



Comptroller of the Currency
Administrator of National Banks

Northeastern District
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Licensing Unit
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October 24, 2002

**Conditional Approval #556
November 2002**

John P.C. Duncan, Esq.
Duncan Associates, LLC
180 North LaSalle Street
Suite 2410
Chicago, Illinois 60601-2704

Re: 1) Application by Neuberger Berman Inc. to charter a national trust bank with the title of New NBTC, National Association, (Charter Number: 24384) New York, New York, and,
2) Application to merge Neuberger Berman Trust Company, National Association, (Charter Number: 24151) Seattle, Washington, with trust offices in New York, Delaware and Florida, with and into New NBTC, National Association (Organizing), New York, New York, under the charter of the latter and with the charter number and title of the former Control Number: 2002 NE 02 0027

Dear Mr. Duncan:

The Comptroller of the Currency ("OCC") has reviewed your application to establish a new national trust bank, which will engage solely in fiduciary activities, with the title of New NBTC, National Association (hereinafter, "New Bank"), to be located at 605 Third Avenue, 44th Floor, New York, New York. After a thorough evaluation of all data available to the OCC, we have found that your proposal meets the requirements for preliminary conditional approval.

This is also to inform you that today the OCC conditionally approved the proposal to merge Neuberger Berman Trust Company, National Association (hereinafter, "NBTC, NA"), an uninsured national trust bank, with and into New Bank, under the charter of the latter and with the charter number and title of the former ("Resulting Bank").

The OCC has also approved Resulting Bank's return of capital, under 12 U.S.C. § 59, in the amount of \$2,000,000 as outlined in your application dated September 17, 2002, to occur subsequent the opening of New Bank and consummation of the merger. Pursuant to 12 U.S.C. § 59, a reduction in capital stock requires approval by shareholders owning at least two-thirds of Resulting Bank's capital stock and, if necessary, amendments to the Articles of Association. The bank should refer to the *Comptroller's Licensing Manual*, Capital and Dividends Booklet for guidance in completing this change in permanent capital. Appropriate notice should be

submitted to the Licensing Manager of the Northeastern District Office when the changes have been accomplished.

We note that Neuberger Berman, Inc. (“Company”) has represented the Resulting Bank’s capital structure, after the merger and return of capital, will be unchanged from NBTC, NA’s pre-merger capital structure, consisting of \$2,000,000 in common stock, \$1,500,000 in surplus and undivided profits of \$428,000, as adjusted for operating results from June 30, 2002.

These approvals are granted based on a thorough review of all information available, including the representations and commitments made in the application and by the representatives of the banks. We also made our decision to grant preliminary conditional approval to organize New Bank with the understanding that the proposed New Bank will apply for membership in the Federal Reserve System and will not be FDIC-insured.

The preliminary conditional approval to organize New Bank, the merger and capital approvals are subject to the following conditions “imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 U.S.C. § 1818 and, as such, are enforceable under 12 U.S.C. § 1818.

1. The transactions and activities described in the applications must be conducted and consummated in the order described and in accordance with the representations made in the applications.
2. At all times, Resulting Bank shall maintain a minimum of \$3 million in Tier 1 capital.
3. If the Resulting Bank fails to maintain Tier 1 capital in the amount of \$3 million, Resulting Bank shall be deemed “undercapitalized,” for purposes of 12 U.S.C. § 1831o and 12 C.F.R. Part 6, and the OCC shall have the authority to take any action authorized under all provisions of 12 U.S.C. § 1831o and 12 C.F.R. Part 6 applicable to an undercapitalized national bank. For purposes of section 1831o(e)(5), an action “necessary to carry out the purpose of this section” shall include restoration of the Bank’s capital so that it is not “undercapitalized” and any other action deemed advisable by the OCC to address the Bank’s capital deficiency or the safety and soundness of its operation.
4. The Resulting Bank: (i) shall give the New York Field Office at least sixty (60) days prior written notice of the Bank’s intent to significantly deviate or change from its business plan or operations¹ and (ii) shall obtain the OCC’s prior written determination of no objection before the Resulting Bank engages in any significant deviation or change from its business plan or operations.
5. The Resulting Bank must maintain on file, at its premises, current financial information (e.g. audited financial reports, quarterly financial statements, 10-K and 10-Q reports as appropriate) on Neuberger Berman, Inc. The financial information must be provided to the Bank’s supervisory office once it becomes available.

¹ If such deviation is the subject of an application filed with the OCC for its prior approval, the OCC does not require notice to the supervisory office.

6. All transactions between the Resulting Bank and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. § 371c, and 12 U.S.C. § 371c-1, and other applicable Federal law. The Board of Directors of the Resulting Bank annually shall review and approve the service agreements, and any other transactions with foreign and domestic affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.

New Bank's initial Tier 1 capital, net of all organizational and pre-opening expenses shall be \$2 million. The manner in which capital is raised must not deviate from that described in the application without prior OCC notification.

Prior to opening New Bank and prior to the merger consummation, the Resulting Bank and the Company must amend the Company's January 4, 2001 Capital and Liquidity Agreement to increase its minimum Tier 1 capital commitment to the Resulting Bank from \$2 million to \$3 million. All other terms and provisions of the agreement shall remain in effect.

Please be advised that the OCC is currently reviewing its capital and liquidity policy with respect to national trust banks. Should there be a change to our policy as a result of the review, we will advise you accordingly. In addition, if the Resulting Bank's future fiduciary and related assets increase significantly, or if the Resulting Bank assumes additional risk, the OCC may require the Resulting Bank to hold additional capital.

Until final approval is granted and the merger is consummated, the OCC has the right to alter, suspend, or revoke these approvals should any interim development be deemed by the OCC to warrant such action.

Please refer to the "Corporate Organization" booklet (enclosed) in the *Comptroller's Licensing Manual* for the instructions on organizing New Bank. The booklet contains all of the steps, as applicable, you must take to receive your charter.

We have reviewed the enclosed articles of association and organization certificate for New Bank and have found them to be in compliance with applicable statutes. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC. You must maintain complete data and supporting documents for disbursements made by organizers for charges to the general ledger of New Bank. All official documents, stationery, advertisements, and other references to New Bank should be followed by "In Organization."

Enclosed are standard requirements that must be met, as applicable, before New Bank will be allowed to commence business. Management must ensure that the applicable policies and procedures are established and adopted by the Board of Directors before New Bank commences business. Applicable standard requirements also must be satisfied before New Bank will be allowed to commence business.

The OCC poses no objection to the following persons serving as executive officers and directors of New Bank as proposed in the application.

Albert C. Bellas	Chairman of the Board and CEO
Howard L. Ganek	Director
Richard S. Levine	Director
Martin McKerrow	Director
Stephen Brent Wells	Director and President
Janet W. Prindle	Director
Heidi L. Steiger	Director
Edward Berman	SVP and Chief Institutional Trust Officer Treasurer and Security Officer
Joseph F. Collins, III	SVP and Chief Fiduciary Officer
Diane E. Lederman, Esq.	SVP and Trust Compliance Officer, General Counsel
John Mack	SVP and Trust Officer
Ralph D. Sinsheimer	SVP – Wealth Management

You are also reminded that until January 5, 2003, the Resulting Bank must seek and obtain the OCC's determination of no objection to any new executive officer or director *prior* to that person assuming such position.

If the New Bank is not opened, and the merger and capital change are not consummated within one year from the approval date, the preliminary conditional approval will expire and merger and capital approval shall automatically terminate.

As a reminder, the bank should advise us in writing and in advance of the desired effective date for the merger transaction so that the OCC may issue the necessary certification letter. We will issue a letter certifying consummation of the merger transaction when we have received:

- 1) A Secretary's Certificate for both banks, certifying that a majority of the board of directors approved the transaction, if not previously provided.
- 2) A Secretary's Certificate for both banks, certifying shareholder approval of the merger transaction, if not previously provided.
- 3) An executed merger agreement, if not previously provided.

These decisions, 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 U.S., any agency or entity of the U.S., or any officer or employee of the U.S, 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 U.S.

You should direct any questions concerning this preliminary conditional charter approval and conditional merger approval to Linda Leickel, Licensing Analyst at (212) 790-4055.

Sincerely,

-signed-

Anthony DosSantos
Licensing Manager

Enclosures: Accepted Articles and Organization Certificate
Standard Requirements and Minimum Policies
Notice of Reduction in Capital
Secretary's Certificate