



April 4, 2013

**Corporate Decision #2013-01
May 2013**

Mr. Ray Cole, Jr., President and CEO
The First, A National Banking Association
6480 U.S. Highway 98 W
Hattiesburg, Mississippi 39404 - 5549

Re: Application to merge First National Bank of Baldwin County, Foley, Alabama, Charter No. 24220, with and into The First, A National Banking Association, Hattiesburg, Mississippi, Charter No. 22949, under the title and charter number of the latter Control Number 2013-SO-02-0001

Dear Mr. Cole:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application to merge the First National Bank of Baldwin County, Foley, Alabama, (“FNBBC”) with and into The First, A National Banking Association, Hattiesburg, Mississippi, (“The First”) under the title and charter number of The First (“the Merger”). The OCC also grants approval for The First to retain its main office and branches located in Mississippi and Louisiana, and to retain as branches, the main office and the branches of FNBBC in Alabama as part of the Merger. These approvals are granted based on a thorough review of all information available, including commitments and representations made in the application, in the merger agreement, and by The First’s representatives.

Background

The First is a national bank headquartered in Hattiesburg, Mississippi, and operates branches in the states of Mississippi and Louisiana. It is a wholly-owned subsidiary of The First Bancshares, Inc. (“First Bancshares”). FNBBC is a national bank headquartered in Foley, Alabama, and operates branches in the state of Alabama. FNBBC is a wholly-owned subsidiary of First Baldwin Bancshares, Inc. (“Baldwin Bancshares”).

Prior to the proposed Merger, First Bancshares will acquire all the outstanding stock of FNBBC.¹ Accordingly, at the time of the Merger FNBBC and The First will be affiliated banks. On February 21, 2013, Baldwin Bancshares filed for Chapter 11 bankruptcy. The sale of FNBBC to

¹ First Bancshares filed a separate application, under section 3(a)(3) of the Bank Holding Company Act, with the Federal Reserve Bank of Atlanta for the acquisition of FNBBC stock from Baldwin Bancshares. The Federal Reserve Bank of Atlanta approved that application on March 28, 2013.

First Bancshares requires the approval of the bankruptcy court.² The OCC has determined that FNBBC is in danger of default within the meaning of 12 U.S.C. § 1813(x)(2)(B).

Interstate Merger Transaction

Mergers of insured banks with different home states are authorized under 12 U.S.C. § 1831u(a)(1) which was adopted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal Act). Generally, an application to engage in an interstate merger transaction pursuant to the Riegle-Neal Act is subject to certain requirements and conditions set forth in 12 U.S.C. §§ 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 Riegle-Neal Act; (3) compliance with nationwide and state concentration limits; (4) expanded community reinvestment analysis and compliance; and (5) adequacy of capital and management skills.³

However, an interstate merger application may be approved without regard to these requirements if the transaction involves a bank in danger of default, 12 U.S.C. § 1831u(e). The OCC has determined that FNBBC is in danger of default. Accordingly, the proposed Merger is authorized, and may be approved, under the Riegle-Neal Act.

The Riegle-Neal Act also provides that, subject to the approval of the OCC, following an interstate merger, the resulting bank may retain and operate, as a main office or a branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction. *See* 12 U.S.C. § 1831u(d)(1); *see also* 12 U.S.C. § 36(d). Accordingly, The First may retain its own main office and branches and may retain and operate as branches the main office and branches of FNBBC.

Bank Merger Act

The OCC reviewed the proposed Merger under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Under the Bank Merger Act, the OCC generally may not approve a merger that would substantially lessen competition. The Bank Merger Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served, 12 U.S.C. § 1828(c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, 12 U.S.C. § 1828(c)(11). The OCC may not approve a

² Proceedings in the bankruptcy court regarding the proposed sale are scheduled for April 2013.

³ The concentration limits and expanded community reinvestment analysis requirements do not apply to transactions between affiliates. FNBBC and The First will be affiliates at the time of the Merger.

merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States, 12 U.S.C. § 1828(c)(13).⁴ Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system, 12 U.S.C. § 1828(c)(5). We considered these factors, as applicable, and found them to be consistent with approval of this application.

Community Reinvestment Act

The Community Reinvestment Act (“CRA”) requires the OCC to take into account 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 transactions that are subject to the Bank Merger Act. *See* 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these institutions and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicant’s record of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

Consummation Guidance

Within seven days of consummation of the Merger, please provide the Southern District Office with copies of the following documents: (1) an executed merger agreement, and (2) documentation of any other required regulatory approvals. We have already received the original secretary's certificate for each bank certifying that a majority of the board of directors have agreed to the proposed transaction, and original secretary's certificate for each bank certifying that the shareholders have approved the proposed transaction.

Conclusion

This approval is granted based on your representation and assurance that other applicable regulatory approvals, non-objections or waivers will have been received prior to the consummation of the Merger.

This decision 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 representations made in the application, other submissions, and other information available to the

⁴ This requirement does not apply to an interstate merger transaction where one of the banks involved is in danger of default. *See* 12 U.S.C. § 1828(c)(13)(B). The proposed Merger of FNBBC and the First would meet it.

OCC as of this date. The OCC may modify, suspend, or rescind this decision if a material change in the information on which the OCC relied occurs prior to the date of the Merger 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. A separate letter is enclosed requesting your feedback on how we handled the referenced application. We would appreciate your response so we may improve our service. If you have any questions, please contact NBE/Licensing Analyst Pansy G. Hale at (214) 720-7052.

Yours truly,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosure