



**Comptroller of the Currency
Administrator of National Banks**

Licensing Department
250 E Street, S.W.
Washington, D.C. 20219

**Conditional Approval #978
November 2010**

October 28, 2010

Mr. Richard K. Kim
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Re: Applications to establish a new national bank and for the new bank to purchase certain assets and assume certain liabilities from another national bank
Application Control Numbers: 2010-WO-01-0014 and 2010-WO-02-0008

Dear Mr. Kim:

The Office of the Comptroller of Currency (“OCC”) hereby grants final conditional approval to the application to establish a new national bank with the title of Bank Midwest, National Association, (“New Bank Midwest” or the “Bank”) to be located in Kansas City, Missouri. The OCC also hereby grants conditional approval to the application by the Bank to purchase certain assets and assume certain liabilities of an unaffiliated bank, Bank Midwest, National Association, Kansas City, Missouri (“Legacy Bank Midwest”). These approvals are granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by the Bank’s representatives during the application process. These approvals are also subject to the conditions set out herein.

Background

This application to charter a new national bank is sponsored by NBH Holdings Corp. (“NBH”). NBH raised capital for the purpose of acquiring one or more banks.¹ This application was filed by NBH to obtain approval for a new national bank, New Bank Midwest, so that NBH, through

¹ In addition to this application, NBH previously received preliminary conditional approval from the OCC for a separate national bank to be used in bidding to acquire the assets and liabilities of failed depository institutions from the Federal Deposit Insurance Corporation (“FDIC”) as receiver. *See* OCC Conditional Approval No. 948 (February 24, 2010). On October 22, 2010, that bank, Hillcrest Bank, National Association, completed its first acquisition of a failed institution from the FDIC. *See* OCC Conditional Approval No. ____ (October 14, 2010).

New Bank Midwest, can acquire certain banking operations of Legacy Bank Midwest in a purchase and assumption transaction (“P&A Transaction”). Legacy Bank Midwest is a subsidiary of Dickinson Financial Corporation (“DFC”). The P&A Transaction would be entered pursuant to a Purchase Agreement between NBH and DFC.² The OCC granted preliminary conditional approval for the charter on October 7, 2010. NBH applied to the Board of Governors of the Federal Reserve System to acquire the Bank.

In the P&A Transaction, New Bank Midwest would purchase certain assets and assume certain liabilities of Legacy Bank Midwest, including most of Legacy Bank Midwest’s stand alone traditional branches in Missouri and Kansas, specified loans and deposits relating to those branches, and certain other loans and other assets. Legacy Bank Midwest would retain its branches in certain stores, one of its traditional branches in Kansas, loans and deposits relating to those branches, and certain other assets and liabilities. Immediately after the P&A Transaction, Legacy Bank Midwest, with its remaining business, would be merged into Armed Forces Bank, National Association, Fort Leavenworth, Kansas, an affiliated bank wholly-owned by DFC.

Discussion

A. Charter

The OCC finds that the Bank has met all requirements and completed all steps necessary to commence the business of banking. In the P&A Transaction, New Bank Midwest would acquire a traditional community bank business with a number of traditional branches and a substantial base of core deposits and performing loans. NBH has the financial resources to maintain capital at the Bank and support it in the future. The applicants represent that sufficient capital will be injected to ensure the Bank substantially exceeds the amount needed to be well-capitalized when it opens for business and thereafter. The OCC also considered the banking experience of the organizers, proposed directors, and senior management. Accordingly, the OCC has determined that the application meets the regulatory factors for final conditional approval.

Accordingly, the OCC concludes the Bank is lawfully entitled to commence the business of banking under 12 U.S.C. § 27(a) and 12 C.F.R. § 5.20. This determination is based on the overall proposal, with the Bank entering the P&A Transaction with Legacy Bank Midwest immediately upon opening. If the P&A Transaction will not occur, this final approval for the charter is void. The Bank is authorized to open simultaneously with the P&A Transaction. OCC approval for the Bank to open is conditioned upon entry into the P&A Transactions.³

² Under the Purchase Agreement, NBH acquired the rights to the name “Bank Midwest”.

³ In connection with opening for business and entry into the P&A Transaction, the Bank requested a waiver of the residency requirements of 12 U.S.C. § 72 for its board of directors. The OCC hereby grants the residency waivers.

NBH's plans for New Bank Midwest include the prospect of substantial growth through further acquisitions. Accordingly, the OCC is requiring the Bank to enter a written Operating Agreement that will require the Bank to submit a Comprehensive Business Plan acceptable to the OCC. The Plan must detail the proposed long-term business and operations of the Bank, and the Bank must obtain the OCC's written supervisory non-objection to the Plan. After receiving the OCC's non-objection, the Bank must implement and adhere to the Plan. Any significant deviation from the Plan will require prior notice to the OCC and receipt of written OCC non-objection to the changes.

The Bank is reminded that several of the standard requirements enclosed in the preliminary conditional approval letter dated October 7, 2010, will continue to apply once the Bank opens and, by opening, the Bank agrees it is subject to these requirements of operation.

B. The P&A Transaction

1. Authority for the P&A Transaction

The Bank applied to the OCC for approval to purchase certain assets and assume certain liabilities in the P&A Transaction with Legacy Bank Midwest. National banks have long been authorized to purchase assets and assume liabilities of other depository institutions under the authority of 12 U.S.C. § 24(Seventh).⁴ Consequently, the Bank may acquire the assets and liabilities, including deposits, as proposed. The OCC approves the P&A Transaction.⁵

2. Authority to operate branches in Missouri

New Bank Midwest also requested OCC approval to continue to operate certain branches of Legacy Bank Midwest in Missouri. New Bank Midwest's main office will be in Kansas City, Missouri. The branches in Missouri are in the same state as New Bank Midwest's main office. Under 12 U.S.C. § 36(c), a national bank may establish and operate branches at any point in the state in which the national bank is situated if such establishment and operation are authorized to state banks by the statute law of the state in question. Missouri permits its state chartered banks

⁴ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

⁵ Based on information currently available to the Bank, the Bank represents it believes it is not acquiring any assets or activities that are not permitted for national banks and that it is not acquiring any subsidiaries. If there are any assets, subsidiaries, or activities that are not permitted for national banks and are transferred to the Bank, the Bank represents it will divest itself of any such nonconforming or impermissible assets, subsidiaries, or activities, within two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.

to establish branches within the state without geographic limitation.⁶ A Missouri state bank could establish branches at all the locations of the Legacy Bank Midwest Missouri branches to be acquired.

Accordingly, New Bank Midwest has the authority to establish branches at all the locations of the Legacy Bank Midwest Missouri branches to be acquired, and so may acquire and continue to operate those Missouri branches, under 12 U.S.C. § 36(c) and applicable intrastate branching laws of Missouri as applied to national banks under section 36(c). The OCC approves the Bank's acquisition and operation of these branches in Missouri.

3. Authority to operate branches in Kansas

New Bank Midwest also requested OCC approval to continue to operate certain branches of Legacy Bank Midwest in Kansas. New Bank Midwest's main office is in Missouri, and so Missouri is its "home state." Prior to the P&A Transaction it would not have a branch in Kansas. Under 12 U.S.C. § 36(g), as amended by section 613(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁷ a national bank may

establish and operate a de novo branch in a State (other than the bank's home State) in which it does not maintain a branch if –

(A) the law of the State in which the branch is located or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State

Revised Statutes § 5155(g)(1)(A) (12 U.S.C. § 36(g)(1)(A)). Kansas permits its state chartered banks to establish branches within the state without geographic limitation.⁸ A Kansas state bank could establish a branch at the location of the first Kansas branch of Legacy Bank Midwest to be acquired by New Bank Midwest (the branch at 7804 State Avenue, Kansas City, Kansas). Thus, New Bank Midwest has the authority to establish a branch at that location, and so may acquire and continue to operate that Kansas branch of Legacy Bank Midwest, under 12 U.S.C. § 36(g)(1)(A) and applicable intrastate branching laws of Kansas as applied to national banks under section 36(g)(1)(A). Establishment of an interstate branch under 12 U.S.C. § 36(g) is also subject to certain conditions under 12 U.S.C. § 36(g)(1)(B) & 36(g)(2). These conditions are: (1) compliance with certain state filing requirements; (2) expanded community reinvestment analysis and compliance; and (3) adequacy of capital and management. The OCC determined

⁶ Mo. Rev. Stat. §§ 361.230 & 362.107.

⁷ Pub. L No. 111-203, 124 Stat. 1376, 1614 (July 21, 2010).

⁸ Kan. Stat. Ann. § 9-1111.

that New Bank Midwest satisfies these conditions to the extent applicable.⁹ Accordingly, New Bank Midwest's continued operation of the branch is authorized under 12 U.S.C. § 36(g), and the OCC approves the Bank's acquisition and operation of this branch in Kansas.

Once New Bank Midwest has its first branch in Kansas under 12 U.S.C. § 36(g), New Bank Midwest is situated in Kansas for branching purposes and can establish additional branches in Kansas as intrastate branches under 12 U.S.C. § 36(c).¹⁰ As noted above, Kansas permits statewide branching, and so a Kansas state bank could establish additional branches at all of the locations of the other Kansas branches of Legacy Bank Midwest being acquired by New Bank Midwest. Accordingly, New Bank Midwest has the authority to establish branches at all of the locations of the other Legacy Bank Midwest Kansas branches to be acquired, and so may acquire and continue to operate these additional Kansas branches of Legacy Bank Midwest, under 12 U.S.C. § 36(c) and applicable intrastate branching laws of Kansas as applied to national banks under section 36(c). The OCC approves the Bank's acquisition and operation of these additional branches in Kansas.

C. Bank Merger Act

The OCC reviewed the proposed P&A Transaction under the factors set forth in the Bank Merger Act ("BMA"), 12 U.S.C § 1828(c), and applicable OCC regulations and policies. The OCC considered these factors and finds them consistent with approval.

D. Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of the community, including low-and-moderate-income neighborhoods, when evaluating certain applications, including charter applications and transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903(a)(2); 12 C.F.R. §§ 5.20(e)(2) & 25.29. The OCC considered New Bank Midwest's description of how

⁹ The requirements in section 36(g) are incorporated from 12 U.S.C. § 1831u(b). The provisions regarding capital include the requirement that the application may be approved only if the "bank involved in the transaction is adequately capitalized *as of the date the application was filed.*" 12 U.S.C. § 1831u(b)(4)(A) (emphasis added). In this application, New Bank Midwest was not in existence at the time the application was filed. The application was filed by the sponsor and organizers on behalf of the Bank so that the Bank could enter the P&A Transaction with Legacy Bank Midwest and acquire the branches immediately upon opening. The Bank will exceed the standards for a well-capitalized bank when it opens for business and completes the P&A Transaction.

¹⁰ See, e.g., 12 U.S.C. § 1831u(d)(2) (incorporated into 12 U.S.C. § 36(g) by 12 U.S.C. § 36(g)(2)(B)) (after an interstate merger, the resulting bank may establish additional branches at any location where any of its predecessor banks could have done); *Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), cert. denied, 419 U.S. 844 (1974) (an interstate national bank is "situated" in each state in which it has offices for purposes of establishing additional branches under section 36(c)); OCC Conditional Approval No. 912 (July 14, 2009) (page 4) (same); OCC Corporate Decision No. 2000-03 (March 8, 2000) (page 7) (same).

it will meet its CRA objectives and the CRA performance evaluation of the other institution involved in the P&A Transaction. The OCC finds approval of the charter application and of the P&A Transaction are consistent with CRA.

Conditions

These approvals are subject to the following conditions:

1. The Bank shall open and commence the business of banking only if it immediately consummates the P&A Transaction. If the Bank is not able to consummate the P&A Transaction immediately, the Bank shall not open.
2. The Bank shall have received from NBH an injection of initial paid-in cash capital in conjunction with the P&A Transaction in an amount sufficient so that the Bank's Tier 1 leverage ratio is at least 10% immediately after consummation of the P&A Transaction, without including any bargain purchase gain. If such cash capital is not provided, the Bank shall not consummate the P&A Transaction.
3. The Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within three (3) business days after receiving this final OCC approval, commencing business, and consummating the P&A Transaction.

These conditions of 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 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

Consummation Guidance

Please notify the OCC that the Bank has opened. The OCC will forward you a Charter Certificate under separate cover.

Please refer to the Business Combinations booklet of the *Comptroller's Licensing Manual* for steps to complete the P&A Transaction. Within seven days of consummation of the P&A Transaction, please provide the OCC with copies of the following documents:

- Executed purchase and assumption agreement.
- Documentation that all other conditions that the OCC imposed have been met.

Conclusion

These conditional approvals are granted based on our understanding that other applicable regulatory approvals, non-objections, or waivers with respect to the Bank, NBH, any other relevant parties, and the proposed P&A Transaction will have been received prior to the Bank's opening for business and consummating the P&A Transaction.

The final approval for the Bank to commence business under 12 U.S.C. § 27(a) is limited to opening in conjunction with the P&A Transaction. This approval is void if the P&A Transaction does not occur.

These conditional approvals, and the activities and communications by OCC employees in connection with the filings, 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 approvals are based on the representations made in the applications, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind these conditional approvals 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 about the supervision of your Bank, please contact Assistant Deputy Comptroller George Orsino at 215-357-4752. For questions about this decision letter or other licensing matters, please contact Senior Licensing Analyst David Reilly at 202-874-5060. You should include the application control numbers on any correspondence related to this filing.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller, Licensing