



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

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

**Conditional Approval #976
November 2010**

October 14, 2010

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

Re: Application to establish a new national bank, Hillcrest Bank, National Association
Application Control Number: 2009-WO-01-0023

Application for Hillcrest Bank, National Association, to acquire from the Federal Deposit Insurance Corporation as Receiver, certain assets and liabilities of Hillcrest Bank
Application Control Number: 2010-WO-02-0009

Dear Mr. Kim:

The Office of the Comptroller of Currency (“OCC”) hereby grants final conditional approval to the application to establish a new national bank with the title of Hillcrest Bank, National Association (“New Hillcrest” or the “Bank”). The OCC also hereby grants conditional approval to the application by the Bank to purchase certain assets and assume certain liabilities of Hillcrest Bank, Overland Park, Kansas, (“Old Hillcrest Bank” or the “Failed Bank”) from the Federal Deposit Insurance Corporation (“FDIC”) as Receiver of the Failed Bank (the “P&A Transaction”).¹ These approvals are granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by the Bank’s representatives during the application process. These approvals are also subject to the conditions set out herein.

¹ During the application and organization process, the Bank used a provisional preliminary name, NBH National Bank, until such time as its initial acquisition of a failed institution from the FDIC. In connection with its opening and initial acquisition, the Bank changed its name.

Background

An application was made to the OCC to charter the Bank. The organizers proposed to establish the Bank 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. The primary proponents of the Bank were several individuals who, along with others, were the organizers of the Bank. The Bank would be a wholly-owned subsidiary of NBH Holdings Corp. (“NBH”), a Delaware corporation incorporated in connection with this proposal. In October 2009 NBH completed a private offering and raised a substantial amount of capital to be deployed in transactions with the FDIC and other bank investments. The OCC granted preliminary conditional approval for the charter on February 24, 2010. *See* OCC Conditional Approval Number 948 (February 24, 2010).

Old Hillcrest Bank, a Kansas state-chartered, nonmember bank, was in danger of default. Its deposits were insured by the FDIC. In contemplation that the appropriate regulatory authority would close the bank and appoint the FDIC as receiver, the FDIC sought bids from potential acquirers. The Bank was the winning bidder. The Comptroller has been asked to grant his written approval of the proposed agreement negotiated between the FDIC and the Bank by which the latter would purchase certain assets and assume the deposit liabilities of the Failed Bank. In addition, since the Bank is still in organization, the OCC also has been asked to grant final approval for the Bank to commence business in order to enter the P&A Transaction.

Discussion

A. Charter

The OCC finds that the Bank has met all requirements and completed all steps necessary to commence the business of banking, including reopening requirements connected with the preliminary conditional approval. In the initial application, the organizers provided a preliminary business plan based on the general size and type of assets of a failed institution they would seek to have the Bank acquire from the FDIC and their plans for the future business of the Bank. While in organization, the Bank kept the OCC informed of developments regarding capital raising, the identity of investors, changes in structure, and changes in proposed management of the Bank. When the Bank identified a potential failed bank it was interested in acquiring, the Bank supplied a preliminary business plan with its plans for the initial capitalization, operations, and business for that target with a focus on the first several months. The OCC reviewed all the relevant materials and permitted the Bank to submit a bid. Thus, the Bank met the steps set out in the OCC preliminary conditional approval.

The OCC is requiring 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 long-term 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 written OCC non-objection to the changes.

Accordingly, the OCC concludes the Bank is lawfully entitled to commence the business of banking under 12 U.S.C. § 27(a) and 12 C.F.R. § 5.20. The Bank is authorized to open simultaneously with the P&A Transaction. The P&A Transaction may be consummated immediately upon approval. OCC approval for the Bank to open is conditioned upon entry into the P&A Transaction.²

The Bank is reminded that several of the standard requirements enclosed in the preliminary conditional approval letter dated February 24, 2010, will continue to apply once the Bank opens and, by opening, the Bank agrees it is subject to these requirements of operation.

B. P&A Transaction

The Bank applied to the OCC for approval to purchase certain assets and assume certain liabilities of Old Hillcrest Bank in the P&A Transaction with the FDIC. National banks have long been authorized to purchase assets and assume liabilities of other depository institutions under the authority of 12 U.S.C. § 24(Seventh).³ Consequently, the Bank may acquire the assets and liabilities, including deposits, as proposed. Based on information currently available to the Bank, the Bank represents that to its knowledge it is not acquiring any assets or activities that are not permitted for national banks.⁴

In the P&A Transaction, the Bank is acquiring ten existing subsidiaries of Old Hillcrest Bank. One of the subsidiaries is a licensed insurance agency that refers bank customers to third-party insurance agencies. The other nine are subsidiaries that acquire, hold, and manage assets acquired by the bank through foreclosure. Based on information currently available to the Bank, the Bank represents that to its knowledge there are no activities conducted in the subsidiaries that

² In connection with opening for business and entry into the P&A Transaction, the Bank requested a waiver of the residency requirements of 12 U.S.C. § 72 for its board of directors. The OCC hereby grants the residency waivers.

³ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

⁴ If subsequent review shows there are nonconforming or impermissible assets or activities, the Bank represents it will conform or divest itself of any such nonconforming or impermissible assets or activities within two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.

cannot be conducted by subsidiaries of a national bank.⁵ The acquisition of these subsidiaries is permissible.

During its organization and for a moment in time upon opening, the Bank's main office is in Boston, Massachusetts. In the P&A Transaction, the Bank would acquire branches of Old Hillcrest Bank in four states in which it does not operate a branch (Kansas, Missouri, Colorado, and Texas). As such, the P&A Transaction is an interstate merger transaction subject to the Riegle-Neal Act. Generally, an application to engage in an interstate merger transaction pursuant to the Riegle-Neal Act, 12 U.S.C. § 1831u, is subject to certain requirements and conditions set forth in sections 1831u(a)(4) and (5) and 1831u(b).⁶ However, these requirements do not apply to a transaction such as this, where one of the banks involved is in default or in danger of default, and the agency may approve the application without regard to those requirements. *See* 12 U.S.C. § 1831u(e). Thus, this P&A Transaction is authorized under the Riegle Neal Act.

The Bank proposes to retain, as its main office after the P&A Transaction, the main office of Old Hillcrest Bank in Overland Park, Kansas. As the resulting bank in an interstate merger transaction under the Riegle-Neal Act, the Bank may retain, as its main office, the main office or branch of any bank involved in the transaction.⁷ The Bank's retention of the office in Overland Park as its main office is legally authorized.

⁵ The permissible activities of national bank operating subsidiaries include holding and managing assets acquired by the bank through foreclosure. *See* 12 C.F.R. § 5.34(e)(5)(v)(A). Insurance agency activities are generally permissible for national banks to engage in through either operating subsidiaries or financial subsidiaries. The Bank expects to continue the insurance agency activities of Old Hillcrest Bank's insurance agency subsidiary. After the P&A Transaction, when the Bank has full access to information about the subsidiaries, the Bank represents that it will promptly update the OCC on the Bank's expected insurance activities and any necessary licenses. The Bank also represents that with respect to all the subsidiaries, it will conform or divest any impermissible subsidiaries within two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.

⁶ These conditions are: (1) compliance with state imposed age limits, if any, subject to the Riegle-Neal Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Riegle-Neal Act; (3) compliance with nationwide and state concentration limits; (4) expanded community reinvestment analysis and compliance; (5) adequacy of capital and management skills; and (6) limits on single branch acquisitions.

⁷ The Riegle-Neal Act provides in relevant part:

(1) Continued Operations. -- A resulting bank 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.

12 U.S.C. § 1831u(d)(1) (emphasis added). The Bank will not retain its preliminary main office in Boston.

In addition to its main office in Overland Park, Old Hillcrest Bank operates one full service branch in Kansas, four full service branches in Missouri, one full service branch in Colorado, and two full service branches in Texas. It also operates a number of limited service branches, with limited services and hours, in senior housing locations in each of the four states. The Bank proposes to retain all of these branch locations after the P&A Transaction. The resulting bank in an interstate merger transaction under the Riegle-Neal Act may retain and operate as branches the main office and any branches of any bank involved in the transaction. 12 U.S.C. §§ 1831u(d)(1) and 36(d). Thus, the Bank may retain and operate, as branches, all of the branches of Old Hillcrest Bank in all four states.

Accordingly, the OCC approves the Bank's acquisition of certain assets and deposit liabilities of Old Hillcrest Bank in the P&A Transaction, the Bank's acquisition of subsidiaries, the Bank's retention of the Overland Park location as its main office, and the Bank's retention of all of the branches of Old Hillcrest Bank in Kansas, Missouri, Colorado, and Texas.

C. Bank Merger Act

The OCC reviewed the proposed P&A Transaction under the factors set forth in the Bank Merger Act ("BMA"), 12 U.S.C § 1828(c), and applicable OCC regulations and policies. The OCC considered these factors and finds them consistent with approval. In addition, the OCC finds that it must act immediately to approve the proposed P&A Transaction under the standards set forth in the BMA. Consequently, certain procedural requirements of the BMA -- publication of notice, request for competitive factors report from the Attorney General, and post-approval waiting period -- are inapplicable. 12 U.S.C. § 1828(c)(3), (4)(C), and (6).

D. Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of the community, including low-and-moderate-income neighborhoods, when evaluating certain applications, including charter applications and transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903(a)(2); 12 C.F.R. §§ 5.20(e)(2) & 25.29. The OCC considered the Bank's description of how it will meet its CRA objectives and the CRA performance evaluation of the other institution involved in the P&A Transaction. The OCC finds approval of the charter application and of the P&A Transaction are consistent with CRA.

Conditions

These approvals are subject to the following conditions:

1. The Bank shall open and commence the business of banking only if it immediately consummates the P&A Transaction. If the Bank is not able to consummate the P&A Transaction immediately, the Bank shall not open.
2. The Bank shall have received from NBH an injection of initial paid-in cash capital in conjunction with the P&A Transaction in an amount sufficient so that the Bank's Tier 1 leverage ratio is at least 10% immediately after consummation of the P&A Transaction, without including any bargain purchase gain. If such cash capital is not provided, the Bank shall not consummate the P&A Transaction.
3. 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 three (3) business days after receiving this final OCC approval, commencing business, and consummating the P&A Transaction.

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

Please notify the OCC that the Bank has opened. The OCC will forward you a Charter Certificate under separate cover.

Please refer to the Business Combinations booklet of the *Comptroller's Licensing Manual* for steps to complete the P&A Transaction. Within seven days of consummation of the P&A Transaction, please provide the OCC with copies of the following documents:

- Executed purchase and assumption agreement.
- Documentation that all other conditions the OCC imposed have been met.

Conclusion

These conditional approvals are granted based on our understanding that other applicable regulatory approvals, non-objections, or waivers with respect to the Bank, NBH, any other

relevant parties, and the proposed P&A Transaction will have been received prior to the Bank's opening for business and consummating the P&A Transaction.

The final approval for the Bank to commence business under 12 U.S.C. § 27(a) is limited to opening in conjunction with the P&A Transaction. This approval is void unless the P&A Transaction occurs as projected.

These conditional 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. Our approvals are based on the representations made in the applications, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind these conditional approvals 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 about the supervision of your Bank, please contact Assistant Deputy Comptroller George Orsino at 215-357-4752. For questions about this decision letter or other licensing matters, please contact Senior Licensing Analyst David Reilly at 202-874-5060. You should include the application control numbers on any correspondence related to this filing.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller, Licensing