



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

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May 17, 2010

**Conditional Approval #955
June 2010**

John P.C. Duncan, Esq.
Duncan Associates
Attorneys and Counselors, P.C.
180 North LaSalle Street
Suite 3850
Chicago, Illinois 60601

**Re: Application by Lehman Brothers Trust Company, National Association for a
Change in the Composition of Assets
Application to Merge Lehman Brothers Trust Company, National
Association into LBTC Transfer Inc.
Control Numbers: 2009-NE-12-0286 2010-NE-12-0117**

Dear Mr. Duncan:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the applications for Lehman Brothers Trust Company, National Association, New York, New York, (“LBTCNA”) to (1) change the composition of its assets and (2) merge into its nonbank affiliate, LBTC Transfer Inc. These approvals are granted after a thorough review of the applications, other materials supplied by the applicant’s representatives, and other information available to the OCC, including commitments and representations made in the applications and during the application process. The OCC’s decision to conditionally approve LBTCNA’s change in asset composition and the subsequent merger of LBTCNA into its nonbank affiliate is made after a determination that the applications met regulatory and policy requirements. These approvals are subject to the conditions set out herein.

Background

LBTCNA applied to the OCC for approval for a fundamental change in its asset composition under 12 C.F.R. § 5.53. The fundamental change in LBTCNA’s asset composition will occur as a result of LBTCNA’s transfer of all its fiduciary accounts and a substantial portion of its other assets to Neuberger Berman Trust Company National Association, New York, New York (“NBTCNA”) pursuant to an agreement LBTCNA and its indirect parent, Lehman Brothers

Holdings Inc. (“LBHI”), previously entered into with Neuberger Berman Group LLC (“NB Group”), NBTCNA’s indirect parent. In exchange for LBTCNA’s transfer of fiduciary and other assets, NBTCNA will assume all of the liabilities of LBTCNA associated with the fiduciary accounts being assigned (the “Transaction”). LBTCNA and NBTCNA are uninsured non-depository national banks the operations of which are limited to those of a trust company and activities related thereto.

LBTCNA also applied to the OCC for approval for LBTCNA to merge into LBTC Transfer Inc. under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5)(the Merger), after consummating the Transaction. LBTC Transfer Inc. is organized as a Delaware corporation and was formed solely for the purpose of engaging in the Merger. It is wholly owned by Lehman Brothers Bancorp Inc. (“LBBI”), the immediate parent and, except for directors’ qualifying shares, sole shareholder of LBTCNA. Because LBTCNA and LBTC Transfer Inc. are both controlled by LBBI, and LBTC Transfer Inc. is not a bank, it is a nonbank affiliate of LBTCNA.¹ LBTCNA has represented that the Merger will occur promptly after the consummation of the Transaction. As a result of the Merger, LBTCNA’s separate existence as a national bank will end, and its charter will terminate.

Discussion

A. The Fundamental Change in Asset Composition

LBTCNA applied to the OCC for prior approval of a fundamental change in its asset composition under 12 C.F.R. § 5.53. Under section 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. In the Transaction, LBTCNA will transfer all of its fiduciary accounts and certain other assets and so it is within the scope of section 5.53(c)(1)(i).

The principal purpose of adopting 12 C.F.R. § 5.53 was to address supervisory concerns raised by so called “dormant” bank charters by providing the OCC with regulatory oversight and a means to monitor them. LBTCNA plans to merge into its nonbank affiliate, LBTC Transfer Inc., promptly after consummation of the Transaction that would make LBTCNA a “dormant” charter. Thus, OCC concerns over the continuation of “dormant” charters are addressed, and so OCC approval of LBTCNA’s application is consistent with the language and purpose of section 5.53.

¹ See 12 C.F.R. §§ 5.33(d)(5) & 5.33(d)(8) (definitions of control and nonbank affiliate).

B. The Merger

In the Merger, LBTCNA will merge into its nonbank affiliate, LBTC Transfer Inc. LBTC Transfer Inc. will be the surviving entity, and LBTCNA 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.”² 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, discussed below, expressly provides for mergers into a nonbank affiliate; however, the regulation limits these transactions to mergers involving a national bank that is not an insured bank. LBTCNA is not insured.

The OCC’s regulations implementing 12 U.S.C. § 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.³ 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. LBTC Transfer Inc. is a Delaware Corporation. Delaware permits its domestic corporations to merge with corporations organized under the law of another jurisdiction, with the Delaware corporation as the survivor.⁴

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. LBTCNA is in the process of meeting applicable procedural requirements under Section 214a and LBTC Transfer Inc. is in the process of complying with the procedures for mergers by Delaware corporations. There are no dissenting shareholders in this case because LBTCNA is, except for directors’ qualifying shares, wholly owned by LBBI and so no issues relating to dissenters’ rights are present.

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

² 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).

³ See 12 C.F.R. § 5.33(g)(5)

⁴ Del. Code Ann. tit. 8, § 252(a)

in any such respect. The OCC reviewed the Merger with respect to these factors and determined approval of the Merger is warranted.

Section 1818 Conditions

These approvals are subject to the following conditions:

1. The Merger may not occur until after the Transaction.
2. If the Merger does not occur within seven (7) days after the Transaction, LBTCNA shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national bank.

These conditions of approval are conditions “imposed in writing by a Federal banking 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.

Other Requirements

The following documents must be submitted to the OCC in connection with Merger:

1. Certified copies of the board of directors’ resolutions approving the merger and the shareholder resolutions approving the merger and waiving notice of the shareholder meeting by publication and by mail.
2. A copy of the final Certificate of Merger filed with the Delaware Secretary of State.
3. LBTCNA’s charter certificate and certification that all OCC Reports of Examination and any other OCC documents in the possession of LBTCNA have been returned to the OCC or destroyed.

If the Transaction and Merger are not consummated within ninety (90) days of these conditional approvals, the approvals shall automatically terminate, unless the OCC grants an extension of the time period.

Conclusion

These conditional approvals 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

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supervisory, regulatory, and examination authorities under applicable law and regulations. The OCC's approvals are based on the representations, submissions, and other information provided in connection with the application available to the OCC as of this date. The OCC may modify, suspend or rescind these approvals if material changes in the information on which the OCC relied occurs prior to the date of the transactions to which these decisions pertain. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

All correspondence, information required to be submitted to the OCC, or any questions concerning these conditional approvals should be directed to Licensing Analyst Robin Miller in the OCC's Northeastern District Licensing Office at (212) 790-4055. You should include the application control number on any correspondence related to this filing.

Sincerely,

Steven Maggio

Steven Maggio
Director for District Licensing