



Comptroller of the Currency
Administrator of National Banks

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

CRA Decision #148
May 2011

April 6, 2011

C. Andrew Gerlach, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004-2498

Re: Application by First Niagara Bank, National Association, Buffalo, New York to
acquire by merger NewAlliance Bank, New Haven, Connecticut

Control Numbers: 2010 NE 02 0022; 2011 NE 07 0016; 2011 NE 08 0008;
2011 NE 08 0009; 2011 NE 08 0010

Dear Mr. Gerlach:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application by First Niagara Bank, National Association, Buffalo, New York (“FNBNA” or “Applicant”), to acquire by merger NewAlliance Bank, New Haven, Connecticut (“NAB”) (the “Merger”). The OCC also grants approval for FNBNA to retain branches and subsidiaries as more fully explained below. These approvals are granted after a thorough evaluation of the application, other materials you have supplied, and other information available to the OCC, including representations made in the application and by Applicant’s representatives during the application process.

I. Background

FNBNA is a subsidiary of First Niagara Financial Group, Inc. (“FNFG”). Following consummation of FNFG’s acquisition of NAB’s holding company,¹ FNBNA proposes to acquire NAB by merger. Consequently, at the time of the Merger, NAB will be affiliated with FNBNA. The deposits of both institutions are insured by the Federal Deposit Insurance Corporation (“FDIC”). FNBNA has branches in New York and Pennsylvania; NAB has branches in Connecticut and Massachusetts. FNBNA also seeks approval following the Merger to retain its

¹ FNFG received approval from the Federal Reserve Board (“FRB”) on March 31, 2011, to merge FNFG Merger Sub, Inc., a wholly owned subsidiary of FNFG, with and into NAB’s parent, NewAlliance Bancshares, Inc. (“NABS”), with NABS surviving the merger as a direct, wholly owned subsidiary of FNFG (“Holding Company Merger”). Applicant has represented that it will not consummate the Merger prior to consummation of the Holding Company Merger.

own main office and branches, and to retain as branches, the main office and branches of NAB. FNBNA seeks approval to retain several subsidiaries of NAB as well.²

II. Legal authority

A. FNBNA's Acquisition of NAB 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").³ FNBNA's home state is New York; NAB's home state is Connecticut. 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 Connecticut 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 § 1831u(a)(5). Under that section, the OCC may not approve a merger under §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 law of the host state."⁴ The maximum age requirement a state is permitted to impose is five years.⁵ Connecticut is the host state for purposes of complying with state imposed age requirements. Connecticut

² Notice of the proposed Merger was published in The Buffalo News and The New Haven Register on November 1, 2011, November 8, 2011 and November 26, 2011. The OCC and the FRB each received several comments. These comments will be addressed subsequently.

³ 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 § 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).

⁴ 12 U.S.C. § 1831u(a)(5)(A).

⁵ 12 U.S.C. § 1831u(a)(5)(B).

imposes a five year minimum age requirement.⁶ NAB has been in existence for more than five years.⁷

Second, the proposed Merger satisfies the applicable Riegle-Neal filing requirements. A bank applying for an interstate transaction under § 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.⁸ The states that will become host states of FNBNA upon consummation of the Merger are those in which FNBNA currently has no branches but in which it will acquire branches: Connecticut and Massachusetts. FNBNA has complied with applicable filing requirements with regard to each state.⁹ Consequently, the Riegle-Neal filing requirements 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.¹⁰ Because FNBNA and NAB will be affiliated at the time of consummation of the Merger, as a result of the acquisition by FNFG of NABS, the Riegle-Neal deposit concentration limits are inapplicable to this transaction.

Fourth, the proposed Merger 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 § 1831u(a), the OCC must: (1) comply with its responsibilities under § 804 of the Community Reinvestment Act (“CRA”);¹¹ (2) take into

⁶ Conn. Gen. Stat. § 36a-412.

⁷ NAB became known as NewAlliance Bank in 2004 as a result of New Haven Saving Bank’s acquisition of the Savings Bank of Manchester and Tolland Bank and the subsequent merger of those institutions with and into New Haven Savings Bank (“NHSB”). NHSB’s history dates back to 1838.

⁸ 12 U.S.C. § 1831u(b)(1).

⁹ See Mass. Gen. Laws Ann. Ch. 167, § 39B (2010); Conn. Gen. Stat. §§ 36a-412, 33-920 (2010). FNBNA’s counsel has represented that a copy of the Merger application was submitted to the Massachusetts Banking commissioner’s office on January 17, 2011. Counsel also represented that he confirmed with the Deputy Commissioner of Banks and General Counsel on February 18, 2011 that no further filings with the state are required. FNBNA also has provided a copy of the application to the Connecticut Department of Banking and complied with Connecticut’s filing requirements. To the extent that Connecticut imposes filing requirements beyond those permitted by 12 U.S.C. § 1831u(b)(1)(A)(i), such additional filing requirements are not applicable to the proposed merger. At any rate, we note that the Connecticut Banking Commissioner on April 6, 2011 issued an approval of the Merger (“Connecticut Decision”).

¹⁰ 12 U.S.C. § 1831u(b)(2)(E).

¹¹ 12 U.S.C. § 2903.

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 reinvestment laws.¹² These provisions, however, do not apply to transactions between affiliated banks and so they are not applicable to the current transaction.¹³ The CRA itself, however, is applicable and will be discussed subsequently.

Fifth, the OCC may approve an application for an interstate merger transaction under § 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.¹⁴ The OCC finds that NAB satisfies the capital requirement, and FNBNA satisfies the capital and management requirements.

Consequently, the proposed Merger satisfies the applicable Riegle-Neal requirements and is legally permissible, subject to consideration of the factors set forth in the Bank Merger Act ("BMA")¹⁵ and each bank's record of compliance with the CRA.¹⁶ These matters are addressed below.

B. 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.¹⁷ 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.¹⁸

¹² 12 U.S.C. § 1831u(b)(3).

¹³ *Id.* Expanded CRA does not apply 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, FNBNA 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 FNBNA and NAB will be affiliated immediately prior to the transaction as a result of the acquisition by FNFG of NABS.

¹⁴ 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).

¹⁵ 12 U.S.C. § 1828(c).

¹⁶ In addition, after the Merger, FNBNA must establish and continue to maintain the liquidation account NAB maintains as a result of its 2004 conversion from mutual to stock ownership. Comptroller's Licensing Manual, *Business Combinations*, pgs. 32-33 (December 2006).

¹⁷ *See* 12 U.S.C. § 1828(c)(5).

¹⁸ *See* 12 U.S.C. § 1828(c)(11).

The OCC reviewed the proposed Merger under the criteria of the BMA and applicable OCC regulations and policies. Because FNBNA and NAB will be owned by the same holding 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 FNBNA and NAB, their future prospects, and the effectiveness of each institution in combating money laundering activities and found these factors to be consistent with approval. The OCC also considered the convenience and needs of the community to be served, including through the enhanced ability of the resulting bank to offer products and services through a broad range of delivery channels, the retention of a regional office in New Haven to enhance local decision-making, and FNBNA's plans with respect to small business, community development, and other lending activities as more fully addressed below. Moreover, FNBNA does not anticipate any reduction or discontinuation of services or products that NAB currently offers. The OCC found this factor to be consistent with approval of the Merger.¹⁹

C. Community Reinvestment Act

The CRA requires the OCC to take into account the records of the institutions proposing to merge in helping to meet the credit needs of the community, including low- and moderate-income ("LMI") neighborhoods, when evaluating merger applications.²⁰ The OCC considered the CRA Performance Evaluation ("PE") of each institution involved in the transaction. A review of the records of these banks, and other information available to the OCC as a result of its regulatory responsibilities, revealed that the banks' records of helping to meet the credit needs of their communities are satisfactory and are consistent with approval of the Merger application.

1. FNBNA

FNBNA's most recent PE, dated March 12, 2007, and issued by the OTS before FNBNA's April 9, 2010 conversion to a national bank, assigned the bank a "Satisfactory" rating.²¹ Among the major factors supporting the rating were: (i) an excellent level of qualified community development investments; (ii) a very good record of community development lending; (iii) an excellent level of small business lending; (iv) a reasonable distribution of loans by geography and borrower income; and (v) a branch and delivery system that is readily accessible to all customers. No evidence of illegal or discriminatory lending practices was noted in the PE.

¹⁹ In the Connecticut Decision, the Banking Commissioner found that the acquisition "will promote public convenience, the benefits to the public clearly outweigh possible adverse effects, and the terms of such merger are reasonable and in accordance with law and sound public policy." The Commissioner also found that the resulting bank, FNBNA, "will provide adequate services to meet the banking needs of all community residents, including low-income residents and moderate-income residents. . . ."

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

²¹ FNBNA, prior to its conversion, was examined using OTS's Large Institution examination procedures and received an "Outstanding" rating on the investment test and a "High Satisfactory" on both the lending and service tests. The evaluation period for the 2007 PE was 2004 through 2006.

2. NAB

NAB's most recent PE, dated December 8, 2008, and issued by the FDIC, assigned the bank an "Outstanding" rating.²² Among the major factors supporting the rating were: (i) its willingness to take a leadership role in providing a significant level of qualified community development investments; (ii) excellent responsiveness to the credit needs of LMI borrowers and small businesses; (iii) good responsiveness to communities of different income levels; (iv) a branch and delivery system that is readily accessible to all customers; (v) leadership in community development lending; and (vi) extensive use of innovative and flexible lending practices to serve the credit needs of its assessment areas. The FDIC stated that the quality and quantity of the community development loans originated by the bank reflected a high degree of responsiveness to economic development, affordable housing, and community service needs of NAB's assessment areas. No evidence of illegal or discriminatory lending practices was noted in the PE.

3. Public Comments

The OCC received several comment letters from the public, including public officials, expressing concerns related to the Merger application. The OCC also reviewed comments that the FRB received on the related Holding Company Merger application. The commenters' concerns are addressed below.²³

a. Small Business and Mortgage Lending

Several commenters expressed concern that FNBNA's and NAB's CRA performance records trail that of their peers in both small business lending and mortgage lending to LMI borrowers and in LMI neighborhoods. Several commenters also expressed concern regarding FNBNA's and NAB's lending to minority borrowers, based on 2008 and 2009 data collected under the Home Mortgage Disclosure Act ("HMDA"). Additionally, one commenter asserted that FNBNA's acquisition strategy has resulted in a decrease in credit availability for LMI persons and minorities.

As summarized above, FNBNA received an overall "Satisfactory" rating in its most recent PE, with a "High Satisfactory" on the lending test. Among the key findings in that evaluation were

²² NAB was examined using the Large Bank examination procedures and received an "Outstanding" rating for both the investment and service tests and a "High Satisfactory" on the lending test. The evaluation period for the 2008 PE was 2005 through 2008 for community development lending, investments, and services and 2007 through 2008 for home mortgage and small business lending.

²³ A number of commenters expressed concern that the Merger, if approved, could result in job losses. In evaluating how an application will help meet the convenience and needs of the communities to be served, the OCC focuses on the resulting bank's furnishing of banking services and products. In the assessment of that factor, the OCC does not include an evaluation of the application's impact on individual community levels of employment. Nevertheless, while FNBNA acknowledged that the Merger could result in job losses in 2011, FNBNA also represented that it intends to create new positions this year as well. Moreover, FNBNA has indicated that it expects its New England workforce to return to NAB's current employment levels by year-end 2012, and that additional hiring will occur as the institution implements its growth strategy in that region.

that FNBNA exhibited an extensive use of government lending programs for LMI borrowers, had an excellent volume of multi-family lending, particularly in LMI areas, and displayed a consistently excellent level of small business lending throughout its assessment area. During the evaluation period, the bank made more than 5,000 small business loans totaling \$830.4 million and was one of the largest Small Business Administration lenders in western New York. Further, FNBNA's community development lending during the evaluation period totaled approximately \$151 million.

In the 2007 PE, the OTS reported that the bank's distribution of HMDA-reportable mortgage loans among areas of different income levels was reasonable, and it commended the bank for using flexible and innovative loan programs to help make credit available to LMI individuals and businesses within its assessment areas. While residential mortgage lending in LMI areas and to LMI borrowers reflected an overall adequate level of performance, the PE noted several mitigating factors for certain assessment areas, including recent entry into communities combined with intense competition from other institutions.

NAB received an overall "Outstanding" rating in its most recent PE, with a "High Satisfactory" on its lending test. Among other findings reflected in the PE, NAB made extensive use of innovative and flexible lending practices to serve the credit needs of its assessment areas. In particular, NAB employed various special mortgage loan programs tailored to assist LMI families in pursuing and maintaining home ownership. In addition, the PE noted that NAB offered a variety of lending programs targeted to the development and support of small businesses, and made extensive use of innovative and/or complex investments to support community development initiatives. Moreover, the PE indicated that NAB's record of opening and closing branches improved the accessibility of its delivery systems, and its services (including business hours) were tailored to the convenience and needs of its assessment areas, particularly LMI geographies and individuals.

In connection with the Merger application, FNBNA represented that it has made over \$506 million in community development loans, originated \$89 million in multi-family loans, and made over \$1 billion in small business loans since 2007. FNBNA also represented that it is an active participant in government-insured loan programs. Additionally, FNBNA represented that it participates actively with the Federal Home Loan Bank of New York, providing grant funding to nonprofit housing agencies that develop affordable housing. FNBNA represented that since 2007, it has funded affordable housing projects throughout its assessment area totaling \$6.6 million, creating more than 681 units of affordable housing. FNBNA also represented that, upon entering the Western Pennsylvania market in 2007, it tripled its volume of lending in federal and state mortgage programs, increasing its percentage of loans originated under such programs from 6.35% of total loans in 2007 to more than 19% in 2009. FNBNA represented that in 2010, it began participating in low income housing tax credit projects and has committed over \$25 million towards equity investments in such projects.

With respect to lending to minority borrowers, as part of the materials that it submitted in support of the Holding Company Merger application, FNFG detailed policies and procedures that FNBNA has implemented and will implement to ensure its compliance with fair lending

requirements, including training of lending personnel, regular fair lending analyses, and oversight and monitoring of consumer lending functions. FNFG has also represented it has implemented a formal complaint-resolution process managed by FNBNA's vice president for customer relations. In further support of the Holding Company Merger application, FNFG represented that all of FNBNA's fair lending practices will be fully implemented within NAB's market area following consummation of the Merger. Both FNBNA and NAB have been subject to ongoing fair lending oversight by the OCC and FDIC, respectively, and comprehensive OCC oversight will continue with respect to the merged entity.²⁴

b. FNBNA's CRA Program

A number of commenters expressed concern that FNBNA's recent merger and acquisition strategy has resulted in insufficient attention to the development of a CRA program responsive to local needs. Some commenters also asserted that the public lacks assurance that if the Merger is approved, the merged entity will maintain a commitment to local communities in Connecticut, including New Haven. Additionally, some commenters requested that approval of the Merger be conditioned on the development of a plan for improving FNBNA's and NAB's CRA performance.

Preliminarily, the CRA does not require banks to enter into commitments or agreements with any organization. (Question and Answer No. 2, § 29(b), 75 Fed. Reg. 11,666 (2010)). Moreover, the CRA does not require a bank to engage in any particular type of lending, investment, or service. CRA performance for large banks is based on an overall assessment under the lending, investment, and services tests. 12 C.F.R. §§ 25.21 to 25.24.

Nonetheless, FNBNA recently developed an enhanced CRA Plan, the purpose of which is to identify community related initiatives, establish objectives, and outline specific measurable targets relating to the investment, lending and community service needs of its LMI communities. FNBNA has generally represented that after the acquisition of NAB, the combined organization will offer an expanded range of credit and deposit products, including in the communities served by NAB. Specifically, under the CRA Plan, FNBNA intends to commit \$250 million in residential mortgage lending over the next five years, which includes a \$30 million affordable housing loan pool. FNBNA also plans to retain relationships with the Connecticut and Massachusetts Housing Finance agencies to continue access to affordable mortgage products. In addition, the CRA Plan indicates that within five years, FNBNA intends to establish a \$20 million consumer loan pool that will provide lending to assist in the recovery from natural disasters, home improvement and other credit needs to be made available to creditworthy borrowers in LMI areas throughout Connecticut.

²⁴ Denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations. However, HMDA data alone is not adequate to provide a basis for concluding that a bank is engaged in lending discrimination or to indicate whether its level of lending is sufficient. HMDA data does not take into consideration borrower creditworthiness, housing prices, collateral values, credit scores, and other factors relevant to each credit decision, nor does it fully reflect the range of the bank's lending activities or efforts.

Moreover, under the CRA Plan, FNBNA intends to provide an additional \$100 million in community development loans over the five year period following the acquisition. According to the CRA Plan, FNBNA intends to continue the community development lending and investment activities of the NewAlliance Bank Community Development Corporation (“NABCDC”), which will operate in FNBNA’s communities in Connecticut and Massachusetts and provide financing for affordable housing, small business, and community development projects. FNB also intends to provide additional funding of \$9 million for the NABCDC over the next five years, with 90% of this funding targeted towards activities in Connecticut.

The CRA Plan further indicates that FNBNA intends to make available \$750 million in small business loans in the five year period following the acquisition and will continue its participation in programs offered by the Small Business Administration. According to the CRA Plan, FNBNA also intends to maintain a \$20 million small business loan pool for eligible small businesses and make available products addressing the credit needs of borrowers in Connecticut and Massachusetts.

The CRA Plan indicates that FNBNA intends to retain CRA mortgage consultants and other personnel in Connecticut, continue outreach with nonprofit organizations, small business loan pools and economic development agencies, the community advisors council, as well as, retain a regional credit infrastructure that includes key decision-makers in order to assist the merged entity in responding to the community’s lending, investment and service needs. The OCC will continue to monitor the merged entity’s CRA and fair lending performance.

c. Request for a Public Hearing

Some of the comment letters requested that the OCC conduct a public hearing. The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11(b), which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

After careful consideration, the OCC determined not to hold a public hearing. The OCC is not aware of any reason why written comments would be insufficient or why a public hearing would be in the public interest. The OCC has thoroughly reviewed all of the written comments submitted, including any received after the close of the public comment period and up to the date of this letter.²⁵

²⁵ In March 2011, the Connecticut Department of Banking held public hearings on applications it received in connection with the Merger and the Holding Company Merger. The concerns raised at those hearings were similar to those contained in the written public comments reviewed by the OCC.

4. Conclusion

In summary, our review of the Merger application and submitted materials, the public comments and responses, representations of the Applicant, and review of supervisory materials, has not revealed any information inconsistent with approval.

D. Retention of Branches by FNBNA Following Consummation of the Merger

Upon consummation of the Merger, FNBNA proposes to retain its main office as its main office, to retain as branches its New York and Pennsylvania branches and to retain as branches NAB's main office in Connecticut and its branch offices in Connecticut and Massachusetts. 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 Therefore, upon consummation of the Merger, FNBNA may retain its current main office as its main office and retain its branches and NAB's main office and branches as branches.²⁷

E. Retention of Subsidiaries and Investments

Following the Merger, FNBNA seeks to retain certain subsidiaries and investments currently held by NAB. The application indicates the subsidiaries either engage in activities permissible for national bank operating subsidiaries under 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34, financial subsidiaries under 12 U.S.C. § 24a and 12 C.F.R. § 5.39, or may be held under the authority of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. § 24.3. FNBNA may retain these subsidiaries and investments for the reasons discussed below.²⁸

²⁶ 12 U.S.C. § 1831u(d)(1).

²⁷ NAB is in the process of relocating its branch at 550 Summer Street, Stamford, Ct. to 2386 Summer Street and has received approval from the Connecticut Department of Banking and the FDIC to do so. FNBNA may also legally establish this branch after consummation of the Merger, because FNBNA will be "situated" in Connecticut for purposes of 12 U.S.C. § 36(c). Under § 36(c), a national bank can establish and operate a branch in any state in which it is situated to the same extent as state banks in that state are affirmatively permitted to establish and operate a branch. *See also* 12 U.S.C. § 36(f). Connecticut permits its state chartered banks to branch without geographic limit, subject to consideration of certain factors, *e.g.*, convenience and needs of the community, state and federal CRA and consumer protection compliance, and safety and soundness. *See* Conn. Gen. Stat. § 36a-145(b)(1). The OCC has considered these factors and grants approval to establish this branch. Within 10 days after opening, FNBNA shall notify the OCC in writing of the branch opening date.

²⁸ As a result of the Merger, FNBNA also will acquire as nonconforming assets stock in the Federal Home Loan Bank of Boston and certain shares of remarketed preferred stock. FNBNA has committed to divest these holdings in accordance with OCC requirements. *See* 12 C.F.R. § 5.33(e)(5).

1. Operating subsidiaries

Operating subsidiaries conduct activities that are permissible for a national bank to engage in directly and conduct those activities pursuant to the same authorization, terms, and conditions that apply to the conduct of those activities by their parent bank.²⁹

New Alliance Servicing Company (“NASC”) operates as a passive investment company, holding certain mortgage related assets of NAB permissible for a national bank to hold. Operating subsidiaries of national banks may make, purchase, sell, service or warehouse loans and other extensions of credit and hold and manage permissible assets under the authority of 12 C.F.R. § 5.34(e)(v)(A) and (D).

Moreover, FNBNA has represented that NASC is wholly-owned by NAB, and that NAB does and, upon consummation of the Merger, FNBNA will: 1) have the ability to control the management and operations of the subsidiary by holding voting interests sufficient to select the number of directors needed to control the subsidiary’s board and to select and terminate senior management; 2) hold more than 50 percent of the voting, or equivalent, interests in the subsidiary; and 3) consolidate each subsidiary’s financial statements with those of FNBNA under Generally Accepted Accounting Principles (“GAAP”).³⁰ Additionally, FNBNA has represented that the activities conducted will be conducted in accordance with OCC policies contained in guidance issued by the OCC regarding the activity.³¹

Based on the FNBNA’s representations, as set forth above, the OCC authorizes FNBNA to retain NASC as an operating subsidiary following the Merger.³²

2. Financial subsidiaries

Financial subsidiaries engage only in activities that are financial in nature or incidental to a financial activity, except as explicitly prohibited by statute,³³ or engage in activities permitted for national banks to engage in directly and subject to the same terms and conditions that govern the conduct and activities by national banks.³⁴ FNBNA seeks to retain as a financial subsidiary after consummation of the Merger New Alliance Investments, Inc. (“NAI”), currently a wholly owned

²⁹ 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(1) and (3).

³⁰ 12 C.F.R. § 5.34(e)(5)(i).

³¹ 12 C.F.R. § 5.34(e)(5)(i)(B).

³² FNBNA also will acquire The Loan Source, Inc., an inactive wholly-owned subsidiary of NAB. This subsidiary only holds cash. If, in the future, FNBNA seeks to make any investments through, or engage in any activity in, this subsidiary, FNBNA must comply with applicable OCC filing requirements.

³³ 12 U.S.C. § 24a(a)(2)(A)(i) and (B); 12 C.F.R. § 5.39(e)(1) and (f).

³⁴ 12 U.S.C. § 24a(2)(A)(ii); 12 C.F.R. § 5.39(e)(2)

subsidiary of NAB. NAI offers, as agent, traditional brokerage and insurance products through registered and licensed representatives, and provides investment advisory services as well. These activities are permissible for a financial subsidiary.³⁵ FNBNA has provided the certifications and notices required by 12 C.F.R. § 5.39(i)(2)(i) through (vi), as applicable. Consequently, following the Merger, FNBNA is authorized to retain NAI as a financial subsidiary.

3. Community Development Investments

NAB has made equity investments with a total book value of about \$4.9 million in NABCDC. As a result of the Merger, the investment in NABCDC will be transferred to FNBNA and FNBNA has represented that it will continue operating NABCDC throughout its footprint, including in Connecticut and Massachusetts. Based on the information and representations provided by FNBNA, including the information discussed below, FNBNA is authorized to hold NABCDC and its investments under the authority of 12 U.S.C. § 24(Eleventh) and 12 C.F.R. Part 24.

Title 12 U.S.C. § 24 (Eleventh) and 12 C.F.R. 24 authorize a national bank to make public welfare investments including in community and economic development entities, community development projects, and other public welfare activities. NABCDC has made five investments in the Community Economic Development Fund (“Fund”), which established a revolving loan pool to support low- and moderate-income entrepreneurs in targeted neighborhoods of New Haven, Hartford, Fairfield County, and throughout the state of Connecticut. NABCDC also owns 100 percent of the stock of the Fairbank Corporation, which in turn owns a rental housing complex in Hartford that provides housing for low-income seniors. In addition, NABCDC has invested in entities located in the City of New Haven that create affordable, subsidized rental housing for professional artists; provide financing to early stage entrepreneurs in New Haven’s Empowerment Zone; provide financing to a mixed use, community revitalization project; and provide financing to companies located in New Haven’s Enterprise Zone and Empowerment Zone, so as to create jobs and foster business development in those areas.

FNBNA’s investment in NABCDC will also comply with the investment limit and limited liability requirements of 12 C.F.R. § 24.4. As described in the application, investments are structured so as not to expose FNBNA to unlimited liability. Moreover, the book value of the aggregate investments in NABCDC, combined with the book value of FNBNA’s existing public welfare investments, total 0.71 percent of FNBNA’s capital and surplus.³⁶

Consequently, FNBNA’s retention of NABCDC after consummation of the Merger is in compliance with 12 U.S.C § 24 (Eleventh) and 12 C.F.R. 24.

³⁵ 12 C.F.R. § 5.39 (e)(i)-(iii).

³⁶ A national bank’s aggregate outstanding investments under 12 C.F.R. 24 are limited to 5 percent of its capital and surplus, unless the bank meets other requirements and receives the OCC’s written approval. In no event may such investments exceed 15 percent of a bank’s capital and surplus.

III. Prior Conditions

Last year in approving FNBNA's conversion to a national charter and its subsequent merger with Harleysville National Bank & Trust Company the OCC imposed 12 U.S.C. § 1818 conditions.³⁷ These conditions, to the extent still applicable, remain in full force and effect.

IV. Consummation requirements

Please refer to the *Business Combination* booklet of the Comptroller's Licensing Manual for steps to complete the Merger.

These approvals are granted based on our understanding that other applicable regulatory approvals, nonobjections or waivers with respect to the proposed transaction will have been received prior to the Merger, as appropriate, and that the Merger will occur after consummation of the Holding Company Merger.

As a reminder, the Northeastern District Licensing Office must be advised in writing 10 days in advance of the desired effective date of the Merger so that the OCC may issue the necessary Merger certification letter.

The OCC will include branch authorizations, as appropriate, in the letter certifying the consummation of the Merger. With respect to the Merger, please ensure that the following has been attended to prior to the desired consummation date:

1. Confirm all other required regulatory approvals, nonobjections, or waivers have been received.
2. Submit a Secretary's Certificate for each institution certifying that a majority of each bank's board of directors approved the Merger.
3. Submit executed merger agreements with the Articles of Association for FNBNA, the resulting bank, attached.
4. Submit a Secretary's Certificate from each institution certifying that the shareholder approvals have been obtained.

V. Conclusion

For the reasons set forth above, and subject to the commitments and representations made in the applications and by representatives of the FNBNA, and subject to the receipt by the FNBNA of all other applicable regulatory approvals, nonobjections and waivers, the OCC hereby approves:

³⁷ See OCC Conditional Approval #952 (March 26, 2010).

1. the Merger of NAB into FNBNA upon consummation of the acquisition of NABS by FNFG;
2. the retention by FNBNA, following the Merger, of its main office and branches, and FNBNA's retention, as branches, of the main office and branches of NAB; and
3. the retention by FNBNA of the subsidiaries and investments as described in, and in accordance with, this approval, including NAB CDC and its community development investments.

If the Merger has not been consummated within six months from today, the approvals will automatically terminate unless the OCC grants an extension of the time period.

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 FNBNA'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.

A separate letter is enclosed requesting your feedback on how we handled your application. We would appreciate your response. If you have questions regarding this letter, please contact Licensing Analyst Wai-Fan Chang, at (212) 790-4055. Please reference the application control number in any correspondence.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosure