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

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Washington, D.C. 20219

**Corporate Decision #2004-8  
May 2004**

March 15, 2004

Gary A. Lax, Esq.  
Luse Gorman Pomerenk & Schick, P.C.  
5335 Wisconsin Avenue, N.W., Suite 400  
Washington, D.C. 20015-2035

Re: Application to Merge First National Bank of Sumner into RH Financial Corporation  
Application Control Number: 2004-CE-12-0012

Dear Mr. Lax:

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 First National Bank of Sumner to merge into its nonbank affiliate, RH Financial Corporation, under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5), subject to the requirements set out below.

**Background**

On January 14, 2004, the First National Bank of Sumner, Olney, Illinois, (Charter Number 6907) (“FNB Sumner”) applied to the OCC for approval to merge into RH Financial Corporation, Olney, Illinois, (“RH Financial”) a nonbank affiliate, under 12 U.S.C. § 215a-3 (the “Merger”), with RH Financial as the surviving entity. As a result of the Merger, FNB Sumner will cease to exist as a national bank.

FNB Sumner has been in liquidation under 12 U.S.C. § 181 since June 2003. It has already sold most of its loans and other assets, and it transferred all of its deposits to another insured bank. Its remaining assets consist of cash, cash equivalents, and a small loan portfolio. Since November 2002, it is no longer insured by the Federal Deposit Insurance Corporation. RH Financial is a Maryland corporation, with its principal place of business in Olney, Illinois. It is a shell corporation, formed for the sole purpose of being the receiving entity in the Merger. The directors of RH Financial are the same as the directors of the bank. In the Merger, shareholders of FNB Sumner will receive shares in RH Financial in exchange for their shares in the bank. RH Financial will continue in business to work down its loan portfolio. It will also assume any liabilities of FNB Sumner, including contingent liabilities.

## Discussion

Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”<sup>1</sup> 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 limits mergers of national banks into their nonbank affiliates to national banks that are not insured banks under the Federal Deposit Insurance Act.

The OCC recently adopted regulations implementing 12 U.S.C. § 215a-3. 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. In particular, the regulation provides:

With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, 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 the merger if it would have a negative effect in any such respect.

68 Fed. Reg. 70122, 70130 (December 17, 2003) (to be codified at 12 C.F.R. § 5.33(g)(5)(i) (effective January 16, 2004)). The regulation imposes 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 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, FNB Sumner is not an insured bank, and RH Financial is a nonbank affiliate. FNB Sumner’s status as an insured bank ended in November 2002 after all

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<sup>1</sup> 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). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See S. Rep. No. 106-11, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess. 8 (1999).*

its deposits were assumed by another insured bank. RH Financial is not a bank. It is an affiliate of FNB Sumner because its board of directors is the same as the board of the bank. *See* 12 C.F.R. § 5.33(d)(5) & 5.33(d)(8) (definitions of control and nonbank affiliate).

Second, the law under which RH Financial is organized allows it to merge with FNB Sumner. RH Financial is a Maryland corporation. Maryland permits its domestic corporations to merge with a foreign corporation, with the Maryland corporation as the survivor. Md. Code Ann. [Corp. & Ass'ns] § 3-102(a)(2). The term "foreign corporation" means "a corporation organized under the laws of the United States, another state of the United States, or a territory, possession, or district of the United States, or under the laws of a foreign country." Md. Code Ann. [Corp. & Ass'ns] § 3-101(b). This definition appears to include national banking associations for Maryland merger purposes.

Third, FNB Sumner has complied with the procedures of 12 U.S.C. § 214a to the extent applicable. FNB Sumner's board of directors and shareholders have voted in favor of the Merger by at least the required margins.

Fourth, RH Financial represents that it will comply with the procedures for mergers by Maryland corporations. The application contains a copy of a resolution of the board of directors of RH Financial approving the Merger. RH Financial and the bank represent it will comply with Maryland state filing requirements for the merger, and the application contains a draft of the Articles of Merger that will be filed with the Secretary of State of Maryland.

Fifth, FNB Sumner has provided for dissenters' rights. Under 12 C.F.R. § 5.33(g)(5)(iv)(A), shareholders of FNB Sumner who dissent from the Merger have dissenters' rights as specified in 12 U.S.C. § 214a for a merger into a state bank. The Proxy Statement and Agreement and Plan of Merger sent to FNB Sumner shareholders provide and describe these dissenters' rights.

Finally, 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. In this regard, it should be noted that the bank has already disposed of most of its business and has been in liquidation since June 2003. This reorganization serves to expedite that process in an orderly and efficient manner. The customers of the bank are the remaining loan customers. There are no known actual creditors remaining, and only two contingent claims (an indemnification obligation in a contract for the sale of some of the bank's assets and a lawsuit in which the bank is a defendant). These parties will continue to be served by RH Financial Corporation which assumes all liabilities and assets upon consummation of the Merger. Further, we have included two preconsummation requirements to limit any potential adverse effects on these parties.

RH Financial Corporation represented that it will continue to maintain the books and records of FNB Sumner for a period of five years after the consummation of the merger and that if RH Financial Corporation should dissolve prior to the five years, the company will make arrangements for the continued maintenance of the bank's books and records.

## **Conclusion**

Accordingly, the OCC approved FNB Sumner's application to merge into RH Financial.<sup>2</sup> This approval was granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and by the bank's representatives. However, FNB Sumner may not consummate the Merger until it has satisfied the following requirements:

1. FNB Sumner must submit evidence satisfactory to the OCC that the lawsuit in which the bank is a defendant has been resolved or that the appropriate court has granted FNB Sumner's motion to substitute RH Financial as the defendant.
2. FNB Sumner must submit evidence satisfactory to the OCC that the parties have made appropriate filings with the courts to substitute RH Financial for FNB Sumner for every other matter in which FNB Sumner is a party.

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

- A. The Charter of FNB Sumner, all OCC Reports of Examination, and any other OCC documents in the possession of FNB Sumner.
- B. A copy of the final Articles of Merger filed with the Secretary of State of Maryland.
- C. Secretary's certificates for each institution, certifying that board of directors and shareholder approval have been obtained.

If the Merger is not consummated within one year of the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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<sup>2</sup> 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, in our Washington office. If you have any questions, please do not hesitate to call me at (202) 874-5060.

Very truly yours,

*/s/ Crystal Maddox*

Crystal Maddox  
Senior Licensing Analyst