



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #472
July 2001

June 5, 2001

Mr. Earl L. Wright
Asset Management Group
6200 S. Syracuse Way, Suite 100
Englewood, Colorado 80111

Re: Application to charter a national trust bank with the title of AMG/Guaranty Trust,
National Association, Englewood, Colorado
Application Control Number: 2000 WE 01 0022

Dear Mr. Wright:

The Comptroller of the Currency (“OCC”) has reviewed your application to establish a new national trust bank with the title of AMG/Guaranty Trust, National Association (“Bank”). After a thorough evaluation of all data available to the OCC, we have found that your proposal meets the requirements for preliminary conditional approval.

This preliminary conditional approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by the proposed Bank’s representatives. In particular, we note the representations that the proposed national bank will apply for membership in the Federal Reserve System and will not be FDIC-insured. You also represented that Asset Management Group (AMG) will liquidate its limited partnership interest in an equipment lease prior to merging the assets of AMG into the Bank.

The operating plan will provide the context for the supervisory review at the pre-opening examination. Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary approval should any interim development be deemed by the OCC to warrant such action.

This preliminary conditional 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 U.S., any agency or entity of the U.S., or an

officer or employee of the U.S., 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 U.S.

The bank's initial paid-in capital net of organizational and preopening expenses, shall be no less than \$3.3 million. The manner in which capital is raised must not deviate from that described in the operating plan without prior OCC notification. If the capital for the new bank is not raised within 12 months or if the new bank is not opened for business within 18 months from the preliminary conditional approval date, preliminary conditional approval will terminate. The OCC is opposed to granting extensions, except under the most extenuating circumstances and when the OCC determines that the delay is beyond the applicant's control. It is expected that the organizers will proceed, as presented in the application, to take the steps necessary for the bank to open for business as soon as possible.

The charter approval is subject to the following conditions:

1. The limitations of the Bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of national trust bank as specified in the Competitive Equality Banking Act of 1987; and 2) the Bank must obtain the OCC's non-objection in writing before amending its Articles of Association to expand the scope of its activities and services.
2. At all times, the Bank shall maintain a minimum of \$2 million in Tier 1 capital, and also shall maintain at all times capital that meets or exceeds the levels required under 12 C.F.R. § 3 for an adequately capitalized bank.
3. The Bank shall obtain the OCC's non-objection before any significant deviation or change from the proposed operating plan occurs during the Bank's first three years of operation. The Bank must notify the OCC's Denver Field Office at least sixty (60) days prior to any proposed significant deviation or change, and obtain the OCC's non-objection in writing to such a proposed deviation or change.
4. Prior to opening the Bank, the Bank and AMG/Guaranty Corp. must enter into a written binding agreement setting forth AMG/Guaranty Corp.'s obligations to provide capital maintenance and liquidity support to the Bank, if and when necessary. The terms and provisions of this capital and liquidity maintenance agreement and any amendments thereto must be acceptable to the Bank and not objected by the OCC, and shall include a provision for collateral to support those obligations, if required by the OCC. The agreement may

not be modified or terminated without prior notice to, and non-objection provided in writing by the OCC.

5. All transactions between the Bank and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. § 371c, and c-1, or other applicable Federal law. The Board of Directors of the Bank annually shall review and approve the service agreements, and any other transactions with foreign and domestic affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.

Prior to activating a transactional Internet function the Bank must satisfy the following requirements:

6. The Bank must submit to the OCC for review and approval a complete description of the Bank's final information and operations architecture as well as the information system risk assessment and management plan. This plan should include a schematic drawing and discussion of the following items:

Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

7. The Bank must have performed an independent security review and test of its electronic banking platform. The Bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the Bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirement listed herein. The review must be conducted by an objective, qualified independent source (Reviewer). The scope should cover all access points, including the Internet, Intranet, or remote access. It should cover adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms electronic access. By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, see "The Internet and the National Bank Charter" booklet (enclosed) of the *Comptroller's Corporate Manual*, pages 37-38, 74-75.
8. The Bank must have a security program in place that complies with the minimum security guidelines specified in 12 C.F.R. § 40 (effective July 1, 2001).
9. The Bank must notify all potential technology-related vendors in writing of the OCC's

examination and regulatory authority under 12 U.S.C. § 1867(c).¹ All final technology-related vendor contracts must stipulate that the performance of services provided by the vendors to the Bank is subject to the OCC's examination and regulatory authority.

Please be advised that the above-listed conditions of this approval are deemed to be conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818(b)(1). The conditions are enforceable under 12 U.S.C. § 1818 as specifically applied to uninsured national banking associations under § 1818(b)(5).

Please refer to the "Corporate Organization" booklet (enclosed) in the *Comptroller's Corporate Manual* for the instructions on organizing your bank. The booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the Bank as soon as you adopt and forward acceptable Articles of Association and the Organization Certificate to the Western District Office. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC.

The trust officers and staff should become thoroughly familiar with "Fiduciary Powers of National Banks and Collective Investment Funds" at 12 C.F.R. § 9 and 12 C.F.R. § 5.26. In addition, management is reminded that the Bank must comply with the applicable requirements of Title II of the Gramm-Leach-Bliley Act of 1999 regarding its fiduciary activities.

We require that, prior to opening, the Bank engage an independent, external auditor to perform an audit according to generally accepted auditing standards of sufficient scope to enable the auditor to render an opinion on the financial statements of the trust company (or the trust company consolidated with its parent), taken as a whole. The audit period shall commence on the date that the organizing group forms the body corporate and may end on any calendar quarter-end no later than 12 months after the trust company opens. We expect that such audits will be performed on an annual basis for at least three years following commencement of operations. Engagement of an auditor will be verified during the preopening examination. (See the "Corporate Organization" booklet.)

The Bank will also need to have an annual independent fiduciary audit as required in 12 C.F.R. § 9. Engagement of an auditor will be verified during the preopening examination.

¹ The OCC has the authority to assess the Bank for the cost of examining a service provider. See 12 C.F.R. § 8.6.

Mr. Earl L. Wright
Asset Management Group
2000-WE-01-0022
Page 5

The application indicates that the Bank will perform core fiduciary activities only from its Colorado office. Management is reminded that 12 C.F.R. § 5.26 requires a national bank which already has approval to engage in fiduciary activities to provide written notice to the OCC when commencing fiduciary activities in a new state.

The OCC has no objection to the following persons serving as executive officers and/or as directors as proposed in the application. Additional executive officers and directors selected prior to opening are subject to the prior review and clearance of the OCC. Also, the OCC requires prior approval of additions or changes in executive officers and directors for two years after the trust company opens for business.

| | |
|----------------------|------------------|
| CEO/Director | Earl Wright |
| Director | Michael Bergmann |
| Director | David Boyles |
| Director | Charles Howard |
| Director | Ronald Moore |
| Senior Trust Officer | Diane Reeder |

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances and selected other publications.

Please direct any questions concerning this preliminary conditional approval to Licensing Manager Jim Bundy in the Western District Office at (415) 545-5921, or to me at (202) 874-5060.

Sincerely,

-signed-

Maria G. Arevalo
NBE/Senior Licensing Analyst
Licensing Operations

Enclosures:

- Internet and the National Bank Charter Booklet
- Corporate Organization Booklet
- Minimum Policies and Procedures
- Standard Requirements