



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

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

**Conditional Approval #984
January 2011**

December 2, 2010

Pinchus D. Raice, Esq.
Pryor Cashman LLP
7 Times Square
New York, New York 10036-6569

Re: Preferred Stock Issuance and Capital Increase
The Upstate National Bank -- Charter Number 12018
OCC Control Number: 2010-WO-12-0055

Dear Mr. Raice:

This is in response to your letter dated November 22, 2010, submitted on behalf of The Upstate National Bank ("Bank"), and subsequent communications with the Office of the Comptroller of the Currency ("OCC"). The Bank applied to increase its capital by issuing shares of Series D Preferred Stock to FNBNY Bancorp, Inc., ("FNBNY") for cash. The OCC hereby grants conditional approval for this issuance of preferred stock described in your letter. This approval is subject to the conditions set out below.

Proposed Stock Issuance

In your earlier letter dated June 29, 2010, the Bank applied to the OCC for a change in its capital structure by amending its Articles of Association to authorize the issuance of up to 20,000,000 shares of Series D Preferred Stock and notified the OCC of the planned issuance of \$500,000 of the Series D Preferred Stock to one of the current controlling principal shareholders of the Bank, George Karfunkel ("Mr. Karfunkel"). The Bank also advised the OCC it was in negotiations to issue additional Series D Preferred Stock to Mr. Karfunkel and to FNBNY.

By letter dated July 9, 2010, the OCC notified the Bank that the Bank's application for the amendment of its Articles to create the Series D Preferred Stock would require full OCC review and that the Bank was required to file an application for any increase in permanent capital. By letter dated September 8, 2010, the OCC approved the issuance of the \$500,000 in Series D

Preferred Stock to Mr. Karfunkel. The OCC also notified the Bank that an application was no longer required for future increases in permanent capital that arise through issuance of common or preferred stock to Mr. Karfunkel or any of the other current principal stockholders for cash consideration. For such increases, the Bank could use the notification procedure in 12 C.F.R. § 5.46(i)(3). An application continues to be required for any increase in capital arising from issuance of common or preferred stock to any other person, including FNBNY.¹

By your letter of November 22nd, the Bank applied for an increase in capital by issuing Series D Preferred Stock to FNBNY.² The OCC hereby approves such increase subject to the following conditions:

1. The Bank shall comply with paragraph (4) of Article VI of the Amended Consent Order dated February 12, 2009, (“Amended Consent Order”) regarding adoption and implementation of a Strategic Plan.
2. If paragraph (4) of Article VI of the Amended Consent Order is terminated in the future, the Bank thereafter shall not initiate any action that significantly deviates from the most recent Strategic Plan that received a written determination of no supervisory objection from the OCC under the Amended Consent Order or make any material change to or a significant deviation in such Strategic Plan unless the Bank has first given the OCC at least sixty (60) days prior written notice of its intent to do so, and obtained the OCC’s prior written determination of no supervisory objection to such action.

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. Failure to comply with these conditions may also result in revocation of this approval.

Conclusion

When the Series D Preferred Stock discussed in this letter has been issued to FNBNY and Mr. Karfunkel and the capital increase completed, the Bank must notify to OCC under 12 C.F.R. § 5.46(i)(3).

¹ The OCC’s September 8th letter contains additional background.

² Your letter also noted that Mr. Karfunkel will continue to hold a majority of the Series D Preferred Stock following his purchase of additional shares of Series D Preferred Stock contemporaneous with the purchase by FNBNY.

Pinchus D. Raice, Esq.
Re: The Upstate National Bank
December 2, 2010
Page 3 of 3

This conditional approval, and the activities and communications by OCC employees in connection with the filings, does 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.

Please include the OCC control number on any correspondence related to this filing. If you have any questions, contact National Bank Examiner Crystal Maddox at (202) 874-5060 or by email at crystal.maddox@occ.treas.gov.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller, Licensing