



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

Corporate Decision #2004-7
April 2004

March 31, 2004

Mr. Shane B. Hansen, Esq.
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487

Re: Application to Merge Security Trust Company, N.A., into STC Resolution, Inc.
Application Control Number: 2004-WE-12-0003

Dear Mr. Hansen:

This is to inform you that, as of the date of this letter, the Office of the Comptroller of the Currency (“OCC”) approved the application by the Security Trust Company, N.A., to merge into its nonbank affiliate, STC Resolution, Inc., under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5).

Background

On March 3, 2004, Security Trust Company, National Association, Phoenix, Arizona, (Charter Number 24364) (“STCNA”) applied to the OCC for approval to merge into STC Resolution, Inc., Grand Rapids, Michigan, (“STC Resolution”) a nonbank affiliate, under 12 U.S.C. § 215a-3, with STC Resolution as the surviving entity (the “Merger”). As a result of the Merger, STCNA will cease to exist as a national bank. STCNA and STC Resolution published notice of the Merger, giving interested parties opportunity to comment, in *The Arizona Republic* and *The Wall Street Journal*, on February 27, 2004.

STCNA is a national bank whose operations are limited to those of a trust company and activities related thereto. It does not accept deposits and is not insured by Federal Deposit Insurance Corporation (“FDIC”). STCNA is a subsidiary of CMIH, Inc., (“CMIH”), which in turn is a subsidiary of Capital Management Investors Holdings, Inc, (“Capital Management”). STC Resolution is a newly created Delaware corporation, with its principal place of business in Grand Rapids, Michigan. It was formed solely to be the receiving entity in the Merger. It is a subsidiary of CMIH. Prior to the Merger, the stock of STCNA will be

transferred to STC Resolution, so that at the time of the Merger, STCNA will be a direct subsidiary of STC Resolution.

Because of certain practices in which the bank had engaged under prior management, the OCC commenced enforcement action against the bank. In a Consent Order (dated October 29, 2003, and modified on November 24, 2003), the bank was ordered to transfer its trust and fiduciary business to another institution, to take steps to ensure an orderly and expeditious resolution of the bank, including the orderly resolution of claims, and to cease operations no later than March 31, 2004. It sold its trust and fiduciary business to an unrelated company on January 8, 2004. Its remaining assets consist primarily of cash, cash equivalents, accounts receivable, and some real estate. It has potential claims against other parties, such as insurance. Its remaining liabilities consist primarily of its lease, trade creditors, and professional service contracts. It is also a defendant in a number of lawsuits.

In order to meet the requirement of the Consent Order that the bank conduct an orderly and expeditious resolution and cease operations no later than March 31, 2004, the bank proposed to resolve certain claims before March 31st and then to effect the Merger to transfer all its remaining assets and liabilities to STC Resolution and end the bank's existence. STCNA is structuring the transaction in a series of steps that enable it to wind-up its affairs in an orderly fashion while providing sufficient resources to satisfy its known creditors. Through the Merger, STC Resolution will assume all of STCNA's assets and liabilities, including contingent liabilities. It will also succeed to the bank's position in all litigation. Under its Certificate of Incorporation, the purpose of STC Resolution is limited to activities needed to be the successor of STCNA by acquiring all its assets, assuming all its liabilities, liquidating remaining noncash assets, paying remaining liabilities as they are determined, resolving remaining contingent claims through negotiation, settlement, litigation, or alternate dispute resolution forums, and generally winding up its affairs.

Discussion

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."¹ 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 limits mergers of national banks into their nonbank affiliates to national banks that are not insured banks under the Federal Deposit Insurance Act.

¹ 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). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See S. Rep. No. 106-11, 106th Cong., 1st Sess. 8 (1999).*

The OCC recently adopted regulations implementing 12 U.S.C. § 215a-3. The regulations 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. In particular, the regulation provides:

With the approval of the OCC, a national bank that is not an insured bank as defined in 12 U.S.C. 1813(h) may merge with one or more of its nonbank affiliates, with the nonbank affiliate as the resulting entity, in accordance with the provisions of this paragraph, provided that the law of the state or other jurisdiction under which the nonbank affiliate is organized allows the nonbank affiliate to engage in such mergers. In determining whether to approve the merger, 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 the merger if it would have a negative effect in any such respect.

68 Fed. Reg. 70122, 70130 (December 17, 2003) (to be codified at 12 C.F.R. § 5.33(g)(5)(i) (effective January 16, 2004). The regulation imposes 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. *See id.* (12 C.F.R. § 5.33(g)(5)(ii)-(v)).

The proposed Merger is covered by, and meets the requirements of, 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). First, STCNA is not an insured bank, and STC Resolution is a nonbank affiliate. STCNA is a limited purpose trust bank, does not accept deposits, and has never been insured by the FDIC. STC Resolution is not a bank. It is an affiliate of STCNA because, at the time of the Merger, STC Resolution will control STCNA. *See* 12 C.F.R. § 5.33(d)(5) & 5.33(d)(8) (definitions of control and nonbank affiliate). STCNA and STC Resolution are located in different states. However, there are no geographic limits on the authority to merge with a nonbank affiliate under section 215a-3.

Second, the law under which STC Resolution is organized allows it to merge with STCNA. STC Resolution is a Delaware corporation. Delaware permits its domestic corporations to merge with corporations organized under the law of another jurisdiction, with the Delaware corporation as the survivor. Del. Code Ann. tit. 8, § 252(a).

Third, STCNA is complying with the procedures of 12 U.S.C. § 214a to the extent applicable. Section 214a requires approval of the plan of merger by a majority of the board, notice to shareholders of the shareholders' meeting to vote on the merger by newspaper publication (unless waived by all shareholders) and by actual notice by mail (unless waived specifically by any shareholder), and approval by a vote of at least two-thirds of each class of stock. The parties have submitted copies of final board resolutions approving the merger and shareholder resolutions approving the merger and waiving notice of the shareholder meeting by publication

and by mail, prior to consummation. The parties represent that certified copies will be filed with the OCC prior to consummation of the Merger.

Fourth, STC Resolution is complying with the procedures for mergers by Delaware corporations. Delaware requires procedural steps similar to section 214a's outlined above. The parties have submitted final copies of board resolutions approving the merger and shareholder resolutions approving the merger and waiving notice of the shareholder meeting by publication and by mail. The parties represent that certified copies will be sent to the OCC prior to consummation of the Merger.²

Fifth, because of its ownership by CMIH now, and STC Resolution at the time of the Merger, there are no dissenting shareholders, and so no issues relating to dissenters' rights are present.

Finally, under the OCC's regulations, in reviewing mergers under section 215a-3, the OCC considers 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 the merger if it would have a negative effect in any such respect. The OCC reviewed the Merger with respect to these factors and determined approval of the Merger is warranted. In this regard, it should be noted that the Merger is being proposed to comply with OCC action requiring the bank to cease operations. Moreover, since no third-party is interested in acquiring what remains of STCNA after the sale of its business, the only other alternatives to the Merger would be to liquidate the bank under 12 U.S.C. § 181 or to place the bank into receivership under 12 U.S.C. § 191. It is highly likely that the alternatives would be less favorable to bank customers, including creditors and contingent claimants, than resolution of the bank's affairs through STC Resolution after the Merger.

STC Resolution represented that it will continue to maintain, and provide OCC access to, the books and records of STCNA for a period of five years after the consummation of the Merger and that if STC Resolution should dissolve prior to the end of the five years, the company will make arrangements for continued maintenance of the bank's books and records.

² Delaware also requires that a certificate of merger be executed and filed with the Delaware Secretary of State as the official documentation of the merger. The application contains a copy of the proposed Certificate of Merger. The parties represent that a state-certified copy will be sent to the OCC when obtained.

Conclusion

Accordingly, the OCC approved STCNA's application to merge into STC Resolution.³ This approval was granted based on a thorough review of all information available, including commitments and representations made in the application and the merger agreement and by the bank's representatives and STC Resolution.

The OCC must be advised in writing in advance of the desired effective date for the Merger so that the OCC may issue the certification letter for the Merger. The OCC will issue a letter certifying consummation of the Merger when we receive the following:

1. STCNA's bank charter and any OCC documents in the possession of STCNA.
2. A copy of the final Certificate of Merger filed with the Delaware Secretary of State.
3. Secretary's certificates for each institution, certifying that board of directors and shareholder approval have been obtained.

If the Merger is not consummated within one year of the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

All correspondence and documents concerning this transaction should be directed to the undersigned at (202) 874-5060.

Very truly yours,

/s/ Beverly Evans

Beverly Evans
Senior Licensing Analyst

³ This 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. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.