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**Comptroller of the Currency  
Administrator of National Banks**  
250 E Street, SW  
Washington, DC 20219

June 8, 2007

**Conditional Approval #807  
July 2007**

Charles W. Blair, Jr.  
President  
nBank, National Association  
1731 North Elm Street  
Commerce, Georgia 30529

Re: Application by nBank, National Association, Commerce, Georgia for a Change in the Composition of its Assets (OCC Application Control Number 2007-SO-12-0083)

Application to Merge nBank, National Association, Commerce, Georgia into nBank Corp, Commerce, Georgia and Termination of National Bank Status (OCC Application Control; Numbers 2007-SO-12-0084 and 2007-SO-09-0010)

Dear Mr. Blair:

This is to inform you that, as of the date of this letter, the Office of the Comptroller of the Currency (“OCC”) approved the application by nBank, National Association (“nBank”), Commerce, Georgia, (Charter Number 7431), under 12 C.F.R. § 5.53, to sell substantially all of its assets and liabilities, including all of its deposit liabilities, to First Covenant Bank, Woodstock, Georgia (“FCB”). The OCC also approved nBank’s application to merge into its non-bank affiliate, nBank.Corp, (“NBC”) under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5).

### **Background**

On March 23, 2007, nBank applied to the OCC for approval for a fundamental change in its asset composition under 12 C.F.R § 5.53. nBank is an insured national bank. The fundamental change in nBank’s asset composition will occur as a result of a purchase and assumption transaction (the “P&A Transaction”) between nBank, NBC and FCB.<sup>1</sup> In the P&A Transaction, FCB will purchase substantially all of nBank’s assets and will assume substantially all of its liabilities, including all outstanding deposit liabilities. It is planned that immediately after the P&A Transaction the insured status of nBank will be terminated under 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2.

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<sup>1</sup> FCB applied to the FDIC and the Georgia Department of Banking and Finance (the “State”) for approval for the P&A Transaction under the Bank Merger Act, 12 U.S.C. § 1828(c).

On March 23, 2007, nBank also applied to the OCC for approval to merge into NBC, under 12 U.S.C. § 215a-3, after the consummation of the P&A Transaction and the termination of nBank’s insured status (the “Merger”). NBC is the immediate parent and sole shareholder of nBank. It is not a bank, and so it is a non-bank affiliate of nBank. NBC is a Georgia corporation. Its principal place of business is in Commerce, Georgia. After the Merger, NBC’s sole activities will consist of managing any remaining assets and liabilities of nBank after the P&A Transaction.

nBank and NBC plan to consummate the Merger immediately after the consummation of the P&A Transaction and the termination of nBank’s status as an insured bank. As a result of the Merger, nBank’s separate existence as a national bank will end and its charter will terminate.

## **Discussion**

### **A. The Fundamental Change in Asset Composition**

nBank applied to the OCC for prior approval of a fundamental change in its asset composition under 12 C.F.R. § 5.53. Under section 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all of its assets through sales or other dispositions. In the P&A Transaction, nBank will sell substantially all of its assets and liabilities, including all deposit liabilities. Thus, it is clearly within the scope of section 5.53(c)(1)(i).

The principal purpose of adopting 12 C.F.R. § 5.53 was to address supervisory concerns raised by so called “dormant” bank charters by providing the OCC with regulatory oversight and a means to monitor them. In the case of nBank, nBank plans to merge into its non-bank affiliate NBC immediately after the P&A Transaction. However, OCC concerns over the continuation of “dormant” charters are addressed through the merger of nBank into its parent NBC under section 5.53. OCC approval of nBank’s application is consistent with the language and purpose of section 5.53. Therefore, this approval is granted, in part, based on the representation that the Merger will occur immediately after the P&A Transaction, or as soon thereafter as possible but no later than 5 days after the P&A.

### **B. The Merger**

In the Merger, nBank will be merged into NBC. NBC will be the surviving entity, and nBank will cease to exist. The Merger is authorized under 12 U.S.C. § 215a-3. Section 215a-3 authorizes a national bank to merge with a non-bank subsidiary or affiliate: “Upon the approval of the Comptroller, a national bank may merge with one or more of its non-bank subsidiaries or affiliates.”<sup>2</sup> The statute does not limit its scope to mergers in which the national bank is the

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<sup>2</sup> 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. See S. Rep. No. 106-11, 106<sup>th</sup> Cong., 1<sup>st</sup> Sess.8 (1999).

surviving entity, and so a merger into a non-bank affiliate is within its scope. The OCC's implementing regulations expressly authorize mergers into a non-bank affiliate. 12 C.F.R. § 5.33(g)(5). However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank.<sup>3</sup>

The OCC's regulation implementing 12 U.S.C. § 215a-3 sets out substantive and procedural requirements for the merger of an uninsured national bank into its non-bank affiliate. The regulation requires that the law of the state or other jurisdiction under which the non-bank affiliate is organized allow the non-bank affiliate to engage in such mergers. 12 C.F.R. § 5.33(g)(5)(i). The regulation imposes procedural requirements that: (1) the bank comply with the procedures of 12 U.S.C. § 214a as if it were merging into a state bank, (2) the non-bank 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 dissenter's rights set out in 12 U.S.C. § 214a. 12 C.F.R. § 5.33(g)(5)(ii)-(iv). The regulation provides that the surviving entity succeeds to the business and property of the national bank. 12 C.F.R. § 5.33(g)(5)(v). The regulation also provides that the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers, and may deny the merger if it would have a negative effect in any such respect. 12 C.F.R. § 5.33(g)(5)(i).

The proposed Merger is covered by, and meets the requirements of, 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). First, as noted above, nBank's status as an insured bank will be terminated after the P&A Transaction, so that at the time of the Merger, nBank will not be an insured bank. NBC is a non-bank affiliate since it is not a bank and is owned by the same shareholders who own nBank. See 12 C.F.R. § 5.22(d)(5) & § 5.33(d)(8) for definitions of control and nonbank affiliate.

Second, the law under which NBC is organized allows it to merge with nBank. NBC is a Georgia corporation. Georgia permits its domestic corporations to merge with foreign corporations organized under the law of another jurisdiction, with the Georgia corporation as the survivor. *See GA. CODE ANN. §14-2-1107.* Georgia also has special procedures for mergers between a parent corporation and a corporation that is at least 90 percent owned by the parent corporation. *See GA. CODE ANN. § 14-2-1104.*<sup>4</sup>

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<sup>3</sup> The OCC previously has approved other transactions involving the merger of an uninsured national bank into a non-bank affiliate. See, e.g. Application by Pine Bank, National Association, Miami, Florida (OCC Conditional Approval No. 759, September 12, 2006); May National Bank (OCC Conditional Approval No. 713, November 8, 2005); Application by Dillard National Bank (OCC Conditional Approval No. 662, October 28, 2004).

<sup>4</sup> nBank's outside counsel, Thomas O. Powell, Troutman Sanders LLP, represents that nBank will rely on section 14-2-1104 of the Georgia Business Corporations Code for this merger transaction. Section 14-2-1104(a) provides in pertinent part that “[a] parent corporation that owns at least 90 percent of the outstanding shares of each class and series of a subsidiary corporation may merge the subsidiary into itself ...without the approval of the board of directors or shareholders of the subsidiary.” On May 16, 2007, Mr. Powell filed a request for pre-clearance of the merger of nBank into NBC under section 14-2-1104 with the Georgia Secretary of State, and received written confirmation from the Secretary of State’s office that “this merger is ok to file.”

Third, nBank is complying with the procedures of 12 U.S.C. § 214a to the extent applicable. NBC is complying with the procedures for mergers by Georgia corporations, including those regarding dissenting shareholders.

Finally, the OCC reviewed the Merger with respect to the purpose of the transaction, its impact on the safety and soundness of nBank, and any effect on nBank's customers, and determined that approval of the Merger is warranted. In this regard, the OCC noted that most of nBank's assets, all of its deposits, and most of its other liabilities will have been transferred to FCB. The OCC also considered that nBank will have received the cash proceeds of the P&A Transaction, and the application represents that those cash proceeds, as well as other assets not transferred to FCB in the P&A Transaction, will remain in NBC and thus NBC will be adequately capitalized to protect the interests of creditors and other claimants on the remaining liabilities.

## **Conclusion**

Accordingly, the OCC approves nBank's application for a fundamental change in asset composition under 12 C.F.R. § 5.53 by engaging in the P&A Transaction with FCB and nBank's application to merge into NBC under 12 U.S.C. § 215a-3.<sup>5</sup>

These approvals are based on a thorough review of all information available, including the representations and commitments made in the application and in the supporting documentation by nBank's representatives. In particular, the approvals are based on nBank's representation that all of nBank's remaining deposits at the time of the P&A Transaction will be assumed by FCB and nBank's representation that the Merger will occur shortly after the P&A Transaction and the termination of nBank's status as an insured bank. The approvals are also subject to the requirements and conditions set out below.

The approvals are subject to the following conditions:

1. nBank may not consummate the P&A Transaction unless all deposits remaining on the books of nBank at the time of consummation are assumed by FCB.
2. If the Merger is not consummated within five (5) days after the P&A Transaction, nBank shall immediately notify the OCC and submit a plan to wind up its affairs and terminate its status as a national bank.

Each of the conditions of approval is a "condition imposed in writing by the agency in connection with the granting of an application or other request" within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

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<sup>5</sup> 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 regulation. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

The OCC must be advised in writing in advance of the desired effective date for the Merger so that the OCC may issue the certification letter for the Merger. The OCC will issue a letter certifying consummation of the Merger when we receive the following:

1. A copy of nBank's certification letter to the Federal Deposit Insurance Corporation under 12 C.F.R. § 307.2, and a copy of any reply or other correspondence relating to the termination of nBank's insured status.
2. nBank's Charter Certificate, all OCC Reports of Examination, and any other OCC documents in the possession of nBank.
3. A copy of the final Certificate of Merger filed with the Georgia Secretary of State.

If the Merger is not consummated within one year of the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

All correspondence and documents concerning these transactions should be directed to Brenda E. McNeese, National Bank Examiner/Senior Licensing Analyst, in our Dallas Office at (214) 720-7052.

Yours truly,

/s/

Beverly L. Evans  
Acting Deputy Comptroller for Licensing

Enclosure: Satisfaction Survey