



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 14, 2009

**Conditional Approval #912
August 2009**

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Re: Applications to convert Chevy Chase Bank, F.S.B., McLean, Virginia, to a national bank and to merge the converted bank into Capital One, National Association, McLean, Virginia
Application Control Nos: 2009-NE-01-006, 02-006, and 08-007
Charter No: 13688

Dear Mr. Navarrete:

The Office of the Comptroller of the Currency (“OCC”) hereby grants conditional approval to the conversion and merger applications described below, for the reasons and subject to the requirements set forth herein. This conditional approval is granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made by the applicants’ representatives during the application process. This approval is also subject to the conditions and requirements set out herein.

I. INTRODUCTION

On March 6, 2009, Chevy Chase Bank, F.S.B., McLean, VA (“CCB”), submitted an application to the Office of the Comptroller of the Currency (“OCC”) to convert from a federal savings bank to a national bank, Chevy Chase Bank, National Association, McLean, VA (“CCBNA” or “Target”). CCB deposits are insured by the Federal Deposit Insurance Corporation (“FDIC”), and it is a wholly-owned subsidiary of Capital One Financial Corporation (“COFC”).¹ Likewise, CCBNA’s deposits will be FDIC insured and it will be a wholly-owned subsidiary of COFC. CCB currently operates branches in Delaware, Washington, D.C., Virginia and Maryland, and it has requested OCC approval to retain its main office and branches after its conversion to CCBNA.

A related application was filed on the same day by Capital One, National Association, McLean, VA (“CONA” or “Resulting Bank”) to concurrently merge CCBNA with and into CONA

¹ COFC is a bank holding company for purposes of the Bank Holding Company Act and a Financial Holding Company under the Gramm-Leach-Bliley Act (“GLBA”). COFC acquired CCB on February 27, 2009.

pursuant to 12 U.S.C. § 215a. CONA deposits are also insured by the FDIC and CONA is also a wholly-owned subsidiary of COFC. CONA's main office is in Virginia and it has branches located in Connecticut, Louisiana, New Jersey, New York, Texas and Virginia. CONA has requested OCC approval to retain its main office and branches, and to retain as branches CCBNA's branches following consummation of the proposed merger. Following consummation of the proposed transactions, CONA also seeks to retain several subsidiaries and non-controlling equity investments currently held by CCB.

II. ANALYSIS

A. Conversion

CCB is authorized to convert to a national bank charter under 12 U.S.C. § 1464(i)(5) of GLBA, and CCBNA is permitted to retain branches after the conversion under 12 U.S.C. § 1464(i)(5) and 12 U.S.C. § 36(c). Regulations of both the OCC and the Office of Thrift Supervision ("OTS") also permit the direct conversion of a federal savings bank to a national bank.²

GLBA explicitly permits conversion of a federal savings bank to a national bank with the approval of the OCC, so long as prior to the enactment of GLBA on November 12, 1999, the federal savings bank was 1) chartered; 2) in operation, and 3) operated one or more branches.³ The OCC may approve a conversion under this provision only if the resulting national bank will meet all financial, management, and capital requirements applicable to national banks.⁴ CCB was chartered as a federal savings bank in 1955 and established branches prior to November 12, 1999, in Delaware, Maryland, Washington, D.C., and Virginia.

In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws.⁵ The regulations further provide that a conversion application may be denied if a significant supervisory, Community Reinvestment Act,⁶ or compliance concern exists with regard to the applicant; approval is inconsistent with applicable law, regulation, or OCC policy; or the applicant fails to provide necessary information that the OCC

² 12 C.F.R. § 5.24; 12 C.F.R. § 552.2-7.

³ See 12 U.S.C. § 1464(i)(5)(A).

⁴ See 12 U.S.C. § 1464(i)(5)(B).

⁵ 12 C.F.R. § 5.24(d).

⁶ The CRA also requires that the OCC must consider a conversion applicant's record of compliance with CRA in deciding the application. 12 U.S.C. § 2903(a)(2) and 2902(3)(A); 12 C.F.R. § 25.29(a)(4). See Part II.C.3. of this approval.

has requested.⁷ Finally, the regulations provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.⁸

The OCC has conducted a thorough review of the conversion application in light of the factors set forth above and determined that the results of this review are consistent with approval of the conversion application.⁹

B. Branch Retention after the Conversion

Upon the OCC's approval of the federal savings bank's conversion to a national bank, the resulting national bank, CCBNA, may retain all of CCB's branches previously established and operating in Delaware, Washington, D.C., Maryland, and Virginia.

CCBNA may retain the branches of CCB pursuant to 12 U.S.C. § 1464(i)(5)(A) and 12 U.S.C. § 36(c). CCBNA, the resulting national bank, may retain all branches CCB operated prior to GLBA's enactment on November 12, 1999.¹⁰ As stated above, the applicant represents that CCB operated at least one branch in Delaware, Washington, D.C., Maryland, and Virginia prior to GLBA's enactment.¹¹ Accordingly, all of CCB's branches in operation in Delaware, Washington, D.C., Maryland, and Virginia prior to November 12, 1999, may be retained upon CCB's conversion to a national bank.

CCB branches established after GLBA was enacted on November 12, 1999, or post-GLBA, may be retained under separate authority found in 12 U.S.C. § 36(c), which authorizes a national bank to establish new branches "at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question."¹² Pursuant to this section, the OCC must evaluate a national bank's intrastate branch applications in the context of the statutory law of the state in which it is situated.¹³ In undertaking this review of state law, the OCC is bound by any applicable limits on

⁷ 12 C.F.R. § 5.13.

⁸ 12 C.F.R. § 5.24(d).

⁹ An application for conversion was submitted by CCB to the OTS on May 11, 2009. The OTS issued its approval on July 9, 2009, conditioned upon CCB 1) notifying the OTS of the effective date of its conversion and 2) surrendering its bank charter. See Letter from Arthur W. Goodhand, Acting Regional Director, Office of Thrift Supervision to Andres L. Navarette, Senior Vice President and Chief Counsel-Regulatory, Capital One Financial Corporation (July 9, 2009).

¹⁰ See 12 U.S.C. § 1464(i)(5)(A).

¹¹ See Letter from Andres L. Navarette, Senior Vice President and Chief Counsel-Regulatory, Capital One Financial Corporation to Sandya Reddy, Senior Licensing Analyst, Office of the Comptroller of the Currency (April 15, 2009).

¹² 12 U.S.C. § 36(c)(2).

¹³ *First Nat'l Bank of Fairbanks v. Camp*, 683 F.2d 586, 597 (D.C. Cir. 1972), cert. denied, 409 U.S. 1124 (1973).

branching that state law imposes.¹⁴ For purposes of 12 U.S.C. § 36, a national bank is considered “situated” in any state in which it has its main office or a branch and may establish new branches in any of those states under state branching laws as incorporated by the McFadden Act and applied to national banks.¹⁵

CCB has only one branch in Delaware. Because this Delaware branch was established pre-GLBA, no further analysis is required to authorize its retention by CCBNA after consummation of the conversion. Also, upon the OCC’s approval of the conversion, CCBNA is situated in Washington, D.C., Maryland and Virginia by virtue of retention of its established pre-GLBA branches following the conversion. Washington, D.C., Maryland and Virginia do not place geographical limits on intrastate branching, but impose certain other standards.¹⁶ Because the relevant standards are satisfied, and the OCC has approved CCB’s conversion to CCBNA, CCBNA may also retain its post-GLBA branches in Washington, D.C., Maryland and Virginia after the conversion.

Accordingly, CCBNA’s request to retain CCB’s main office and branches after the conversion is legally permissible and approved.¹⁷

C. Merger

1. Section 215a

Because both CCBNA and CONA have their main office in the same state, the authority for the merger is set forth in 12 U.S.C. § 215a, governing mergers between banks that are located in the same state. In approving a merger, the OCC also must take into account the factors set forth in the Bank Merger Act and the Community Reinvestment Act. In addition, as discussed below, the Resulting Bank may retain the branches of CCBNA and CONA as branch offices of the resulting bank.

¹⁴ See *First Nat’l Bank of Logan v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966).

¹⁵ See *Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir.), *cert. denied*, 419 U.S. 844 (1974) (California bank with grandfathered branches in Washington State is situated in Washington for section 36 purposes).

¹⁶ Md. Code Ann., Fin. Inst. § 5-1003 (LexisNexis 2009) (including standards related to 1) the institution’s capital stock and surplus, 2) the branch’s promotion of public convenience, 3) whether the institution has sufficient capital to support the branch, 4) the institution’s general compliance with Maryland’s banking code where applicable to a national bank, *see also* Md. Code Ann., Fin. Inst. §§ 5-1006, 3-209 and 1-101 (LexisNexis 2009), and 5) restrictions against establishing or maintaining branches near commercial affiliates); Va. Code Ann. §§ 6.1-39.3 and 6.1-44.8 (2009) (impact on the bank’s safety and soundness and the public interest; limitations on establishing or maintaining a branch in Virginia on the premises or property of an affiliate if the affiliate engages in commercial activities). The District of Columbia imposes no other limitations. D.C. Code Ann. § 26-733 (LexisNexis 2009). Applicants have certified to the OCC that neither CCB nor CONA maintain branches on the premises or property of an affiliate that engages in commercial activities.

¹⁷ We also approve CCBNA’s request for an additional investment in bank premises under 12 U.S.C. § 371d, and 12 C.F.R. §§ 5.37 and 7.1000.

2. Bank Merger Act

The OCC reviewed the proposed merger transaction under the criteria of the Bank Merger Act,¹⁸ and other applicable statutes, OCC regulations and policies. Because the parties to the merger are already owned by the same holding company, the merger will have no anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities . . .”¹⁹ The OCC considered these factors and found them to be consistent with approval under the statutory provisions.

3. Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the records of the institutions proposing to engage in a conversion or a merger in helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating conversion and merger applications.²⁰ The OCC considers the CRA Performance Evaluation (“PE”) of each institution involved in the transaction. A review of the records of these applicants, and other information available to the OCC as a result of its regulatory responsibilities, revealed the institutions’ record of helping to meet the credit needs of their communities, including LMI neighborhoods, are satisfactory and consistent with approval of these applications.

a) CCB

In the June 25, 2007, PE issued by the OTS, CCB received an overall “Outstanding” CRA performance rating.²¹ CCB received an “Outstanding” rating under the Lending, Investment, and Service Tests. Among the major factors supporting CCB’s rating were: 1) the volume of lending was substantial in relationship to the bank’s size, 2) lending as a percentage of average assets exceeded that of the bank’s peer group for all loan categories; 3) a majority of the total loans were made in the assessment area; and 4) geographic distribution of loans within the assessment areas was reasonable compared to demographic and aggregate lending benchmarks. The PE states that no violations of the substantive provisions of the antidiscrimination laws or regulations were identified.

¹⁸ 12 U.S.C. § 1828(c).

¹⁹ 12 U.S.C. § 1828(c)(11).

²⁰ 12 U.S.C. § 2903(a)(2) and 2902(3)(E); 12 C.F.R. § 25.29(a)(3).

²¹ The evaluation period was from January 1, 2005, through December 31, 2006, for the lending test and for the investment and services tests the period was from January 1, 2005, to March 31, 2007.

b) CONA

In the April 30, 2007, PE issued by the OCC, CONA received an overall “Satisfactory” CRA rating.²² The bank received a “High Satisfactory” on the lending and investment tests and “Low Satisfactory” on the service test. Among the major factors supporting CONA’s rating were: 1) good lending volume given the competition in the primary markets; 2) a majority of home mortgage and business lending activity was within its assessment area; 3) overall distribution of lending was adequate with good distribution of loans to borrowers of different income levels; 4) good volume of community development loans; 5) the level of qualified community development investments was good given the bank’s resources and capacity, and 6) good community development services that addressed identified needs in the community. In addition, service delivery systems were considered to be reasonably accessible to geographies and individuals of different income levels in Louisiana, and reasonably accessible to essentially all geographies and individuals of different income levels in Texas.²³ No evidence of illegal discrimination or other illegal credit practices were noted in the PE.

D. Branch Retention after the Merger

CONA’s main office is in Virginia, and its branches are located in Connecticut, Louisiana, New Jersey, New York, Texas and Virginia. CCBNA’s main office is also located in Virginia, and it has branches in Delaware, Washington, D.C., Maryland and Virginia. CONA has requested approval to retain CCBNA’s branches and CONA’s branches following the merger. Retention of these branches is authorized under 12 U.S.C. § 36(b)(2).²⁴

1. Retention of CONA’s Branches

Under 12 U.S.C. § 36(b)(2)(C), the Resulting Bank may retain the acquiring bank’s branches unless state law would prohibit a state bank from retaining such branches. For purposes of section 36(b), the Resulting Bank is situated in all the states in which the participating banks were located.²⁵

²² The evaluation period for the PE was from January 1, 2004, through December 31, 2006, for the Lending Test and for community development loans and the Investment and Service tests, the period was January 13, 2004, through April 30, 2007.

²³ Capital One, F.S.B. and North Fork Bank merged into CONA, on July 7, 2007, and August 1, 2007, respectively. CONA’s PE covers CRA activities during a period that precede these mergers. However, both institutions received an Outstanding CRA rating from their primary regulator.

²⁴ CONA has not yet determined which branches will be closed as a result of the proposed merger. CONA must comply with branch closing procedures set forth in 12 U.S.C. § 1831r-1 and 12 C.F.R. § 5.30(j) should CONA decide to close any branches after consummation of the merger.

²⁵ See Decision on the Applications of First Bank National Association, (Minnesota) and First National Bank of East Grand Forks (Minnesota) (OCC Corporate Decision No. 97-68, July 10, 1997) (Part II-B).

CONA is situated in Connecticut, Louisiana, New Jersey, New York, Texas, and Virginia. Under section 36(b)(2), the Resulting Bank may retain and operate as a branch any branch CONA had before the merger unless state law would prohibit a state bank from retaining such branches following a merger. There is no provision in Connecticut, Louisiana, New Jersey, New York, Texas, or Virginia law²⁶ that prohibits a state-chartered bank, following a merger with another bank, from retaining its own similarly situated branches in the state. Therefore, the Resulting Bank may retain CONA's branches under section 36(b)(2)(C).

2. CONA's Retention of CCBNA's Branches

Under section 36(b)(2)(A), the resulting bank may retain the target bank's branches if the resulting bank could establish them as new branches under section 36(c).²⁷ CCBNA's branches are located in Virginia, Delaware, Washington, D.C., and Maryland. Pursuant to 12 U.S.C. § 36(b)(2)(A), CONA may retain CCBNA's branches as branches if CONA could establish these as new branches under section 36(c).

As previously discussed, under 12 U.S.C. § 36(c) a national bank is authorized to establish new branches at any point within the State in which the bank is situated if such is authorized to State banks by the statute law of the State in question.²⁸ As already noted, the OCC must evaluate a national bank's branch application in the context of the statutory law of the state in question. For purposes of 12 U.S.C. § 36(c), a national bank is considered "situated" in any state in which it has its main office or a branch,²⁹ and following a merger, a national bank is situated in any state in which any of the parties to the merger had a main office or a branch.³⁰ Consequently, following the merger, CONA may retain branches in Virginia, Maryland, the District of Columbia, and Delaware under state intrastate branching laws as incorporated by the McFadden Act and applied to national banks with respect to the establishment of branches.

Since CONA is situated in all the states in which the participating banks were located, CONA is situated for purposes of 12 U.S.C. § 36(c) in Washington, D.C., Virginia, Maryland and Delaware.³¹ As a result, CONA may retain CCBNA's branch offices in those states because establishment of branches at the sites of the former branch offices of CCB is permissible under

²⁶ Conn. Gen. Stat. Ann § 36a-125 (2009); La. Rev. Stat. Ann. §§ 6:355 and 6:501 (2009); N.J. Rev. Stat. §17:9A-139(2) (2009); N.Y. Banking Law § 105.5(a) (2009); Tex. Fin. Code Ann. § 32.301(c) (2009); Va. Code Ann. §§ 6.1-44 and 6.1-44.8 (LexisNexis 2009).

²⁷ CONA is not seeking to retain CCBNA's main office as a branch.

²⁸ 12 U.S.C. § 36(c)(2).

²⁹ See fn. 15, *supra*.

³⁰ See fn. 25, *supra*.

³¹ *Id.*

12 U.S.C. § 36(c) and applicable state law incorporated therein.³² Since these standards are met, CONA is approved to retain and operate as branches CCBNA's branches.³³

E. Retention of Subsidiaries and Investments

The Resulting Bank will retain as operating, financial, and statutory subsidiaries a number of entities that CCB currently owns. Specifically, CCB's active direct and indirect subsidiaries are listed in the application as follows: 1) Chevy Chase Preferred Capital Corp.; 2) Chevy Chase Real Estate LLC; 3) Chevy Chase Funding LLC; 4) Chevy Chase Financial Services Corporation; 5) Chevy Chase Mortgage Company; 6) Manor Holding (Virginia) LLC; 7) Ashburn Village Development Corporation; 8) Old Chapel Corporation; 9) Chevy Chase Insurance Agency, Inc.; 10) Chevy Chase Securities, Inc.; 11) Manor Investment LLC; 12) Primrose Development Corporation; 13) Consumer Finance Corporation – CFC; and 14) 13800 GA. AVE. LLC.³⁴

Except for non-controlling equity investments and the subsidiary through which it holds the non-controlling investments, CCB's subsidiaries involve activities that are permissible for national banks.

1. Operating Subsidiaries

Generally, the operating subsidiaries to be acquired by the Resulting Bank are engaged in lending activities, funding of CCB's mortgage securitization transactions, selling of securities to the general public, investing in real estate loans, issuance of preferred stock to outside investors, and holding of other-real-estate-owned ("OREO"). CONA has represented that all operating subsidiaries that it acquires will operate in accordance with OCC regulations and policies contained in guidance issued by the OCC. CONA also represents that it will wholly own each operating subsidiary directly or indirectly, will meet the applicable control standards set forth in 12 C.F.R. § 5.34(e)(2) with respect to each such subsidiary, and that each such subsidiary will be consolidated with CONA under generally accepted accounting principles.

³² See D.C. Code Ann. § 26-733 (LexisNexis 2009); Va. Code § 6.1-39.3(A) (LexisNexis 2009); Md. Code Ann., Fin. Inst. § 5-1003 (LexisNexis 2009); Del. Code Ann. Tit. 5, § 770 (2009).

³³ CONA has submitted applications separately for certain post-merger short distance relocations and *de novo* branches. This letter does not address those applications.

³⁴ CONA also provided a list of CCB subsidiaries that 1) have been dissolved (CBUSA Mortgage LLC; CBUSA Mortgage-National Capital LLC; CCRE, Inc.; North Ode Street Development Corporation; and Brookfield P/S); 2) had been transferred to an unrelated entity prior to COFC's acquisition of CCB (Chevy Chase Trust Company; 7501 Wisconsin Avenue LLC; Bondy Way Development Corporation; and ASB Capital Management LLC); 3) are inactive (CCB New Markets Fund, LLC; CBUSA Investment LLC; Old Chevy Chase Mortgage Company; Great Seneca Development Corporation; Brambleton Land Corporation; and Brooke Manor Land Corporation); or 4) are inactive and in the process of being dissolved (Chevy Chase Mortgage Company of Virginia; Chevy Chase Asset Management, LLC; and Ronam Corporation Inc.). If CONA intends to resume any activities in any of the inactive subsidiaries, it should file the appropriate application or notices as required by 12 C.F.R. §§ 5.34 or 5.36, or other applicable statute or regulation.

Chevy Chase Preferred Capital Corporation invests in real estate loans and issues preferred stock to outside investors, which is included in the Tier 1 capital of CCB. It may be retained by CONA as an operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(D). Chevy Chase Funding LLC is a funding vehicle used for CCB mortgage securitization transactions and it may be retained as a CONA operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(O). Chevy Chase Mortgage Company is a subsidiary that engages in mortgage lending activities and it may be retained as a CONA operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(C). Ashburn Village Development Corporation and Old Chapel Corporation are OREO subsidiaries and may be retained as CONA operating subsidiaries pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(A).³⁵ Chevy Chase Securities, Inc. is a licensed broker-dealer that sells securities on a retail basis to the general public, including depositors and other customers of CCB. Chevy Chase Securities, Inc., may be retained as a CONA operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(N).³⁶ Consumer Finance Corporation, or CFC, is formerly CCB's subprime auto lending unit. CFC originations were discontinued several years ago and it has no employees, but CCB collections personnel continue to pursue recoveries on charged off loans. CFC may be retained as an operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(C) and (AA).³⁷

CONA is approved to retain CCB's active operating subsidiaries as discussed above.

2. Financial Subsidiaries

CONA also provided certifications and notices required by 12 C.F.R. §5.39 for the Resulting Bank to retain as financial subsidiaries two subsidiaries of CCB. One subsidiary is a licensed

³⁵ Chevy Chase Real Estate LLC is a CCB subsidiary that does not engage in any activities directly, but serves as a holding company for Ashburn Village Development Corporation and Old Chapel Corporation. The entities held by Chevy Chase Real Estate LLC engage in activities permitted to national banks; thus, Chevy Chase Real Estate LLC is a permissible operating subsidiary and CONA may retain it.

³⁶ Chevy Chase Financial Services Corporation does not directly engage in any activities, but serves as the holding company for Chevy Chase Securities, Inc. It also serves as a holding company for Chevy Chase Insurance Agency, Inc., and Chevy Chase Title Services, LLC, to be discussed subsequently, which CONA proposes to hold as financial subsidiaries. The entities held under Chevy Chase Financial Services Corporation all may permissibly be held by CONA – Chevy Chase Securities, Inc. as an operating subsidiary and Chevy Chase Insurance Agency, Inc., and Chevy Chase Title Services, LLC, as financial subsidiaries. Consequently, they may permissibly be held by Chevy Chase Financial Services Corporation.

³⁷ In addition, CONA will retain Manor Investment LLC, which was formerly involved in real estate projects but currently holds no investments. Its only activity is holding a small interest in a cash reserve account relating to a recently completed condo conversion project (of which all units have been sold). It may be retained as a CONA operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(5)(v)(V). Manor Holding (Virginia), LLC, is a holding company whose only investment is Manor Investment LLC. CONA may retain Manor Holding (Virginia), LLC because the entity that it owns is engaged in an activity permitted to national banks, and holding such entity is a permissible operating subsidiary activity.

CONA will also retain Primose Development Corporation, which is obligated to develop a park as part of a

insurance broker offering personal property, casualty, and life insurance products and services to the general public, including customers of CCB. The other subsidiary is a joint venture with a third party that provides title agency and related services.

Chevy Chase Insurance Agency, Inc., is a licensed insurance broker offering a variety of “personal line” property and casualty and life insurance programs to the general public, including depositors and other customers of CCB. Chevy Chase Insurance Agency, Inc., may be held as a financial subsidiary of CONA pursuant to 12 U.S.C. §24a and 12 C.F.R. § 5.39(e)(1)(ii). Chevy Chase Title Services, LLC, is a joint venture with ProfitCenters LLC and provides title agency and related services. CCB holds a 50% interest in Chevy Chase Title Services, LLC, and it may be held by CONA as a financial subsidiary pursuant to 12 U.S.C. § 24a and 12 C.F.R. § 5.39(e)(1)(ii).

CONA has made the representations required under 12 C.F.R. § 5.39(i)(1) and CONA may retain Chevy Chase Insurance Agency, Inc., and Chevy Chase Title Services, LLC, as financial subsidiaries.³⁸

3. Statutory subsidiary

13800 GA. AVE. LLC (“13800”) is a wholly-owned direct statutory subsidiary of CCB and owns a parcel of land under a gas station. CCB acquired 13800 in November 2007 in connection with its plans to relocate one of its branches. Since the acquisition, 13800’s only activity has been to lease the land to the gas station. CONA plans to continue the lease with the gas station until it terminates in 2013. Upon termination of the lease, CONA plans to relocate an existing branch to the 13800 property.

13800 owns and manages premises intended for future use by CONA as bank premises. This is permissible for national banks,³⁹ and CONA is approved to retain 13800.

4. Non-controlling equity investments

CCB also holds a non-controlling 15% equity investment in CB/USA LLC. CB/USA LLC, in turn holds a 10% non-controlling investment in several LLCs that are formed by a consortium of custom home builders to assist in the group purchases of building supplies and material, thus

residential and commercial community that CCB previously developed and sold. Courts have long held that rights and obligations with respect to and benefiting third parties pass to national banks following a conversion from another type of charter or merger with another entity even where such rights or obligations would not have been undertaken by the bank initially. OCC Corporate Decision 97-13, 37-38 (February 254, 1997); *Frank v. Giesy*, 117 F.2d 122 (9th Cir. 1941) (national bank that survived a consolidation with a state bank held liable under a lease entered into by the target bank even where survivor had no intention of using the property as bank premises).

³⁸ Chevy Chase Financial Services Corporation does not directly engage in any activities, but serves as the holding company for Chevy Chase Insurance Agency, Inc., and Chevy Chase Title Services, LLC. *See* fn. 37, *supra*.

³⁹ *See* 12 U.S.C. §§ 29(First) & 371d; 12 C.F.R. § 5.37.

giving CONA an indirect 1.5% interest in those LLCs. Because CONA has not demonstrated that these holdings are permissible as non-controlling investments of a national bank in accordance with the standards set forth in 12 C.F.R. § 5.36(e), CONA is required to divest of them within two years of consummation of the conversion and merger. Should CONA seek to demonstrate to the OCC that these non-controlling investments are permissible for a national bank, it must do so promptly after consummation of the merger and conversion.⁴⁰

5. Community Development Investments

Community development investments to be transferred to CONA as a result of the merger are permissible under the investment authority of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24. These investments are in projects involving federal Low Income Housing Tax Credits that primarily benefit low- and moderate-income individuals, and in a new markets growth fund (the “Fund”) established through the U. S. Small Business Administration as a New Markets Venture Capital Company. The Fund’s focus is to invest in small businesses located in low-income areas of the Baltimore-Washington D.C.-Northern Virginia corridor and access New Markets Tax Credits. The total amount of the investments to be transferred to CONA is less than one percent of CONA’s capital and surplus. Further, the aggregate dollar amount of CONA’s community development investments after this transfer will be less than fifteen percent of CONA’s capital and surplus. CONA may provide after-the-fact notifications for its future Part 24 investments up to 15% of its unimpaired capital and surplus provided that CONA continues to be at least adequately capitalized and that the additional investment amounts do not pose risk to the Federal Deposit Insurance Fund. In no event may CONA’s aggregate community development investments, including contingent liabilities, exceed 15% of its unimpaired capital and surplus.

III. CONDITIONS

These approvals are subject to the following conditions:

1. Prior to consummation of the conversion and merger, CONA shall execute an operating agreement (“Operating Agreement”) with the OCC. The Operating Agreement shall provide, among other things, that within 30 days following the consummation of the conversion and merger, CONA shall enter into an Indemnification Agreement, satisfactory to the OCC, with COFC, pursuant to which COFC agrees to indemnify CONA for certain liabilities, as specified, that may be incurred directly or indirectly by CONA, including any of its direct or indirect subsidiaries, as a result of the acquisition or assumption of assets, activities, and obligations by CONA, including any if its direct or indirect subsidiaries, or other specified liabilities, resulting from CONA’s acquisition of CCB and its direct and indirect subsidiaries.

⁴⁰ CBUSA Investment LLC does not engage in any activities directly, but serves as a holding company for the non-controlling equity investment in CB/USA LLC. Since the underlying non-controlling investment is nonconforming, CONA is also required to divest of it within two years of consummation of the conversion and merger.

2. The Board of Directors of CONA shall assure that the Operating Agreement is adopted, fully and timely implemented, and adhered to thereafter.
3. CONA shall take all steps necessary to ensure that the commitments set forth in a letter dated July 7, 2009, from CONA President Lynn A. Pike to OCC National Bank Examiner Vance S. Price, following the concurrence of the OCC, 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.

IV. CONSUMMATION GUIDANCE

Please refer to the *Conversion* and *Business Combination* booklets for steps to complete the conversion and merger.

These conditional approvals are granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transactions will have been received prior to the conversion and merger, as appropriate, and that the merger of CCBNA into CONA will occur immediately after the conversion of CCB to a national bank.

As a reminder, the Northeastern District Licensing unit must be advised in writing 10 days in advance of the desired effective date for the conversion and merger so that the OCC may issue the necessary conversion authorization and merger certification letters.

The OCC will include branch authorizations, as appropriate, in the letters authorizing the conversion and certifying the consummation of the merger. With respect to the conversion application, you are reminded that the following items must be satisfactorily addressed on or before the effective date of the conversion of CCB:

1. The converting institution must ensure that all other required regulatory approvals, non-objections, or waivers have been received.
2. The converting institution must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion.
3. Upon completion of all steps required to convert to a national banking association, the converted bank must submit the “Conversion Completion Certification” (enclosed) certifying that all of the steps required to convert CCB to a national banking association have been completed.

When the institution has satisfactorily completed all of the above steps, the OCC will issue a “Conversion Completion Acknowledgment” officially authorizing the institution to commence business as a national banking association.

With respect to the merger application, please ensure that you have submitted the following prior to your desired consummation date:

1. CONA must ensure that all other required regulatory approvals, non-objections, or waivers have been received.
2. A Secretary's Certificate for each institution certifying that a majority of each bank's board of directors approved the merger.
3. An executed merger agreement with the Amended Articles of Association for the Resulting Bank attached.
4. A Secretary's Certificate from each institution certifying that the shareholder approvals have been obtained.

V. CONCLUSION

For the reasons set forth above, and subject to the commitments and representations made in the applications and by representatives of the applicants, the section 1818 conditions set forth above, and subject to the receipt by the applicants of all other applicable regulatory approvals, nonobjections and waivers, the OCC hereby conditionally approves:

- 1) the conversion of CCB to a national bank;
- 2) the retention by CCBNA of CCB's branches;
- 3) the merger of CCBNA into CONA;
- 4) the retention by CONA of its main office and branches, and CCBNA's branches as branches following consummation of the merger of CCBNA into CONA; and
- 5) the retention of the subsidiaries as described above following consummation of the merger of CCBNA into CONA; with the exception of CBUSA Investment LLC and its holdings of non-controlling equity investments in CB/USA LLC and the Builder LLCs that CONA shall divest within two years of the merger's consummation.

If the conversion and merger transactions have not been consummated within six months from the approval date, the approvals will automatically terminate unless the OCC grants an extension of the time period.

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 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.

A separate letter is enclosed requesting your feedback on how we handled your applications. We would appreciate your response so we may improve our service. If you have questions regarding this letter, please contact me at (202) 874-5060, or Senior Licensing Analyst Sandya Reddy at (212) 790-4055. Please reference the application control number in any correspondence.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller
Licensing