



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

Washington, D.C. 20219

September 10, 2004

**Corporate Decision #2004-16
October 2004**

Mr. Doug Adamson, Jr.
President & CEO
First National Bank in Durant
P.O. Box 309
Durant, Oklahoma 74702

Re: Application by First National Bank in Durant, Durant, Oklahoma, to establish a limited partnership as an operating subsidiary with a wholly owned LLC as the limited partner and a wholly owned corporation as the general partner.
Application Control Number: 2004-SO-08-0017

Dear Mr. Adamson:

This is in response to the operating subsidiary application by First National Bank in Durant, Durant, Oklahoma (“Bank”), to the Office of the Comptroller of the Currency (“OCC”) for approval to retain three operating subsidiaries pursuant to 12 C.F.R. § 5.34(e)(5).¹

Proposed Structure and Activities

The first two subsidiaries of the Bank are a corporation, Durant Asset Management, Inc. (“INC”), and a limited liability company, Texoma Holdings, LLC (“LLC”). Both INC and LLC are chartered under the laws of the State of Nevada and are each directly and wholly owned by the Bank. In turn, LLC and INC will hold all rights to a second-tier subsidiary, Bryan Asset Holdings, LP (“LP”) (collectively, “Subsidiaries”), a limited partnership certified under Nevada law. LLC’s sole activity is to hold a 99% limited partnership interest in LP. INC’s sole activity is to hold the remaining 1% general partnership interest in LP. You have informed the OCC that LP will hold participation interests in loans originated by banks in Texas and purchased by the Bank.

¹ This application originally was filed as an after the fact notice pursuant to 12 C.F.R. § 5.34(e)(5)(iv). Because the OCC has determined that the application raises a novel legal issue because of the use of a limited partnership as an operating subsidiary, the OCC has decided to consider this notice as an application requiring an affirmative OCC action for approval. 12 C.F.R. § 5.34(e)(5)(i), (v).

Analysis and Conclusion

The activities of the proposed Subsidiaries are clearly permissible. National banks may purchase loans and participation interests in loans or pools of loans under 12 U.S.C. § 24 (Seventh) (general ability of national banks to make loans). Therefore, the Subsidiaries' activities and purpose clearly qualify them as operating subsidiaries of the Bank.

Under the OCC's regulations, an operating subsidiary in which a national bank may invest includes a corporation, limited liability company, or similar entity "if the parent bank owns more than 50 percent of the voting (or similar type of controlling) interest of the operating subsidiary; or the parent bank otherwise controls the operating subsidiary and no other party controls more than 50 percent of the voting (or similar type of controlling) interest in the operating subsidiary."² The ownership structure of INC and LLC is consistent with operating subsidiary status under the OCC's regulation. INC and LLC are respectively a corporation and a limited liability company and Bank will hold a 100% interest in both of them. Clearly, INC and LLC meet the requirements in the OCC's regulations for qualifying subsidiaries in which Bank may permissibly invest.

The Bank's proposal contemplates the conduct of permissible national bank activities through an operating subsidiary organized as a limited partnership. As reflected in the partnership agreement, the proposed structure satisfies the basic conditions required by the OCC for a national bank to hold an operating subsidiary - i.e., bank control over the entity and limitation or insulation of the bank's liability for the entity's activities.³ As explained below, the OCC has permitted banks to structure their business in a number of different ways provided these criteria are met.

The OCC previously has permitted a national bank to hold a non-controlling interest in a limited liability company where the bank held a majority of the economic interest in that company.⁴ The OCC also has allowed bank operating subsidiaries to act as general partners and limited partners for limited partnerships.⁵ Combining these precedents results in the ownership structure proposed by Bank for its investment in LP. Bank would exercise, indirectly through INC and LLC, all economic and management control over the activities of LP. This structure will cause LP to meet the criteria for control for purposes of the regulations defining qualifying subsidiaries.⁶ The use of the LLC and INC as intermediate corporate entities between the Bank

² 12 C.F.R. § 5.34(e)(2)

³ The OCC also notes, given the nature of the bank's ownership and control over the LP, that accounting for the LP should be done on a consolidated basis.

⁴ March 9, 2000 Letter from Julie L. Williams to Patrick S. Antrim, Bank of America Corporation, permitted Bank of America, N.A. to make a non-controlling investment in a limited liability company constituting a majority of the equity of the LLC.

⁵ OCC Corporate Decision No. 2000-07 (May 10, 2000) (a national bank operating subsidiary can be a general partner in a limited partnership); OCC Conditional Approval No. 243 (May 9, 1997) (a national bank subsidiary can be a general partner in a partnership and can hold a non-controlling interest in a different partnership as a limited partner).

⁶ 12 C.F.R. § 5.34(e)(2)

and the LP also provide the same degree of protection for the Bank as in other cases where an intermediate operating subsidiary is used to limit the liability of its parent national bank.⁷

Based upon a thorough review of the information and representations contained in your letters, and for the reasons previously stated, we believe the Bank is legally authorized to establish INC, LLC, and LP as operating subsidiaries under 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34 subject to OCC examination, supervision, and regulation. This determination is based upon the representations made with respect to the proposed Subsidiaries and the understanding that the Subsidiaries will be operated within the constraints of all national banking laws, rulings and regulations. Any material difference or deviation from the facts as described above could result in a different conclusion.

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.

Sincerely,

/s/ Lawrence E. Beard

Lawrence E. Beard
Deputy Comptroller for Licensing

⁷ Because INC is the only general partner of LP, liability will be limited by restricting managerial control over LP to a wholly-owned subsidiary of the Bank.