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Comptroller of the Currency  
Administrator of National Banks

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Western District Office  
1225 17th Street, Suite 300  
Denver, Colorado 80202-5534

Licensing Unit  
(720) 475-7650, FAX (720) 475-7691

**Conditional Approval #656**  
**October 2004**

September 13, 2004

Ms. Eve Heimberg  
Counsel  
The Bank of New York  
One Wall Street  
New York, New York 10286

RE: Applications from The Bank of New York Company, Inc. to effect a corporation reorganization by:

- 1) Converting BNY Western Trust Company, Los Angeles, California to The Bank of New York Trust Company, National Association, Los Angeles, California, Charter #24526; OCC Control # 2004 WE 01 0008;
- 2) Merging The Bank of New York Trust Company, National Association, Miami, Florida with and into BNY Florida Interim Trust Company, National Association, (new charter to effectuate merger) Miami, Florida, OCC Control # 2004 WE 02 0023;
- 3) Merging BNY Trust Company of Missouri, St. Louis, Missouri with and into BNY Missouri Interim Trust Company, National Association, (new charter to effectuate merger) St. Louis, Missouri, OCC Control # 2004 WE 02 0021;
- 4) Merging BNY Florida Interim Trust Company, National Association, Miami, Florida and BNY Missouri Interim Trust Company, National Association, St. Louis, Missouri with and into The Bank of New York Trust Company, National Association, Los Angeles, California, OCC Control # 2004 WE 02 0022; and
- 5) Request for Residency Waiver for directors, OCC Control # 2004 WE 12 0156.

Dear Ms. Heimberg:

This is to inform you that effective this date, the Office of the Comptroller of the Currency (OCC) has approved your proposal for a corporate reorganization of the trust bank subsidiaries of The Bank of New York Company, Inc.

The OCC approvals are granted based on a thorough review of all information available, including commitments and representations made in the applications and the three plans of merger agreements and those of your representatives. Our approvals are also subject to any other required regulatory approvals. We approve the following:

- 1) Conversion of BNY Western Trust Company, Los Angeles, California to a national bank. We find that your request meets the requirements for conditional approval to convert to a national banking association pursuant to 12 U.S.C. § 35 and 12 C.F.R. § 5.24 as follows:

Title: The Bank of New York Trust Company, National Association  
Location: Los Angeles, California

This approval is granted with the understanding that the proposed national bank will apply for membership in the Federal Reserve System and will remain FDIC-insured.

The following apply to the activities of a limited purpose national trust bank so please be guided accordingly:

1. All transactions between the bank and any affiliates, domestic or foreign, shall be conducted subject to the applicable provisions of 12 U.S.C. § 371C and c-1, or other applicable federal law.
2. The bank must notify all potential technology-related vendors in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 1867(c). All final technology-related vendor contracts must stipulate that the performance of services provided by the vendors to the bank is subject to the OCC's examination and regulatory authority. The provisions of 12 C.F.R. § 9 would be applicable to any fiduciary activities contracted out to vendors.
3. The bank shall maintain an Audit Committee, a majority of the members of which are not involved in the day-to-day affairs of the trust bank.

Additionally, you are reminded that the following are required before the effective date of the conversion:

1. The institution must purchase adequate fidelity bond coverage in accordance with 12 C.F.R. § 7.2013, which lists four factors the directors should consider in determining adequacy.
2. If a director, officer, employee, or principal shareholder of the bank (including an entity in which such person owns an interest of 10 percent or more) is involved in the sale of credit life insurance to loan customers, the bank should ensure compliance with 12 C.F.R. § 2, which among other things, prohibits a covered person from retaining commissions or other income from the sale of credit life insurance connected with any loan the bank makes.

3. The board of directors must adopt and have in place policies, practices, and procedures to ensure the safe and sound operation of the bank. The board also must review those policies, practices, and procedures continually and ensure compliance with them.
4. The converting institution must obtain any other required regulatory approvals. Please provide us with a copy of your application to purchase Federal Reserve Bank stock.
5. The limitations of the bank's activities must be fully enumerated in the bank's Articles of Association. Specifically, the articles must state clearly that: 1) the business of the association will be limited to that of a national trust bank; and 2) the bank must obtain the OCC's prior written approval before amending its Articles of Association to expand the scope of its activities and services.

Additionally, the OCC is currently reviewing its capital and liquidity policy with respect to national trust banks. Should there be a change in our policy as a result of the review, we will advise you accordingly. In addition, if the Bank's future assets under management increase significantly, or if the Bank assumes additional risk, the OCC may conclude that increased capital is required.

The trust officers should become thoroughly familiar with "Fiduciary Activities for National Banks" at 12 C.F.R. § 9 and 12 C.F.R. § 5.26. Management is reminded that 12 C.F.R. § 5.26 requires a national bank which already has approval to engage in fiduciary activities to provide written notice to the OCC when commencing fiduciary activities in a new state.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.

If the conversion is not consummated within six months from the date of the decision, approval will be withdrawn. The OCC is opposed to granting extensions, except under the most extenuating circumstances and expects the conversion to occur as soon as possible.

Upon conversion, please submit a letter certifying that you have completed all steps required to convert to a national banking association.

Additionally, effective this date, the OCC approved your proposal to merge 1) The Bank of New York, National Association, Miami, Florida with and into BNY Florida Interim Trust Company, National Association, Miami, Florida, 2) BNY Trust Company of Missouri, St. Louis, Missouri with and into BNY Missouri Interim Trust Company, National Association, St. Louis, Missouri and 3) BNY Florida Interim Trust Company, National Association, Miami, Florida and BNY Missouri Interim Trust Company, National Association, St. Louis, Missouri with and into The Bank of New York Trust Company, National Association, Los Angeles, California.

The business combination of BNY Florida Interim Trust Company, National Association, Miami, Florida, BNY Missouri Interim Trust Company, National Association, St. Louis, Missouri, and The Bank of New York Trust Company, National Association, Los Angeles, California is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. § 215a-1 and 1831u(a).

Please refer to the OCC's Business Combination booklet for the required steps to organize an interim national bank. The steps to complete the mergers are contained in the same booklet.

Also, approval of the merger is granted subject to the following standard conditions:

1. If the mergers are not consummated within one year from this date, the approval shall be automatically terminated unless the OCC has granted an extension.
2. The Western District Office must be advised at least 10 days in advance of the desired effective date of the mergers, so that the OCC may issue the necessary certification letter(s).

Additionally, please include a description of the proposed changes to the bank's capital account(s) so that we may certify the increase in the bank's capital. Identify which accounts will be affected (common/preferred stock and/or surplus), the exact amount of the increase, the exact amount of the account prior to and after consummation, and the effective date of the change.

The OCC will issue a letter certifying consummation of the transactions when we receive:

1. A secretary's certificate from each institution, certifying that the shareholder approvals have been obtained.
2. Certification that the conversion of BNY Western Trust Company is complete (see attached sample letter).
3. Oath of directors of the newly converted trust company.
4. Executed Articles of Association and organization certificate of the newly converted trust company.
5. Stock payment certificates for BNY Florida Interim Trust Company, N.A. and BNY Missouri Interim Trust Company, N.A.

It is our understanding that consummation of the transactions will take place in the following sequential order: conversion, merger of the Interim Banks, and finally the three-way Riegle-Neal merger.

This letter also responds to your request for the OCC to waive the residency requirement under 12 U.S.C. § 72 for the following who are proposed to be elected to the board of directors of The Bank of New York Trust Company, National Association, Los Angeles, California: Mark Peter

Brown, Patrick Edward Curtin, Robert Lester Griffin, Richard Glacken Jackson, George Gervasio Lagoa, John Marshall Dowd, Michael Francis McFadden, Gary Nicholas Nazare, Karen Bretherick Peetz, Michael John Pellino and Patrick J Tadie. We understand that after their election, fifteen percent of the bank's board of directors will meet the residency requirements of 12 U.S.C. § 72.

The OCC hereby grants a waiver of the residency requirements of 12 U.S.C. § 72 for the above named individuals. The OCC reserves the right to withdraw this waiver at any time and at our discretion and to request additional biographical and/or financial information on any member of the board of directors. All other requirements of 12 U.S.C. § 72 remain applicable.

These 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 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.

All correspondence and documents concerning this transaction should be directed to Licensing Analyst Sherry R. Gorospe at the address given on the first page of this letter or you may reach her by phone at (720) 475-7653. 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.

Sincerely,

*/s/ Ellen Tanner Shepherd*

Ellen Tanner Shepherd  
Licensing Manager

Enclosures