



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

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June 30, 2011

**Conditional Approval #1001
July 2011**

Mr. Jeffrey Watiker, Esq.
51 West 52nd Street
New York, New York 10019-6150

Re: Application by Wilmington Trust, FSB, Wilmington, Delaware to convert from a federal savings bank to a national bank; Application by M&T Bank, National Association, Oakfield, New York to acquire by merger the converted bank and to acquire by merger M&T Trust Company of Delaware, Inc., Wilmington, Delaware; and related applications and notices
Control Nos.: 2011 NE 01 0001, 2011 NE 02 0009

Dear Mr. Watiker:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the application by Wilmington Trust, FSB, Wilmington, Delaware to convert from a federal savings bank to a national bank headquartered in Wilmington, Delaware; and the application by M&T Bank, National Association, Oakfield, New York, to acquire by merger the converted bank, designate the former main office of the converted bank as its main office and retain its former main office as a branch, with the resulting bank named “Wilmington Trust, National Association”; and for the resulting bank to acquire by merger M & T Trust Company of Delaware, Inc., Wilmington, Delaware. The OCC also grants approval for the converted bank to retain subsidiaries and to exercise fiduciary powers, and certain residency waivers, as more fully explained below. These approvals are granted after a thorough evaluation of the applications, other materials you have supplied, and other information available to the OCC, including representations made in the applications and by applicants’ representatives during the application process.

I. Background

On February 25, 2011, Wilmington Trust FSB, Wilmington, Delaware (“WTFSB”) submitted an application to the OCC to convert from a federal savings bank to a national bank with fiduciary powers with the name “Wilmington Trust, National Association,” Wilmington, Delaware (“Converted Bank” or “WTNA#1”), and to retain certain

subsidiaries after conversion (the “Conversion Application”). Also on February 25, 2011, M&T Bank, National Association, Oakfield, New York (“MTNA”), submitted a related application to merge the Converted Bank with and into MTNA, designate the former main office of the Converted Bank as its main office, retain its former main office as a branch, with the resulting bank to be named “Wilmington Trust, National Association” (“WTNA”)¹; and immediately thereafter, merge M&T Trust Company of Delaware, Inc., Wilmington, Delaware (“MTDE”), with and into WTNA (the “Merger Application”). (The Conversion Application and the Merger Application are hereinafter collectively referred to as the “Applications” and WFSB and MTNA the “Applicants”).²

WFSB is a wholly owned direct subsidiary of Wilmington Trust Corporation (“WTCorp”) and an indirect wholly owned subsidiary of M&T Bank Corporation (“MTB Corp”). MTNA is a wholly owned subsidiary of MTBCorp and so WFSB and MTNA are affiliates. MTDE is currently a subsidiary of M&T Bank, MTBCorp’s subsidiary state member bank. Prior to effectuating the merger of MTDE with and into WTNA, the parties contemplate MTDE will become a subsidiary of WTNA. WFSB and MTNA are insured banks; the Converted Bank will be insured. MTDE is an uninsured Delaware limited purpose trust company.³

¹ Upon consummation of its conversion, WFSB will be named “Wilmington Trust, National Association”. In this Approval, “Converted Bank” or “WTNA#1” is used to refer to Wilmington Trust, National Association before its merger with MTNA and “WTNA” refers to the institution resulting from the merger between the Converted Bank and MTNA.

² These Applications were filed as part of a larger transaction involving M&T Bank Corporation’s planned internal reorganization in connection with its proposed acquisition of Wilmington Trust Corporation. On April 26, 2011, the Federal Reserve Board (“FRB”) approved applications submitted by MTBCorp to, among other things, acquire WTCorp and thereby indirectly acquire its subsidiary bank, Wilmington Trust Company (“WTC”) and its subsidiary savings bank, WFSB, and certain other nonbanking subsidiaries of WTCorp. *See* FRB Order Approving the Acquisition of a Bank Holding Company, Merger of Banks, and Establishment of Branches in response to applications submitted by MTBCorp and its subsidiary state member bank, Manufacturers and Traders Trust Company, Buffalo, New York (“M&T Bank”), April 26, 2011 (“FRB Approval Order”). The parties consummated the holding company transaction on May 16, 2011.

Notice of the Applications was published in The Buffalo News, The Delaware News Journal and The Baltimore Sun on February 25, 2011, March 7, 2011 and March 24, 2011. The OCC did not receive any comments. The FRB received comments on the related applications filed by MTBCorp and M&T Bank; those comments were addressed in the FRB Approval Order.

³ Because the proposed merger of MTDE and WTNA is a merger between an insured depository institution and an uninsured institution, this transaction also requires the prior approval of the Federal Deposit Insurance Corporation (“FDIC”). 12 U.S.C. 1828(c)(1)(A). FDIC granted approval on June 30, 2011.

WTFSB has no branches. MTNA has no branches; its only location is its main office in Oakfield, New York. As noted, MTNA seeks approval following the merger to retain the Converted Bank's main office as its main office and to retain its former main office as a branch. MTDE's only location is its main office in Delaware. WTFSB currently owns two subsidiary uninsured non-depository trust companies, one directly, the other indirectly. WTNA seeks to retain these and certain other subsidiaries following consummation of the conversion and mergers.

II. Legal Authority

A. Conversion to a national bank charter

The conversion of WTFSB to a national bank is legally authorized under 12 C.F.R. § 5.24 of the OCC's regulations and 12 C.F.R. § 552.2-7 of the regulations of the Office of Thrift Supervision ("OTS").⁴ In deciding a conversion application, OCC regulations provide that the OCC takes into account whether the institution can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies.⁵ The regulations further provide that an application may be denied if a significant supervisory, Community Reinvestment Act ("CRA"),⁶ or compliance concern exists with respect to the applicant; approval is inconsistent with applicable law, regulation, or policy; or the applicant fails to provide necessary information that the OCC has requested.⁷ The regulations also provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.⁸ Finally, the regulations provide that a conversion of a federal savings bank to a national bank charter must not be in contravention of applicable federal law.⁹

⁴ This provision requires a converting federal savings bank that does not meet the conditions for expedited treatment under 12 C.F.R. § 516.5 to file an application under 12 C.F.R. § 563.22(b)(2) with the OTS and receive prior approval. The OTS approved WTFSB's application to convert on May 12, 2011. *See* May 12, 2011 letter from James G. Price, OTS Regional Director, to Jeffrey A. Watiker, Counsel.

⁵ 12 C.F.R. § 5.24(d)(1).

⁶ The CRA also requires that the OCC 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). This will be discussed more fully subsequently in this decision.

⁷ 12 C.F.R. §§ 5.24(d) and 5.13(b).

⁸ 12 C.F.R. § 5.24(d)(1).

⁹ 12 C.F.R. § 5.24(d)(2)(ii)(E). As stated, OTS regulations permit the direct conversion of a federal savings bank to a national bank. 12 C.F.R. § 552.2-7.

The conversion requirements of Dodd-Frank do not apply to the conversion of a federal thrift into a national bank.

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 are consistent with approval of the Conversion Application. Following the conversion, WTNA#1 is authorized to retain as its main office, WTFSB's main office in Wilmington, Delaware.

B. MTNA's Acquisition of the Converted Bank by Merger

Mergers of insured banks with different home states are authorized under 12 U.S.C. § 1831u(a)(1), which was adopted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Riegle-Neal").¹⁰ As noted, WTFSB's main office is located, and the main office of the Converted Bank will be located, in Delaware; MTNA's main office is located in New York. Riegle-Neal permitted a state to elect to prohibit interstate merger transactions involving their home state banks if they did so between September 29, 1994 and May 31, 1997. Neither New York nor Delaware exercised this opt-out authority.

An application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in Riegle-Neal. These conditions are compliance with state-imposed age minimums, if any, which cannot exceed five years; compliance with federal and certain state filing requirements; compliance with certain deposit concentration limits; community reinvestment compliance; and adequacy of capital and management skills. These requirements are addressed below.

First, the proposed merger satisfies state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank . . .to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory

¹⁰ See also 12 U.S.C. § 215a-1 which authorizes a national bank to merge with an out-of-state bank if the merger is approved pursuant to Riegle-Neal. 12 U.S.C. § 215a-1(a). For purposes of Riegle-Neal, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located" and with respect to a state bank, the State by which the bank is chartered. The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(g)(4), (5), (6), (8) & (10).

law of the host state.”¹¹ The maximum age requirement a state is permitted to impose is five years.¹² Delaware is the host state for purposes of complying with state imposed age requirements. Delaware does not impose a minimum age requirement where the resulting bank in the interstate merger transaction will be located in Delaware.¹³ The resulting bank in this transaction will be located in Delaware.

Second, the proposed merger satisfies the applicable Riegle-Neal filing requirements. A bank applying for an interstate transaction under section 1831u(a) must (1) “comply with the filing requirements of any host State of the bank which will result from such transaction” as long as the filing requirements do not discriminate against out-of-state banks and are similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state; and (2) submit a copy of the application to the state bank supervisor of the host state.¹⁴ Counsel for MTNA has represented copies of the Merger Application were submitted to the New York State Banking Department and the Delaware Banking Commissioner and that neither state required any additional filing requirement as permitted under Riegle-Neal. Consequently, the Riegle-Neal filing requirements have been complied with and are satisfied.

Third, the proposed merger does not raise issues with respect to the deposit concentration limits of Riegle-Neal. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on interstate transactions; however, interstate transactions involving only affiliated banks are specifically exempt from these provisions.¹⁵ Because MTNA and the Converted Bank are affiliated, the Riegle-Neal deposit concentration limits are inapplicable to this transaction.

Fourth, the proposed transaction does not raise issues with respect to the special community reinvestment compliance provisions of Riegle-Neal. In determining whether to approve an application for an interstate merger under section 1831u(a), the OCC must: (1) comply with its responsibilities under section 804 of the Community Reinvestment Act (CRA);¹⁶ (2) take into account the CRA evaluations of any bank that would be an affiliate of the resulting bank; and (3) take into account the applicant bank’s record of compliance with applicable state community

¹¹ 12 U.S.C. § 1831u(a)(5)(A).

¹² 12 U.S.C. § 1831u(a)(5)(B).

¹³ Del. Code Ann. tit. 5 § 795C.

¹⁴ 12 U.S.C. § 1831u(b)(1).

¹⁵ 12 U.S.C. § 1831u(b)(2)(E).

¹⁶ 12 U.S.C. § 2903.

reinvestment laws.¹⁷ But these provisions do not apply to transactions between affiliated banks and so they are not applicable to the current transaction.¹⁸ The CRA itself, however, is applicable and will be discussed subsequently.

Fifth, the OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction.¹⁹ The OCC finds that WTFSB satisfies the capital requirement, and that MTNA and WTNA satisfy the capital and management requirements.

Consequently, the proposed merger transaction satisfies the applicable Riegle-Neal requirements and is legally permissible, subject to consideration of the factors in the Bank Merger Act (“BMA”)²⁰ and the banks’ records of compliance with the CRA. These factors will be addressed below.

C. Bank Merger Act

Under the BMA, the OCC may not approve a merger that would have anti-competitive effects, and must also consider the financial and managerial resources and future prospects of the existing and resulting banks, and the convenience and needs of the community to be served.²¹ The BMA also requires the OCC to take into consideration the effectiveness of each insured depository institution involved in the proposed transaction in combating money-laundering activities.²²

The OCC reviewed the proposed merger under the criteria of the BMA and applicable OCC regulations and policies. Because the parties to the merger will be owned by the same holding

¹⁷ 12 U.S.C. § 1831u(b)(3).

¹⁸ *Id.* The expanded CRA requirement applies only where the resulting bank would have a branch or a bank affiliate in any state in which it had no branch or bank affiliate immediately prior to the transaction. In this case, WTNA as the resulting bank, will not have a branch or bank affiliate in any state where it did not have a branch or bank affiliate prior to the transaction because MTNA and the Converted Bank will be affiliated prior to the transaction.

¹⁹ 12 U.S.C. § 1831u(b)(4). The term “adequately capitalized” for these purposes has the same meaning as used with respect to prompt corrective action. 12 U.S.C. § 1831u(g)(1).

²⁰ 12 U.S.C. § 1828(c).

²¹ *See* 12 U.S.C. 1828(c)(5).

²² *See* 12 U.S.C. 1828(c)(11).

company at the time of the merger, we found that the merger would not have anticompetitive effects. The OCC also considered the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and the effectiveness of each institution in combating money laundering activities and found these factors to be consistent with approval.

D. Community Reinvestment Act

The CRA requires the OCC to take into account the records of the institutions proposing to engage in a merger in helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods.²³ Additionally, the OCC takes into account an applicant’s record of CRA performance in considering an application for an insured depository institution to convert to a national bank charter.²⁴ We reviewed the CRA Performance Evaluation (“PE”) of each institution involved in the transaction,²⁵ as well as other information available to the OCC as a result of its regulatory responsibilities. Our review revealed that the records of MTNA (designated as a limited purpose institution), WTFSB, M&T Bank (the principal subsidiary of MTBCorp.) and Wilmington Trust Company (the principal subsidiary of WTCorp.) in helping to meet the credit needs of their communities are satisfactory.

1. M & T Bank

M&T Bank’s most recent PE, dated May 12, 2008 and issued by the Federal Reserve Bank of New York, assigned the bank an “Outstanding” rating. Among the major factors supporting the rating were: (i) an excellent overall level of qualified community development investments; (ii) leadership in community development lending; (iii) good distribution of loans by geography and borrower income; (iv) good responsiveness to the credit needs of small businesses; and (v) a branch and delivery system that is readily accessible to all assessment areas. No evidence of illegal or discriminatory lending practices was noted in the PE.

2. MTNA

MTNA’s most recent PE, dated May 18, 2009 and issued by the OCC, assigned the bank an overall “Satisfactory” rating. Among the major factors supporting the rating were: (i) excellent levels of community development and qualified investment lending activity; (ii) excellent responsiveness to credit and community development needs; and (iii) high level of community

²³ 12 U.S.C 2903(a)(2) and 2902(3)(E); 12 CFR 25.29(a)(3).

²⁴ 12 C.F.R. 25.29(a)(4).

²⁵ MTDE is a limited purpose uninsured trust company and not subject to the CRA.

development services. No evidence of illegal or discriminatory lending practices was noted in the PE.

3. Wilmington Trust Company

Wilmington Trust Company's most recent PE, dated July 20, 2009 and issued by the Federal Reserve Bank of Philadelphia, assigned the bank an overall "Outstanding" rating. Among the major factors supporting the rating were: (i) excellent distribution of loans by geography and borrower income; (ii) good distribution of loans among businesses of different sizes; (iii) significant level of qualified community development investments; (iv) high level of community development loans; and (v) leadership in community development services. No evidence of illegal or discriminatory lending practices was noted in the PE.

4. WTFSB

WTFSB's most recent PE, dated October 29, 2009 and issued by the OTS, assigned the bank an overall "Satisfactory" rating. Among the major factors supporting the rating were: (i) excellent level of qualified community development investments, particularly within the Maryland assessment area; (ii) good distribution of loans by geography and borrower income; (iii) adequate responsiveness to community development and small business credit needs; (iv) reasonable level of community development services; and (v) variety of alternative delivery systems. No evidence of illegal or discriminatory lending practices was noted in the PE.

5. Public Comments

The OCC did not receive any comment letters from the public on the Applications, but did receive copies of the letters to the FRB on the related M&TBCorp and M&T Bank applications under its jurisdiction. Some of the commenters commended M&T Bank for its relationship with community groups and for certain aspects of its CRA program, but also made recommendations for the bank to expand its community development programs. Other commenters alleged that M&T denied home mortgage loan applications of African American or Hispanic borrowers more frequently than those of nonminority applicants in certain areas. These public comments were addressed in the FRB Approval Order. None of the comment letters specifically refer to subsidiaries subject to OCC's decision, namely MTNA or WTFSB, and as such, they were not reviewed in detail by the OCC.

6. Conclusion

In summary, our review of the Applications, as well as submitted materials, representations of the Applicants, and review of supervisory data, has not revealed any information inconsistent with approval.

E. Retention of branches by WTNA following consummation of the conversion and merger

Upon consummation of the conversion of WTFSB to a national bank charter and the merger of the Converted Bank with and into MTNA, MTNA proposes to retain the main office of the Converted Bank as its main office and to retain its former main office as a branch. Riegle-Neal provides that, subject to the approval of the OCC, following an interstate merger, the resulting bank may retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.²⁶ The OCC authorizes, WTNA as the resulting bank in the merger to retain upon consummation of the conversion and merger, the main office of the Converted Bank as its main office and its former main office in New York as a branch.²⁷

F. WTNA Acquisition of MTDE by Merger

Because WTNA and MTDE will each have their main office in Delaware at the time of the merger, the merger is legally authorized pursuant to 12 U.S.C. § 215a, which governs mergers between national banks and state banks located within the same state. Section 12 U.S.C. § 215a(d) provides that a merger involving a state bank may not be in contravention of state law. Under Delaware law, a limited purpose trust company is permitted to merge with an affiliated national bank.²⁸ Consequently, the merger is legally authorized under 12 U.S.C. § 215a.

G. Retention of Limited Purpose Trust Companies and other Operating Subsidiaries

Following the conversion and mergers WTNA seeks to retain WTFSB's two subsidiary uninsured non-depository trust companies, along with certain other subsidiaries. The Applications indicate the subsidiaries engage in activities permissible for national banks and their operating subsidiaries under 12 U.S.C. § 24(Seventh), 12 U.S.C. § 92a, and 12 C.F.R.

²⁶ 12 U.S.C. § 1831u(d)(1).

²⁷ As indicated above, MTNA intends to change its name to WTNA upon consummation of its merger with the Converted Bank. A national banking association, upon written notice to the OCC, may change its name provided the new name includes the word "National". 12 U.S.C. § 30.

²⁸ Del. Code Ann. tit 5 §§ 775 (b)(2)a.; 773(1); and 782(a).

§ 5.34 and 12 C.F.R. Part 9.²⁹ WTNA#1 may retain these subsidiaries upon conversion for the reasons discussed below.³⁰

Wilmington Trust Retirement and Institutional Services Company (“WTRISC”) - WTRISC is a Delaware non-deposit uninsured trust company. It provides personal trust services and trust and related fiduciary and trust administrative services to various types of employee benefit plans, and also provides various trust administration and other related services and recordkeeping and reporting services to third-party administrators, advisors, brokers and consultants. These activities are permissible for national banks under 12 U.S.C. § 92a and 12 U.S.C. § 24(Seventh) and 12 C.F.R. Part 9. The OCC permits national banks to own and operate state trust companies as operating subsidiaries, provided the state trust companies do not engage in activities impermissible for national banks.³¹

Wilmington Trust Fiduciary Services Company (“WTFSC”) – WTFSC is a New Jersey chartered non-deposit uninsured trust company and 100% owned by WTRISC. Its activities include providing corporate trustee services, performing trust, investment management, fund accounting, and benefit payment services offered through financial advisors for retirement and employee benefit plans, providing custodial, trading and paying agent services to retirement and employee benefit plans, acting as ERISA fiduciary and providing other related services. These activities are also permissible for national banks under 12 U.S.C. 92a and 12 U.S.C. 24(Seventh)

²⁹ WTRISC has represented that these subsidiaries currently, and WTNA has represented that these subsidiaries will continue to, meet the requirements for operating subsidiaries in 12 C.F.R. § 5.34(e) and that the subsidiaries will conduct their activities in accordance with OCC policies and guidance.

³⁰ In addition to the subsidiaries proposed to be retained as a result of the conversion and mergers, on March 23, 2011 counsel submitted after the fact notice for eight subsidiaries WTNA will acquire in connection with the intended transfer by Wilmington Trust Company (“WTC”) of its Corporate Client Services (“CCS”) business to WTNA post conversion and mergers. These subsidiaries will provide various management and support services to trust and investment management clients of WTNA. As described in the notice, the activities consist of those eligible for after-the-fact notice under 12 C.F.R. § 5.34(e)(5)(v)(B)(I)(J)and (K), either individually or in some combination thereof.

In some cases, these subsidiaries will share space and employees with WTNA; in some cases WTNA and the subsidiary may also share space and employees with trust clients as well. National banks are permitted to share space and employees with third parties. 12 C.F.R. § 7.3001. Accordingly, WTNA and its subsidiaries may do so, provided WTNA and its subsidiaries comply with the provisions 12 C.F.R. § 7.3001. Of course, to the extent that WTNA and any of these subsidiaries provide services concurrently to trust clients, any services requiring fiduciary powers under 12 U.S.C. 92a must be provided directly by WTNA. The applicant's notice included representations regarding WTNA's ability to control these entities and represented the activities will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activities. (See 12 C.F.R. § 5.34(e)(5)(i)(A)). Any action on these notices will be separately addressed.

³¹ See, e.g., OCC Conditional #696 (June 9, 2005) and authorities cited therein (pg. 8, note 13).

and 12 C.F.R. Parts 5 and 9. As stated above, national banks may own and operate state trust companies as operating subsidiaries, provided the state trust companies engage only in national bank permissible activities. Accordingly, WTNA may hold WTFSC indirectly as an operating subsidiary.

BLA Holding Corp. (“BLA”) - BLA is a Massachusetts stock corporation. It is a holding company that acts as a general partner for BDG & Co. (“BDG”), a Massachusetts general partnership serving as nominee holder of securities for trust clients of WTFSB. BDG’s other general partner is WTRISC. National bank operating subsidiaries may participate in partnerships as general partners provided the partnership will only engage in activities that are permissible for a national bank and the operating subsidiary is operated appropriately to minimize the risk of liability passing through the subsidiary to the bank.³² The activity in which BDG is engaged is permissible under 12 U.S.C. 92a and 12 C.F.R. Part 9.

Based on the Applicants representations as set forth above, the OCC authorizes the Converted Bank to retain these subsidiaries upon conversion and WTNA may continue to retain them as the resulting bank in the merger between MTNA and the Converted Bank.

H. Exercise of Fiduciary Powers

WTFSB currently provides trust services and the OCC grants its request under 12 U.S.C. § 92a, to exercise full fiduciary powers following the charter conversion.³³

Title 12 U.S.C. § 92a provides:

The Comptroller of the Currency shall be authorized and empowered to grant by special permit to national banks applying therefore, when not in contravention of State or local law, the right to act as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.³⁴

³² See Comptroller’s Licensing Manual, Investments in Subsidiaries and Equities (July 2008).

³³ 12 C.F.R. §5.26 (e)(1)(iii). As proposed, Applicants have represented that WTNA will exercise fiduciary powers in Delaware and 15 other states and have represented that the exercise of intended fiduciary powers are not in contravention of applicable state laws. In addition, the OCC has determined, as required by 12 U.S.C. § 92a(i), that the capital and surplus of WTNA will not be less than that required by state law of state banks, trust companies, and other corporations exercising comparable fiduciary powers in the relevant states.

³⁴ 12 U.S.C. § 92a(a).

For these purposes, a national bank is considered to be “located” with respect to each fiduciary relationship in the state in which the bank acts in a fiduciary capacity for that relationship. A national bank acts in a fiduciary capacity for a relationship in the state in which it accepts the fiduciary appointment, executes the documents that create the fiduciary relationship, and makes discretionary decisions regarding the investment or distribution of fiduciary assets.³⁵

OCC regulations adopted under 12 U.S.C. § 92a provide that a national bank may act in a fiduciary capacity in any state. In doing so, it may engage in any of the eight fiduciary capacities listed in 12 U.S.C. § 92a(a), unless the state prohibits its own fiduciaries from acting in that capacity³⁶ and, in addition, it may act in any other fiduciary capacity permitted by the state for its own state fiduciaries.³⁷ While acting in a fiduciary capacity in one state, it may market its fiduciary services to, and act as a fiduciary for, customers located in any state and it may act as fiduciary for relationships that include property located in other states through trust offices and trust representative offices that it may establish in any state.³⁸

I. Director Residency Waivers

The OCC hereby grants multiple waivers of the residency requirements of 12 U.S.C. § 72 for the majority of the board of directors of WTNA. These waivers are granted based upon a thorough review of all the information available, including the representations and commitments made in the application and by the applicant’s representatives during the application process. As currently proposed, one of WTNA’s directors will meet the residency requirement of 12 U.S.C. § 72, and four will not. WTNA may continue to appoint directors who do not meet the residency requirements without applying for individual waivers, as long as the ratio of directors meeting the residency requirement to those not meeting such requirement remains the same as in this approval. The OCC reserves the right to withdraw these residency waivers at any time.

III. Section 1818 Conditions

These approvals are subject to the following conditions:

1. WTNA’s Board of Directors and Management shall take all steps necessary to ensure that the commitments set forth in a letter dated June 29, 2011 (“Commitment Letter”), by Mark J. Czarnecki, President and Chief Executive Officer, M&T Bank, N.A. to Richard T. Baskin,

³⁵ 12 C.F.R. § 9.7(d).

³⁶ 12 C.F.R. § 9.7(a)(1).

³⁷ 12 C.F.R. § 9.7(a)(2).

³⁸ *Id.* at § 9.7(b) and (c).

Assistant Deputy Comptroller, are fully adopted, in accordance with the relevant timeframes included in the Commitment Letter, and adhered to thereafter.

2. WTNA shall not make any significant deviation or change from its business plan, as reflected in the Applications and supplemental materials provided to the OCC in connection with the Applications, without receiving OCC's prior written determination of no objection.

3. WTNA shall not make any significant deviation or change from any subsequent business plan to which WTNA has received the OCC's prior written determination of no objection, without first submitting to the OCC sixty (60) days prior written notice and obtaining the OCC's prior written determination of no objection. For purposes of this condition, "significant deviation or change" is the same as defined in Appendix G to the Charters booklet of the Comptroller's Licensing Manual.

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.

The OCC may impose additional conditions it deems appropriate in any written determination of no objection it issues in response to WTNA.

IV. Consummation Requirements

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, nonobjections or waivers with respect to the proposed transactions have been or will have been received prior to the conversion and merger, as appropriate, and that the mergers will occur upon the conversion of WTFSB to a national bank.

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

The OCC will include a branch authorization, as appropriate in the letter 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 WTFSB:

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 WTFSB 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. At that time, you will receive the charter certificate.

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

1. MTNA 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 and, if necessary, the Amended Articles of Association for the WTNA, the resulting Bank.
4. A Secretary's Certificate from each institution certifying that the shareholder approvals have been obtained, if required.

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, and subject to the receipt by the Applicants of all other applicable regulatory approvals, non objections and waivers, the OCC hereby approves:

1. the conversion of WTFSB to a national bank, "Wilmington Trust, National Association" ("Converted Bank") with its main office in Wilmington, Delaware;

2. the retention by the Converted Bank of the subsidiaries described in this Approval;
3. the Converted Bank's exercise of fiduciary powers;
4. the merger of the Converted Bank into MTNA, with the resulting bank named "Wilmington Trust, National Association" ("WTNA");
5. the retention by WTNA, following the conversion and merger, of the Converted Bank's main office as its main office and the retention of the former main office of MTNA in New York as a branch; and
6. the acquisition of MTDE and the subsequent merger of MTDE into WTNA.

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

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 supervisory, regulatory and examination authorities under applicable law and regulations. These approvals are based on the Applicants' representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind these approvals if a material change in the information on which the OCC relied occurs prior to the date of the transactions to which these approvals pertain. 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 these applications. We would appreciate your response so we may improve our service. If you have questions regarding this letter, please contact Senior Licensing Analyst Sandya Reddy at (212)790-4055. Please reference the application control number(s) in any correspondence.

Sincerely,

Beverly Evans

Beverly Evans
Acting Deputy Comptroller for Licensing