



Comptroller of the Currency
Administrator of National Banks

Licensing Operations
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July 28, 2005

**Conditional Approval #698
August 2005**

Brad W. Merrill
Executive Vice President
Liquidating Agent
American Investment Bank, N.A.
200 East South Temple
Salt Lake, UT 84111-1241

Re: Merger of American Investment Bank, N.A., Salt Lake City, Utah, with and into American Investment Holdings, LLC, Salt Lake City, Utah
CAIS Control Number: 2005-WE-12-0191

Dear Mr. Merrill:

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 American Investment Bank, N.A, Salt Lake City, Utah (AIB), to merge into its nonbank affiliate, American Investment Holdings, LLC, Salt Lake City, Utah (AIH), under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5), subject to the requirements set out below (the Merger).

Background

On July 18, 2005, AIB, which is in liquidation under 12 U.S.C. § 181, applied to the OCC for approval to merge into AIH, a nonbank affiliate, under 12 U.S.C. § 215a-3 (the “Merger”), with AIH as the surviving entity. Immediately prior to the Merger, AIB will consummate a transaction in which Zions First National Bank, Salt Lake City, Utah (Zions), will purchase and assume all of AIB’s deposits. Immediately upon consummation of that purchase and assumption transaction, AIB’s status as an insured bank will be terminated by the Federal Deposit Insurance Corporation (FDIC) under 12 U.S.C. § 1818(q). Immediately following termination of AIB’s FDIC insured status, AIB will merge into AIH, a nonbank affiliate, pursuant to 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5), and AIB will cease to exist as a national bank. Leucadia National Corporation directly or indirectly wholly owns both AIB and AIH.

Discussion

In the Merger, AIB will be merged into AIH, a Utah limited liability company, once AIB is no longer an insured bank. After the Merger, AIH will be the surviving entity and AIB 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 Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.” 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. Moreover, 12 C.F.R. § 5.33(g)(5), the OCC’s implementing regulation, expressly takes the position that mergers into a nonbank affiliate are covered. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank as defined in 12 U.S.C. § 1813(h). *See* 12 C.F.R. § 5.33(g)(5)(i).

The regulations implementing section 215a-3 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, AIB’s status as an insured bank will be terminated after the purchase and assumption transaction with Zions. AIH is an affiliate of AIB. Since Leucadia National Corporation directly or indirectly wholly owns both AIB and AIH, they are under “common control.” AIH is thus a nonbank affiliate of AIB. *See* 12 C.F.R. § 5.33(d)(5) & 5.33(d)(8) (sets forth definitions of control and nonbank affiliate). *See also* 12 U.S.C. § 371c(b)(3)(A).

Second, the law under which AIH is organized allows it to merge with AIB. AIH is a Utah limited liability company. Utah permits its limited liability companies to merge with other entities “if each company and entity that is a party to the merger approves a plan of merger and if the merger is permitted by the statutes governing each entity.” Utah Code Ann. § 48-2c-1407(1). The term “entity” includes a “domestic or foreign corporation.” *Id.* at § 48-2c-102(8)(a). This definition would appear to include national banking associations for Utah merger purposes.

Third, AIB has complied with the procedures of 12 C.F.R. § 214a to the extent applicable. AIB's board of directors and its sole shareholder have unanimously approved the merger and the merger agreement.

Fourth, AIH has complied with certain procedures for mergers by Utah limited liability companies and AIB represents that the remaining requirements will be satisfied. Specifically, as required by Utah Code Ann. § 48-2c-1409, AIB represents that the articles of merger will be filed with Utah.

Fifth, the dissenters' rights requirement has been satisfied here.

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 would be consistent with them. In this regard it should be noted that AIB has already disposed of most of its business and is in liquidation.

Conclusion

The approval of the Merger is granted based on a thorough review of all information available, including commitments and representations made in the application, the merger agreement and by AIB's representatives. In particular, this approval is based on AIB's representation that the Merger will occur immediately after termination of AIB's status as an insured bank, which will occur immediately after consummation of the purchase and assumption transaction with Zions.

This approval is subject to the following condition:

The Merger must be consummated no later than August 3, 2005.

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:

1. Written assurance from the Federal Deposit Insurance Corporation that AIB is no longer insured.
2. The Charter of AIB, all OCC Reports of Examination, and any other OCC documents in the possession of AIB.
3. A copy of the final Articles of Merger filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

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4. Secretary's certificates for each institution, certifying that board of directors and shareholder approval has been obtained.

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.

Should you have any questions regarding this letter, please contact me at (720) 475-7652.

Sincerely,

signed

Louis T. Gittleman
Senior Licensing Analyst