



Central District
One Financial Place
440 S. LaSalle St., Suite 2700
Chicago, IL 60605

**Conditional Approval #1160
September 2016**

August 26, 2016

Mr. Matthew D. Rowe
Ruder Ware, L.L.S.C.
500 N. First Street, Suite 800
P.O. Box 8050
Wausau, WI 54402-8050

Re: Change in Assets Application to Dispose of Substantially all Assets and Substantially All Liabilities of Fidelity National Bank, Medford, Wisconsin, Through a Purchase and Assumption Transaction with AbbyBank, Abbotsford, Wisconsin
OCC Control Number 2016-CE-5.53-292296

Merger of Fidelity National Bank, Medford, Wisconsin into Fidelity Bancorp, Inc.,
Medford, Wisconsin
OCC Control Number 2015-CE-215a-3-292297
Charter No.: 16516

Dear Mr. Rowe:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the above referenced applications (Applications) filed by Fidelity National Bank, Medford, Wisconsin (Bank) to (1) change the composition of its assets and (2) then merge into a nonbank affiliate, Fidelity Bancorp, Inc. (Affiliate). These approvals are granted after a thorough evaluation of the Applications, other materials supplied by Bank's representatives, and other information available to the OCC, including representations and commitments made in the Application and during the application process by the Bank's representatives. The approval is subject to the conditions set out herein.

The Transactions

The Applications filed with the OCC on August 5, 2016 seek approval for Bank to sell substantially all of its assets and liabilities, including all of its insured deposits to AbbyBank,

Abbotsford, WI (Buyer) in a purchase and assumption transaction,¹ are part of a series of transactions in which Bank proposes to terminate its national bank charter.

Discussion

A. Fundamental Change in Asset Composition

The Bank applied to the OCC for prior approval of a substantial change in its asset composition under 12 CFR 5.53. Pursuant to 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 Buyer, the Bank will sell all or substantially all of its assets and all of its deposits.

The principal purpose of adopting 12 CFR 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. Following consummation of the purchase and assumption transaction, the Bank would become a “dormant” charter. The Bank, however, plans to merge into Affiliate promptly after consummation of the purchase and assumption transaction. Thus, OCC concerns over the continuation of “dormant” charters are addressed, and so OCC approval of the 5.53 application is consistent with the language and purpose of section 5.53.

B. Merger of the Bank with and into Fidelity Bancorp, Inc.

In this merger, Bank will merge into Affiliate, which will be the surviving entity, and the Bank will cease to exist. The merger is authorized under 12 USC 215a-3. Section 215a-3 authorized 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.”² 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. The Bank will not be an insured bank at the time of the merger.

The OCC’s regulations implementing 12 USC 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.³ The regulation requires the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to

¹ 12 CFR 5.53. Upon consummation of the purchase and assumption and notification to the Federal Deposit Insurance Corporation of the transfer of all insured deposits from the Bank to the Buyer, the Bank will no longer be FDIC insured pursuant to 12 USC 1818(q) and 12 CFR 307.1. The Buyer’s participation in the purchase and assumption is subject to a separate approval by the FDIC, and was approved on July 29, 2016.

² 12 USC 215a-3(a), as added by 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).

³ 12 CFR 5.53(g)(5).

engage in such mergers. Affiliate is organized under the law of Wisconsin, which permits domestic corporations to merge with corporation organized under the laws of another jurisdiction, with the Wisconsin corporation as the survivor.⁴

The OCC regulations also requires that: (1) the bank comply with the procedures of 12 USC 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 USC 214a and (4) the rights of dissenting shareholders and appraisal of the stock of dissenting shareholders in the nonbank affiliate shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate was organized. The Bank has complied with these procedural requirements.

The OCC 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 considered the proposed merger with respect to these factors and determined that approval of the merger is warranted.

Conditions

The approval of the Change in Assets and 215a-3 applications are subject to the following conditions:

1. The merger of Fidelity National Bank into Fidelity Bancorp, Inc. shall not occur until after consummation of the purchase and assumption transaction by AbbyBank to acquire substantially all of the assets and liabilities of Fidelity National Bank.
2. If the merger of Fidelity National Bank into Fidelity Bancorp, Inc. does not occur within five (5) business days after the sale of all or substantially all of Fidelity National Bank's assets to AbbyBank, and the subsequent termination of Fidelity National Bank's FDIC deposit insurance, Fidelity National Bank shall immediately notify the OCC and submit a plan acceptable to the OCC to conclude 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 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

Other Requirements

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

1. Written confirmation that the Bank is no longer FDIC insured.

⁴ Wisconsin Statute 180.1104.

2. Fidelity National 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 Wisconsin Secretary of State.

The 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, an 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 non which the OCC relied occurs prior to the date of the transaction to which this decision pertain. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If these transactions are not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

All correspondence regarding these applications should reference the control numbers. If you have any questions, contact Licensing Analyst Valarina Oliver-Dumont at (312) 360-8886 or at valarina.dumont@occ.treas.gov or myself at (312) 360-8866 or nancy.sundstrom@occ.treas.gov. 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.

Sincerely,

signed

Nancy M. Sundstrom
Director for District Licensing

cc: Federal Deposit Insurance Corporation, Chicago, IL
Wisconsin Department of Financial Institutions
Federal Reserve Bank of Minneapolis