



Conditional Approval #1092
April 2014

March 7, 2014

G. Burke Phelps
CEO and President
The First National Bank of Smith Center
133 South Main St.
Smith Center, KS 66967

Re: Disposition of Substantially all the Assets of The First National Bank of Smith Center, Smith Center, Kansas via a Purchase and Assumption with The Guaranty State Bank and Trust Company, Beloit, Kansas
OCC Control No.: 2014 WE 5.53 137272

Merger of The First National Bank of Smith Center, Smith Center, Kansas, with and into Smith Center Bancshares, Inc., Smith Center, Kansas
OCC Control No.: 2014 WE 215a3 137269

Dear Mr. Phelps:

The Office of the Comptroller of Currency (“OCC”) hereby conditionally approves the above referenced applications.

The Transactions

These applications are part of a series of transactions in which substantially all of the assets and liabilities of The First National Bank of Smith Center, Smith Center, Kansas (FNB) will be sold to The Guaranty State Bank and Trust Company, Beloit, Kansas (Guaranty), and thereafter the operations and charter of FNB will be terminated. FNB is a wholly-owned subsidiary of Smith Center Bancshares, Inc., Smith Center, Kansas (Bancshares). As proposed, the following events will occur in sequence on the same business day.

1. FNB will transfer substantially all of its assets and all of its insured deposits to Guaranty in a purchase and assumption transaction.¹

¹ Upon consummation of the purchase and assumption and notification to the Federal Deposit Insurance Corporation of the transfer of all insured deposits from FNB to Guaranty, FNB will no longer be FDIC insured. pursuant to 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2. Guaranty’s participation in the purchase and assumption is subject to a separate approval by the FDIC, pursuant to the Bank Merger Act, 12 U.S.C. § 1828(c).

2. FNB will merge with and into Bancshares, thereby terminating FNB's charter.

Discussion

A. Fundamental Change in Asset Composition

FNB 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 purchase and assumption transaction with Guaranty, FNB will sell all its deposits and substantially all of its assets. Thus, for FNB, the transaction is clearly within the scope of section 5.53(c)(1)(i).

In deciding a change in asset composition application, OCC regulations provide that the OCC consider the purpose of the transaction, its impact on the safety and soundness of the bank, and any effect on the bank's customers. The principal purpose of adopting 12 C.F.R. § 5.53 was to provide the OCC with a means to monitor and address supervisory concerns raised by so called "dormant" bank charters. In the case of FNB, FNB plans to merge into its nonbank affiliate, Bancshares, shortly after the purchase and assumption transaction that would make FNB a "dormant" charter. Thus, OCC concerns over the continuation of "dormant" charters are addressed. OCC approval is consistent with the language and purpose of section 5.53, provided the merger into the nonbank affiliate occurs as proposed. OCC's approval of the section 5.53 application is based on and relies upon representations made by FNB or its representatives.

B. Merger of FNB with and into Bancshares.

In this merger, FNB will merge into its nonbank affiliate, Bancshares. Bancshares will be the surviving entity, and FNB 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 nonbank subsidiary or affiliate: "Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates." 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).

The statute does not limit its scope to mergers in which the national bank is the surviving entity, and so a merger *into* a nonbank affiliate is within its scope. The OCC's implementing regulation, discussed below, expressly provides for mergers into a nonbank affiliate. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank. FNB will not be an insured bank at the time of the merger.

The OCC's regulations implementing 12 U.S.C. § 215a-3 set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which

the nonbank affiliate is the resulting entity. *See* 12 C.F.R. § 5.33(g)(5). The regulation requires that the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. The regulation also imposes the following additional 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 nonbank 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 dissenters' rights set out in 12 U.S.C. § 214a. 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 a merger if it would have a negative effect in any such respect.

The applicant has represented it has or will comply with these procedural requirements. Therefore, based upon these representations, the OCC hereby conditionally approves the merger of FNB into Bancshares.

Conditions

These approvals are subject to the following conditions:

1. The merger of FNB into Bancshares shall not occur until after consummation of the purchase and assumption transaction between FNB and Guaranty, and termination of FNB's FDIC deposit insurance.
2. If the merger of FNB with and into Bancshares does not occur within seven (7) calendar days after the sale of substantially all of FNB's assets to Guaranty, FNB shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national bank.

These conditions of approval are a "condition imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request" within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

Conclusion

Accordingly, the OCC approves FNB's applications for a fundamental change in asset composition, and for the merger of FNB into Bancshares. These approvals are subject to the conditions set out above. This conditional approval is also granted based on the information and representations made in the application. In particular, the approvals are based on FNB's representation that the merger will occur shortly after the purchase and assumption transaction and the termination of FNB's status as an insured bank.

The OCC will not issue a letter certifying the consummation of the transactions and termination of the charter until we have received:

1. Written confirmation that FNB is no longer FDIC insured.

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2. FNB's charter certificate and certification that all OCC Reports of Examination have been returned to the OCC, or destroyed.
3. A copy of the final Certificate of Merger filed with the Kansas Secretary of State.
4. Any other required regulatory approval.

These conditional approvals, 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 your application. We would appreciate your response so we may improve our service.

If you have any questions, contact Senior Licensing Analyst Louis Gittleman at 720-475-7650 or at louis.gittleman@occ.treas.gov. Please include the OCC's control number on any correspondence.

Sincerely,

/s/

James A. Bundy
Director for District Licensing

Enclosure: Survey