



**Conditional Approval #1240**  
**May 2020**

April 7, 2020

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

Subject: Substantial Asset Change and Merger with and into Nonbank Affiliate Applications  
Submitted on Behalf of First Citizens Bank of Polson, NA, Polson, Montana  
OCC Control Nos.: 2020-HQ-5.53-313605 and 2020-HQ-215a-3-313606  
Charter No.: 24670

Dear Mr. Coleman:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves the above referenced applications (Applications) submitted by First Citizens Bank of Polson, NA, Polson, Montana (Bank). These approvals are granted after a thorough evaluation of the Applications, other materials supplied by the Bank's representatives, and other information available to the OCC, including commitments and representations made in the Applications and during the application process. The OCC's approvals are subject to the conditions set out herein.

**I. The Transactions**

The Applications relate to a series of transactions in which the Bank seeks to terminate its national bank charter. In the first stage, the Bank has applied to the OCC for a substantial asset change pursuant to 12 CFR 5.53, in which the Bank will enter into a Purchase & Assumption (P&A) transaction with Unity Bank, Augusta, Wisconsin, a state-chartered, non-member bank; through the P&A, the Bank will transfer its remaining deposits and substantially all of its remaining assets and liabilities to Unity Bank.

Once the P&A transaction is completed, the Bank will begin the process of voluntarily terminating its Federal Deposit Insurance Corporation (FDIC) deposit insurance pursuant to 12 USC 1818(a). Finally, once the FDIC has terminated the Bank's deposit insurance, the Bank will merge with and into its nonbank affiliate, Flathead Lake Holding Company (Flathead), a newly formed non-bank subsidiary of the Bank's parent bank holding company, Flathead Lake Bancorporation, Inc. (Holding Company), and return its national bank charter to the OCC.

Mr. Scott Coleman, Esq.  
OCC Control Numbers: 2020-HQ-313605 and 313606  
First Citizens Bank of Polson, Polson, Montana

## **II. Discussion**

### *A. Substantial Asset Change*

The Bank applied to the OCC for prior approval of a substantial asset change under 12 CFR 5.53. Under section 5.53(d)(2), a national bank must obtain the prior written approval of the OCC for a substantial asset change, which includes the sale or other disposition of all, or substantially all, of its assets in a transaction or series of transactions. Through the transactions contemplated in its applications, including the P&A, the Bank will transfer all of its deposits and substantially all of its assets and other liabilities to Unity Bank.

Section 5.53(d)(3) requires the OCC, in reviewing a substantial asset change application, to consider, as relevant, the capital levels of any resulting national bank or federal savings association; the conformity of the transaction to applicable law, regulation, and supervisory policies; the purpose of the transaction; the impact of the transaction on the safety and soundness of the national bank; and the effect of the transaction on the national bank's shareholders, depositors, other creditors, and customers. The OCC may deny the application if the transaction would have a negative effect in any of these respects. The OCC has considered the factors for approval under 12 CFR 5.53 and found them consistent with approval, subject to the Bank's compliance with conditions set forth in this letter, which are intended to help ensure the Bank meets the applicable approval standards.

### *B. Merger of the Bank with and into Flathead*

In this merger, the Bank will merge into Flathead, a nonbank affiliate. Flathead will be the surviving entity, and the Bank will cease to exist.

The merger is authorized under 12 USC 215a-3. Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate. The statute does not limit its scope to mergers in which the national bank is the surviving entity, and, therefore, 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. *See* 12 CFR 5.33(g)(5)(i). The Bank will not be an insured bank at the time of the merger.

The OCC's regulation implementing 12 USC 215a-3 sets 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. *See* 12 CFR 5.33(g)(5). The regulation requires that the laws of the state under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. 12 CFR 5.33(g)(5)(i). The regulation also imposes the requirements that: (1) the national bank comply with the procedures of 12 USC 214a as if the nonbank affiliate were a state bank; (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization; and (3) shareholders of the national bank who dissent from the merger have the dissenters' rights set out in 12 USC 214a. 12 CFR 5.33(g)(5)(ii)-(iv). The Bank has represented that it has complied or will comply with these procedural requirements. The OCC

Mr. Scott Coleman, Esq.  
OCC Control Numbers: 2020-HQ-313605 and 313606  
First Citizens Bank of Polson, Polson, Montana

has considered the merger application in light of these factors and found them consistent with approval, subject to the Bank's compliance with the conditions set forth in this letter, which are intended to help ensure the Bank meets the applicable approval standards.

### **III. Conditions**

The approval is subject to the following conditions:

1. The Bank shall remain solvent following the consummation of the P&A transaction, and immediately following the consummation, the Bank shall provide the OCC (1) updated financial information, including a balance sheet, demonstrating that the Bank is solvent prior to merging with and into Flathead, and (2) projected financial information demonstrating that Flathead would be solvent after the merger.
2. The merger of the Bank with and into Flathead shall not occur until after consummation of the P&A transaction between the Bank and Unity Bank and the termination of the Bank's FDIC deposit insurance.
3. If the merger of the Bank with and into Flathead does not occur within five calendar days after the termination of FDIC deposit insurance, the Bank shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national bank.

These conditions of approval are "conditions imposed in writing by a federal banking agency in connection with any action on an application, notice, or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

### **IV. Consummation Requirements**

If the P&A is not consummated within 30 days of when regulatory approval is received, this approval will automatically terminate unless the OCC grants an extension of the time period in writing.

The OCC will not issue a letter certifying the consummation of the merger with Flathead and the termination of the Bank's charter until the below items are submitted to the satisfaction of the Senior Licensing Analyst listed below:

1. Written confirmation that the Bank is no longer FDIC-insured.
2. Certification that the Bank's charter certificate and 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 Montana Secretary of State as part of the merger of the Bank into Flathead.

Mr. Scott Coleman, Esq.  
OCC Control Numbers: 2020-HQ-313605 and 313606  
First Citizens Bank of Polson, Polson, Montana

4. Copies of all required regulatory approvals and any needed amendments to the 12 USC 215a-3 application.

## **V. Conclusion**

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, an 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. This approval is based on the 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 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, please contact Senior Licensing Analyst Stephanie Moss at (202) 649-6260 or at [Stephanie.Moss@occ.treas.gov](mailto:Stephanie.Moss@occ.treas.gov). Please include the OCC control numbers on any correspondence.

Sincerely,

/s/

Stephen A. Lybarger  
Deputy Comptroller for Licensing