



**Conditional Approval #1127  
September 2015**

August 4, 2015

Mike Lochmann  
Partner  
Stinson Leonard Street LLP  
1201 Walnut St., Suite 2900  
Kansas City, MO 64106

Re: 12 U.S.C. 35 – Conversion  
H&R Block Bank, Kansas City, MO  
Proposed Title: H&R Block Bank, National Association  
OCC Control No.: 2014-WE-Conversion-138232

Change of Assets – 12 C.F.R. 5.53  
H&R Block Bank, National Association, Kansas City, MO  
OCC Control No.: 2014-WE-5.53-138236

Merger into Nonbank Affiliate – 12 U.S.C. 215a-3  
H&R Block Bank, National Association, Kansas City, MO  
OCC Control No.: 2014-WE-215a3-138244

Dear Mr. Lochmann:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the above referenced applications.

**The Transactions**

These applications are part of a series of transactions in which H&R Block Bank, Kansas City, MO (H&R FSB) will convert from a federal savings bank to a national association known as H&R Block Bank, National Association (H&R NA). Immediately following the conversion, H&R NA will sell certain of its assets and 100 percent of its insured deposits to BofI Federal Bank, San Diego, CA (BoFI), and thereafter the operations and charter of H&R NA will be merged with and into Block Financial LLC, Kansas City, MO (Block) thereby terminating the charter of H&R NA. H&R FSB is a wholly-owned subsidiary of Block which is wholly-owned by H&R Block, Inc., Kansas City, MO. As proposed, the following events will occur in sequence on the same business day.

## H&R Block Bank

1. H&R FSB will convert to a national association with the name of H&R Block Bank, National Association.
2. H&R NA will transfer substantially all of its assets and all of its insured deposits to BofI in a purchase and assumption transaction.<sup>1</sup>
3. H&R NA will merge with and into Block, terminating H&R NA's charter.

### Discussion

#### A. Conversion of H&R FSB

Law and regulations permit the direct conversion of a federal savings bank into a national bank.<sup>2</sup> In deciding a conversion application, OCC regulations provide that the OCC takes into account whether the institution can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies.<sup>3</sup> The regulations further provide that an application may be denied if a significant supervisory, Community Reinvestment Act (CRA)<sup>4</sup>, or compliance concern exists with the applicant; approval is inconsistent with applicable law, regulation, or policy; or the applicant fails to provide necessary information that the OCC has requested.<sup>5</sup> Finally, the regulations provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.<sup>6</sup>

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<sup>1</sup> Upon consummation of the purchase and assumption and notification to the Federal Deposit Insurance Corporation of the transfer of all insured deposits from H&R NA to BofI, H&R NA will no longer be FDIC insured pursuant to 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2. BofI's participation in the purchase and assumption is subject to a separate approval by the OCC, pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c).

<sup>2</sup> 12 C.F.R. § 5.24; 12 C.F.R. § 152.19. The OCC has approved many such conversions. *See, e.g.*, Decision of the Applications by TCF Financial Corp. to convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin into National Banks (OCC Corporate Decision No. 97-113, February 24, 1997). Section 5.24(d)(2)(ii)(E) of the OCC's regulations provides that the conversion of a federal savings bank must not be in contravention of federal law. Sections 152.19 and 163.22(b)(1)(ii) require either the filing of a notice or application to the OCC. The conversion filing is being considered by the OCC to be filing of the required Notice. Further, we have received confirmation from the Federal Reserve of Kansas City that they intend to approve the waiver of a filing for H&R Block Inc. to become a bank holding company because the converted bank would exist only for a moment in time.

<sup>3</sup> 12 C.F.R. § 5.24(d).

<sup>4</sup> The CRA itself also requires that the OCC must consider a conversion applicant's record of compliance with CRA in deciding the application. 12 U.S.C. § 2903(a)(2) and 2902(3)(A); 12 C.F.R. § 25.29(a)(4). H&R FSB's record of compliance with CRA was found to be satisfactory.

<sup>5</sup> 12 C.F.R. § 5.24(d) and 5.13(b). The conversion raises no issues regarding branching since H&R FSB has no branches. Moreover, no issues regarding retention of nonconforming assets or activities arise since none have been identified.

<sup>6</sup> The primary federal regulator of H&R FSB and H&R NA is the OCC. Therefore, there will be no change in regulator.

The OCC has conducted a thorough review of the conversion application in light of the factors set forth above and determined that the results of this review are consistent with approval of the conversion application. The OCC has also found that a no-objection decision is consistent with the provisions of 12 C.F.R. § 163.22(h).

H&R FSB has subsidiaries that H&R NA seeks to retain following the conversion, Emerald Financial Services, Inc. (EFS) and HRB Mortgage Holdings, Inc. (Mortgage Holdings). EFS currently issues and services the Emerald Card and Emerald Advance Card and Mortgage Holdings holds and services mortgage loans for H&R FSB. H&R NA is hereby authorized to retain the subsidiaries.<sup>7</sup>

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

H&R FSB, on behalf of H&R NA, 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 BofI, H&R NA will sell all its deposits and certain of its assets.

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. H&R NA plans to merge into its nonbank affiliate, Block. Thus, OCC concerns over the continuation of “dormant” charters are addressed, and so the OCC conditionally approves H&R NA’s application, and the approval is consistent with the language and purpose of section 5.53.

## **C. Merger of H&R NA with and into Block.**

In this merger, H&R NA will merge into its nonbank affiliate, Block. Block will be the surviving entity, and H&R NA 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, 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. H&R NA will not be an insured bank at the time of the merger.

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<sup>7</sup> These are permissible activities for the operating subsidiary of a national bank. See 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34(e)(1), (e)(5)(v)(A) and (e)(5)(v)(C).

## H&R Block Bank

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 OCC has conducted a thorough review of the applications in light of the factors set forth above and determined that the results of this review are consistent with conditional approval of the merger with a nonbank affiliate.

The applicant has represented it has or will comply with these procedural requirements. Therefore, based upon these representations, the OCC hereby approves the merger of H&R NA into Block.

### **Conditions**

These approvals are subject to the following conditions:

1. Immediately following the conversion to a national bank charter, H&R NA shall consummate the purchase and assumption transaction whereby it will sell 100 percent of its insured deposits and certain of its assets to BofI.
2. The merger of H&R NA into Block shall not occur until after consummation of the purchase and assumption transaction between H&R NA and BofI and termination of H&R NA's FDIC insurance.
3. If the merger of H&R NA with and into Block does not occur within seven (7) calendar days after the sale of certain assets and all of the deposits to BofI, H&R NA 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.

### **Requirements**

The converting institution must ensure that all other required regulatory approvals have been obtained. Upon completion of all steps required to convert to a national banking association, submit the "Conversion Completion Certification" (previously supplied) certifying that you have done so. Please provide the OCC with at least 10 days advance notice of the conversion.

H&R Block Bank

When the institution has satisfactorily completed all of the steps, the OCC will issue a Conversion Completion Acknowledgment officially authorizing the institution to commence business as a national banking association. If the conversion is not consummated within six months from the date of the decision, the approval will automatically terminate unless the OCC grants an extension of the time period. The OCC is opposed to granting extensions, except under the most extenuating circumstances and expects the conversion to occur as soon as possible.

The OCC will not issue a letter certifying the consummation of the transactions and termination of the charter until we have received:

1. Written confirmation that H&R NA is no longer FDIC insured.
2. H&R FSB'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 Delaware Secretary of State.
4. Secretary's Certificate certifying that shareholder approval has been obtained.
5. Any other required regulatory approval.

These conditional approvals, 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 Louis Gittleman at 720-475-7650 or at [louis.gittleman@occ.treas.gov](mailto:louis.gittleman@occ.treas.gov). Please include the OCC's control numbers on any correspondence.

Sincerely,

*Stephen A. Lybarger*

Stephen A. Lybarger  
Deputy Comptroller, Licensing

Attachments: Conversion Completion Checklist  
Survey Letter