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Comptroller of the Currency  
Administrator of National Banks

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Western District Office  
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Denver, Colorado 80202  
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October 21, 2011

**Conditional Approval #1011  
November 2011**

Richard K. Kim  
Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019

Re: Bank Midwest, National Association  
Purchase of Certain Assets and Assumption of Certain Liabilities

Dear Mr. Kim:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application by Bank Midwest, National Association, Kansas City, MO (“Acquirer”) to purchase certain assets and assume certain liabilities of Community Bank of Colorado, Greenwood Village, CO (“Failed Entity”) from the Federal Deposit Insurance Corporation (“FDIC”) as Receiver for the Failed Bank for the reasons and subject to the conditions set below. As discussed 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 Federal Deposit Insurance Corporation (“FDIC”), was declared insolvent (closed) by the State Banking Commissioner on October 21, 2011 and the FDIC was appointed as receiver. At the close of business on October 21, 2011, the Failed Entity had total assets of approximately \$1.2 billion. The Comptroller has now been asked to grant his written approval of the proposed agreement negotiated between the FDIC and Acquirer by which the latter would purchase certain assets and assume certain liabilities of Failed Entity.

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

### **The Purchase and Assumption**

Generally, an application to engage in an interstate merger transaction, including by means of a purchase and assumption 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. § 1831(e). Moreover, in approving a transaction under the Riegle-Neal Act, the OCC may authorize the acquiring bank to retain its own main office and branches and to retain as branches the main office and branches of the target bank 12 U.S.C. §§ 1831u(d)(1) and 36(d). Thus, the acquisition by Acquirer of assets and liabilities of Failed Entity and the retention by Acquirer of its own main and branch offices and the retention of the main office and branches of Failed Entity as branches are legally authorized 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 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.

### **Community Reinvestment Act**

The Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicants’ 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.

## 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.

Within seven days of consummation of the Transaction, please provide the district office with copies of the following documents:

- A Secretary's Certificate, as applicable, certifying that a majority of the board of directors approved.
- 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 David Finnegan, Licensing Analyst at 720-475-7653 or david.finnegan@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

*Ellen Tanner Shepherd*

Ellen Tanner Shepherd  
Director for District Licensing