



March 28, 2016

**Conditional Approval #1271
August 2021**

Timothy B. Matz, Esq.
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3299 K St. NW, Suite 100
Washington, DC 20219-000 I

Re: Goldwater Bank, N.A., Scottsdale, Arizona
Charter Number 24671
Application for Reverse Stock Split
OCC Control Number: 2015-HQ-Capital&Div-146818

Dear Mr. Matz:

This responds to Goldwater Bank, N.A., Scottsdale, Arizona (Bank) regarding its application under 12 CFR 5.46 to complete a reverse stock split in accordance with the corporate governance provisions of Arizona law. Based on the representations and commitments made by the Bank, the application is hereby conditionally approved, subject to the conditions set forth below.

I. Background

A. Facts

The Bank, in its bylaws, has elected to follow the corporate governance provisions of Arizona law to engage in a reverse stock split as permitted by Arizona law. The Bank proposes the reverse stock split to decrease the administrative expenses incurred in servicing multiple shareholders who own relatively small numbers of shares, including corporate expenses associated with shareholder communications and meetings.

In order to reduce the legal and administrative costs associated with shareholder communications and meetings, the Bank's board of directors has determined, conditioned on the approval of at least two-thirds of the outstanding shares of the Bank's common stock, to complete a reverse stock split. The reverse stock split will offer each shareholder of Bank common stock one share of the Bank's common stock for every 250,000 shares that the shareholder currently holds. As a result, the Bank's controlling shareholder, Mr. Wiechert, will become the Bank's sole shareholder (except for the Bank's directors, who will hold director's qualifying shares in accordance with 12 USC 72) and each of the remaining shareholders, who will only hold a

fractional share as a result of the reverse stock split, will receive cash in exchange for his or her fractional share. Mr. Wiechert, who currently holds in excess of 99 percent of the shares of the Bank's issued and outstanding common stock, intends to vote all of his shares in favor of the reverse stock split proposal. The Bank's actions to affect the reverse stock split are subject to shareholder approval, which is anticipated to occur at a special meeting of shareholders duly called and to be held following the receipt of the Office of the Comptroller of the Currency (OCC) approval.

The Bank will supplement the dissenters' rights outlined in OCC Advisory Letter 2002-6 (AL 2002-6) with certain aspects of the dissenters' rights set forth in 12 USC 215a, provided that any such additional rights afforded by Section 215a do not conflict with the rights set forth in AL 2002-6.

B. Corporate Governance

The Bank's main office is located in Scottsdale, Arizona. Therefore, Bank may adopt Arizona corporate governance procedures to the extent that those procedures are not inconsistent with applicable Federal banking statutes or regulations.¹ The Bank has previously adopted Arizona law for its corporate governance matters. See section 7.4 of the Bank's Revised and Restated Bylaws entitled Corporate Governance Procedures.

The OCC has promulgated 12 C.F.R. 7.2023 that codifies its decisions permitting reverse stock splits. The OCC confirms in the regulation the authority of national banks to conduct reverse stock splits where "the transaction serves a legitimate corporate purpose and provides adequate dissenting shareholders' rights."² The regulation specifically recognizes that reducing costs associated with shareholder communications is an example of a legitimate corporate purpose supporting a reverse stock split.³

Counsel for the Bank represents that Title 10 - Corporations and Associations of the Arizona Revised Statutes (ARS) does not specifically authorize Arizona corporations to effect reverse stock splits, but does provide for distributions to shareholders, including by "purchase, redemption or other acquisition of the corporation's shares."⁴ Arizona law does expressly provide for dissenters' rights in connection with a reverse stock split.⁵ Title 10 of the ARS also authorizes an Arizona corporation to "pay in money the fair value of fractions of a share as determined by the board of directors." ARS § 10-604. Moreover, Title 10 of the ARS specifically references a corporate action that "reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash" as one of the situations in which a shareholder has the right to dissent and obtain payment of the fair value of the shareholder's shares.

¹ 12 CFR 7.2000(b).

² 12 CFR 7.2023(a).

³ 12 CFR 7.2023(b)(2).

⁴ ARS I 0-640.

⁵ Specifically, provisions of the IBCA permit a corporation to amend its articles of incorporation to reduce par value and effectuate a reclassification or cancellation of shares for the purpose of eliminating fractional shares. See 805 ILCS 5/Art. 10 (permitting amendments); 805 ILCS 5/6.15 (permitting fractional shares and, in lieu thereof, the payment of cash for fractional shares).

The Bank has made the certifications required by AL 2002-6 for situations where corporate governance provisions do not provide for dissenters' rights.

II. Discussion

A national bank has the authority to engage in a reverse stock split pursuant to 12 CFR 7.2023. "A national bank may engage in a reverse stock split if the transaction serves a legitimate corporate purpose and provides adequate dissenting shareholders' rights."⁶ Twelve CFR 7.2023 explicitly lists reducing costs associated with shareholder communications and meetings as a legitimate corporate purpose for a reverse stock split.⁷ Thus, based on Goldwater's representations, the reverse stock split at issue has a legitimate corporate purpose.

The remaining issue is whether the proposed reverse stock split provides adequate dissenting shareholders' rights. The National Bank Consolidation and Merger Act ("NBCMA") describes the dissenting shareholders' rights required for consolidations and mergers.⁸ When conducting a reverse stock split, pursuant to 12 CFR 7.2023, a bank must provide shareholders adequate dissenters' rights to ensure that the shareholders receive a fair price for their shares.⁹ These dissenters' rights need not be identical to those identified in the NBCMA.¹⁰ The OCC has generally found that dissenters' rights comparable to those under the NBCMA are adequate for purposes of conducting a reverse stock split under 12 CFR 7.2023.¹¹

Under the NBCMA, shareholders dissenting to a bank merger may receive the fair value of their shares if the shareholders either vote against the merger, or give written notice of dissent prior to or at the shareholder meeting at which the shareholders vote on the merger. The value of the dissenting shareholders' shares is determined by an appraisal made by a committee of three persons: one chosen by the dissenting shareholders, one chosen by the directors of the bank (as it exists after the merger), and one chosen by the other two members of the committee. If the committee fails to determine a value for the shares, or a dissenting shareholder is not satisfied with the value determined, the OCC must make an appraisal of the shares.¹²

Goldwater's application represents that Goldwater's corporate governance procedures provide dissenters' rights including: (a) advance notice of dissenters' rights to shareholders before the shareholder meeting at which the shareholders will vote on the reverse stock split; (b) an independent third party appraisal of the shares if Goldwater and any dissenting shareholders are unable to agree on the value of the dissenting shares; (c) payment by Goldwater of the cost of

⁶ 12 CFR 7.2023. Twelve CFR 7.2023 codifies prior OCC interpretations. *See* Investment Securities; Rules, Policies, and Procedures for Corporate Activities; Bank Activities and Operations, 64 Fed. Reg. 60092, 60094 (Nov. 4, 1999).

⁷ 12 CFR 7.2023.

⁸ These rights are detailed in 12 USC 214a(b), 215(b)-(d), and 215a(c).

⁹ Conditional Approval No. 940 (Dec. 16, 2009); *see generally NoDak Bancorporation v. Clarke*, 998 F.2d 1416 (8th Cir. 1993) (holding that a so-called "freeze-out" merger was not prohibited by the National Bank Act where the merger provided adequate protections to minority shareholders through appraisal rights).

¹⁰ Conditional Approval No. 940; *see NoDak*, 998 F.2d 1416.

¹¹ *See, e.g.*, Interpretive Letter No. 1125 (Feb. 11, 2010); Conditional Approval No. 940.

¹² *See* 12 USC 214a(b), 215(b)-(d), 215a(b)-(d), and 215a(c); *see also* Interpretive Letter No. 1125; Conditional Approval No. 940.

appraising any dissenting shares; and (d) binding arbitration by an independent third party, to be paid for by Goldwater, if the court that would ordinarily hear an appraisal action under the corporate governance procedures refuses jurisdiction to appraise Goldwater's shares. Based on these representations and past OCC precedent, Goldwater's procedures are comparable to those in the NBCMA and provide adequate dissenters' rights.¹³

Goldwater's application notes that the bank has not determined the amount to be paid to minority shareholders in accordance with 12 CFR 5.67.¹⁴ Instead, Goldwater has established a price of \$0.01 per share based on the book value per share as of September 30, 2015. There is no established market for Goldwater stock, and the \$0.01 price per share was the price used for Goldwater's recapitalization.

Goldwater's choice not to determine share price in accordance with 12 CFR 5.67 does not adversely affect dissenters' rights. If a shareholder dissents, the dissenter may require Goldwater to pay for an independent appraisal of the value of the shares. Thus, Goldwater's initial valuation of the shares, however determined, does not limit or diminish any dissenters' rights.¹⁵

In light of the foregoing, Goldwater's proposed reverse stock split has a legitimate corporate purpose and provides adequate dissenters' rights. The application therefore is consistent with 12 CFR 7.2023.

III. Conclusion

For the above reasons, including the representations and commitments made by the Bank, we find that the proposed reverse stock split is legally authorized and meets the other statutory criteria for approval. Accordingly, this application is hereby approved, subject to the following conditions:

1. The Bank will provide for dissenters' rights comparable to those found in 12 USC 214a(b), 215(b)-(d), and 215a(c).
2. If any shareholders dissent from the reverse stock split, the Bank will pay the cost of any appraisal that may occur, but not the costs of attorneys' fees incurred by and costs of experts retained by dissenting shareholders.
3. If the appropriate court(s) declines to accept jurisdiction of an appraisal action, the Bank will pay for binding arbitration by an independent third party to appraise

¹³ See Conditional Approval No. 940. Goldwater represents that the procedures meet all of the minimum standards listed in item 3 (concerning dissenters' rights) of the OCC's application form for a reverse stock split.

¹⁴ The OCC's application form for reverse stock splits asks whether the applicant determined the price to be paid under 12 CFR 5.67, which provides, *inter alia*, that a bank may remit the cash value of a fractional share to a fractional shareholder. If there is no active market to determine the value of the fractional share, the bank may determine the value of the share "based on a reliable and disinterested determination as to the fair market value" of the fractional share. 12 CFR 5.67.

¹⁵ Moreover, Licensing has indicated that, under the circumstances, using book value to value the stock is entirely appropriate.

the stock but not the costs of attorneys' fees incurred by and costs of experts retained by dissenting shareholders.

Please be advised that the above conditions of this approval shall be deemed to be conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818(b)(1).

Please notify the OCC when the change in capital has been completed in accordance with this approval. The notification should state the date of the change, and the dollar amount of the reduction in the common stock and surplus account associated with the payment for fractional shares. The notification should include a certification that shareholders approved the change in capital structure according to law, regulations, and the Bank's Articles of Association. A secretary's certificate of shareholder approval should be included. The notification also should include a statement that the change in the capital structure complies with all applicable laws and regulations. Upon receipt of the notification, the OCC will review the reduction in capital attributable to the payment for fractional shares.

If the reverse stock split is not consummated within one year from the approval date, the approval shall automatically terminate unless the OCC grants an extension of the time period. Please advise Patricia Goings, Senior Licensing Analyst, within 10 days of the effective date of the reverse stock split.

Please include OCC Control Number 2015-HQ-Capital&Div-146818 on all correspondence related to this application.

This 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, 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 laws and regulations. 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 Patricia Goings, Senior Licensing Analyst, at 202-649- 6260 or by email patricia.goings@occ.treas.gov.

Sincerely

/s/

Beverly L. Evans
Director for Licensing Activities