



Comptroller of the Currency
Administrator of National Banks

Central District Office
One Financial Place, Suite 2700
440 South LaSalle Street
Chicago, Illinois 60605

Conditional Approval #566
January 2003

December 23, 2002

James L. Thrash, Senior Vice President
First Merchants Bank, National Association
Post Office Box 792
Muncie, Indiana 47308-0792

Subject: Trust Bank Charter (OCC Control # 02-CE-01-006)

Dear Mr. Thrash:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national trust bank, which will engage solely in fiduciary activities, with the title of Merchants Trust Company, National Association ("Bank"). On December 23, 2002, after a thorough evaluation of all data available to the OCC, we found that your proposal met the requirements for preliminary conditional approval.

This preliminary conditional approval is granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the application and by the bank's representatives. We also made our decision to grant preliminary conditional approval with the understanding that the proposed national bank will apply for membership in the Federal Reserve System and will not be FDIC-insured.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until all preopening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary conditional approval should the OCC deem any interim development to warrant such action.

This preliminary conditional approval is subject to the following condition(s):

1. The Bank: (i) shall give the Champaign Field Office at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from its business plan or operations and (ii) shall obtain the OCC's written determination of no objection before

the Bank engages in any significant deviation or change from its business plan or operations.

2. The OCC has granted an exemption to the condition for a new national bank to engage an independent external auditor for the first three years of operation. This exemption is subject to the following conditions: a) the Bank remains a subsidiary of First Merchants Corporation, a bank holding company, and the Bank's financial statements are included in the audited financial statements of the parent; and b) adequate audit coverage is maintained at the Bank level. If any of these conditions are not met with the first three years of operation, the exemption may be withdrawn at the OCC's discretion.
3. The Bank's initial Tier 1 capital, net of all organizational and preopening expenses, shall be no less than \$2 million. The Bank shall maintain a minimum of \$2 million in Tier 1 capital at all times. If the Bank fails to maintain Tier 1 capital in the amount of \$2 million, the Bank shall be deemed "undercapitalized," for purposes of 12 USC 1831o and 12 CFR 6, and the OCC shall have the authority to take any action authorized under all provisions of 12 USC 1831o and 12 CFR 6 applicable to an undercapitalized national bank. For purposes of 12 USC 1831o(e)(5), an action "necessary to carry out the purpose of this section" shall include restoration of the Bank's capital so that it is not "undercapitalized," and any other action deemed advisable by the OCC to address the Bank's capital deficiency or the safety and soundness of its operations.

These conditions of approval are conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

This preliminary conditional approval is also granted based, in part, upon your representation that the trust business from the subsidiary banks will be transferred as a dividend-in-kind at fair value to the parent company prior to its contribution to the new trust company. It is understood that this fair value determination must be made prior to the trust company opening for business and must be satisfactory to this office.

The OCC is currently reviewing its capital and liquidity policy with respect to national trust banks. Should there be a change in our policy as a result of the review, we will advise you accordingly. In addition, if the Bank's future assets under management increase significantly, or if the Bank assumes additional risk, the OCC may conclude that increased capital is required.

Final approval will not be granted until and unless the Federal Reserve Board acts favorably on your application to acquire the Bank. You must furnish the OCC's Central District Office (Attn: Licensing) with a copy of all related filings to the Federal Reserve, including registration material.

The OCC poses no objection to Stefan S. Anderson, Roger M. Arwood, Michael L. Cox, Jon H. Moll, or James L. Thrash serving as directors as proposed in the application.

The OCC poses no objection to the following persons serving as executive officers as proposed in the application:

| <u>Name</u> | <u>Title</u> |
|-----------------------|---|
| James L. Thrash | President and CEO |
| Lawrence A. Anthrop | Senior Vice President – Manager, Lafayette Trust Office |
| Mark A. Collison | Senior Vice President – Investments |
| Karen T. Akin | Vice President – Trust Marketing / New Business |
| William J. Bittermann | Vice President – Senior Employee Benefits Officer |
| David L. Forbes | Vice President – Senior Personal Trust Officer |
| Sharon L. Powell | Vice President – Manager Trust Accounting |

Prior to the Bank’s opening, the Bank must obtain the OCC’s prior written determination of no objection for any additional organizers or executive officers, or directors appointed or elected before the person assumes the position. For a two-year period after the Bank commences business, the Bank must file and the OCC issue a letter of no objection to any new executive officer or director prior to that person assuming such position.

The “Corporate Organization” booklet in the *Comptroller’s Licensing Manual* provides guidance for organizing your bank. The booklet may be found at the Publications section of the OCC's web site: www.occ.treas.gov. 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 and begin organizing the Bank as soon as you adopt and forward acceptable Articles of Association and the Organization Certificate to this office. As a “body corporate” or legal entity, you may begin taking those steps necessary for obtaining final approval. The Bank may not engage in fiduciary activities until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new bank charters. The Bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

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

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 United States (U.S.), any agency or entity of the U.S., or any 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.

You should direct any questions concerning this preliminary conditional approval to Daniel J. Walters at (312) 360-8872.

Sincerely,

-signed-

David J. Rogers
National Bank Examiner

Enclosures: Minimum Policies and Procedures
Standard Requirements