



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #907
July 2009

June 19, 2009

Ms. Radhi Thayu
Assistant General Counsel
Bank of America Corporation
NY 1-100-18-07
One Bryant Park
New York, NY 10036

Re: Applications to merge Merrill Lynch Bank USA, Salt Lake City, Utah with and into Bank of America, National Association, Charlotte, North Carolina
Application Control Number: 2009-ML-02-0004

Dear Ms. Thayu:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the application to merge Merrill Lynch Bank, USA, Salt Lake City, Utah (“MLBUSA”) with and into Bank of America, National Association, Charlotte, North Carolina (“BANA”) for the reasons and subject to the conditions and requirements set forth herein. This conditional approval is granted after a thorough evaluation of the application, other materials you have supplied, and other information available to the OCC, including representations made in the application and by BANA’s representatives during the application process.

The Transaction

BANA and MLBUSA are wholly-owned indirect subsidiaries of Bank of America Corporation. BANA has branches in 33 states and the District of Columbia. BANA will not retain MLBUSA’s main office in Salt Lake City, Utah as a branch of the resulting bank. MLBUSA, a state-chartered industrial bank, has two offices one in New Jersey and the other in New York. However, the activities being conducted at these offices do not meet the definition of a branch under national banking laws and regulations. BANA does not plan to operate these offices as branches and, as such, these offices will not be retained as branches by BANA upon completing the merger.

Legal Authority for the Merger

BANA has applied to the OCC for approval to merge with MLBUSA under the charter and title of BANA, pursuant to 12 U.S.C. §§ 215a-1, 1828(c) and 1831u. The home state of BANA is North Carolina and the home state of the target bank is Utah, and so in this transaction two

affiliated banks with different home states under the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (“Riegle-Neal”) will merge.¹ The OCC may not approve an interstate merger if the transaction involves a bank whose home state has enacted a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. Both states have laws permitting interstate mergers.

Approval of an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in sections 1831u(a)(5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Riegle-Neal Act’s limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. The OCC has determined that the merger satisfies all these conditions to the extent applicable.²

Bank Merger Act

The OCC reviewed the proposed merger transaction under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c). Among other matters, we found that the proposed transaction would have no anticompetitive effects. The OCC also considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider “. . . the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities” The OCC considered these factors and found them to be consistent with approval of this application.

Community Reinvestment Act

The OCC also is required to consider the applicant’s record of compliance with the Community Reinvestment Act (“CRA”), 12 C.F.R. § 25.29(a)(3), including the applicant’s record of helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating certain applications, including consolidation and merger transactions that are subject to the Bank Merger Act. The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

¹ Industrial banks are banks for purposes of Riegle-Neal. 12 U.S.C. § 1813(a)(2).

² Upon consummation of a merger under Riegle-Neal, the acquiring bank may retain as a main office or branches each of the main offices and branches of the banks involved in the merger. 12 U.S.C. § 1831u(d)(1). Consequently, following consummation of the merger, BANA may retain its own main office and each of its branches. As previously noted, BANA does not seek to retain the main office of MLBUSAs as a main office or branch and MLBUSAs does not operate any branches.

Retention of subsidiaries and investments

Following the merger BANA intends to retain ten operating subsidiaries and one non-controlling investment (NCI) of MLBUSA as detailed in the application. The OCC's review of the ten operating subsidiaries found them to be engaged in activities permissible for national banks and their operating subsidiaries and to otherwise meet the regulatory qualifications to be considered to be operating subsidiaries. 12 C.F.R. §§ 5.34(e)(2) and (e)(5)(i)(A). The OCC's review of the NCI found it to be engaged in activities that are permissible for a national bank and to meet the standards for a non-controlling investment set forth in 12 C.F.R. § 5.36(e)(2), (4), (5), (6), and (7). Consequently, following consummation of the merger, the OCC approves retention of the operating subsidiaries and the NCI by BANA.

Also, as part of the application, BANA is seeking approval to retain sixteen community development investments held in MLBUSA Community Development Corp., a direct subsidiary of MLBUSA, engaged in carrying out the MLBUSA's community reinvestment programs. These community development investments comply with the requirements of 12 C.F.R. § 24 and the OCC approves BANA's retention of these investments upon completing the merger.

Conditions of the Approval

This approval is subject to the following conditions:

Prior to consummation of the merger BANA shall execute an operating agreement ("Operating Agreement") with the OCC. The Operating Agreement shall provide, among other requirements, that not later than 30 days after consummation of the merger with MLBUSA, BANA shall enter into an agreement, acceptable to the OCC, with its direct and indirect holding companies, Bank America Corporation, NB Holdings Corporation, BAC North America Holding Corporation, and BANA Holding Corporation (the "Holding Companies"), that provides for indemnification of BANA by the Holding Companies of losses, obligations and expenditures related to any Asset or Assets or activities that BANA has acquired or will acquire from Merrill Lynch & Co., Inc. including, as a result of its acquisition by merger, MLBUSA.

The Board of Directors shall assure that the Operating Agreement is fully adopted, timely implemented, and adhered to thereafter.

These conditions of approval are conditions "imposed in writing by a Federal 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 Requirements

This conditional approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed transaction will have been received prior to the transaction.

If the transaction has not been consummated within twelve months from the approval date, the approval will automatically terminate unless the OCC grants an extension of the time period.

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, 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 decision 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 decision if a material change in 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.

All correspondence regarding this application should reference the application control number. If you have any questions, please contact me at (202) 874-5294 or by email at Stephen.Lybarger@occ.treas.gov.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Large Bank Licensing Expert