



June 13, 2013

**Conditional Approval #1073  
July 2013**

Mr. Joshua T. McNulty  
Bracewell & Giuliani LLP  
1445 Ross Avenue, Suite 3800  
Dallas, Texas 75202-2711

Re: Application by Southwestern National Bank to Purchase Substantially All the Assets  
of Nevada National Bank  
CAIS Control No. 2013-SO-02-0009

Application by Nevada National Bank to Change the Composition of its Assets by  
Selling Substantially All of its Assets  
CATS Filing No. 2013-SO-5.53-133594

Application by Nevada National Bank to Merge into SWNB Bancorp, Inc.  
CATS Filing No. 2013-SO-215a3-133717

Dear Mr. McNulty:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the application by Southwestern National Bank, Houston, Texas (“SNB”), to purchase substantially all the assets of Nevada National Bank, Las Vegas, Nevada (“NNB”), under 12 U.S.C. § 1828(c)(2) and 12 C.F.R. § 5.33 (the “Asset Purchase”). The OCC also hereby conditionally approves the application by NNB under 12 C.F.R. § 5.53 to change the composition of its assets by selling substantially all of its assets and its deposit business (the “Asset Sale”), and the application by NNB under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33 subsequently to merge into SWNB Bancorp, Inc. (“SWNB Bancorp”) (the “Merger”). These conditional approvals were granted after a thorough review of the applications, other materials SNB and NNB or their representatives have supplied, and other information available to the OCC, including commitments and representations made in the applications and by the banks’ representatives during the application process. The approvals are also subject to the conditions set out herein.

**Background**

SNB and NNB are affiliated insured national banks, both wholly owned by SWNB Bancorp. As of December 31, 2012, SNB had total assets of approximately \$339 million, and NNB had total assets of approximately \$44 million. These applications are part of a series of transactions by which NNB will sell all of its business, including all of its deposits, and

thereafter end its existence as a national bank by merging into its immediate parent bank holding company. The steps in the series will occur in close succession on a single day. The steps are as follows: First, SNB will acquire substantially all of the assets of NNB in an asset purchase requiring OCC approval under 12 U.S.C. § 1828(c)(2) and 12 C.F.R. § 5.33. Second, NNB will sell its deposits, deposit customer relationships, the lease for its Las Vegas office facility, and other assets related to the office and deposit business to a third party bank, Cathay Bank (“Cathay”), a California state bank. NNB applied to the OCC under 12 C.F.R. § 5.53 for the sale of substantially all of its business to SNB and Cathay.<sup>1</sup> Third, upon consummation of the assumption of all of NNB’s deposits by Cathay, the insured status of NNB will terminate under 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2. Fourth, once it is an uninsured national bank, NNB will merge into SWNB Bancorp, its holding company and a nonbank affiliate, under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5).

## **Discussion**

### **A. The Asset Purchase by SNB**

SNB applied to the OCC for approval to purchase substantially all of the assets of NNB under 12 U.S.C. § 1828(c)(2) and 12 C.F.R. § 5.33. National banks are authorized to purchase the assets and assume the liabilities of other depository institutions as an activity incidental to the business of banking under the authority of 12 U.S.C. § 24(Seventh).<sup>2</sup> This transaction involves a national bank in Texas acquiring the assets of a national bank in Las Vegas. However, SNB is not acquiring a branch in Nevada, and thus, no issue of branch acquisition or retention is raised under the Riegle-Neal Act, 12 U.S.C. § 1831u(d)(1).

The Asset Purchase is subject to OCC review under the Bank Merger Act.<sup>3</sup> Under the Bank Merger Act, the OCC generally may not approve a transaction 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, the convenience and needs of the community to be served, and the risk of the

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<sup>1</sup> Cathay applied to the state of California for approval of the deposit assumption and related asset purchase under applicable California law and to the Federal Deposit Insurance Corporation for approval under 12 U.S.C. § 1828(c)(2). The OCC understands Cathay has received its regulatory approvals.

<sup>2</sup> See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E. 2d 518, 523-24 (Ohio Com. Pl. 1961).

<sup>3</sup> NNB is selling its deposit business and assets related to conducting the deposit business to Cathay. But the bulk of NNB’s banking assets – all loans, all investment securities, and all other assets not transferring to Cathay – are being acquired by SNB. SNB’s acquisition of assets from NNB, in conjunction with the sale of the deposit business, will result in the elimination of the NNB charter. Accordingly, the OCC concluded SNB’s asset acquisition is subject to 12 U.S.C. § 1828(c)(2), even though SNB is not assuming any deposits from NNB. Where all or substantially all of the assets of an insured depository institution are being acquired by another insured depository institution, the transaction must be reviewed for compliance with the Bank Merger Act. See 12 U.S.C. § 1828(c)(2) (“No insured depository institution shall...either directly or indirectly, *acquire the assets of...* any other insured depository institution except with the prior written approval of the responsible agency.”) (emphasis added).

transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828(c)(5). The OCC must also consider the effectiveness of the banks in combating money laundering activities. 12 U.S.C. § 1828(c)(11). Lastly, the OCC may not approve any interstate merger transaction that results in the resulting insured depository institution controlling 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). The OCC considered these factors and found them consistent with approval of this application. The OCC approves SNB's Asset Purchase application.

### **B. The Asset Sale by NNB**

NNB applied to the OCC for prior approval of a fundamental change in its asset composition under 12 C.F.R. § 5.53. Under section 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. In the Asset Sale transactions with SNB and Cathay, SNB will sell substantially all of its assets and all of its deposit business.

The principal purpose of adopting 12 C.F.R. § 5.53 was to address supervisory concerns raised by so called "dormant" bank charters by providing the OCC with regulatory oversight and a means to monitor them. NNB plans to merge into its nonbank affiliate, SWNB Bancorp. Thus, OCC concerns over the continuation of "dormant" charters are addressed, and OCC approval of NNB's application is consistent with the language and purpose of section 5.53. The OCC approves of NNB's application under 12 C.F.R. § 5.53.

### **C. The Merger of NNB into SWNB Bancorp**

In this Merger, NNB will merge into its immediate parent, SWNB Bancorp. SWNB Bancorp will be the surviving entity, and NNB will cease to exist. This Merger is authorized under 12 U.S.C. § 215a-3. 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."<sup>4</sup> 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, discussed below, expressly provides for mergers into a nonbank affiliate. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank. NNB will not be an insured bank at the time of the Merger.<sup>5</sup>

The OCC's regulations implementing 12 U.S.C. § 215a-3 set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which

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<sup>4</sup> 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).

<sup>5</sup> Because the Merger of NNB into SWNB Bancorp will occur only after NNB is no longer an insured bank, the Merger is not subject to review under the Bank Merger Act, 12 U.S.C. § 1828(c).

the nonbank affiliate is the resulting entity. *See* 12 C.F.R. § 5.33(g)(5). The regulation requires that the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. The regulation also imposes the following 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 follows 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. The regulation also provides that 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 a merger if it would have a negative effect in any such respect.

The OCC reviewed the proposed Merger of NNB into SWNB Bancorp and found that all requirements were satisfied. The OCC approves the Merger of NNB into SWNB Bancorp.

### **Conditions**

Approval of the 12 CFR 5.53, 12 USC 215a-3 and 12 USC 1828(c) applications are subject to the following conditions:

1. SNB shall consummate the Asset Purchase only if the subsequent transactions are expected to occur as planned.
2. NNB shall not consummate the Merger until after the sale of NNB's deposit business to Cathay has occurred and NNB's status as an uninsured bank has been confirmed.
3. If the Merger of NNB into SWNB Bancorp does not occur within five (5) calendar days after the sale of NNB's deposit business to Cathay, NNB shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national bank.

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. Due to the interconnectedness of the applications, the SNB merger was also conditionally approved.

### **Conclusion**

Accordingly, the OCC conditionally approves SNB's application for the Asset Purchase and NNB's applications for the Asset Sale and Merger. The approvals are subject to the conditions set out above. The approvals are also granted based on the information and representations made in the applications. In particular, the approvals are based on SNB's and NNB's representation that the Merger will occur shortly after the Asset Purchase and the Asset Sale and the termination of NNB's status as an insured bank. 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 OCC will not issue a letter certifying the consummation of the transactions until we have received:

1. A copy of NNB's certification to the Federal Deposit Insurance Corporation under 12 C.F.R. § 307.2.
2. NNB's charter certificate, and certification that all OCC Reports of Examination and any other OCC documents have been returned to the OCC or destroyed.
3. A copy of the final Certificate of Merger filed with the Texas Secretary of State.

If all the steps of the transaction are not consummated within ninety (90) days of this letter, these approvals shall automatically terminate, unless the OCC grants an extension of the time period.

These conditional approvals, and the activities and communications by OCC employees in connection with the filings, 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. 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 feedback on how we handled these applications. We would appreciate your response so we may improve our service.

You should include the application control numbers on any correspondence related to these filings. If you have any questions, contact Senior Licensing Analyst Jearlene Miller at 214-720-2818.

Sincerely,

*Karen H. Bryant*

Karen H. Bryant  
Director for District Licensing

Enclosure