



**Conditional Approval #1105
September 2014**

August 11, 2014

Donald N. Lamson, Esq.
Shearman & Sterling LLP
801 Pennsylvania Avenue NW
Washington, D.C. 20004

Re: Change in Bank Control Notice by Reliance Financial Corporation to Acquire
ING National Trust, Minneapolis, Minnesota (Charter # 24033)
OCC Control Number: 2014-NE-CBCA-138585

Dear Mr. Lamson:

The Office of the Comptroller of the Currency (OCC) has reviewed and evaluated the Notice of Change in Bank Control involving ING National Trust, Minneapolis, Minnesota (Bank) filed by Reliance Financial Corporation, Atlanta, Georgia (RFC) (Notice). Based on a review of the facts on record and the representations and commitments made in connection with the Notice, and in consideration of the relevant regulatory factors, the OCC hereby determines that the Notice is technically complete and does not disapprove the change in control.¹ This non-disapproval is subject to the conditions set out below.

Background and Transaction Steps

The Bank is an uninsured national bank whose operations are limited to trust and trust related activities. It is a direct wholly owned subsidiary of Lion Connecticut Holdings Inc. (LCHI), and an indirect wholly owned subsidiary of Voya Financial, Inc.

The Bank's principal lines of business are personal trust and retirement plan services. The personal trust line of business operates out of Minneapolis, Minnesota. The retirement plan services business operates out of Windsor, Connecticut. The Bank also has a trust office in Delaware. LCHI entered a purchase and assumption agreement with RFC pursuant to which LCHI has agreed to sell all of the Bank's outstanding stock to RFC in connection with the sale of the Bank's personal trust business to RFC's wholly owned Delaware chartered trust company, Reliance Trust Company of Delaware (RTCD). The stock sale is proposed to occur subsequent to the Bank's transfer of the retirement plan services business to a newly chartered Connecticut

¹The OCC also hereby grants pursuant to 12 U.S.C. §72 the waivers for residency requested in connection with the Notice. The Directors are required to meet all other requirements of section 72.

trust company, so that when RFC acquires the Bank only the personal trust business will remain.² As proposed, the Bank will transfer the retirement plan services business to the newly chartered Connecticut trust company (Asset Transfer) and promptly thereafter, LCHI will sell all of the Bank's issued and outstanding stock to RFC. Immediately following consummation of the change in control, RFC will merge the Bank into RTCD (Merger).

Proposed Change in Control

The OCC processes change in control notices in accordance with the requirements set forth in 12 U.S.C. § 1817(j) and 12 C.F.R. §5.50(f).³ The OCC may disapprove a notice if the OCC finds that: (i) the proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States; (ii) the effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served; (iii) either the financial condition of any acquiring person or the future prospects of the institution is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank; (iv) the competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit that person to control the bank; (v) an acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires; or (vi) the OCC determines that the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.⁴ After carefully considering the facts on record and the representations and commitments made in connection with the Notice, the OCC does not find a basis to disapprove the change in control.

Legal Authority for the Bank to Merge With RTCD

Promptly following its acquisition of the Bank, RFC proposes to merge the Bank into RTCD. Although the Bank is required only to provide notice of the proposed merger to the OCC, there must be legal authority for the Bank to merge with RTCD.⁵

²The Bank filed a change in asset composition application under 12 C.F.R. § 5.53 on May 9, 2014.

³The Bank is not insured and so in this case only the OCC's regulation applies.

⁴12 U.S.C. §1817(j)(7) and 12 C.F.R. §5.50(f)(5).

⁵A national bank is not required to obtain the OCC's prior approval in cases involving a merger with a state bank where the resulting institution is a state bank. Instead, the national bank is only required to provide notice to the OCC. See 12 C.F.R. §§ 5.33 (c) and (g)(3)(i) and (ii).

Under 12 U.S.C. § 214a, subject to certain procedural requirements, a national banking association may “...merge or consolidate with, a State bank *in the same State in which the national banking association is located*, under a State charter...”⁶ Here, the Bank, a national trust bank with its main office in Minnesota and a trust office in Delaware, proposes to merge with RTCD, a Delaware chartered trust company. RTCD is clearly located in Delaware. The question is whether the Bank is “located” in Delaware by virtue of its trust office there. The OCC has not previously considered when a national bank is “located” in a state for purposes of section 214a.

The language in section 214a is similar to language in sections of the National Bank Consolidation and Merger Act codified at 12 U.S.C. § 215 and 12 U.S.C. § 215a. Under section 215,

Any national bank or any bank incorporated under the laws of any State may, with the approval of the Comptroller, be consolidated with one or more national banking associations *located in the same State* under the charter of a national banking association....

12 U.S.C. § 215(a) (emphasis added). Similarly, in the case of national bank mergers under section 215a,

One or more national banking associations or one or more State banks, with the approval of the Comptroller, under an agreement not inconsistent with this Act, may merge into a national banking association *located within the same State*, under the charter of the receiving association.

12 U.S.C. § 215a(1) (emphasis added). Because the language in section 214a parallels the language in section 215 and section 215a, when a national bank is considered “located” in a state for purposes of mergers and consolidations under 12 U.S.C. § 214a must parallel when a national bank is considered “located” in a state for purposes of consolidations under section 215 and mergers under section 215a.

For many years, the OCC has considered a national bank located in a state for purposes of mergers under section 215a or consolidations under section 215 if it has its main office or a branch there, in the case of commercial banks,⁷ and in the national trust bank context, if it has its

⁶12 U.S.C. § 214a (emphasis added). Under 12 U.S.C. 214b, termination of a national bank's status as a national banking association is automatic upon completion of the requirements of 12 U.S.C. § 214a. *See also* 12 C.F.R. § 5.33 (g)(3)(i).

⁷*See, e.g.,* Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A. Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998) (Part II-A-1, citing earlier OCC decisions). *See also Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas, May 6, 1998) (reviewing OCC Corporate Decision No. 98-19; agreeing with OCC position that out-of-state bank was located in Texas for section 215a merger purposes because it had branches there).

main office or a trust office there.⁸ Therefore, for purposes of mergers or consolidations under 12 U.S.C. § 214a, a national bank engaged in commercial banking activities is “located” in a state if it has its main office or a branch there, and a national trust bank is “located” in a state if it has its main office or a trust office there.⁹ Accordingly, the Bank is located in Delaware for purposes of section 214a by virtue of its trust office in that state, and so the Bank is legally authorized to merge with RTCD.¹⁰

Section 1818 Conditions

This non-disapproval is subject to the following conditions:

1. Prior to consummating the change in control, RFC shall ensure that all other required regulatory approvals, non-objections, or waivers required in connection with the proposed series of transactions have been received.
2. The change in control shall not consummate prior to the Asset Transfer and shall consummate one moment prior to consummation of the Merger.
3. The Merger shall consummate promptly after consummation of the change in control. Within one day after the change in control is consummated, if the Merger has not consummated, RFC shall submit a plan to the OCC to wind down the Bank’s affairs and terminate its status as a national bank within 90 days of the consummation of the change in control.

These conditions 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.

⁸See, e.g., Decision on the Application to Merge Neuberger Berman Trust Company, New York, New York, with and into Neuberger Berman National Trust Company, Seattle, Washington (OCC Corporate Decision No. 2001-29, September 28, 2001).

⁹Section 214a also provides authority for a national banking association to convert to a state bank. We are not addressing here the issue of when a national bank is located in a state for purposes of section 214a in the context of a conversion; however, in the context of a national bank’s conversion to a state bank under section 214a, we think it is unlikely the OCC would consider a national bank located in a state other than the state where its main office is located. Cases involving conversions of national banking associations to state banks under 12 U.S.C. § 214a would likely parallel cases involving conversions of state banks to national banking associations under 12 U.S.C. § 35.

¹⁰Whether RTCD, a Delaware chartered trust company, has legal authority to merge with the Bank is a question of Delaware law.

Change in Control Consummation and Other Requirements

The date of consummation of the change in control must be provided to the Northeastern District Licensing Office within 10 days after consummation. The change in control must be consummated as proposed in the Notice. RFC must notify the OCC in writing if prior to consummation there are any changes in the terms, conditions, or parties to the change in control as described in the Notice. In the event of any such changes, the OCC reserves the right to require RFC to amend the Notice, or require the submission of a new notice of change in control.

In addition, unless an extension is granted, the change in control must be consummated within ninety (90) days of the date of this non-disapproval. Failure to consummate within ninety (90) days or an approved extended time period granted by the OCC will cause this non-disapproval to lapse and require the filing of a new notice of change in control if the parties wish to proceed with the acquisition.

RFC must also submit the following documents to the OCC's Northeastern District Licensing Office:

1. Certified copies of the Bank's board of directors' resolution approving the Merger and the required shareholder resolutions regarding notice and Merger approval.
2. A copy of the final Certificate of Merger filed with the Delaware Secretary of State.
3. The Bank's charter certificate and certification that all OCC Reports of Examination and any other OCC documents in the possession of the Bank have been returned to the OCC or destroyed.

Conclusion

The conditions of this non-disapproval and the activities and communications by OCC employees in connection with the Notice 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 OCC's non-disapproval is based on the representations, submissions, and other information provided in connection with the Notice available to the OCC as of this date. Any material change in the information on which the OCC has relied, may result in modification, suspension or rescission of this non-disapproval. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

Reliance Financial Corporation
OCC Control Number: 2014-NE-CBCA-138585

If you have any questions, please contact Licensing Analyst Kerry Rice in the OCC's Northeastern District Licensing Office at (212) 790-4055. Please include the OCC control number on any correspondence related to this filing.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing