



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Conditional Approval #662
November 2004**

October 28, 2004

Mr. Joel D. Feinberg, Esq.
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: Application to Merge Dillard National Bank into Dillard Investment Co. Inc.
Application Control Number: 2004-WE-12-0297

Application by Dillard National Bank for a Change in the Composition of Assets
Application Control Number: 2004-WE-12-0348

Dear Mr. Feinberg:

This is to inform you that, as of the date of this letter, the Office of the Comptroller of the Currency (OCC) approved the application by the Dillard National Bank, (DNB) Gilbert, Arizona, (Charter Number 18777) to merge into its nonbank affiliate, Dillard Investment Co. Inc. (DIC), under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). The OCC also approved the sale of all the deposit liabilities and substantially all the assets of Dillard National Bank to GE Capital Consumer Card Co., FSB under 12 C.F.R. § 5.53.

Background

On August 27, 2004,) DNB applied to the OCC for approval for a fundamental change in its asset composition under 12 C.F.R. § 5.53. The fundamental change in DNB's asset composition will occur as a result of DNB's agreement to sell all of its deposit liabilities and substantially all of its assets to GE Capital Consumer Card Co., Mason, Ohio, an insured federal savings bank, in a purchase and assumption transaction (the Transaction). It is planned that immediately after the Transaction, the insured status of DNB will be terminated under 12 U.S.C. § 1818(q).

On August 27, 2004, DNB also applied to the OCC for approval for DNB to merge into Dillard Investment Co. Inc. (the Merger), after the consummation of the Transaction and the termination of DNB's status as an insured bank. DIC is the immediate parent, and the sole

shareholder, of DNB. It is not a bank, and so it is a nonbank affiliate of DNB. DIC is organized as a Delaware corporation. Its principal place of business is in Little Rock, Arkansas. DNB plans to consummate the Merger immediately after the consummation of the Transaction and the termination of DNB's status as an insured bank. DNB hopes to consummate the Merger on the same day as the Transaction, but in any event it will complete the Merger as soon as possible thereafter. As a result of the Merger, DNB's separate existence as a national bank will end, and its charter will terminate.

Discussion

A. The Fundamental Change in Asset Composition

DNB applied to the OCC for prior approval of a fundamental change in its asset composition under 12 C.F.R. § 5.53. The OCC recently issued 12 C.F.R. § 5.53, and it became effective on October 1, 2004. *See* 69 Fed. Reg. 50293 (August 16, 2004). Under section 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 Transaction, DNB will sell all its deposits and substantially all of its assets. Thus, it is clearly within the scope of section 5.53(c)(1)(i). The principal purpose of adopting 12 C.F.R. § 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. DNB plans to merge into its nonbank affiliate parent immediately after the Transaction that would make DNB a "dormant" charter. Thus, OCC concerns over the continuation of "dormant" charters are addressed, and so OCC approval of DNB's application is consistent with the language and purpose of section 5.53.

B. The Merger

In the Merger, DNB will be merged into DIC, a Delaware corporation. After the Merger, DIC will be the surviving entity, and the bank will cease to exist. The Merger is authorized under 12 U.S.C. § 215a-3.

Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: "Upon the approval of the OCC, a national bank may merge with one or more of its nonbank subsidiaries or affiliates." 12 U.S.C. § 215a-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). 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 affiliate is within its scope. The OCC's implementing regulation, discussed below, expressly provides for mergers

into a nonbank affiliate. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank.

The OCC recently adopted regulations implementing 12 U.S.C. § 215a-3. *See* 68 Fed. Reg. 70122, 70129-30 (December 17, 2003) (to be codified at 12 C.F.R. § 5.33(g)(4)&(5) (effective January 16, 2004). The regulations set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which the nonbank affiliate is the resulting entity. The regulation requires that the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. The regulation also imposes the following additional requirements that: (1) the bank comply with the procedures of 12 U.S.C. § 214a as if it were merging into a state bank, (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization, and (3) shareholders of the national bank who dissent from the merger have the dissenters' rights set out in 12 U.S.C. § 214a. *See id.* (12 C.F.R. § 5.33(g)(5)(ii)-(v)). The 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. *See id.* (12 C.F.R. § 5.33(g)(5)(i)).

The proposed Merger is covered by, and meets the requirements of, 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). First, as discussed above, DNB's status as an insured bank will be terminated after the Transaction, so that at the time of the Merger, DNB will not be an insured bank. DIC is a nonbank affiliate since it is not a bank and it is the sole shareholder of DNB. *See* 12 C.F.R. § 5.33(d)(5) & 5.33(d)(8) (definitions of control and nonbank affiliate). DNB and DIC are located in different states. However, there are no geographic limits on the authority to merge with a nonbank affiliate under section 215a-3.

Second, the law under which DIC is organized allows it to merge with DNB. DIC is a Delaware corporation. Delaware permits its domestic corporations to merge with corporations organized under the law of another jurisdiction, with the Delaware corporation as the survivor. Del. Code Ann. tit. 8, § 252(a).

Third, DNB has complied with the procedures of 12 U.S.C. § 214a to the extent applicable. Section 214a requires approval of the plan of merger by a majority of the board, notice to shareholders of the shareholders' meeting to vote on the merger by newspaper publication (unless waived by all shareholders) and by actual notice by mail (unless waived specifically by any shareholder), and approval by a vote of at least two-thirds of each class of stock. The application contains certified copies of the board of directors resolution approving the merger and the shareholder resolution approving the merger and waiving notice of the shareholder meeting by publication and by mail.

Fourth, DIC has complied with the procedures for mergers by Delaware corporations. Delaware requires procedural steps similar to section 214a's outlined above. The application contains certified copies of the board of director resolution approving the merger and the shareholder resolution approving the merger and waiving notice of the shareholder meeting by publication and by mail.

Fifth, because DNB is wholly-owned by DIC, there will be no dissenting shareholders, and so no issues relating to dissenters' rights are present.

Sixth, under the OCC's regulations, in reviewing mergers under section 215a-3, the OCC considers 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 the merger if it would have a negative effect in any such respect. The OCC reviewed the Merger with respect to these factors and determined approval of the Merger is warranted.

Conclusion

Accordingly, the OCC approved DNB's application for a fundamental change in asset composition under 12 C.F.R. § 5.53 and its application to merge into DIC under 12 U.S.C. § 215a-3. These approvals are granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and those of DNB's representatives. In particular, the approvals are based on DNB's representation that the Merger will occur shortly after the Transaction and the termination of DNB's status as an insured bank.

These approvals are subject to the following condition:

If the Merger does not occur within five (5) days after the Transaction, DNB shall immediately notify the OCC and submit a plan to wind up its affairs and terminate its status as a national bank.

This condition of approval is a "condition 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. As such, the condition is enforceable under 12 U.S.C. § 1818.

The OCC must be advised in writing in advance of the desired effective date for the Merger so that the OCC may issue the certification letter for the Merger. The OCC will issue a letter certifying consummation of the Merger when we receive the following:

1. Written assurance from the Federal Deposit Insurance Corporation that Dillard National Bank is no longer insured.

2. DNB's bank charter and any OCC documents in the possession of DNB.
3. A copy of the final Certificate of Merger filed with the Delaware Secretary of State.

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. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence and documents concerning this transaction should be directed to the undersigned at (202) 874-5060.

Very truly yours,

signed

Crystal Maddox
National Bank Examiner