



Office of the Comptroller of the Currency

Central District
425 S. Financial Place, Suite 2700
Chicago, IL 60605

Conditional Approval #1244

May 19, 2020

June 2020

Scott A. Coleman
Ballard Spahr LLP
2000 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Re: Change in Asset Composition and Merger with Nonbank Affiliate applications filed by
Neighborhood National Bank, Mora, MN 55051 Charter No.: 15161
OCC Control Nos.: 2020-CE-5.53-314051 and 2020-CE-215a3-314052

Dear Mr. Coleman:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the applications by Neighborhood National Bank, Mora, Minnesota (Bank) to change the composition of all, or substantially all, of its assets by sale and then merge with and into Neighborhood Holdings, Inc., Mora, Minnesota (NHI) (Applications). This approval is granted after a thorough evaluation of the Applications, other materials supplied by Bank's representatives, and other information available to the OCC, including the representations and commitments made in the Applications and during the application process by Bank's representatives. The OCC reviewed these proposals under the criteria of 12 USC 215a-3, 12 CFR 5.33 and 12 CFR 5.53(d)(3) and deemed them consistent with approval. The approval is subject to the conditions set out herein.

Transactions

The Applications filed with the OCC on March 20, 2020 seek approval for Bank to transfer substantially all of its assets and liabilities, including all of its insured deposits, to Wings Financial Credit Union, Apple Valley, Minnesota (Wings), in a purchase and assumption transaction, and then, shortly thereafter merge into NHI, thereby terminating Bank's national bank charter.

Discussion

Fundamental Change in Asset Composition

Bank applied to the OCC for prior approval of a fundamental change in its asset composition under 12 CFR 5.53. Under 5.53(c)(1)(i), a national bank must obtain the prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. Bank proposes to sell substantially all of its assets and transfer all of its deposit liabilities to Wings. Thus, the transaction is clearly within the scope of 5.53(c)(1)(i).

National banks have long been authorized to engage in purchase and assumption transactions, both as seller and buyer, as part of their general banking powers under 12 USC 24(7). See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society*, 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). See also 12 USC 1828(c) (purchase and assumption transactions included among transactions requiring review under Bank Merger Act). Such purchase and assumption transactions are commonplace in the banking industry. The OCC has approved many such transactions, including transactions in which a national bank sold substantially all its business.¹ Accordingly, Bank has the authority under 12 USC 24(7) to sell its assets and transfer its liabilities to Wings.²

In addition, in deciding a change in asset composition application, OCC regulations provide that the OCC consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The principal purpose of adopting 12 CFR 5.53 was to provide the OCC with a means to monitor and address supervisory concerns raised by so called "dormant" bank charters. In the case of Bank, Bank plans to merge into its nonbank affiliate, NHI, shortly after the purchase and assumption transaction that would make Bank a "dormant" charter. Thus, OCC concerns over the continuation of "dormant" charters are addressed. OCC approval is consistent with the language and purpose of 5.53, provided the merger into the nonbank affiliate occurs as proposed. OCC's approval of the 5.53 application is based on and relies upon representations made by Bank or its representatives.

¹ See OCC Conditional Approval No. 1230, September 17, 2019 (South Central Bank, N.A., Chicago, IL and Verve, A Credit Union, Oshkosh, WI); OCC Conditional Approval No. 1160, August 26, 2016 (Fidelity National Bank, Medford, WI and AbbyBank, Abbotsford, WI); OCC Conditional Approval No. 1095, April 15, 2014 (Flint River National Bank, Camilla, GA and Five Star Credit Union, Dothan, AL); OCC Conditional Approval No. 1092, March 7, 2014 (The First National Bank of Smith Center, Smith Center, KS and The Guaranty State Bank and Trust Company, Beloit, KS); OCC Merger Decision 88-14, August 29, 1988 (The First National Bank of Hastings, Hastings, MN and First National Bank, Spring Valley, MN); Merger Decision, January 25, 1986 (City National Bank of Cloquet, Cloquet, MN and Carlton National Bank, Carlton, MN).

² 12 USC 215c, enacted as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, [Pub. L. No. 102-242, 105 Stat. 2302](#) (enacted December 19, 1991) (FDICIA), also authorizes certain purchase and assumption and merger transactions for national banks. It was a grant of additional authority to allow national banks to engage in merger transactions with Federal savings associations. Nothing in 215c was intended to deprive a national bank of existing authority under other statutes to engage in mergers or purchase and assumption transactions authorized by those statutes. National banks have engaged in purchase and assumption transactions under the authority of 12 USC 24(7) both before and after the enactment of 215c. See, e.g., OCC decisions cited in note 1.

Merger of Neighborhood National Bank with and into Neighborhood Holdings, Inc.

Bank will merge into NHI, which will be the surviving entity and Bank will cease to exist. Twelve USC 215a-3 authorizes 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."³ 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. Bank will not be an insured bank at the time of the merger.⁴

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.⁵ The regulation requires the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. NHI is organized under the law of Minnesota, which permits domestic corporations to merge with corporations organized under the laws of another jurisdiction, such as national banks, that will result in the Minnesota corporation as the survivor.⁶

The OCC regulations also require 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; (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. Bank is in process of meeting applicable procedural requirements under 214a and NHI is in the process of complying with the procedures for mergers by Minnesota.

The OCC's regulation also provides that the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of Bank, and any effect on 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.

³ 12 USC 215a-3, 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, 14 Stat. 2944, 3034 (December 27, 2000).

⁴ Following the purchase and assumption transaction, Bank will provide notice to the FDIC and pursue termination of its insured status pursuant to 12 USC 1818(p).

⁵ 12 CFR 5.33(g)(5).

⁶ Minn. Stat. 302a.601 (2019).

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Conditions

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

1. The merger of Neighborhood National Bank into Neighborhood Holdings, Inc. shall not occur until after consummation of the purchase and assumption between Neighborhood National Bank and Wings Financial Credit Union and termination of Neighborhood National Bank's Federal Deposit Insurance Corporation (FDIC) deposit insurance.
2. If the merger of Neighborhood National Bank into Neighborhood Holdings, Inc. does not occur within seven (7) calendar days after the termination of FDIC deposit insurance, Neighborhood 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.

The conditions of this 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.

Consummation Requirements

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

1. Written confirmation that Bank is no longer FDIC insured.
2. 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 Minnesota Secretary of State.
4. Copies of any other required regulatory approval.

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 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. Our approval is based on 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 transactions 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.

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

A separate letter is enclosed requesting your feedback on how we handled your applications. We would appreciate your response so we may improve our service. All correspondence regarding the Applications should reference the control numbers. If you have any questions, contact Licensing Analyst Valarina Oliver-Dumont at valarina.dumont@occ.treas.gov or at (312) 360-8886.

Sincerely,

/s/

John A. O'Brien
Director for District Licensing