



October 27, 2017

**Conditional Approval #1187
December 2017**

Brian Marek, Esq.
Carleton Goss, Esq.
Hunton & Williams LLP
1445 Ross Avenue, Suite 3700
Dallas, TX 75202

Re: Application to Establish an Operating Subsidiary by Merchants Bank of California, NA,
Carson, California OCC Charter No.: 21371
OCC Control No.: 2017-HQ-Subs&Equities-299667

Application for Merger of Merchants Bank of California, NA, with and into MBOC
OpSub, Inc.
OCC Control No.: 2017-HQ-215a3-299668

Dear Messrs. Marek and Goss:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the above referenced applications (Applications) submitted by Merchants Bank of California, NA, Carson, California (Bank). These approvals are granted after a thorough evaluation of the Applications, other materials supplied by the Bank's representatives, and other information available to the OCC, including commitments and representations made in the Applications and during the application process. The OCC's approvals are subject to the conditions set out herein.

I. The Transactions

The Applications relate to a series of transactions pursuant to which the Bank proposes to terminate its national bank charter. As part of winding down the Bank's business, the Bank is closing its remaining deposit accounts.¹ After the Bank has closed all of its remaining deposit accounts and all associated funds have left the Bank, it will request the Federal Deposit Insurance Corporation (FDIC) terminate the Bank's deposit insurance pursuant to 12 USC 1818(p). Upon the FDIC terminating the Bank's deposit insurance, the Bank will merge with and into its proposed operating subsidiary and nonbank affiliate, MBOC OpSub, Inc. (OpSub), which will acquire all of the Bank's remaining assets and assume all of the Bank's remaining stated and contingent liabilities and be the surviving entity.

¹ On September 20, 2017, the OCC conditionally approved the Bank's application for a substantial asset change under 12 CFR 5.53 to permit the Bank to dispose of its remaining deposit accounts.

II. Discussion

A. Establish OpSub as an Operating Subsidiary

The Bank intends to form OpSub, a Delaware corporation, to facilitate the merger. A corporation may qualify as an operating subsidiary if the bank has the ability to control the management and operations of the subsidiary, the bank owns and controls more than 50 percent of the voting interest of the subsidiary, the operating subsidiary engages only in activities permissible for a national bank to engage in directly, and the subsidiary is consolidated with the bank under generally accepted accounting principles. 12 CFR 5.34(e)(1)-(2). OpSub will meet these requirements.

B. Merger into Op Sub under 12 USC 215a-3

After the termination of its deposit insurance, the Bank will merge into OpSub, a nonbank affiliate. OpSub will be the surviving entity, and the Bank will cease to exist.

The merger is authorized under 12 USC 215a-3. Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate. The statute does not limit its scope to mergers in which the national bank is the surviving entity, and, therefore, 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. 12 CFR 5.33(g)(5)(i). The OCC is imposing the condition set forth below to ensure that the Bank will be uninsured at the time of the merger.

The OCC's regulation implementing 12 USC 215a-3 sets 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. 12 CFR 5.33(g)(5). The regulation requires that the law of the state under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. 12 CFR 5.33(g)(5)(1). The regulation also imposes the requirements that: (1) the national 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. 12 CFR 5.33(g)(5)(ii)-(iv). The Bank has represented that it has complied or will comply with these procedural requirements.

The regulation also requires that the OCC consider the conformity of the transaction to applicable law, regulation, and supervisory policies; the purpose of the transaction; the impact of the transaction on safety and soundness of the national bank; and the effect of the transaction on the national bank's shareholders, depositors, other creditors, and customers. 12 CFR 5.33(e)(1)(i). The OCC has considered these factors and found them consistent with approval.

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III. Condition

The approvals are subject to the following conditions:²

1. The merger of the Bank with and into OpSub shall not occur until after all of the Bank's deposit accounts have been closed and the Bank's FDIC insurance of accounts has been terminated, and
2. The merger of the Bank with and into OpSub shall not occur until it has submitted a plan for the preservation of its books and records (Plan) to the Director for Special Supervision (Director), and the Director has provided a written determination of no supervisory objection to the Plan.

These conditions of approval are "conditions imposed in writing by a federal banking agency in connection with any action on an application, notice, or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

IV. Consummation Requirements

The OCC will not issue a letter certifying the consummation of the merger into OpSub and the termination of the charter until the following items are submitted to the satisfaction of the Senior Licensing Analyst named below:

1. Written confirmation that the Bank is no longer FDIC-insured;
2. An original secretary's certificate certifying that the shareholders of the Bank have approved the merger with and into OpSub;
3. Certification that the Bank's charter certificate and all OCC Reports of Examination have been returned to the OCC or destroyed;
4. A copy of the final Certificate of Merger filed with the Delaware Secretary of State; and
5. Copies of any other required regulatory approvals.

² On September 20, 2017, the OCC conditionally approved the Bank's application for a substantial asset change under 12 CFR 5.53, and set forth the following two conditions: 1) the Bank shall provide updated financial statements and projections weekly to the Director for Special Supervision, or at other time intervals as the Director for Special Supervision may determine; and 2) if the Bank's charter is not terminated through the merger of the Bank with and into a nonbank affiliate within five business days of the termination of the Bank's FDIC insurance of accounts, the Bank 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 remain in effect.

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If the merger of the Bank with and into OpSub is not consummated within six months from the date of this letter, the approval of the merger will automatically terminate unless an extension has been granted. 12 CFR 5.33(e)(7).

V. Conclusion

These conditional approvals, and the activities and communications by OCC employees in connection with the filings, 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. These approvals are based on the Bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind these approvals 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.

If you have any questions, please contact Senior Licensing Analyst Stephanie Moss at (202) 649-7243 or at Stephanie.Moss@occ.treas.gov. Please include the OCC control number on any correspondence.

Sincerely,

signed

Stephen A. Lybarger
Deputy Comptroller for Licensing