



Comptroller of the Currency
Administrator of National Banks

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Washington, DC 20219
202-649-6260

Licensing Activities

December 28, 2012

**Conditional Approval #1056
February 2013**

Steven J. Johnson, Esq.
Lindquist & Vennum, P.L.L.P.
4200 IDS Center
80 South Eight Street
Minneapolis, Minnesota 55402

Re: Application by First Dakota National Bank, Yankton, South Dakota to merge with Bank 360, Beresford, South Dakota under the title and charter of First Dakota National Bank and to Retain Nonconforming Assets in a Subsidiary
OCC Control Number – 2012-WE-02-0022

Dear Mr. Johnson:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the application to merge Bank 360 into First Dakota National Bank (First Dakota), under the charter and title of the latter. In connection with the merger, the OCC also approves the resulting bank, First Dakota, to retain certain nonconforming assets, which are currently held by Bank 360, in a wholly-owned subsidiary for no longer than two years, and to maintain the main office and branches of Bank 360 as branches of First Dakota.

This approval is granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and those of your representatives during the application process and a determination that the proposal meets certain regulatory and policy requirements. The OCC's approval is subject to the consummation requirements and condition set out herein.

Background

First Dakota is wholly owned by First Dakota Financial Corporation, a bank holding company. First Dakota operates fourteen offices in South Dakota. Bank 360 is a federal stock savings association, which operates its main office and two branches in South Dakota.

Proposed Merger Transaction

First Dakota filed an application with the OCC to merge Bank 360 with First Dakota and has requested approval for the resulting bank to retain Bank 360's main office and branches, as well

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as First Dakota's branches, as branches after the merger. In connection with the merger, First Dakota has also requested approval to hold certain investment assets currently held by a service corporation of Bank 360.

The OCC reviewed the proposed merger transaction under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Under the Bank Merger Act, the OCC generally may not approve a merger that would substantially lessen competition. The Bank Merger Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. 12 U.S.C. § 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. 12 U.S.C. § 1828(c)(11). In addition, the OCC may not approve a merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828(c)(5) (as amended by section 604 of Dodd-Frank). The Community Reinvestment Act requires the OCC to take into account the applicants' record of helping meet the credit needs of the community, including low-and moderate-income 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. We considered these factors and found them consistent with approval under the statutory and regulatory provisions.

Branch Retention

The application requests OCC approval for First Dakota to retain the main office and branches of Bank 360 as branches of the resulting bank after the merger. Branch retention following the merger is covered by the McFadden Act, 12 U.S.C. § 36. Under § 36(b)(2)(A), a national bank may retain as branches the main office and branches of the target bank in a merger transaction if the national bank could establish them as new branches under 12 U.S.C. § 36(c). Section 36(c) permits a national bank to establish and operate a new branch at any point within the state in which the bank is situated if state statutory law would permit a state bank to establish such a branch. The statutory law of South Dakota, where the main office and all branches of Bank 360 are located, expressly permits a bank to establish and maintain branches at the head office and branches of the target bank following a merger. Therefore, First Dakota may retain as branches the main offices and branches of Bank 360 following the merger under § 36(b)(2)(A). First Dakota is further permitted to retain its own main office and branches pursuant to § 36(b)(2).

Retention of Nonconforming Assets

Bank 360 currently holds a service corporation, Universal Service Corporation (USC), approved to engage in real estate development activities. As part of the merger application, First Dakota

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has represented the activities of the service corporation are in fact the holding and managing of assets acquired by the savings association as investment assets, specifically one commercial building, which is impermissible for a national bank. However, pursuant to 12 C.F.R. § 5.33(e)(5), First Dakota may retain USC subject to the condition set out herein.

Section 1818 Condition

First Dakota shall divest of USC within two calendar years of consummation of the merger transaction, unless First Dakota seeks and receives a written determination from OCC that this asset is a permissible investment within the time period.

This condition is a condition "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, this condition is enforceable under 12 U.S.C. § 1818. Failure to comply with the condition may also result in revocation of this approval.

Consummation Guidance

The Western District Licensing Division of the OCC must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approvals or waivers.

The OCC will issue a letter certifying consummation of the transaction when we receive a Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained.

If the merger is not consummated within one year from the approval date, the approval shall 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 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.

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All correspondence regarding this application should reference the control number. If you have any questions, contact Senior Licensing Analyst Louis Gittleman at (720) 475-7650 or e-mail louis.gittleman@occ.treas.gov.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosure: Survey Letter