



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

Southern District Licensing
500 North Akard, Suite 1600
Dallas, Texas 75201-3323

December 1, 2011

**Conditional Approval #1014
January 2012**

T. Keith Perry
Executive Vice President
CenterBank of Jacksonville, N.A.
1325 Hendricks Avenue
Jacksonville, Florida 32207

Re: CenterBank of Jacksonville, National Association Change in Assets and Merger with
CenterBank, Inc. (2011-SO-12-0148 and 2011-SO-12-0149)

Dear Mr. Perry:

The Office of the Comptroller of the Currency (“OCC”) approves the application by CenterBank of Jacksonville, National Association, Jacksonville, Florida (“CenterBank”), under 12 C.F.R. § 5.53, to sell substantially all of its assets and liabilities, including all of its deposit liabilities, to FirstAtlantic Bank, Jacksonville, Florida (“FirstAtlantic”). The OCC also approves CenterBank’s application to merge into its non-bank affiliate, CenterBank, Inc., Jacksonville, Florida (“CBI”), under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5).

Background

On October 7, 2011, CenterBank, applied to the OCC for approval for a fundamental change in its asset composition under 12 C.F.R § 5.53. CenterBank is an insured national bank. The fundamental change in CenterBank’s asset composition will occur as a result of a purchase and assumption transaction (the “P&A Transaction”) between CenterBank and FirstAtlantic.¹ In the P&A Transaction, FirstAtlantic will purchase substantially all of CenterBank’s assets and will assume substantially all of its liabilities. It is planned that immediately after the P&A Transaction the insured status of CenterBank will be terminated under 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2.

¹ FirstAtlantic applied to the OCC for approval for the P&A Transaction under the Bank Merger Act, 12 U.S.C. § 1828(c). The P&A Transaction was approved by the OCC on September 30, 2011.

On October 7, 2011, CenterBank also applied to the OCC for approval to merge into CBI, under 12 U.S.C. § 215a-3, after the consummation of the P&A Transaction and the termination of CenterBank's insured status (the "Merger"). CBI is the immediate parent and sole shareholder of CenterBank. CBI is not a bank, and so it is a nonbank affiliate of CenterBank. CBI is a Florida corporation. Its principal place of business is in Jacksonville, Florida. After the Merger, CBI's sole activities will consist of managing any remaining assets and liabilities of CenterBank after the P&A Transaction.

CenterBank and CBI plan to consummate the Merger immediately after the consummation of the P&A Transaction and the termination of CenterBank's status as an insured bank. As a result of the Merger, CenterBank's separate existence as a national bank will end and its charter will terminate.

Discussion

Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: "Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates."² The statute does not limit its scope to mergers in which the national bank is the surviving entity, and so a merger *into* a nonbank affiliate is within its scope. The OCC's implementing regulation limits mergers of national banks into their nonbank affiliates to national banks that are not insured banks under the Federal Deposit Insurance Act.

The OCC recently adopted regulations implementing 12 U.S.C. § 215a-3. The regulations set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which the nonbank affiliate is the resulting entity (refer to 12 C.F.R. § 5.33(g)(5)). In particular, the regulation provides:

With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. § 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect.

² 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000). Section 1206 was adopted to facilitate the ability of banking organizations to affect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See* S. Rep. No. 106-11, 106th Cong., 1st Sess. 8 (1999).

The regulation imposes additional requirements that: (1) the bank comply with the procedures of 12 U.S.C. § 214a as if it were merging into a state bank, (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization, and (3) shareholders of the national bank who dissent from the merger have the dissenters' rights set out in 12 U.S.C. § 214a. *See id.* (12 C.F.R. § 5.33(g)(5)(ii)-(v)).

The proposed Merger is covered by, and meets the requirements of, 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). First, as noted above, CenterBank's status as an insured bank will be terminated after the P&A Transaction, so that at the time of the Merger, CenterBank will not be an insured bank. CBI is a nonbank affiliate. CBI is a Florida corporation that is registered as a bank holding company. CBI wholly owns and controls CenterBank and one nonbank subsidiary. See 12 C.F.R. §§ 5.33(d)(5) and 5.33(d)(8) for definitions of control and nonbank affiliate.

CenterBank and CBI are located in the same state. However, there are no geographic limits on the authority to merge with a nonbank affiliate under section 215a-3.

Second, the law under which CBI is organized allows it to merge with CenterBank. CBI is a Florida corporation. Florida permits its domestic corporations to merge with or into one or more other business entities formed, organized, or incorporated under the laws of Florida or any other state. FLA. STAT. § 607.1108.

Third, the bank has complied with the procedures of 12 U.S.C. § 214a to the extent applicable. CenterBank's board of directors and shareholders has voted in favor of the Merger by at least the required margins.

Fourth, CBI represents that it will comply with the procedures for mergers by Florida corporations. The application contains a copy of a resolution of the board of directors of CBI approving the Merger. CBI and CenterBank represent it will comply with Florida State filing requirements for the merger, and the application contains the Articles of Merger that will be filed with the Secretary of State of Florida.

Finally, under the OCC's regulations, in reviewing mergers under section 215a-3, the OCC considers the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect. The OCC reviewed the Merger with respect to these factors and determined approval of the Merger is warranted. In this regard, the bank will dispose of most of its business in the P&A Transaction and immediately thereafter become uninsured. This reorganization serves to expedite that process in an orderly and efficient manner. CBI has the means to effectively liquidate the assets acquired from CenterBank.

Conclusion

Accordingly, the OCC approves CenterBank's application for a fundamental change in asset composition under 12 C.F.R. § 5.53 by engaging in the P&A Transaction with FirstAtlantic and CenterBank's application to merge into CBI under 12 U.S.C. § 215a-3.

These approvals were granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and by the bank's representatives. In particular, the approvals are based on CenterBank's representation that all of CenterBank's remaining deposits at the time of the P&A Transaction will be assumed by FirstAtlantic and CenterBank's representation that the Merger will occur shortly after the P&A Transaction and the termination of CenterBank's status as an insured bank. The approvals are also subject to the requirements and condition set out below.

If the Merger with CenterBank, Inc. ("CBI") is not consummated within five (5) days after the Purchase and Assumption Transaction with FirstAtlantic, CenterBank shall immediately notify the OCC and submit a plan to wind up its affairs and terminate its status as a national bank.

This condition of approval is a "condition imposed in writing by the agency in connection with the granting of an application or other request" within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

In addition, CenterBank must submit the following before we will issue a letter certifying consummation of the Merger:

1. A copy of CenterBank's certification letter to the Federal Deposit Insurance Corporation under 12 C.F.R. § 307.2, and a copy of any reply or other correspondence relating to the termination of CenterBank's insured status.
2. CenterBank's Charter Certificate, all OCC Reports of Examination, and any other OCC documents in the possession of CenterBank.
3. A copy of the final Certificate of Merger filed with the Florida Secretary of State.

The OCC must be advised in writing in advance of the desired effective date for the Merger so that we may issue the certification letter for the Merger. We will issue a letter certifying consummation of the merger when we receive, in addition to the three requirements above, the following:

- The Charter of CenterBank, all OCC Reports of Examination, and any other OCC documents in the possession of Bank.
- A copy of the final Articles of Merger filed with the Secretary of State of Florida.
- Secretary's certificates for each institution, certifying that board of directors and shareholder approval have been obtained.

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.

All correspondence and documents concerning this transaction should reference the control number. We have enclosed a letter requesting your feedback on how we handled your application. We would appreciate your response to improve our service.

If you have any questions, contact Senior Licensing Analyst Brenda E. McNeese at (214) 720-7052 or by email at brenda.mcneese@occ.treas.gov.

Sincerely,

Karen H. Bryant

Karen H. Bryant
Director for District Licensing

Enclosures: Survey Letter