



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

March 31, 2009

Conditional Approval #895
April 2009

Daniel W. Morton
Senior Vice President & Senior Counsel
The Huntington National Bank
Legal Department
Huntington Center
41 South High Street
Columbus, Ohio 43287

Re: Application by The Huntington National Bank, Columbus, Ohio, relating to the restructuring of its lending relationship with Franklin Credit Management Corporation and its affiliates
CAIS Control Number 09-CE-08-016, 09-CE-08-017, and 09-CE-12-045

Dear Mr. Morton,

This is in response to the application of The Huntington National Bank, Columbus, Ohio, (the “Bank”) on March 16, 2009, which proposes to create or acquire three operating subsidiaries in connection with a multi-step transaction to restructure its commercial lending relationship with Franklin Credit Management Corporation (“FCMC”) and various entities affiliated with FCMC (collectively referred to hereinafter as “Franklin”). Based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank's representatives, the Comptroller of the Currency (“OCC”) hereby conditionally approves the Bank’s proposed operating subsidiaries and an associated nonmaterial noncash contribution from the Bank’s holding company.

I. Background

Through its merger with Sky Bank,¹ the Bank acquired large commercial loans outstanding to Franklin (the “Commercial Loans”). Franklin has been engaged in the business of originating and purchasing residential mortgage loans and holding those loans, which are serviced by FCMC.² The Bank’s Commercial Loans to Franklin are primarily secured by the

¹ Sky Bank was acquired by Huntington Bancshares Inc. (“HBI”), the Bank’s holding company, on July 1, 2007, and merged into the Bank on September 21, 2007.

² The Bank represents that the restructured lending relationship will enable Franklin to expand its business of providing loan servicing to third parties.

residential mortgages that Franklin holds (the “underlying mortgages”) and the other real estate owned (“OREO”) that Franklin has acquired as a result of foreclosing on underlying mortgages (“underlying OREO”).³ The Commercial Loans also are secured by, among other collateral, the stock of FCMC. The loans are currently outstanding under two forbearance agreements between Franklin⁴ and the Bank that expire on May 15, 2009. Under the proposal, if implemented, the loans would be restructured under a substantially revised credit agreement with a three-year maturity. FCMC would service the underlying mortgages and underlying OREO pursuant to a new servicing agreement entered into with an operating subsidiary of the Bank. The Bank has represented that if the proposed transaction does not occur, it will likely be compelled to foreclose on the Commercial Loans.

II. Proposal

The Bank represents that the proposed restructuring of the lending relationship with Franklin will enable the Bank and the Participants to maximize their recoveries by, among other means, facilitating more efficient and expeditious entry into modifications of the underlying mortgages, more efficient and expeditious disposal of the underlying OREO, and the realization of certain tax benefits.

To accomplish this, the Bank proposes a series of transactions. The underlying mortgages and underlying OREO will be transferred by Franklin to a newly-formed Delaware statutory trust (the “Trust”), for which the Bank will serve as trustee and administrator. The Trust will issue a certificate representing the Bank’s interests in the underlying mortgages; this certificate will be held in a newly-formed limited liability company that will be an indirect operating subsidiary of the Bank (“Newco LLC”). Another certificate issued by the Trust representing the Bank’s interests in the underlying OREO will be held in a newly-formed operating subsidiary of Newco LLC (“OREO Sub”). Newco LLC will be wholly-owned by a real estate investment trust (“REIT”) that is an existing indirect operating subsidiary of the Bank. In exchange for indirectly acquiring the underlying mortgages and underlying OREO, REIT will issue to Franklin additional preferred and common shares (“Franklin’s REIT shares”) with a fair market value equal to that of the underlying mortgages and underlying OREO. As collateral for the Commercial Loans, the Bank will hold a security interest in Franklin’s REIT shares and, in addition, all dividends paid by the REIT on those shares will go directly to the Bank to help pay down Franklin’s obligations under the Commercial Loans.⁵ The Trust will enter into an

³ More than 95 percent of the assets securing the Commercial Loans are residential mortgages; the remainder consists of OREO acquired by Franklin by foreclosing on residential mortgage loans it had originated or purchased.

The Bank and a nonbank affiliate, Huntington Finance LLC, hold an undivided 84% interest in the Commercial Loans; two unrelated Participants hold the remaining 16%. The amount of the affiliate’s interest in the Commercial Loans that has not already been charged off will be upstreamed by the affiliate to HBI, and HBI will contribute these assets to the Bank through a noncash contribution to capital.

⁴ In addition to FCMC, the Franklin entities that hold underlying mortgages or underlying OREO are Franklin Credit Asset Corporation and Tribeca Lending Corporation and their various subsidiaries.

⁵ The interests of the Participants in the underlying mortgages and underlying OREO held in the Trust will be represented by certificates to be held by Franklin. Participants will have a security interest in the certificates. Net

agreement with FCMC under which FCMC will continue to service the underlying mortgages and underlying OREO, but will apply the Bank's servicing, loan modification, collection, and foreclosure processes, procedures and standards.

The Bank explains that by acquiring control over the underlying mortgages and underlying OREO, rather than merely holding a security interest, and by entering into a servicing agreement with FCMC whereby FCMC remains as servicer of the underlying mortgages and underlying OREO while applying the Bank's processes, procedures and standards, the Bank will be better able to mitigate potential losses on the Commercial Loans to Franklin by more aggressively resolving delinquent underlying mortgage loans, disposing of foreclosed real estate, and more effectively managing risks and controlling costs.

The Bank also represents that the restructuring should provide benefits to Franklin's customers through more effective loss mitigation strategies, including loan modifications, to avoid foreclosures where possible. The additional cash flow on the underlying mortgages and underlying OREO that results from these changes in processes, procedures, and standards will be allocated as a result of the restructuring to further paying down Franklin's outstanding balance on the Commercial Loans to the Bank and the Participants.

Finally, the restructuring enables Franklin to remain in, and possibly grow, its servicing business. This can have the effect of reducing Franklin's outstanding balance on the Commercial Loans because 70 percent of any dividends that FCMC generates will be allocated, under the restructured lending relationship, to reducing the outstanding amount of Franklin's obligations. Moreover, the Bank states that FCMC's continued functioning as an independent entity negates the potential need to find a replacement servicer and avoids the disruption that could cause. Applicant also represents that the restructured arrangement can generate significant cost savings to the Bank in terms of its arrangement with Franklin, and can provide significant federal tax benefits to the Bank in the form of a deferred tax asset.⁶

III. Analysis

The transaction involves the creation or acquisition of three operating subsidiaries. The Trust will hold title to the underlying mortgages and underlying OREO, distribute all net collections received in connection with those assets to Newco LLC and OREO Sub, or to the Bank on behalf of the Participants, and contract with and supervise FCMC with respect to its servicing of the underlying mortgages and underlying OREO. OREO Sub will hold interests in the underlying OREO and pay dividends to its immediate parent, Newco LLC, from net proceeds of the OREO assets. Newco LLC, which will own OREO Sub and hold interests in the underlying mortgages, will make distributions to the REIT from net collections on the underlying mortgages and the distributions from OREO Sub.

collections representing the portion of the underlying mortgages and underlying OREO held by the Participants will go to the Bank on behalf of the Participants.

⁶ The deferred tax asset arises from the difference between the book value and the fair market value of the underlying mortgages and underlying OREO when Franklin Newco merges into Newco LLC and Franklin receives an interest in the REIT equal to the fair market value of those assets in a nontaxable exchange.

A. Establishment of operating subsidiaries

As discussed below, three legal entities created or acquired by the Bank to facilitate the restructuring of the lending relationship with Franklin qualify as operating subsidiaries of the Bank and are subject to the OCC's operating subsidiary requirements.

1. Ownership and control requirements

a. Operating subsidiaries established as a corporation or limited liability company

The OCC's operating subsidiary regulations⁷ provide that:

An operating subsidiary in which a national bank may invest includes a corporation, limited liability company, limited partnership, or similar entity if:

- (A) The bank has the ability to control the management and operations of the subsidiary;
- (B) The parent bank owns and controls 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 of the operating subsidiary; and
- (C) The operating subsidiary is consolidated with the bank under Generally Accepted Accounting Principles ("GAAP").

Newco LLC and OREO Sub meet these standards to be considered operating subsidiaries of the Bank. Newco LLC is a limited liability company and OREO Sub is a corporation. Moreover, the Bank, indirectly through intermediate wholly- or majority-owned operating subsidiaries will control the management and operations of each entity as a result of the Bank's ability to select the members of the management committee of Newco LLC and the board of directors of OREO Sub, and its authority to select and terminate senior management of those entities.⁸ The Bank also, indirectly through the intermediate subsidiaries, will hold more than 50 percent of the voting or equivalent interests in those companies and, in any event, no other party will control more than 50 percent of such interests.⁹ Finally, the Bank has represented that the financial statements of both subsidiaries will be consolidated with those of the Bank under GAAP.¹⁰

⁷ 73 Fed. Reg. 22216, 22238 (April 24, 2008) (to be codified at 12 C.F.R. § 5.34(e)(2)(i)).

⁸ *Cf.*, *id.* at 22238 (to be codified at 12 C.F.R. § 5.34(e)(5)(i)(A)(3)(i)) (setting forth "control" standards that are one element in determining whether a national bank may establish or acquire an operating subsidiary by filing an after-the-fact notice, rather than an application).

⁹ *Id.* (to be codified at § 5.34(e)(2)(i)(B)).

¹⁰ *Id.* (to be codified at § 5.34(e)(2)(i)(C)).

b. Operating subsidiary established as a Delaware statutory trust

The Trust also qualifies as an operating subsidiary. As the OCC has noted, national banks may invest in business trusts, which have characteristics of corporations such as limited liability, as operating subsidiaries, which increases the flexibility that national banks have to structure their operations.¹¹ Delaware statutory trusts include business trusts and may hold, manage and control property, and engage in any lawful business or activities for profit. These trusts provide limitations on personal liability to the beneficial owners as is provided to shareholders of private for-profit corporations, and also to the trustee except with respect to the trust itself or a beneficial owner. Delaware business trusts may merge or consolidate with or convert into other types of business entities, and any other type of business entity may convert into Delaware statutory trust.¹² Moreover, the Bank, through its prospective roles as trustee and administrator of the Trust, and holder of an 84 percent interest in the underlying mortgages and underlying OREO to be held in the Trust, will control the management and operations of the Trust,¹³ no other party will control more than 50 percent of the voting or similar type interest in the Trust,¹⁴ and the Bank represents that the financial statements of the Trust will be consolidated with those of the Bank under GAAP.¹⁵

¹¹ 61 Fed. Reg. 60,349 (November 27, 1996) (codifying definition of operating subsidiaries at the time as encompassing a “corporation, limited liability company, or similar entity”).

¹² Del. Code Ann. tit. 12, §§ 3801(g), 3803, 3815, 3820, and 3821.

¹³ 73 Fed. Reg. at 22238 (to be codified at § 5.34(e)(2)(A)). Pursuant to the Administration Agreement between and the Bank and the Trust, the Bank as Administrator shall, among other things, prepare all documents, filings and related instruments to comply with state and federal tax laws and securities laws; file all tax returns and financial statements; establish and maintain a deposit account for the benefit of The Trust certificate holders; confirm whether potential insurance companies are “qualified insurers” for purposes of issuing mortgage guaranty insurance, hazard insurance, flood insurance and determine the adequacy of insurance; provide consent to the utilization of any subservicer or subcontractor by the servicer; direct the servicer in its efforts to cure and correct any breach or representation related to any mortgage loans or OREO; exercise the option to extend the servicing agreement; take all appropriate action on behalf of the Trust to preserve its qualification to do business in the various jurisdictions in which it does business; review the performance of the servicer to assure compliance with applicable servicing standards, policies, procedures, and work rules and take all appropriate action on behalf of the Trust to ensure performance and compliance with such requirements; remove the servicer if the administrator determines in its sole discretion that a default has occurred under the servicing agreement; coordinate delivery of various documents required for the release of mortgage loans and OREO properties; and inspect or review mortgage property or OREO to determine if it is contaminated by hazardous or toxic substances and instruct the servicer about how to proceed.

Wilmington Trust Company (“WTC”) will serve as co-trustee to satisfy the Delaware statutory requirement that at least one trustee of a statutory trust be a resident of Delaware or have its principal place of business in Delaware. *Id.* at § 3807(a). WTC’s duties as co-trustee are limited by the trust agreement to executing and filing certain documents required by state law and accepting service of process in Delaware.

¹⁴ *Id.* (to be codified at § 5.34(e)(2)(i)(B)).

¹⁵ *Id.* (to be codified at § 5.34(e)(2)(i)(C)). Consistent with 12 C.F.R. § 5.34, the Bank has represented that all activities of the subsidiaries will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. The Bank also has represented that it will disclose its roles as trustee and administrator of the Trust to Franklin and the Participants and obtain the consent of each direct and indirect beneficiary of the Trust for the Bank to act as trustee.

2. Permissibility of activities

As discussed, the Bank holds a security interest in Franklin’s underlying mortgages and underlying OREO as collateral for the existing Commercial Loans. As part of the proposed loan restructuring, the Bank would take an undivided interest in those OREO parcels through the Trust and OREO Sub, and in the loans through the Trust and Newco LLC. Clearly, a national bank and its operating subsidiaries may acquire and hold mortgage loans.¹⁶ With respect to the underlying OREO, which constitutes a minor portion of the total collateral on the Commercial Loans, the Bank proposes to acquire ownership interests through its operating subsidiaries pursuant to the well-established authority to take real estate in satisfaction of debts previously contracted (“DPC”). The statutory basis for a national bank to acquire real estate and other property DPC is 12 U.S.C. § 29 and 12 U.S.C. § 24 (Seventh).

Section 29 provides that a national bank may “purchase, hold and convey real estate . . . such as shall be conveyed to it in satisfaction of debts previously contracted in the course of its dealings.”¹⁷ The DPC authority is a necessary corollary to the lending authority of national banks; it permits banks to engage in transactions that otherwise may be prohibited by law. The authority of a bank to acquire DPC property is a necessary power for banks that was recognized in the earliest days of our country. Among other provisions relating to the power to hold real property included in the charter of the First National Bank was the power to hold property “conveyed to it in satisfaction of debts previously contracted in the course of its dealings.”¹⁸

Through analogy to Section 29, the courts have interpreted the incidental powers of national banks granted in 12 U.S.C. § 24 (Seventh) to authorize the acquisition and holding of personal property, such as stock, in satisfaction of debts previously contracted.¹⁹ In this proposal, the Bank, through its majority ownership of the REIT, will hold a 100% equity interest in the OREO Sub, the sole asset of which shall be the Bank’s undivided 100% interest in its portion of the underlying OREO properties held in the Trust. Thus, both Section 29 and Section 24 (Seventh) provide authority to engage in this transaction.

¹⁶ See, e.g., 12 U.S.C. § 371; 12 C.F.R. §§ 34.3 and 5.34(e)(v)(A), (C), (D).

¹⁷ 12 U.S.C. § 29(Third).

¹⁸ 1 Stat. 191, 1st Cong., Chap. 10, 1st Sess. (Feb. 25, 1791). A similar provision was included in the charter of the Second Bank of the United States. 3 Stat. 266, 14th Cong., Chap. 44, 1st Sess. (Apr. 10, 1816). The authority of a bank to acquire DPC property was included among those powers granted in the National Currency Act of 1863, 12 Stat. 665, 37th Cong., Chap. 58, 3rd Sess. (Feb. 25, 1863).

¹⁹ See *First Nat’l Bank of Charlotte v. Nat’l Exch. Bank of Baltimore*, 92 U.S. 122, 127 (1875) (“In the honest exercise of the power to compromise a doubtful debt owing the bank, it can hardly be doubted that stocks may be accepted in payment and satisfaction, . . . Such a transaction would not amount to a dealing in stocks.”); *Atherton v. Anderson*, 86 F.2d 518, 525 (6th Cir. 1936), *rev’d on other grounds*, 302 U.S. 643 (1937); *Morris v. Third Nat’l Bank*, 142 F. 25, 31 (8th Cir. 1905) (“A national bank may lawfully do many things in securing and collecting its loans, in the enforcement of its rights and the conservation of its property previously acquired, which it is not authorized to engage in as a primary business.”).

A bank may rely upon the DPC authority when it determines that a borrower is unable or may be unable to make timely repayment of a loan as originally agreed and that, through the exercise of sound business judgment, the impact of the borrower's failure to pay as agreed may be ameliorated or resolved by the taking of property.²⁰ DPC authority only applies to facilitate loan recovery.²¹

In the present transaction, as previously discussed, the acquisition of DPC real property by the Bank is key to the restructuring of the loan relationship between the Bank and Franklin, which provides a mechanism that can generate additional cash flows from the underlying mortgages and underlying OREO, through loan modifications and more expeditious sale of OREO, as well as additional income to Franklin that will be allocated, through the payment of dividends, to the reduction of the outstanding balance on Franklin's Commercial Loans. Additionally, the establishment of the deferred tax asset in favor of the Bank and other cost savings that Bank anticipates as a result of taking ownership of the underlying mortgages and underlying OREO can mitigate the losses that the Bank has incurred on the Commercial Loans to Franklin.

We further note that the DPC authority may be exercised only as a temporary measure. Once acquired, DPC real property is subject to the limitations contained in Section 29 and 12 C.F.R. Part 34, which governs other real estate owned by national banks.²² Section 29 specifically limits the holding period for DPC real estate to five years, with the possible extension of up to five additional years with approval from the OCC. Within that holding period, national banks must divest DPC real estate "at the earliest time that prudent judgment dictates."²³ The OCC has applied, by analogy, similar holding limitations and divestiture requirements to stock and other property acquired DPC under a bank's incidental powers.²⁴

Therefore, the Bank's holding of the OREO through the OREO Sub and the Trust is a permissible exercise of its DPC authority under 12 U.S.C. § 29 and 12 U.S.C. § 24(Seventh). While the restructuring of the lending relationship does not directly extinguish any of the borrower's debt, the restructuring provides means by which Franklin's outstanding debt on the

²⁰ *Atherton, supra* at 525.

²¹ Interpretive Letter No. 518, *reprinted in* [1990-91 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,229 (Apr. 6, 1990). As the courts have noted, a national bank has no authority to take real property for purely "speculative purposes" (*Atherton, supra*, at 525) and DPC transactions "must be compromises in good faith." *First Nat'l Bank of Charlotte, supra* at 128.

²² *Id.*; No-Objection Letter No. 87-10, *reprinted in* [1987-88 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,039 (Nov. 27, 1987).

²³ 12 C.F.R. § 34.82(a).

²⁴ Interpretive Letter No. 643, *reprinted in* [1994 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,551 (July 1, 1992); Interpretive Letter No. 518, *supra*; No-Objection Letter No. 87-10, *supra*.

Commercial Loans may be reduced and provides additional benefits to the Bank that will offset a significant portion of the losses that it would otherwise incur.²⁵

Consistent with the holding period and divestiture requirements in Section 29 and as applied, by analogy, to stock and other property acquired DPC under Section 24(Seventh), the Bank must dispose of its interests in the OREO Sub and the OREO properties at the earliest time prudent judgment dictates, but in no event later than the end of the five year holding period, unless the OCC approves an extension of time as authorized by the statute.

Consequently, the activities of the Bank and its subsidiaries are permissible for a national bank. OREO Sub will engage solely in holding the Bank's certificate representing its interest in the underlying OREO and paying dividends to Newco LLC from net proceeds of the OREO assets. Newco LLC will own OREO Sub, hold the certificate that represents the Bank's interest in the underlying mortgages, and make distributions to the REIT from net collections on those assets and distributions from OREO Sub. The Trust will hold title to the underlying mortgages and underlying OREO, distribute all net collections received in connection with those assets to Newco LLC and OREO Sub, or the Bank on behalf of the Participants, and contract with and supervise FCMC with respect to its servicing of the underlying mortgages and underlying OREO. Each of these activities is a permissible activity for a national bank and its operating subsidiaries, which may, among other things, hold and manage assets permissibly acquired by the parent bank, provide services to the bank or its affiliates, and purchase, sell, service, and warehouse loans or other extensions of credit, or interests therein.²⁶

B. Noncash contribution to capital

Under the proposal, Huntington Finance LLC, an affiliate of The Bank, and a subsidiary of HBI, will dividend that portion of its interest in the Commercial Loans to HBI, which, in turn, will contribute that interest to the Bank. As proposed, the contribution of this interest constitutes a nonmaterial noncash contribution to capital surplus because it constitutes less than three percent of Tier 1 capital prior to the contribution, and the OCC hereby approves this contribution of capital by HBI to the Bank.²⁷

²⁵ This conclusion comports with the analysis in Interpretive Letter No. 518, *supra*. In that letter, the OCC declined to approve a proposed DPC transaction in which the bank would exchange foreign sovereign debt for equity in a corporation where the foreign sovereign debt was sold into the secondary market and not extinguished. The letter noted that the lender dealt only with a third party, not the debtor, and that the transaction involved no benefit to the borrower. As discussed, the current restructuring involves significant benefit to the debtor, including extending the term of the loan by almost three years, providing the debtor with an opportunity to remain in and grow its business, and providing alternative means to further pay down its debt. Moreover, the terms of the restructuring arrangement have been negotiated directly and freely by the lender and the borrower to their mutual benefit.

²⁶ 12 C.F.R. § 5.34(e)(v)(A), (B) and (D)).

²⁷ OCC Licensing Manual, *Capital and Dividends*, 6-7 (November 2007). The noncash contribution to capital is not subject to 12 U.S.C. §§ 371c and 371c-1 because it is not a "covered transaction" or otherwise within the scope of those provisions. 12 U.S.C. §§ 371c(b)(7) and 371c-1(a)(2); 12 C.F.R. §§ 223.3(h) and 223.52. We note also that the Bank is assuming no liabilities in connection with its receipt from HBI of these assets.

IV. Conditions

This approval is subject to the following conditions:

1. Prior to the Bank consummating any steps of this proposal, as approved, the Bank shall execute an operating agreement (“Operating Agreement”) with the OCC. The Operating Agreement shall provide, among other things, that prior to consummation of any steps of this proposal, the Bank shall enter into an agreement, acceptable to the OCC, with the holding company of the Bank, Huntington Bancshares Inc. (“HBI”), pursuant to which HBI agrees to indemnify the Bank for losses and related expenditures, as specified, that may be incurred directly or indirectly by the Bank or any of its subsidiaries including the Trust, arising from the acquisition, directly or indirectly, of specified assets or interests in specified assets, or any activity assumed by the Bank or any of its subsidiaries including the Trust, with respect to such assets or interests in such assets.
2. The Board of Directors of the Bank shall assure that the Operating Agreement is fully adopted, timely implemented, and adhered to thereafter.
3. The Bank shall take all steps necessary to ensure that the commitments set forth in the March 27, 2009 letter from Stephen D. Steinour, Chairman, President and Chief Executive Officer, The Huntington National Bank, to Travis Wilbert, Director for District Licensing, Central District, are fully adopted, timely implemented, and adhered to thereafter.

These conditions of approval are conditions “imposed in writing by a Federal agency in connection with any action on any application, notice or other request” within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

V. 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 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. Our conditional approval is based on the Bank’s representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, please contact Travis Wilbert, Director for Licensing, OCC Central

District, at 312-360-8866, or e-mail at travis.wilbert@occ.treas.gov. In any correspondence regarding this application, please reference the above application number.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller
Licensing