



**Conditional Approval #1111  
November 2014**

October 1, 2014

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Miami, Florida 33131

Re: Acquisition of Pacific National Bank by a Group of Investors  
OCC Control Number: 2014-SO-Combination-137236  
Request for Director Residency Waivers  
OCC Control Number: 2014-SO-DirectorWaiver-139848

Dear Messrs. Eckland and Brown:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the applications under which a group of investors (Investors) would acquire Pacific National Bank, Miami, Florida (PNB), namely, an application to organize an interim national bank, Interim PNB, National Association, Miami, Florida, (Interim PNB) and an application to consolidate Interim PNB with and into PNB under 12 U.S.C. § 215, under the title and charter of PNB.<sup>1</sup>

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<sup>1</sup> The OCC also hereby approves PNB's request for a waiver of the directors' residency requirement under 12 U.S.C. § 72 for Stephen H. Deckoff, Leslie A. Meier, and Mounir Nahas after the consolidation. This letter does not provide a determination with respect to any employment agreement between PNB and any institution-affiliated party of PNB for purposes of the golden parachute regulation, 12 C.F.R. Part 359, to the extent any such employment agreement contains golden parachute provisions. This letter also does not provide a determination with respect to any proposed payment to any current or former institution-affiliated party of the PNB related to the termination of any Supplemental Participant Retirement Plan Agreement or any Phantom Stock Plan Agreement for purposes of the golden parachute regulation. Prior to making any payment or entering into any agreement subject to the golden parachute regulation, PNB must first obtain the approval of the OCC with the concurrence of the FDIC, if necessary.

OCC conditionally approves these applications after reviewing the applications, other materials PNB, its representatives, the Investors, and their representatives supplied, and additional information available to the OCC, including commitments and representations made in the applications and by PNB's and the Investors' representatives during the application process. This approval is also subject to the condition set out in this letter.

### **The Transaction**

Pursuant to an Agreement and Plan of Merger (Agreement), dated October 16, 2013 and amended October 18, 2013, applications were filed with the OCC (1) to form Interim PNB, sponsored by PNB, and (2) to consolidate Interim PNB and PNB under the authority of 12 U.S.C. § 215 under the title and charter of PNB. As a result of the consolidation, all pre-closing outstanding shares of PNB would be cancelled and converted into a right to receive a cash payment, and the Investors would obtain post-closing shares of PNB. Side Letters dated November 15 and 26, 2013, and January 21, 2014, amended certain provisions of the Agreement. PNB's Articles of Association and Bylaws will be the charter documents of the surviving institution whose main office will remain at the current address of PNB. PNB does not operate any branch locations and there are no approved but unopened branches. PNB's board of directors and its shareholders approved the merger on September 23, 2013, and March 11, 2014, respectively.

### **Discussion**

In the first step of this transaction, Interim PNB will be chartered as an interim national bank pursuant to the National Bank Act, 12 U.S.C. §§ 21 *et seq.* Interim national banks may be formed to facilitate corporate reorganizations and accomplish a business combination and are insured institutions. *See* 12 U.S.C. § 1815(a)(2); 12 C.F.R. § 5.33(e)(4). Here, Interim PNB is being used to facilitate the acquisition of PNB. The second step of the transaction will be the consolidation of Interim PNB with PNB, under the charter and title of the latter. A national bank may consolidate with another national bank located in the same state under 12 U.S.C. § 215. Accordingly, the formation of Interim PNB and the consolidation with PNB are legally authorized and are hereby approved.<sup>2</sup>

The proposed consolidation is also subject to OCC review under the Bank Merger Act (BMA). The OCC reviewed the proposed merger under the criteria of the BMA, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA also requires the OCC to take

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<sup>2</sup> This transaction is in effect a change in control wherein the Investors acquire control of PNB. Accordingly, the OCC required the Investors to provide the information that would be required in a notice under the Change in Bank Control Act, 12 U.S.C. § 1817(j), and the OCC's regulations, 12 C.F.R. § 5.50, and determined that approval of the transaction is consistent with the standards in the Change in Bank Control Act.

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. The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities. Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. The OCC considered these factors and found them consistent with approval of this application.

The proposed consolidation is also subject to OCC review under the Community Reinvestment Act (CRA). 12 U.S.C. §§ 2902(3) & 2903(a)(2); 12 C.F.R. § 25.29. The CRA requires the OCC to take into account the applicants' record of helping to meet the credit needs of the community, including low- and moderate-income neighborhoods, when evaluating certain applications. The OCC found that approval of the transaction is consistent with the CRA.

### **Condition**

This approval is subject to the following condition:

No later than three (3) business days after consummation of the consolidation, PNB shall enter into a written Operating Agreement with the OCC on terms and conditions acceptable to the OCC and shall thereafter implement and adhere to the terms of the Operating Agreement.

This condition of approval 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, the condition is enforceable under 12 U.S.C. § 1818.

### **Consummation Requirements**

The consolidation may not be consummated prior to the expiration of the Department of Justice's waiting period under the BMA. OCC will issue a letter certifying consummation of the transaction when we receive documentation that all conditions the OCC imposed have been met.

If the consolidation has not been consummated within six months from the approval date, the approval will automatically terminate unless the OCC grants an extension of time. The OCC must be advised in writing of the desired effective date for the consolidation so it may issue the necessary certification letter.

### **Conclusion**

These conditional approvals, and the activities and communications by OCC employees in connection with the applications, 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

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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 may modify, suspend or rescind any portion of this decision if a material change in the information on which the OCC relied occurs prior to the date of the transactions 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 the feedback on how we handled the referenced applications. If you have any questions, please contact Senior Licensing Analyst Jearlene Miller by e-mail at [jearlene.miller@occ.treas.gov](mailto:jearlene.miller@occ.treas.gov) or by telephone at (214) 720-2818. Please include the OCC Control Number on any correspondence related to this filing.

Sincerely,

*signed*

Karen Marcotte  
Acting Deputy Comptroller for Licensing