Comptroller of the Currency
Administrator of National Banks

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Conditional Approval #713
December 2005

November 8, 2005

Mr. David E. Teitelbaum, Esq.
Sidley Austin Brown & Wood LLP
1501 K Street, N.W.
Washington, D.C. 20005

Re: Application to Merge May National Bank into Bloomingdales.com, Inc.
Application Control Number: 2005-WE-12-195

Application by May National Bank for a Change in the Composition of Assets
Application Control Number: 2005-WE-12-224

Dear Mr. Teitelbaum:

This is to inform you that, as of the date of this letter, the Office of the Comptroller of the Currency ("OCC") approves the application by May National Bank of Ohio, Lorain, Ohio ("MNB" or "May Bank") to merge into its nonbank affiliate, Bloomindales.com, Inc., under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5). The OCC also approved the sale of all the deposit liabilities and substantially all the assets of May National Bank to FDS Bank, under 12 C.F.R. § 5.53.

Background

On July 21, 2005, Federated Department Stores, Inc. ("FDS"), on behalf of May Bank (Charter Number 21922) applied to the OCC for approval for a fundamental change in MNB's asset composition under 12 U.S.C. § 5.53.[1] The fundamental change in MNB's asset

[1] In the filing, MNB originally maintained that approval under section 5.53 should not be required because section 5.53 provides an exception if the change in asset composition is part a voluntary liquidation under 12 U.S.C. § 181 if the liquidating bank has stipulated it will complete its liquidation and will return its charter to the OCC

composition will occur as a result of MNB's agreement to sell all of its deposit liabilities and substantially all of its assets to FDS Bank, Mason, Ohio, an insured federal savings bank, in a purchase and assumption transaction (the "Transaction"). It is planned that immediately after the Transaction, the insured status of MNB will be terminated under 12 U.S.C. § 1818(q).

On July 21, 2005, MNB also applied for approval for MNB to merge with and into a non-bank affiliate of MNB, Bloomingdales.com, Inc. ("BCI") pursuant to 12 U.S.C. § 215a-3 (the "Merger"), after the consummation of the Transaction and the termination of MNB's status as an insured bank. FDS is the sole shareholder of BCI, and also indirectly wholly owns MNB.[2] BCI is not a bank, and so it is a nonbank affiliate of MNB. BCI is organized as a New York corporation. Its principal place of business is in New York, New York. The applicant has represented that BCI is authorized under New York law to engage in the proposed Merger with MNB. MNB plans to consummate the Merger immediately after the consummation of the Transaction and the termination of MNB's status as an insured bank. As a result of the Merger, MNB's separate existence as a national bank will end, and its charter will terminate.

Discussion

A. The Fundamental Change in Asset Composition

MNB 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 Transaction, MNB will sell all its deposits and substantially all of its assets. Thus, it is clearly within the scope of section 5.53(c)(1)(i). The principal purpose of adopting 12 C.F.R. § 5.53 was to address supervisory concerns raised by so called "dormant" bank charters by

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within one year, *see* 12 C.F.R. § 5.53(b), and MNB believes the sequence of transactions that MNB planned was equivalent to a voluntary liquidation. The applicants also requested that, if the OCC disagreed with this position, the OCC process the filing under section 5.53. The OCC informed the applicants that the filing would be considered an application under 12 U.S.C. § 5.53 as well as under 12 U.S.C. § 215a-3. The exception in section 5.53(b) clearly covers only circumstances in which the bank is selling its assets as part of a voluntary liquidation under 12 U.S.C. § 181. That is not the case here. The OCC previously processed another similar transaction (*i.e.*, one in which a bank transferred its assets and deposits to another insured institution and then merged into a nonbank affiliate) under both 12 C.F.R. § 5.53 (for the sale of assets) and 12 U.S.C. § 215a-3 (for the merger into the nonbank affiliate). *See* Conditional Approval No. 662 (October 28, 2004).

[2] In early 2005, FDS and May Department Stores ("May Stores") announced their intent to merge. Both entities owned financial institutions to transact their credit card business. FDS owned FDS Bank, and May Stores owned MNB. In anticipation of this merger, FDS filed a Change in Bank Control Notice with the OCC on March 3, 2005, to acquire control of MNB. On July 13, 2005, the OCC issued a non-disapproval letter to FDS to acquire control of MNB. FDS is also the sole shareholder of BCI. Following the change in control, May Bank is wholly-owned by Grande Levee, Inc., a Nevada corporation, and indirectly wholly-owned and controlled by FDS. Therefore, MNB and BCI are affiliated entities owned by FDS.

providing the OCC with regulatory oversight and a means to monitor them.[3] MNB plans to merge into its nonbank affiliate, BCI, immediately after the Transaction that would make MNB a "dormant" charter. Thus, OCC concerns over the continuation of "dormant" charters are addressed, and so OCC approval of MNB's application is consistent with the language and purpose of section 5.53.

B. The Merger

In the Merger, MNB will be merged into BCI, a New York corporation. After the Merger, BCI will be the surviving entity, and the bank 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.

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. *See id.* (12 C.F.R. § 5.33(g)(5)(ii)-(v)). 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. *See id.* (12 C.F.R. § 5.33(g)(5)(i)).

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, as discussed above, MNB's status as an insured bank will be

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[3] As part of the OCC's consideration of supervisory concerns with a Section 5.53 transaction, the OCC reviewed the applicable purchase price being allocated to MNB for the credit card account relationships as part of the Transaction. The OCC interposes no supervisory objection to this aspect of the Transaction.

terminated after the Transaction, so that at the time of the Merger, MNB will not be an insured bank. BCI is a nonbank affiliate since it is not a bank and it, like MNB, is under the common ownership and control of FDS. *See* 12 C.F.R. § 5.33(d)(5) & 5.33(d)(8) (definitions of control and nonbank affiliate). MNB and BCI 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 BCI is organized allows it to merge with MNB. BCI is a New York corporation. New York permits its domestic corporations to merge with corporations organized other the law of another jurisdiction, with the New York corporation as the survivor. N.Y. Business Corporations Law § 907.

Third, MNB has complied 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 July 21, 2005, merger application and subsequent August 30, 2005, supplement contains certified copies of the board of directors resolution approving the merger and the shareholder resolution approving the merger and waiving notice of the shareholder meeting by publication and by mail.

Fourth, BCI has complied with the procedures for mergers by New York corporations. New York requires procedural steps similar to section 214a's outlined above. The application contains certified copies of the board of director resolution approving the merger and the shareholder resolution approving the merger. *See generally* N.Y. Business Corporations Law § 901 et. seq.

Fifth, because MNB and BCI are both indirectly wholly-owned by FDS, there will be no dissenting shareholders, and so no issues relating to dissenters' rights are present.

Sixth, 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.

Conclusion

Accordingly, the OCC approves MNB's application for a fundamental change in asset composition under 12 C.F.R. § 5.53 and its application to merge into BCI under 12 U.S.C. § 215a-3. These approvals are granted based on a thorough review of all information available, including commitments and representations made in the application, including the August 30, 2005, supplement, and the merger agreement and those of MNB's representatives. In particular,

the approvals are based on MNB's representation that the Merger will occur shortly after the Transaction and the termination of MNB's status as an insured bank.

These approvals are subject to the following condition:

> If the Merger does not occur within seven (7) days after the Transaction, MNB shall immediately notify the OCC and submit a plan to wind up its affairs and terminate its status as a national bank.

This condition of approval is a "condition 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. As such, the condition is enforceable under 12 U.S.C. § 1818.

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. Written assurance from the Federal Deposit Insurance Corporation that MNB is no longer insured.

2. MNB's bank charter and any OCC documents in the possession of MNB.

3. A copy of the final Certificate of Merger filed with the New York Secretary of State.

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.

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.

All correspondence and documents concerning this transaction should be directed to the undersigned. Should you have any question, please contact Senior Licensing Analyst Louis Gittleman at (720) 475-7650.

Very truly yours,

signed
Ellen Tanner Shepherd
Director for District Licensing