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Comptroller of the Currency  
Administrator of National Banks

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Licensing Division  
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**Conditional Approval #860**  
**July 2008**

June 18, 2008

Geoffrey S. Kay, Esq.  
Hunton & Williams LLP  
111 Congress Avenue, Suite 1800  
Austin, TX 78701

Re: Application to establish a new national bank, with the title of Heritage Bank,  
National Association, New York, New York  
Control Nos.: 2008-NE-01-0001 Charter No.: 24857

Dear Mr. Kay:

I grant preliminary conditional approval to your application to establish a new national bank with the title of Heritage Bank, National Association (“Bank”) based on a thorough evaluation of all information in the record and available to the Comptroller of the Currency (OCC) relevant to the applicable statutory policy factors, including the representations and commitments made in the application and by the Bank’s representatives. Conditional approval is also based on the organizers commitments to: 1) provide a revised business plan and pro forma financial statements if \$85 million in capital is raised and, 2) not to permit employees to participate as non-voting members of any committees that must be comprised of independent outside directors.

I made my decision to grant preliminary conditional approval with the understanding that the proposed Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (“FDIC”).

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 this preliminary conditional approval should the OCC deem any interim development to warrant such action.

This preliminary conditional approval is subject to the following conditions:

1. Within 120 days of commencing business, the Board of Directors must develop and submit to the OCC a written performance based incentive compensation plan (“Plan”), acceptable to the OCC, which at a minimum includes, Plan objectives and purpose; Plan participants; performance measures; amount of cash and/or non-cash benefits; and Plan costs.
2. The Bank shall: (i) give the New York Metro-New Jersey-West Field Office, 343 Thornall Street, Suite 610, Edison, New Jersey 08837 at least sixty (60) days prior written notice of its intent to significantly deviate or change from its business plan or operations,<sup>1</sup> and (ii) 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. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank’s notice. This condition shall remain in effect during the Bank’s first three years of operation. For the first three years of operation, the Bank also must provide a copy of such written notice of its intent to significantly deviate or change from its business plan or operations to the FDIC’s New York regional office.

These conditions of approval are conditions imposed in writing by a Federal banking agency in connection with the granting of any application or other request within the meaning of 12 USC § 1818. As such, the conditions are enforceable under 12 USC § 1818.

The Bank’s initial paid-in capital, net of all organizational and pre-opening expenses, shall be no less than \$53.2 million. The manner in which capital is raised must not deviate from that described in the business plan without prior written OCC notification. If the capital for the Bank is not raised within 12 months or if the 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.

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<sup>1</sup> If such deviation is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

The OCC poses no objection to the following persons serving as executive officers, directors, and/or organizers as proposed in the application:

<u>Name</u>	<u>Title</u>
Daniel Healy	Executive Chairman, Director and Organizer
Raymond Nielson	Vice Chairman, Director and Organizer
David Bagatelle	President, CEO, Director and Organizer
Michael Carleton	EVP, COO, CITO, Director and Organizer
Joseph Harpster	EVP, CCO, and Organizer
Gerard Perri	EVP, CFO, Treasurer and Organizer
Dr. Charles Aswad	Director and Organizer
Richard Carmichael	Director and Organizer
Peter Crivelli	Director and Organizer
Howard Fensterman, Esq.	Director and Organizer
Barry Leistner	Director and Organizer
Mitchel A. Maidman, Esq.	Director and Organizer
Charles Messick	Director and Organizer
Matthew Pechinski, Esq.	Director and Organizer
Dr. Masood A. Rizvi	Director and Organizer
Norman Schulman, CPA	Director and Organizer
James K. Schmidt	Director and Organizer
Matthew Seiden	Director and Organizer

Please be advised that not all background checks requested by the OCC have been received. Although we have decided not to delay action pending receipt of those responses, the OCC may consider remedies available to it if adverse or previously withheld information is received.

Prior to the Bank's opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers or executive officers, or directors appointed or elected before the person assumes the position. For a two-year period after the Bank commences business, the Bank must file an Interagency Biographical and Financial Report with the SO and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

I also grant approval to your request to waive the citizenship requirements of 12 USC § 72 for Richard Carmichael to serve as a member of the board of directors of the Bank. This waiver is based upon a review of all available information, including Geoffrey S. Kay, Esq.

the filing, subsequent correspondence and telephone conversations, and the Bank's representation that this waiver will not affect the board's responsibility to direct the Bank's operations in a safe and sound manner. The OCC reserves the right to withdraw or modify this waiver and, at its discretion, to request additional information at any time in the future.

The "Charters" booklet in the *Comptroller's Licensing Manual* provides guidance for organizing your bank. The booklet is located at the OCC's web site: <http://www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf>. 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 Articles of Association and the Organization Certificate to Senior Licensing Analyst Sandya Reddy in this office for our review and acceptance. 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 for new national banks. The Bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted 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 preopening examination and before the OCC will grant final charter approval:

1. The Bank must submit to the New York Metro-New Jersey-West Field Office for review, and prior written determination of no supervisory objection, 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.

2. 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 herein. The review must be conducted by an objective, qualified independent source (Reviewer). 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.

By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, refer to the *FFIEC IT Examination E-Banking Handbook*, pages 26-30, Information Security Program.

The booklet is located at the FFIEC's Web site:

[http://www.ffiec.gov/ffiecinfobase/booklets/e\\_banking/e\\_banking.pdf](http://www.ffiec.gov/ffiecinfobase/booklets/e_banking/e_banking.pdf).

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 CFR 30, Appendix B.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the *Comptroller's Licensing Manual*, which is available only in electronic form at our Web site: <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

This preliminary 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, 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. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

