



September 20, 2017

**Conditional Approval #1188
December 2017**

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

Re: Application for Substantial Asset Change by Merchants Bank of California, NA, Carson, California
OCC Control No.: 2017-HQ-5.53-299443 OCC Charter No.: 21371

Dear Messrs. Marek and Goss:

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

I. The Transactions

The Application relates 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 intends to close its remaining deposit accounts, for which the Bank has applied for OCC approval for a substantial asset change under 12 CFR 5.53. Following the closure of the deposit accounts, the Bank intends for the termination of its deposit insurance by the Federal Deposit Insurance Corporation (FDIC) pursuant to 12 USC 1818(p). After the termination of the Bank's deposit insurance, it intends to merge with and into a to-be-established operating subsidiary.¹

II. Discussion

The Bank applied to the OCC for prior approval of a substantial asset change under 12 CFR 5.53. Under 12 CFR 5.53(b), a national bank must obtain the prior written approval of the OCC for a substantial asset change, which includes the sale or other disposition of all, or substantially

¹ The Bank's establishment of an operating subsidiary and the merger into the operating subsidiary are subject to applications that have been filed with the OCC under Control Numbers 2017-HQ-Subs&Equities-299667 and 2017-HQ-215a3-299668, respectively.

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all, of its assets in a transaction or series of transactions. Here, the Bank intends to close all of its remaining deposit accounts.

12 CFR 5.53(d)(3) requires the OCC, in reviewing a substantial asset change application, to consider the capital levels of any resulting national bank; the conformity of the transaction to applicable law, regulation, and supervisory policies; the purpose of the transaction; the impact of the transaction on the safety and soundness of the national bank; and the effect of the transaction on the national bank's shareholders, depositors, other creditors, and customers. The OCC may deny the application if the transaction would have a negative effect in any of these respects.

One of the purposes of 12 CFR 5.53 is to address supervisory concerns raised by so called "dormant" bank charters by providing the OCC with regulatory oversight and a means to monitor them. The Bank plans to establish an operating subsidiary which it will merge into after the termination of its deposit insurance. However, the OCC has yet to approve these transactions, raising the possibility that the Bank's charter may become dormant.

The OCC has considered the factors for approval under 12 CFR 5.53 and found them consistent with approval, subject to the Bank's compliance with the conditions below, which are intended to help ensure the Bank meets the applicable approval standards, including OCC supervisory concerns regarding "dormant" bank charters.

III. Conditions

The approval is subject to the following conditions:

1. The Bank shall provide updated financial statements and projections weekly to the Director for Special Supervision (Director) starting one week from the date of this approval. The Director may require that the Bank provide updated financial statements and projections at other time intervals as the Director may determine, in her discretion.
2. If the Bank's charter is not terminated through merger of the Bank with and into a non-bank 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 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. Conclusion

This 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

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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. This 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.

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

Sincerely,

signed

John A. O'Brien
Acting Director for Licensing Activities