



**Conditional Approval #1078  
October 2013**

September 19, 2013

Nathan L. Berger, Esq.  
Frost Brown Todd LLC  
400 West Market Street, 32<sup>nd</sup> Floor  
Louisville, Kentucky 40202-3363

Re: 12 C.F.R. § 5.53 Disposition of Assets via Purchase and Assumption Transaction  
with First Farmers Bank & Trust, Converse, Indiana, and Other Sales of Assets  
CATS Filing No. 2013-HQ-5.53-134474

12 U.S.C. § 215a-3 Merger into Nonbank Affiliate  
CATS Filing No. 2013-HQ-215a3-135539

Dear Mr. Berger:

The Office of the Comptroller of Currency (OCC) hereby conditionally approves the above referenced applications (Applications) submitted by Bank of Indiana, N.A., Dana, Indiana (Bank). These approvals are granted after a thorough evaluation of the Applications, other materials supplied by the Bank's representatives, and other information available to the OCC, including commitments and representations made in the Applications and during the application process. The OCC's approvals are subject to the consummation requirements and conditions set out herein.

**The Transactions**

The Applications are part of a series of transactions in which the Bank, pursuant to 12 C.F.R. § 5.53, proposes to: (i) transfer all of its insured deposits and sell certain of its assets to First Farmers Bank & Trust, Converse, Indiana (FFB&T); (ii) sell certain assets to IBC Recovery, LLC, Indianapolis, Indiana. After the transfer of insured deposits to FFB&T, the Bank will become eligible to terminate its insurance of accounts with the Federal Deposit Insurance Corporation (FDIC) pursuant to 12 C.F.R. Part 307.<sup>1</sup> Further, pursuant to 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5), the Bank proposes to merge with and into BOI Successor Corporation, Indianapolis, Indiana (BOISC), a nonbank affiliate.

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<sup>1</sup> Upon consummation of the purchase and assumption and notification to the FDIC of the transfer of all insured deposits from the Bank to FFB&T, the Bank will no longer be FDIC insured, pursuant to 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2. FFB&T's participation in the purchase and assumption is subject to a separate approval by the Federal Reserve Board pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c), and the Indiana Department of Banking.

## **Discussion**

### **A. Fundamental Change in Asset Composition**

The Bank 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 purchase and assumption transaction with FFB&T, the Bank will sell all of its deposits and substantially all of its assets. The Bank will sell additional assets to IBC Recovery, LLC. In deciding a change in asset composition application, OCC regulations provide that the OCC consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. 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. The Bank plans to merge into its nonbank affiliate, BOISC, immediately after the proposed transfer of assets and deposits to FFB&T and the transfer of assets to IBC Recovery LLC. Thus, OCC concerns over the continuation of "dormant" charters are addressed and the transaction is consistent with the language and purpose of section 5.53.

The OCC has considered these factors and found them consistent with approval.

### **C. Merger of the Bank with and into BOISC**

In this merger, the Bank will merge into its nonbank affiliate, BOISC. BOISC will be the surviving entity, and the Bank will cease to exist.

The 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." 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).

The statute does not limit its scope to mergers in which the national bank is the surviving entity, therefore, 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. The Bank will not be an insured bank at the time of the merger.

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 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 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. 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 Bank has represented it has or will comply with these procedural requirements.

The OCC considered these factors and found them consistent with approval

### **Conditions**

These approvals are subject to the following conditions:

1. The Bank shall consummate the purchase and assumption transactions whereby it will sell all of its insured deposits and substantially all of its assets to FFB&T and IBC Recovery LLC.
2. The merger of the Bank into BOISC shall not occur until after consummation of the purchase and assumption transactions between the Bank and FFB&T and IBC Recovery LLC and termination of the Bank's FDIC insurance of accounts.
3. If the merger of the Bank with and into BOISC does not occur within five (5) business days after consummation of the purchase and assumption transaction between the Bank and FFB&T, and the subsequent termination of the Bank's FDIC insurance of accounts, the Bank 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.

### **Closing**

The OCC will not issue a letter certifying the consummation of the transactions and termination of the charter until the below items are submitted to the satisfaction of the Senior Licensing Analyst listed below:

1. Written confirmation that the Bank is no longer FDIC-insured.
2. The Bank's charter certificate and certification that all OCC Reports of Examination have been returned to the OCC, or destroyed.
3. A copy of the final Certificate of Merger filed with the Indiana Secretary of State.

4. Secretary's Certificate certifying that shareholder approval has been obtained.
5. Copies of all required regulatory approvals.

If the purchase and assumption transactions with FFB&T and IBC Recovery LLC are not consummated within thirty (30) days from the approval date, the approval will automatically terminate unless the OCC grants an extension of the time period.

This conditional 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.

A separate letter is enclosed requesting your feedback on how we handled your application. We would appreciate your response so we may improve our service.

If you have any questions, contact Senior Licensing Analyst Yoo Jin Na at (202) 649-6335 or at [YooJin.Na@occ.treas.gov](mailto:YooJin.Na@occ.treas.gov). Please include the OCC's control numbers on any correspondence.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller, Licensing