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Comptroller of the Currency  
Administrator of National Banks

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Northeastern District  
1114 Avenue of the Americas, Suite 3900  
New York, New York 10036

August 1, 2001

**Corporate Decision #2001-23  
September 2001**

Leonard J. Rubin, Esq.  
Powell, Goldstein, Frazer & Murphy LLP  
191 Peachtree Street, N.E.  
Sixteenth Floor  
Atlanta, Georgia 30303

Re: Maryland Bank & Trust Company, National Association.  
Lexington Park, Maryland  
Expedited Reorganization  
CAIS Control Number 2001-NE-12-0161

Dear Mr. Rubin:

This is to inform you that the Office of the Comptroller of the Currency (“OCC”) approved the application of Maryland Bank & Trust Company, National Association (“Bank”) to undertake a reorganization pursuant to Section 1204 of the American Home Ownership and Economic Opportunity Act of 2000 and 12 C.F.R. § 7.2000(a).

I. Discussion

**A. American Home Ownership and Economic Opportunity Act of 2000**

On December 21, 2000, Congress passed the American Homeownership and Economic Opportunity Act of 2000 (“AHEOA”).<sup>1</sup> Section 1204 of this act provides a streamlined process for national banks to effect holding company reorganizations through an exchange of the banks’ stock for cash or securities of a bank holding company.<sup>2</sup>

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<sup>1</sup> 114 Stat. 2944, Pub. L. 106-569, 106<sup>th</sup> Cong. (2000). This section is codified as Section 5 of the National Bank Consolidation and Merger Act, 12 U.S.C. § 215a-2.

<sup>2</sup> 12 U.S.C. § 215a-2(a).

Section 1204 permits a national bank, with a vote of the shareholders of at least two-thirds of its shares, to reorganize to become a subsidiary of a bank holding company. The bank also must obtain OCC approval and observe OCC rules and regulations.

Section 1204 provides a detailed description of procedures a national bank must follow to effect a reorganization through a share exchange. The national bank must carry out its reorganization in accordance with a reorganization plan that specifies the manner in which the reorganization shall be carried out. The plan must specify the consideration to be paid for shares of bank stock, the date for fixing the right of shareholders to participate in the exchange, and the manner in which the bank will carry out the exchange. A majority of the entire board of directors of the national bank must approve the plan. Also, shareholders must approve the plan at a meeting following the procedures prescribed for a merger of a national bank under section 3 of the National Bank Consolidation and Merger Act.<sup>3</sup>

Shareholders who vote against the reorganization or have given written notice of dissent are entitled to receive dissenters' rights provided under section 215a.<sup>4</sup> That provision gives dissenting shareholders the right to receive fair value for their shares and to have the value determined by an appraisal committee, or if none is appointed, the Comptroller of the Currency.

## **B. OCC Regulations**

National banks may conduct reorganizations under section 1204 pursuant to existing OCC rules and regulations. Section 1204 does not require the OCC to adopt regulations before banks may conduct share exchanges under its provisions. The plain language of section 1204 provides for reorganizations with the Comptroller's approval "pursuant to rules and regulations promulgated by the Comptroller" rather than "pursuant to rules and regulations promulgated by the Comptroller under this section."

Further support for this reading is provided by the effective date chosen by Congress for section 1204. Section 1204 was effective on its enactment, reflecting congressional intent that banks be able to conduct transactions authorized under section 1204 immediately. Accordingly, section 1204 does not require that the OCC adopt regulations implementing its provisions before banks may conduct reorganizations. Banks must comply, however, with OCC regulations in effect at the time of the transactions, including regulations promulgated in the future under section 1204.

Twelve 12 C.F.R. § 7.2000 is a regulation that applies to reorganizations. Section 7.2000(a) provides that a national bank proposing to engage in a corporate governance procedure "shall comply with applicable Federal banking statutes and regulations, and safe and sound banking practices." Section 1204 provides a highly detailed set of requirements for a national bank to

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<sup>3</sup> 12 U.S.C. § 215a-2(b). Section 3, codified at 12 U.S.C. § 215a, addresses shareholder approval, shareholder notice, and dissenters' rights.

<sup>4</sup> 12 U.S.C. § 215a-2(c). Section 1204(d) provides that the corporate existence of a national bank that reorganizes pursuant to section 1204 is unaffected by reason of the reorganization. Section 1204(e) provides that section 1204 does not affect in any way the applicability of the Bank Holding Company Act of 1956 to a reorganization. See 12 U.S.C. § 215a-2(d) and (e).

observe in effecting a reorganization. A national bank that effects a share exchange under section 1204 also must comply with those requirements and safe and sound banking practices.<sup>5</sup>

### **C. The Bank's Plan**

We have reviewed the Bank's plan of reorganization and find that it complies with the requirements of section 1204 and section 7.2000(a):

The Bank's reorganization plan appropriately specifies the manner in which the reorganization will be carried out;

A majority of the entire Board of Directors of the Bank has approved the plan of reorganization;

The reorganization plan specifies (A) the amount of cash or securities of the bank holding company, or other consideration, to be paid to the bank's shareholders in exchange for their shares of stock of the Bank; (B) the date as of which the rights of each shareholder to participate in the exchange will be determined; and (C) the manner in which the exchange will be carried out; and

The Bank is submitting its reorganization to its shareholders at a meeting to be held at the call of the directors in accordance with the procedures prescribed in connection with a merger of a national bank under section 215a. The Bank is soliciting a vote in favor of the reorganization plan by shareholders owning at least two-thirds of the Bank's outstanding shares.

Should the Bank's shareholders approve the reorganization plan, any Bank shareholder who has voted against the plan at the shareholders meeting or who has given notice in writing at or prior to that meeting that the shareholder dissents from the plan, shall be entitled to receive the value of his or her shares as provided for in section 215a.

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<sup>5</sup> Prior to the enactment of section 1204, the OCC permitted national banks to effect reorganizations through share exchanges under authority of section 7.2000(b). That provision permits a national bank to adopt the corporate governance procedures of the state in which it is headquartered, Delaware law, or the Model Business Corporation Act to the extent they are not inconsistent with federal banking law or safety and soundness. *See* Interpretive Letter No. 891, *reprinted in* [Current Binder] Fed. Banking L. Rep. (CCH) ¶ 81-410 (Apr. 26, 2000), Interpretive Letter No. 879, *reprinted in* [1999-2000] Fed. Banking L. Rep. (CCH) ¶ 81-372 (Nov. 19, 1999), Interpretive Letter No. 870, *reprinted in* [1999-2000] Fed. Banking L. Rep. (CCH) ¶ 81-364 (Oct. 12, 1999), and Interpretive Letter No. 869, *reprinted in* [1999-2000] Fed. Banking L. Rep. (CCH) ¶ 81-363 (Oct. 12, 1999). Now that section 1204 provides a federal framework for effecting share exchanges, a national bank may not rely on section 7.2000(b) to effect a share exchange.

## II. Conclusion

The Bank's reorganization plan meets the requirements of section 1204 and section 7.2000(a). Accordingly, the OCC approves this application. We will certify the reorganization upon receipt of the final executed Agreement and Plan of Reorganization, final shareholder approval and notification of the effective date of the transaction.

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application(s) and by the bank's representatives. 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 an 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. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States

Please include the CAIS control number on all correspondence related to this filing.

If you have any questions concerning this decision, please contact Senior Licensing Analyst Sandya Reddy at (212) 790-4055.

Sincerely,

**-signed-**

Anthony DosSantos  
Licensing Manager