



Comptroller of the Currency
Administrator of National Banks

Southeastern District
Marquis One Tower, Suite 600
245 Peachtree Center Ave., N.E.
Atlanta, Georgia 30303

Conditional Approval #364
March 2000

February 14, 2000

Mr. William M. Butler, Spokesperson
Futurus Bank, National Association (Proposed)
1580 Warsaw Road
Roswell, Georgia 30076

Re: Control No. 99-SE-01-0028

Dear Mr. Butler:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national bank with the title of **Futurus Bank, National Association**. On February 14, 2000, after a thorough evaluation of all data available to the OCC, we found your proposal met the requirements for preliminary approval.

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by the proposed bank's representatives. We also made our decision to grant preliminary approval with the understanding that the proposed national bank will apply for membership in the Federal Reserve System and obtain FDIC insurance.

This is preliminary approval only. Final approval will not be granted until and unless the Federal Reserve Board acts favorably on your application with them to acquire this new bank. You must furnish the OCC's Southeastern district office with a copy of all related filings to the Federal Reserve, including registration material.

Any significant deviations from the original operating plan, or changes in the organizing group or chief executive officer, must receive the prior written approval of the OCC. Significant deviations or changes that have not been approved may be grounds for delaying issuance of the charter or for withdrawing

preliminary approval (see Significant Changes discussion in the Introduction of the "Corporate Organization" booklet).

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Please refer to the "Corporate Organization" booklet (enclosed) in the *Comptroller's Corporate Manual* for the instructions on organizing your bank. The booklet contains all of the steps you must take to receive your charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the bank as soon as you adopt and forward acceptable Articles of Association and the Organization Certificate to this office. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC.

After reading the instructions for the organization of a new bank, it is suggested that the spokesperson or a designated correspondent visit this Office to discuss the organizing process. We feel such a visit can save time and prevent some of the pitfalls that have delayed or prevented other banks from opening.

Enclosed with this letter are standard requirements that must be met before the bank will be allowed to commence business. Management must ensure that the applicable policies and procedures are established and adopted by the board of directors before the bank begins operation.

The OCC poses no objection to the following persons serving as designated senior executive officers and/or directors. Any additional executive officers are subject to the prior review and clearance of the OCC.

<u>NAME</u>	<u>POSITION</u>
William Butler	President/Director
Clayton Parke Day	Director
Nathan Hardwick, IV	Director
Michael Hug	Director
Deborah Janicki	Director
Gregory Janicki	Director
Donald Shapleigh, Jr.	Director
Richard Stimson	Director
Danny Tesney	Director
Joel Weinbach	Director

As Organizer Donald Shapleigh, Jr. is currently a management official of Net.B@nk, Inc. and Net.B@nk, Alpharetta, GA, Mr. Shapleigh's proposed role as Director for Futurus Bank, N.A. is subject to the Depository Institution Management Interlocks Act (DIMIA),

12 U.S.C. § 3201-3208. However, as Futurus Bank, N.A. will be chartered less than two years, and the interlock will not result in a monopoly or substantial lessening of competition, the OCC hereby exempts Mr. Shapleigh from DIMIA as allowed under 12 C.F.R. § 26.6(b)(3). Mr. Shapleigh may serve as a Director of Futurus Bank, N.A. for a period of three years as allowed by 12 C.F.R. § 26.6(c).

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The bank holding company proposes to downstream a minimum of \$8.5 million in capital prior to commencing bank operations. You are reminded that, pursuant to 12 CFR 5.20(i)(5)(iii), this preliminary approval expires if the bank does not raise the capital funds within 12 months from the date of this letter. The preliminary approval also will expire if the bank has not commenced business within 18 months from the date of this letter.

You are also reminded that for a period of two years after the bank has opened for business, the OCC must review and have no objection to any new executive officer or director prior to that person assuming such position.

This approval is subject to the condition that the bank shall provide the OCC at least thirty (30) days prior notice of any significant deviations or changes from the proposed operating plan during the first three years of operation. This condition is enforceable under 12 U.S.C. § 1818.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.

You should direct any questions regarding this preliminary approval to Corporate Analyst Dennis Oswald at (404) 588-4525.

Yours truly,

/s/

John O. Stein
Licensing Manager

Enclosures: Standard Requirements
"Corporate Organization" Booklet
Minimum Policies and Procedures

Standard Requirements

- C For a period of two years after the bank has opened for business, the OCC must review and have no objection to any new executive officer or director prior to that person assuming such position. The proposed person may not assume the position, until the OCC has issued a letter of no objection.

Since this condition is imposed pursuant to the OCC's chartering authority, the OCC is not subject to the 30-day review period imposed by 12 USC 1831i. However, the OCC will process all such notices in a timely manner using the procedures in the "Change in Directors and Senior Executive Officers" booklet.

- C The OCC requires that, prior to opening, the Futurus Bank, N.A. engage an independent, external auditor to perform an audit according to generally accepted auditing standards of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank (or consolidated holding company), taken as a whole. The audit period shall commence on the date that the organizing group forms a body corporate and may end on any calendar quarter-end no later than 12 months after the bank opens. The OCC expects that such audits will be performed annually for at least three years following commencement of operations. Engagement of an auditor will be verified during the preopening examination (see the "Corporate Organization" booklet).

- C Warrants issued to bank organizers must include the following provision:

If Futurus Bank, N.A.'s capital falls below the minimum requirements contained in 12 CFR 3 or below a higher requirement as determined by the OCC, the OCC may direct Futurus Bank, N.A. to require warrant holders to exercise or forfeit their warrants. Futurus Bank, N.A. will notify warrant holders within 45 days from the date the OCC notifies the bank in writing that warrant holders must exercise or forfeit their warrants. Futurus Bank, N.A. will cancel warrants not exercised within 21 days of Futurus Bank, N.A.'s notification. Futurus Bank, N.A. has agreed to comply with any OCC request that Futurus Bank, N.A. invoke its right to require warrant holders to exercise or forfeit their warrants under the previous circumstances.

As a requirement of this approval, Futurus Bank, N.A. agrees to invoke the "exercise or forfeit" feature at the OCC's request under the previous circumstances.

- C The proposed bank must ensure that internal systems will be year 2000 compliant. It also must perform due diligence to ensure that any third-party data processing services or purchased applications or systems from software vendors will be year 2000 compliant.

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- C The bank's financial statements must be prepared on an accrual basis according to generally accepted accounting principles.
- C The president must serve as a member of the board of directors.
- C If the new bank is not opened for business within 18 months from the preliminary approval date, preliminary approval will be withdrawn. The OCC is opposed to granting extensions, except under the most extenuating circumstances, and expects that the organizers will proceed, as presented in the application, to take the steps necessary for the bank to open for business as soon as possible.
- C All persons who, together with their interests, subscribe to 10 percent or more of the initial stock offering must submit biographical and financial reports for review to the Licensing staff prior to acquisition of their shares. The Licensing staff must have no objection to such persons before they purchase their shares. Subsequent to opening the national bank, requirements of the Change in Bank Control Act (12 USC 1817(j)) will apply. Changes in the composition of members or trustees of a voting trust or voting agreement also may be subject to the requirements of the Change in Bank Control Act.
- C Stock certificates must not be issued prior to the date the bank opens for business, but must be issued immediately following the bank's opening.
- C The bank must have adequate fidelity insurance covering all persons authorized to collect, receive, or deposit funds from stock subscriptions. The bank must purchase adequate fidelity bond coverage in accordance with 12 CFR 7.2013, which lists four factors the directors should consider to determine adequacy. This insurance must be in force from the effective date of the offering circular until the bank opens for business (see the "Corporate Organization" booklet).
- C The board of directors must develop written policies and procedures that will guide the bank's operations in a safe and sound manner. Those policies must be completed no later than the date of the applicant's request for a preopening examination. In addition, the board of directors must review and adopt the policies and procedures at its first meeting (see Appendixes, Minimum Policies and Procedures). The board of directors is responsible for regular review and modification of policies and procedures and for assuring continuous compliance with them.

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- C Organizational and preopening expenses significantly exceeding those projected in the application, and/or net capital significantly less than that projected in the application, are a basis for revocation of preliminary approval. Capital adequacy is not the sole reason to determine the acceptability of organization costs. The OCC will evaluate the reasonableness of preopening expenses (see the "Corporate Organization" booklet).

- C A letter must be submitted to the district office at least 45 days before the bank is scheduled to open, notifying the OCC that all conditions and requirements necessary to receive a national bank charter have been met, requesting a preopening examination, and providing the anticipated opening date.

NBE/Corporate Analyst