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Comptroller of the Currency  
Administrator of National Banks

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Western District Office  
50 Fremont Street, Suite 3900  
San Francisco CA 94105  
(415) 545-5900; Fax (415) 545-5974

September 30, 2002

**Conditional Approval #551  
October 2002**

J. Stephen Voelker – Spokesman  
Legacy Bank, National Association (proposed)  
125 East Campbell Avenue  
Campbell, California 05008

Re: Legacy Bank, National Association (proposed)  
CAIS Control No: 2002-WE-01-0004 and 2002-WE-05-0035

Dear Mr. Voelker:

The Comptroller of the Currency (OCC) has reviewed your application to establish a new national bank with the title of Legacy Bank, National Association. On September 30 2002, after a thorough evaluation of all data available to the OCC, we found that your proposal met the requirements for preliminary conditional approval. The Bank also may offer credit life, health, and accident insurance in accordance with 12 CFR 2.

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 conditional approval with the understanding that the proposed national bank will apply for membership in the Federal Reserve System and obtain FDIC insurance.

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted until all pre-opening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke preliminary approval should the OCC deem any interim development to warrant such action.

This preliminary conditional approval is subject to the following conditions:

1. The Bank: (i) shall give the San Francisco Field Office at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from its business

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plan or operations<sup>1</sup> and (ii) shall obtain the OCC's written determination of no objection before the Bank engages in any significant deviation or change from its business plan or operations. For the first three years of operation, the Bank must also provide a copy of such notice to the FDIC's San Francisco Regional Office.

2. The Bank's business plan outlines services to be provided through a transactional web site at, or shortly after, the Bank opens for business. Prior to activation of the web site, the Bank must take the actions detailed below. An expansion of Internet services beyond that outlined in the business plan within the first three years of operation is considered a significant change in the business plan. Prior to implementing such an expansion of Internet operations, the Bank must follow the requirements of Condition No. 1, as well as:

- The Bank must submit to the OCC's San Francisco Field Office for review and approval a complete description of the Bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items:

Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

- The Bank must have performed an independent security review and test of its electronic banking platform. The Bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. If the Bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirements listed below. An objective, qualified independent source (Reviewer) must conduct the review. The scope should cover:
  - All access points, including the Internet, Intranet, or remote access.
  - The adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access.

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<sup>1</sup> If such deviation is the subject of an application filed with the OCC, the OCC does not require notice to the supervisory office

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By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, see “The Internet and the National Bank Charter” booklet of the Comptroller’s Licensing Manual, pages 37-38, and 74-75. This booklet may be found on the OCC’s web site at [www.occ.treas.gov/netbank/letters.htm](http://www.occ.treas.gov/netbank/letters.htm).

3. The Bank must have a security program in place that complies with the “Interagency Guidelines Establishing Standards for Safeguarding Customer Information” specified at 12 C.F.R. 30, Appendix B.

Organizers should refer to OCC Advisory Letter 2000-12 dated November 28, 2000, and OCC Advisory Letter 2001-47 dated November 1, 2001, for guidance on risk management of outsourcing technology services. (Please refer to enclosures.)

4. The Bank must notify all potential technology-related vendors in writing of the OCC’s examination and regulatory authority under 12 U.S.C. 1867(c)<sup>2</sup>. All final technology-related vendor contracts must stipulate that the performance of services provided by the vendors to the Bank is subject to the OCC’s examination and regulatory authority.
5. The OCC requires that, prior to opening, the Bank 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. 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 requires that such audits be performed annually for at least three years following the commencement of operations.

These conditions of approval are conditions “imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 U.S.C. 1818. As such, the conditions are enforceable under 12 U.S.C. 1818.

This is to inform you that the Comptroller of the Currency (OCC) has also approved your application to establish a messenger service branch to operate throughout Santa Clara County, California. 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 Bank’s representatives. If the branch is not operating within 18 months of the Bank’s opening, the approval will automatically terminate unless the OCC has granted an extension.

The operation of the service is limited to those locations where the Bank could legally establish a

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<sup>2</sup>The OCC has the authority to assess the bank for the cost of examining a service provider. See 12 C.F.R. 8.6.

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permanent branch under applicable federal and state law and within the geographic areas where the notice of the proposed mobile service was published. After the service begins operations, the Bank must maintain a log of operations, indicating the date, specific location, and a description of each stop (e.g., office, store, residence, etc.). At all times, the service must be maintained and operated in compliance with the relevant provisions of 12 C.F.R. § 21 and the *Bank Protection Act of 1968*. If you desire to operate the service outside of the area where notice was published, please file a branch application and contact Licensing Operations for additional information.

Within 10 days after establishment of the messenger service, the Bank must provide the OCC with written confirmation of the commencement date, and popular name of the service. Please send your letter to Licensing Operations and refer to the filings CAIS number.

The Bank's initial paid-in capital, net of organizational and pre-opening expenses, shall be no less than \$9,000,000. The manner in which capital is raised must not deviate from that described in the operating plan without prior OCC notification. If the capital for the new Bank is not raised within 12 months or if the new Bank is not opened for business within 18 months from the preliminary conditional approval date, this approval expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances, and when the OCC determines that the delay is beyond the applicant's control. The organizers are expected to proceed diligently, consistent with their application, for the Bank to open for business as soon as possible.

The OCC poses no objection to the following persons serving as executive officers as proposed in the application.

President/Chief Executive Officer: J. Steven Voelker  
Chief Credit Officer: Daniel D. Duarte  
Chief Financial Officer: Bruce H. Kendall  
Chief Banking Officer: Rene A. Kakebeen

The OCC poses no objection to the individuals listed below serving as directors:

Thomas E. Ray	Donald A. Gootee
Kevin J. Gilday	Martha A. Sanford
Samson Zarnegar	Jerry L. Greer
Joseph P. Petkewich	Frank A. Leamy
O'Neal Sutton III	Lester B. Workman
J. Stephen Voelker	Bruce H. Kendall
Daniel D. Duarte	

Prior to the Bank's opening, the Bank must obtain the OCC's prior written determination of no objection for any additional executive officers selected, or directors appointed or elected, before the person assumes the position. For a two-year period after the Bank commences business, the

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OCC must issue a letter of no objection to any new executive officer or director prior to that person assuming such position.

The "Corporate Organization" booklet in the *Comptroller's Licensing Manual* provided guidance for organizing your bank. The booklet may be found at the Publications section of the OCC's web site: [www.occ.treas.gov](http://www.occ.treas.gov). 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. The Bank may not begin the business of banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures. The Bank must meet the standard requirements before it is 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.

In addition to the standard requirements for all new national banks, the following special requirements must be satisfied prior to the Bank's request for a pre-opening examination and before the OCC will grant final charter approval:

1. The Bank will submit to the OCC a written program for training its Directorate on the duties and responsibilities of new bank directors. The program should describe initial training prior to the Bank's opening and ongoing training during the first year of operations. The Bank must obtain the OCC's prior written determination of no objection for this program.
2. The Bank should nominate for OCC's approval one additional independent director who has had recent experience (within the last five years) as an executive officer or director of an insured depository institution. For purposes of this requirement, the terms "executive officer" and "director" are defined in the manner set forth in 12 C.F.R. § 215.2. "Independent director" is defined as a director who is not also an officer or employee of the Bank.

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

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 U.S., any agency or entity of the U.S., or an officer or

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employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.

Please direct any questions concerning preliminary conditional approval to Senior Licensing Analyst Geryl N. Race at (415) 545-5923.

A separate letter is enclosed requesting your feedback on how we handled your application. We would appreciate your response so we may improve our service.

Very truly yours,

**-signed-**

James A. Bundy  
Licensing Manager

Enclosures: "Corporate Organization" Booklet  
Minimum Policies and Procedures  
Standard Requirements  
AL 2000-12  
AL 2001-47  
Survey Letter