



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2009-08
August 2009

July 17, 2009

Bonnie Upham
Chief Risk Officer
Alerus Financial, National Association
401 Demers Avenue
Grand Forks, North Dakota 58201

Re: Application by Alerus Financial, National Association, Grand Forks, North Dakota, to acquire from the Federal Deposit Insurance Corporation (“FDIC”) as receiver, the deposits and certain assets of BankFirst, Sioux Falls, South Dakota
OCC Control No.: 2009-CE-02-021

Dear Ms. Upham

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application of Alerus Financial, National Association, Grand Forks, North Dakota (“Alerus”) to purchase certain assets of and assume certain liabilities of BankFirst, Sioux Falls, South Dakota (“Failed Entity”) from the FDIC as receiver, for the reasons set forth below. The transaction may be consummated immediately upon approval. 12 U.S.C. § 1828(c)(6).

Failed Entity, a state chartered bank with deposits insured by the FDIC, was declared closed by the South Dakota state banking commissioner on July 17, 2009, and the FDIC was appointed as receiver. The Comptroller has now been asked to grant his written approval of the proposed agreement negotiated between the FDIC and Alerus by which the latter would purchase certain assets and assume the deposit liabilities of Failed Entity.

This approval is granted based upon the information contained in Alerus’s application and other information and representations made to the OCC during its processing of the application.

The Purchase and Assumption

Alerus applied to the OCC for approval to purchase certain assets of and assume certain liabilities of Failed Entity under 12 U.S.C. §§ 24 (Seventh) and 1828(c) (the “Transaction”). Alerus is located in North Dakota. Failed Entity is located in South Dakota, and has a branch office in Minnesota. A national bank may acquire all or part of a depository institution through a

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purchase and assumption transaction under 12 U.S.C. § 24 (Seventh). Thus, the Transaction is legally authorized and the OCC approves the Transaction.

Generally, an application to engage in an interstate merger transaction pursuant to the Riegle-Neal Act, 12 U.S.C. § 1831u, is subject to certain requirements and conditions set forth in sections 1831u(a)(4) and (5) and 1831u(b). These conditions are: (1) compliance with state imposed age limits, if any, subject to the Riegle-Neal Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Riegle-Neal Act; (3) compliance with nationwide and state concentration limits; (4) expanded community reinvestment analysis and compliance; (5) adequacy of capital and management skills; and (6) limits on single branch acquisitions. These requirements, however, do not apply to a transaction, such as this, where the FDIC has provided assistance under 12 U.S.C. § 1823(c), or one of the banks involved is in default or in danger of default. 12 U.S.C. § 1831u(e). Moreover, in approving a transaction under the Riegle-Neal Act, the OCC may authorize the acquiring bank to retain as branches the main office and any branches of the target bank. 12 U.S.C. §§ 1831u(d)(1) and 36(d). Thus, the acquisition by Alerus of certain assets and deposit liabilities of Failed Entity is legally permissible under 12 U.S.C. § 24(Seventh) and the retention by Alerus of the main office and branch of Failed Entity as branches is legally permissible under the Riegle-Neal Act.

Bank Merger Act

The OCC reviewed the proposed purchase and assumption Transaction under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. 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 combatting money laundering activities, including in overseas branches,” 12 U.S.C. § 1828(c)(11). We considered these factors and found them consistent with approval under the statutory provisions.

In addition, the OCC also finds, under the standards set forth in the Bank Merger Act, that it must act on the application immediately. 12 U.S.C. § 1828(c)(3), (4)(C)(i), and (6). Consequently, there is no requirement for publication of notice of the Transaction, for a request by the OCC of a competitive factors report from the Attorney General, or for a post-approval waiting period prior to consummation of the Transaction.

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Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicant’s record of helping to meet the credit needs of the community, including low-and-moderate-income (“LMI”) neighborhoods, when evaluating certain applications, including transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the Transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

Subsequent Sale of the Sioux Falls, South Dakota Office

The FDIC announced the opportunity for interested bidders to partner with each other for the purpose of acquiring the deposits and assets of BankFirst. However, the FDIC also indicated that it would accept bids only from individual bidders and not joint bids from two or more parties. Consequently, Alerus placed a bid for all of the branches, deposits and certain assets of Failed Entity that were being sold with the intention that it would immediately sell the South Dakota portion of Failed Entity’s business to an unaffiliated party.

We understand that Alerus has entered into a written agreement whereby immediately following its acquisition of certain assets and deposits of Failed Entity from the FDIC, Alerus will immediately sell those certain assets and deposit liabilities of Failed Entity that are attributed to the main office location of Failed Entity at 6100 South Old Village Place, Sioux Falls, South Dakota to First Dakota National Bank, Yankton, South Dakota (“First Dakota”). First Dakota has filed a separate application with the OCC for approval of this transaction and this application is addressed by the OCC in a separate decision. At the conclusion of this sale to First Dakota, Alerus will retain those deposits and assets of Failed Entity that are attributed to its former branch in Minneapolis, Minnesota.

Consummation Guidance

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transaction will have been received prior to the consummation of the transaction. Please refer to the Business Combinations booklet of the *Comptroller’s Licensing Manual* for steps to complete the transaction.

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Within seven days of consummation of the transaction, please provide the Central District Office with copies of the following documents:

- An executed purchase and assumption agreement.
- Documentation that all other conditions that the OCC imposed have been met.

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.

If you have questions regarding this letter, please contact Carolina Ledesma, Senior Licensing Analyst, at (312) 360-8867 or at carolina.ledesma@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller, Licensing