



September 15, 2016

**Corporate Decision #2016-01
October 2016**

Khoi D. Dang, Esq.
Hogan, Rosen, Beckham & Coren LLP
23975 Park Sorrento, Suite 200
Calabasas, California 91302-4001

Re: Application to Increase Permanent Capital filed on behalf of Gateway Bank, F.S.B., Oakland, California, to issue 2,664,347 shares of 6.67% Perpetual Non-Cumulative Preferred Stock, Series C to the ResCap Liquidating Trust
OCC Control Number: 2016-HQ-Capital&Div-216694; Charter Number: 708857

Dear Mr. Dang:

The Office of the Comptroller of the Currency (OCC) hereby approves the June 22, 2016 application (Application) filed on behalf of Gateway Bank, F.S.B. (Bank) for an increase in permanent capital pursuant to 12 CFR 5.45. The increase will occur through the issuance of 2,664,347 shares of the Bank's Series C, Perpetual Non-Cumulative Preferred Stock to the ResCap Liquidating Trust (ResCap) in connection with the settlement of litigation among the Bank, ResCap and Residential Funding Company, LLC. This approval is granted after a thorough review of the application, other materials you have supplied, including representations and commitments made by the Bank and its counsel in the Application, and other information available to the OCC.

The OCC also deems the application a request pursuant to Article II of the Bank's October 26, 2011 Consent Order. The OCC will separately address the Bank's request for written determination of no supervisory objection in separate correspondence.

Legal Authority

Under 12 CFR 5.45(g), a Federal stock savings association is required to submit an application to the appropriate OCC licensing office and obtain prior OCC approval to increase its permanent capital if the savings association is: (1) required to receive OCC approval pursuant to letter, order, directive, written agreement or otherwise; (2) selling common or preferred stock for consideration other than cash; or (3) receiving a material noncash contribution to capital surplus.

In determining whether to approve a proposed increase in a Federal stock savings association's permanent capital, the OCC considers the factors listed in 12 CFR 5.45(f). Those factors require the OCC to review whether the change is consistent with law, regulation, and OCC policy; provides an adequate capital structure; and, if approved,

complies with the savings association's capital plan. The OCC has determined these regulatory factors are consistent with approval.

In order for the preferred stock issuance to qualify as additional tier 1 capital, 12 CFR 3.20(c) specifies that, among other things, (1) the preferred stock instrument is issued and "paid-in"; and (2) the paid-in amount is classified as equity under generally accepted accounting principles (GAAP). The OCC has determined the forgiveness or extinguishment of debt by a bank can constitute adequate consideration for the issuance of a bank capital instrument under the risk-based capital rules. In addition the settlement of a lawsuit could constitute adequate consideration to satisfy the "paid-in" requirement for the issuance of a bank capital instrument. Accordingly, based on the facts and circumstances involving the Bank, the OCC has determined that the Bank's lawsuit is a *bona fide* legal obligation of the Bank and the settlement agreement along with the settlement amount are sufficient to extinguish the Bank's legal obligation. This capital transaction to issue preferred stock in exchange for debt forgiveness qualifies as additional tier 1 capital under 12 CFR 3.20(c).

The OCC has also determined that the Bank's Amended Certificate of Designations complies with the requirements of 12 CFR 5.22.

Consummation Requirements

This transaction must be consummated within one year of the date of this letter. Failure to consummate within one year or an approved extended time period granted by the OCC will cause our approval to lapse and require the filing of a new Application by the Bank if it wishes to proceed with the capital increase.¹

In accordance with 12 CFR 5.45(g)(4), within 10 days after consummation, the Bank must submit a notice to the OCC containing the amount, including the par value of the stock, and effective date of the increase; a certification that the funds have been transferred from the litigation reserve to the Bank's capital account; and a statement that the Bank has complied with all laws, regulations, and conditions imposed by the OCC. Please send consummation information to the attention of Senior Licensing Analyst Patricia Goings.

The transaction must be consummated as proposed in the Application. If any of the terms, conditions, or parties to the transaction described in the Application change, the OCC must be informed in writing prior to consummation to determine if any additional action or reconsideration is required. In such situations, the OCC reserves the right to require submission of an amended or new Application.

This approval and the activities and communications by OCC employees in connection with the Application does 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 an 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.

¹ The Bank has already made a one-time cash payment of \$400,000 as part of the settlement agreement with ResCap and the Residential Funding Company, LLC.

Gateway Bank, F.S.B.
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Our approval is based on the representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind any portion of 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 approval pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, please contact Senior Licensing Analyst Patricia Goings by email at GOINGSP@occ.treas.gov or by telephone at (202) 649-6260. Please include the OCC Control Number on any correspondence related to this filing.

Sincerely,

signed

Stephen A. Lybarger
Deputy Comptroller for Licensing