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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

January 25, 2010

**Conditional Approval #946**  
**March 2010**

Stan Calderon  
President and CEO  
Baytree National Bank & Trust Company  
9 Market Square Court  
Lake Forest, IL 60045

Re: Application by Baytree National Bank & Trust Company, Lake Forest, Illinois, to  
Establish an Operating Subsidiary  
OCC Application Number: 2009-WO-08-0002

Dear Mr. Calderon:

This responds to the application filed by Baytree National Bank & Trust Company, Lake Forest, Illinois (“Bank”), requesting approval for the establishment of a new operating subsidiary, Baytree Managed Assets, LLC, Lake Forest, Illinois (“LLC”), to hold and manage substantially all of the Bank’s impaired loans and other real estate owned (“OREO”) assets. For the reasons discussed herein, the application is approved subject to the conditions described below.

### **Background**

The Bank, currently owned by Baytree Bancorp, Inc., proposes to establish LLC as part of its acquisition by EB Financial Group, Inc. The Bank would contribute approximately \$41 million of OREO assets and impaired loans and \$2 million in cash to the LLC in exchange for 100% of the Class A and Class B units of the LLC and promissory note for \$23 million. Individuals who currently hold approximately \$4.5 million of the Bank’s subordinated debt would cancel that debt in exchange for 100% of the Class B units of the LLC. Once both exchanges have taken place, the Bank would own approximately 89% of the LLC, with the individual investors owning, in aggregate, approximately 11% of the LLC.<sup>1</sup>

The Bank will serve as managing member of the LLC. The operating agreement governing the LLC provides that the LLC will administer and service the impaired loans and OREO assets,

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<sup>1</sup> In the event that a receiver is appointed for the Bank during any period in which the Bank holds the Class A units, the operating agreement provides that the Class B units immediately would be cancelled and cease to exist. The capital account related to the Class A units would be recomputed to account for the elimination of the Class B units.

with the expectation of disposing of, or otherwise liquidating, the loans and OREO in an orderly fashion within three years. The Bank has represented that the activities of the LLC will be operated in accordance with OCC regulations and policies contained in guidance issued by the OCC.

As the LLC sells or disposes of assets, the cash flow generated will be used first to cover any operating expenses of the LLC and then to pay interest and principal on the promissory note to the Bank. Any additional funds collected from the disposition of assets will be retained at the LLC until all remaining assets are liquidated. At that point, the accumulated funds will be used first to fully retire the Bank's Class A units and then to fully retire the investors' Class B units, with any remaining funds paid evenly to the Class A and Class B unit holders.

### **Discussion**

A national bank may conduct in an operating subsidiary those activities that are permissible for a national bank to engage in directly either as part of, or incidental to, the business of banking.<sup>2</sup> The activities of the proposed subsidiary are clearly permissible. National banks may service loans, including impaired loans, and manage OREO assets acquired through foreclosure or otherwise in the course of collecting a debt previously contracted.<sup>3</sup> The OCC has long held that such activities are permissible for national banks and their operating subsidiaries.<sup>4</sup>

### **Conclusion**

Based upon a thorough review of the information and representations contained in your application, and for the reasons previously stated, the Bank's application to establish the LLC as an operating subsidiary pursuant to 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 5.34 is hereby approved, subject to the following conditions:

1. The approval of LLC is contingent upon consummation of EB as a bank holding company and EB's subsequent acquisition of the Bank.
2. The Bank must receive the prior, written approval of the OCC before the LLC may make any payment that results in a reduction of the capital account of either the Class A or Class B units of the LLC.
3. Any payments to the Class A or Class B unit holders are subject to any restrictions, limitations, or other requirements imposed by statute, by the OCC, or otherwise, upon the Bank's payment of dividends.

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<sup>2</sup> 12 C.F.R. § 5.34(e)(1).

<sup>3</sup> 12 U.S.C. § 24(Seventh); 12 C.F.R. § 5.34(e)(5)(v)(A) (managing assets) and (D) (servicing loans).

<sup>4</sup> Conditional Approval No. 912 (Aug. 12, 2009) (operating subsidiary managing parent bank's OREO assets); Interpretive Letter No. 1097 (April 3, 2008) (purchasing and serving loans); Conditional Approval No. 595 (Jun. 5, 2003) (purchasing and managing loans and assets from parent bank).

This determination is based upon the representations made with respect to the proposed subsidiary and the understanding that the subsidiary will be operated within the constraints of all national banking laws, rulings, and regulations. Any material difference or deviation from the facts as described above could result in a different 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, 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 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.

A separate letter is enclosed requesting your feedback on how we handled the referenced application. We would appreciate your response so we may continue to improve our service. If you have any questions, contact Senior Licensing Analyst Bruce Halper at (202) 874-5060 or at [Bruce.Halper@OCC.Treas.Gov](mailto:Bruce.Halper@OCC.Treas.Gov).

Sincerely,

*signed*

Lawrence E. Beard  
Deputy Comptroller for Licensing

Enclosure: Survey Letter