



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

Licensing Department
250 E Street, S.W.
Washington, D.C. 20219

**Conditional Approval #960
August 2010**

July 15, 2010

Mr. Brian D. Christiansen
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, N.W.
Washington, D.C. 22205

Re: Application to establish a new national bank, NAFH National Bank
Application Control Number: 2010-WO-01-0008

Application for NAFH National Bank to acquire from the Federal Deposit Insurance Corporation as Receiver, certain assets and liabilities of: MetroBank of Dade County, Turnberry Bank, and First National Bank of the South
Application Control Numbers: 2010-WO-02-0004, -0005 & -0007

Dear Mr. Christiansen:

The Office of the Comptroller of Currency (“OCC”) hereby grants final conditional approval to the application to establish a new national bank with the title of NAFH National Bank, Miami, Florida (the “Bank”). The OCC also hereby grants conditional approval to the application by the Bank to purchase certain assets and assume certain liabilities of MetroBank of Dade County (“MetroBank”), Miami, Florida, Turnberry Bank (“Turnberry”), Aventura, Florida, and First National Bank of the South (“FNB South”), Spartanburg, South Carolina (collectively, the “Failed Banks”) from the Federal Deposit Insurance Corporation (“FDIC”) as Receiver of the Failed Banks (the “P&A Transactions”). These approvals are 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 in the applications and by the Bank’s representatives during the application process. These approvals are also subject to the conditions set out herein.

Background

An application was made to the OCC to charter the Bank. The organizers proposed to establish the Bank for the purpose of assuming liabilities and purchasing assets from the FDIC acting as the receiver of a depository institution, inasmuch as only chartered depository institutions may assume deposit liabilities from the FDIC. The primary proponents of the Bank were several individuals who, along with others, are the organizers of the Bank. The Bank would be a wholly-owned subsidiary of North American Financial Holdings, Inc. (“NAFH”), a Delaware corporation incorporated in connection with this proposal. In December 2009 NAFH completed a private offering and raised a substantial amount of capital to be deployed in transactions with the FDIC and/or other bank investments. The OCC granted preliminary conditional approval for the charter on March 25, 2010. *See* OCC Conditional Approval Number 950 (March 25, 2010).

MetroBank, a state chartered bank, Turnberry, a federal savings association, and FNB South, a national bank, were each in danger of default. Each bank had deposits insured by the FDIC. In contemplation that the appropriate regulatory authority may close each bank and appoint the FDIC as receiver, the FDIC sought bids from potential acquirers to acquire each of the Failed Banks. The Bank was the winning bidder in each case. The Comptroller has been asked to grant his written approval of the proposed agreement negotiated between the FDIC and the Bank by which the latter would purchase certain assets and assume the deposit liabilities of the Failed Banks. In addition, since the Bank is still in organization, the OCC also has been asked to grant final approval for the Bank to commence business in order to enter the P&A Transactions.

Discussion

A. Charter

The OCC finds that the Bank has met all requirements and completed all steps necessary to commence the business of banking, including reopening requirements connected with the preliminary conditional approval. In the initial application, the organizers provided a preliminary business plan based on the general size and type of assets of a failed institution they would seek to have the Bank acquire from the FDIC and their plans for the future business of the Bank. While in organization, the Bank kept the OCC informed of developments regarding capital raising, the identity of investors, changes in structure, and changes in proposed management of the Bank. When the Bank identified a potential failed bank it was interested in acquiring, the Bank supplied a preliminary business plan with its plans for the initial capitalization, operations, and business for that target with a focus on the first several months. The OCC reviewed all the relevant materials and permitted the Bank to submit a bid. Thus, the Bank met the steps set out in the OCC preliminary conditional approval.

The OCC is requiring the Bank to enter a written Operating Agreement that will require the Bank to submit a Comprehensive Business Plan acceptable to the OCC. The Plan must detail the proposed long-term business and operations of the Bank, and the Bank must obtain the OCC's written supervisory non-objection to the Plan. After receiving the OCC's non-objection, the Bank must implement and adhere to the Plan. Any significant deviation from the Plan will require prior notice to the OCC and receipt of written OCC non-objection to the changes.

Accordingly, the OCC concludes the Bank is lawfully entitled to commence the business of banking under 12 U.S.C. § 27(a) and 12 C.F.R. § 5.20. The Bank is authorized to open simultaneously with the P&A Transactions. The P&A Transactions may be consummated immediately upon approval. OCC approval for the Bank to open is conditioned upon entry into the P&A Transactions.¹

The Bank is reminded that several of the standard requirements enclosed in the preliminary conditional approval letter dated March 25, 2010, will continue to apply once the Bank opens and, by opening, the Bank agrees it is subject to these requirements of operation.

B. P&A Transactions

1. P&A Transactions with respect to MetroBank and Turnberry

The Bank applied to the OCC for approval to purchase certain assets and assume certain liabilities of MetroBank and Turnberry in P&A Transactions with the FDIC. National banks have long been authorized to purchase assets and assume liabilities of other depository institutions under the authority of 12 U.S.C. § 24(Seventh).² Consequently, the Bank may acquire the assets and liabilities, including deposits, as proposed. With respect to any assets, subsidiaries, or activities that are not permitted for national banks and are transferred to the Bank, the Bank represents it will divest itself of any such nonconforming or impermissible assets, subsidiaries, or activities, within two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.³ The OCC approves the P&A Transactions.

¹ In connection with opening for business and entry into the P&A Transactions, the Bank requested a waiver of the residency requirements of 12 U.S.C. § 72 for its board of directors. The OCC hereby grants the residency waivers.

² See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

³ Based on information currently available to the Bank, the Bank represents it is not aware of any nonconforming or impermissible assets or activities.

The Bank's main office will be at the location of MetroBank's main office in Miami, Florida. The Bank also requested OCC approval to acquire, retain, and operate the branches of MetroBank and the main office and branches of Turnberry in Florida. The Bank has authority to retain and operate these branches under 12 U.S.C. § 36(c) and applicable intrastate branching laws of Florida as applied to national banks under section 36(c). The OCC approves the Bank's operation of these branches.

2. P&A Transaction with respect to FNB South

The Bank also applied to the OCC for approval to purchase certain assets and assume certain liabilities of FNB South in a P&A Transaction with the FDIC. As noted above, national banks are authorized to purchase assets and assume liabilities of other depository institutions under the authority of 12 U.S.C. § 24(Seventh).

In addition, this P&A Transaction involves the Bank's acquisition of branches in another state in which it does not operate a branch (South Carolina). As such, it is an interstate merger transaction subject to the Riegle-Neal Act. 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).⁴ However, these requirements 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, and the agency may approve the application without regard to those requirements. *See* 12 U.S.C. § 1831u(e). Thus, this P&A Transaction is authorized under the Riegle Neal Act.

Moreover, the resulting bank in an interstate merger transaction under the Riegle-Neal Act may retain and operate as branches the main office and any branches of any bank involved in the transaction. 12 U.S.C. §§ 1831u(d)(1) and 36(d). Thus, the Bank may retain and operate as branches the main office and branches of FNB South, as well as the Bank's own branches.

Accordingly, the OCC approves the Bank's acquisition of certain assets and deposit liabilities of FNB South in the P&A Transaction and approves the Bank's acquisition and operation as branches of the main office and branches on FNB South acquired in the P&A Transaction.

⁴ 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.

3. Bank Merger Act

The OCC reviewed the proposed P&A Transactions under the factors set forth in the Bank Merger Act (“BMA”), 12 U.S.C § 1828(c), and applicable OCC regulations and policies. The OCC considered these factors and finds them consistent with approval. In addition, the OCC finds that it must act immediately to approve the proposed P&A Transactions under the standards set forth in the BMA. Consequently, certain procedural requirements of the BMA -- publication of notice, request for competitive factors report from the Attorney General, and post-approval waiting period -- are inapplicable. 12 U.S.C. § 1828(c)(3), (4)(C), and (6).

4. 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 neighborhoods, when evaluating certain applications, including charter applications and transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903(a)(2); 12 C.F.R. §§ 5.20(e)(2) & 25.29. The OCC considered NAFH National Bank’s description of how it will meet its CRA objectives and the CRA performance evaluation of the other institution involved in the P&A Transactions. The OCC finds approval of the charter application and of the P&A Transactions is consistent with CRA.

Conditions

These approvals are subject to the following conditions:

1. The Bank shall open and commence the business of banking only if it immediately consummates at least one of the P&A Transactions. If the Bank is not able to consummate a P&A Transaction immediately, the Bank shall not open.
2. The Bank shall have received from NAFH an injection of initial paid-in cash capital in conjunction with the P&A Transactions in an amount sufficient so that the Bank’s Tier 1 leverage ratio is at least 10% immediately after consummation of the P&A Transactions, without including any bargain purchase gain. If such cash capital is not provided, the Bank shall not consummate the P&A Transactions.
3. The Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within three (3) business days after receiving this final OCC approval, commencing business, and consummating the P&A Transactions.

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.

Consummation Guidance

Please notify the OCC that the Bank has opened. The OCC will forward you a Charter Certificate under separate cover.

Please refer to the Business Combinations booklet of the *Comptroller’s Licensing Manual* for steps to complete the P&A Transaction. Within seven days of consummation of the P&A Transactions, please provide the OCC with copies of the following documents:

- Executed purchase and assumption agreements.
- Documentation that all other conditions that the OCC imposed have been met.

Conclusion

These conditional approvals are granted based on our understanding that other applicable regulatory approvals, non-objections, or waivers with respect to the Bank, NAFH, any other relevant parties, and the proposed P&A Transactions will have been received prior to the Bank’s opening for business and consummating the P&A Transactions.

The final approval for the Bank to commence business under 12 U.S.C. § 27(a) is limited to opening in conjunction with the P&A Transactions. This approval is void unless at least one of the P&A Transactions occurs as projected.

These conditional approvals, and the activities and communications by OCC employees in connection with the filings, 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 approvals are based on the representations made in the applications, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind these conditional approvals 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.

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If you have any questions about the supervision of your Bank, please contact Assistant Deputy Comptroller George Orsino at 215-357-4752 or Examiner in Charge Chris Primrose at 202-531-4987. For questions about this decision letter or other licensing matters, please contact Senior Licensing Analyst David Reilly at 202-874-5060. You should include the application control numbers on any correspondence related to this filing.

Sincerely,

Lawrence E. Beard

Lawrence E. Beard
Deputy Comptroller, Licensing