:

1. The merger of Business Bank of Texas, National Association into Holding Corp. shall not occur until after consummation of the purchase and assumption transaction between Business Bank of Texas, National Association and Lone Star Capital Bank, National Association.
2. If the merger of Business Bank of Texas, National Association with and into Holding Corp. does not occur within seven calendar days after the sale of all or substantially all of Business Bank of Texas, National Association's assets to Lone Star Capital Bank,

³12 CFR 5.33(g)(5).

⁴Texas Business Organizations Code Sections 10.001, 10.006.

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National Association the Bank shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national 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 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

If the operating subsidiary is not established or acquired or the new activity commenced in an existing subsidiary within 12 months from the date of this letter, the approval automatically terminates unless the OCC grants an extension.

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.

Please include the OCC control numbers on any correspondence related to these filings. If you have any questions, contact Paula Dejmek Woods, Licensing Analyst at 312 660-8710 or Paula.DejmekWoods@occ.treas.gov.

Sincerely,

/s/

Jonathan Fink

Acting Director for District Licensing