



**Conditional Approval #2104
September 2018**

August 29, 2018

Ms. Ruth Calaman
General Counsel and Chief Compliance Officer
Evercore Trust Company, National Association
55 East 52nd Street, 23rd Floor
New York, New York 10055

Re: Applications to establish Evercore Temporary Trust Bank, National Association, Wilmington, Delaware, merge Evercore Trust Company, National Association, New York, New York, with and into Evercore Temporary Trust Bank, National Association, merge Evercore Trust Company of Delaware, Wilmington, Delaware, with and into the resulting bank, and reduce permanent capital

OCC Control Numbers: 2018-NE-Combination-303211, 2018-NE-Combination-304024, 2018-NE-Capital&Div-303201

Dear Ms. Calaman:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the applications to charter Evercore Temporary Trust Bank, National Association, Wilmington, Delaware (Temporary), merge Evercore Trust Company, National Association, New York, New York (ETCNA-NY) with and into Temporary (Merger 1), with the resulting bank named Evercore Trust Company, National Association (ETCNA-DE),¹ and immediately following Merger 1, merge Evercore Trust Company of Delaware, Wilmington, Delaware (ETCD), with and into ETCNA-DE (Merger 2)(Merger 1 and Merger 2, collectively, the Mergers). The OCC hereby also grants the request for residency waivers for the directors of Temporary² and conditionally approves the application for ETCNA-DE to reduce permanent capital following consummation of Merger 2. These approvals are granted based on a thorough evaluation of all information available, including commitments and representations made in the applications and during the application process. These approvals are subject to the conditions set out herein.

¹ To reflect its name change, Temporary is called ETCNA-DE when discussing transactions that will occur following consummation of Merger 1.

² See 12 U.S.C. § 72.

Background and Transaction Steps

The OCC received applications to charter Temporary, merge ETCNA-NY with and into Temporary and, immediately following consummation of Merger 1, merge ETCD with and into the resulting bank. ETCNA-NY is an uninsured national trust bank with its main office in New York and trust offices in several other states, including Delaware. Temporary, ETCNA-NY and ETCD are all wholly-owned subsidiaries of Evercore LP; Evercore Inc. owns more than 80 percent of Evercore LP. Temporary is being established to facilitate ETCNA-NY's objective of moving its main office to Delaware and merging with its affiliated Delaware chartered trust company. Following consummation of Merger 2, ETCNA-DE proposes to reduce its permanent capital.

Legal Authority

The OCC received an application to charter Temporary, a national bank whose activities will be limited to trust activities. Chartering a national bank that limits its activities to those of a trust company and activities related thereto is permissible under the National Bank Act. *See, e.g.*, 12 USC 27(a) (last sentence); 12 CFR 5.20(e)(1) & 5.20(l).

In Merger 1, ETCNA-NY would merge with and into Temporary. Temporary's main office is in Delaware and ETCNA-NY has a trust office in Delaware. Under 12 USC 215a, subject to certain procedural requirements, a national banking association or a state bank "...may merge into a national banking association located within the same state..." 12 USC 215a (a). The OCC previously has concluded that a national trust bank is located in any state in which it has a trust office for purposes of mergers occurring under the authority of section 215a.³ Thus, ETCNA-NY is located in Delaware for purposes of section 215a and Merger 1 is legally authorized. Upon consummation of Merger 1, ETCNA-DE will exercise fiduciary powers pursuant to 12 CFR 5.26(b)(1).⁴

In Merger 2, ETCD, a Delaware chartered trust company, would merge with and into ETCNA-DE. Merger 2 is also authorized under section 215a because ETCD and ETCNA-DE are both located in Delaware.⁵

Following consummation of Merger 2, ETCNA-DE proposes to reduce its permanent capital. Pursuant to 12 USC 59, a national bank may reduce its capital upon the vote of shareholders holding two-thirds of its capital stock and OCC approval. The OCC's implementing regulation

³ *See, e.g.*, OCC Corporate Decision No. 2001-29 (September 28, 2001).

⁴ *See also* 12 USC 215a(e). ETCNA-DE will retain ETCNA-NY's main office as a trust office following consummation of the Mergers. *See* 12 CFR 9.7(c).

⁵ For purposes of 12 USC 215a, "state bank" includes a state trust company. 12 USC 214(a).

for section 59, 12 CFR 5.46, sets forth factors the OCC considers in reviewing a national bank's application to reduce permanent capital, including appropriate shareholder approval. The OCC has reviewed the relevant factors and finds them consistent with its approval of the proposed capital reduction.

Section 1818 Conditions

These approvals are subject to the following conditions:

1. Within ten (10) business days following consummation of the Mergers, ETCNA-DE shall enter into a written Operating Agreement with the OCC on terms and conditions acceptable to the OCC. ETCNA-DE shall thereafter implement and adhere to the terms of the Operating Agreement.
2. Within three (3) business days after the effective date of the Operating Agreement between ETCNA-DE and the OCC, ETCNA-DE shall enter into a written Capital and Liquidity Support Agreement (CSA) with Evercore Inc., Evercore LP and the OCC on terms and conditions acceptable to the OCC, setting forth Evercore Inc.'s and Evercore LP's obligation to provide capital and liquidity support to ETCNA-DE if and when necessary. ETCNA-DE shall thereafter implement and adhere to the terms of the CSA.
3. Within three (3) business days after the effective date of the Operating Agreement between ETCNA-DE and the OCC, ETCNA-DE shall enter into a written Capital Assurance and Liquidity Maintenance Agreement (CALMA) with Evercore Inc. and Evercore LP on terms and conditions acceptable to the OCC, setting forth Evercore Inc.'s and Evercore LP's obligation to provide capital and liquidity support to ETCNA-DE if and when necessary. ETCNA-DE shall thereafter implement and adhere to the terms of the CALMA.
4. The capital reduction shall not occur until after consummation of the Mergers.

These conditions 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.

Consummation and Other Requirements

The Northeastern District Office must be advised in writing in advance of the desired effective date for the Mergers so it may issue the necessary certification letter. If the Mergers are not consummated within six months of the OCC's approval date, the approvals shall automatically terminate, unless the OCC grants an extension. The reduction in capital must occur within 12 months of the OCC's approval date.

Conclusion

These conditional approvals and the activities and communications by OCC employees in connection with the applications 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. These conditional approvals are based on the representations, submissions, and other information provided in connection with the applications available to the OCC as of this date. The OCC may modify, suspend or rescind these approvals, if a material change in information on which the OCC relied, occurs prior to the date of the transactions to which these approvals pertain. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

We have enclosed a letter requesting your feedback on how we handled your application. We would appreciate your response, so we may improve our services.

If you have any questions, please contact Licensing Analyst Justin E. Holder at (212) 790-4014 or by e-mail at holderje@occ.treas.gov. All correspondence should reference the OCC control numbers.

Sincerely,

/s/

Marva Cummings
Director for District Licensing

Enclosure: Survey Letter