



**Comptroller of the Currency
Administrator of National Banks**

Southern District Licensing
500 North Akard, Suite 1600
Dallas, Texas 75201-3323

**Conditional Approval #759
October 2006**

September 12, 2006

Mr. David Luigs, Esq.
Wilmer, Cutler, Pickering, Hale and Dorr, LLP
1875 Pennsylvania, N.W.
Washington, D.C. 20006

Re: Application by PineBank, National Association, for a Change in the Composition of its Assets (OCC Application Control Number 2006-SO-12-0230)

Application to Merge PineBank, National Association, into Omega USA, Inc.
(OCC Application Control Number 2006-SO-12-0231)

Dear Mr. Luigs:

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 PineBank, National Association, Miami, Florida, (“PineBank”), under 12 C.F.R. § 5.53, to sell most of its assets, all of its deposits, and most of its other liabilities to The Hemisphere National Bank, Miami, Florida (“Hemisphere”). The OCC also approved PineBank’s application to merge into its nonbank affiliate, Omega USA, Inc., Miami, Florida, (“Omega”) under 12 U.S.C. § 215a-3 and 12 C.F.R. § 5.33(g)(5).

Background

PineBank (OCC Charter Number 23181) applied to the OCC for approval for a fundamental change in its asset composition under 12 C.F.R. § 5.53. PineBank is an insured national bank. The fundamental change in PineBank’s asset composition will occur as a result of a purchase and assumption transaction (the “P&A Transaction”) between PineBank and Hemisphere.¹ In the P&A Transaction, Hemisphere will purchase most of PineBank’s assets,

¹ Hemisphere applied to the OCC for approval for the P&A Transaction under the Bank Merger Act, 12 U.S.C. § 1828(c). The OCC approved that application.

will assume all of its then outstanding deposit liabilities,² and will assume most of its other liabilities. It is planned that, immediately after the P&A Transaction, the insured status of PineBank will be terminated under 12 U.S.C. § 1818(q) and 12 C.F.R. § 307.2.

PineBank also applied to the OCC for approval to merge into Omega, under 12 U.S.C. § 215a-3, after the consummation of the P&A Transaction and the termination of PineBank's insured status (the "Merger"). Omega is not a bank and is owned by PineBank's shareholders, and so it is a nonbank affiliate of PineBank. Omega is a Delaware corporation. Its principal place of business is in Miami. It was formed for the sole purpose of participating in the Merger and being the successor to PineBank. After the Merger, Omega's sole activities will consist of managing the assets and liabilities that remained in PineBank after the P&A Transaction.

PineBank and Omega plan to consummate the Merger immediately after the consummation of the P&A Transaction and the termination of PineBank's status as an insured bank. As a result of the Merger, PineBank's separate existence as a national bank will end, and its charter will terminate.

Discussion

A. The Fundamental Change in Asset Composition

PineBank 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 P&A Transaction, PineBank will sell substantially all of its assets and transfer all of its deposits and substantially all of its other liabilities. 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 providing the OCC with regulatory oversight and a means to monitor them. PineBank plans to merge into its nonbank affiliate Omega immediately after the P&A Transaction that would make PineBank a "dormant" charter. Thus, OCC concerns over the continuation of "dormant" charters are addressed. OCC approval of PineBank's application is consistent with the language and purpose of section 5.53. Therefore, this approval is granted, in part, based on the representation that the Merger will occur immediately after the P&A Transaction, or as soon thereafter as possible.

B. The Merger

In the Merger, PineBank will be merged into Omega. Omega will be the surviving entity, and PineBank 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

² PineBank has certain deposits that Hemisphere is not assuming. Those deposits are to be paid off or otherwise disposed of prior to the P&A Transaction. Thus, in the P&A Transaction, Hemisphere will assume all of PineBank's remaining deposits.

the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”³ 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 regulations expressly authorize mergers into a nonbank affiliate. 12 C.F.R. § 5.33(g)(5). However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank.⁴

The OCC’s regulation implementing 12 U.S.C. § 215a-3 sets out substantive and procedural requirements for the merger of an uninsured national bank into its nonbank affiliate. 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. 12 C.F.R. § 5.33(g)(5)(i). The regulation imposes procedural 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. 12 C.F.R. § 5.33(g)(5)(ii)-(iv). The regulation provides that the surviving entity succeeds to the business and property of the national bank. 12 C.F.R. § 5.33(g)(5)(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 the merger if it would have a negative effect in any such respect. 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 noted above, PineBank’s status as an insured bank will be terminated after the P&A Transaction, so that at the time of the Merger, PineBank will not be an insured bank. Omega is a nonbank affiliate since it is not a bank and is owned by the same shareholders who own PineBank. *See* 12 C.F.R. § 5.33(d)(5) & 5.33(d)(8) (definitions of control and nonbank affiliate).

Second, the law under which Omega is organized allows it to merge with PineBank. Omega 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).

³ 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).

⁴ The OCC previously has approved other transactions involving the merger of an uninsured national bank into a nonbank affiliate. *See, e.g., Applications by May National Bank* (OCC Conditional Approval No. 713, November 8, 2005); *Applications by Dillard National Bank* (OCC Conditional Approval No. 662, October 28, 2004); *Application by Security Trust Company, N.A.* (OCC Corporate Decision No. 2004-7, March 31, 2004); *Application by First National Bank of Sumner* (OCC Corporate Decision No. 2004-08, March 15, 2004).

Third, PineBank is complying with the procedures of 12 U.S.C. § 214a to the extent applicable. Omega is complying with the procedures for mergers by Delaware corporations. There are no issues regarding dissenters' rights in the Merger since all shareholders of PineBank and Omega agreed to the Merger.

Finally, the OCC reviewed the Merger with respect to the purpose of the transaction, its impact on the safety and soundness of PineBank, and any effect on PineBank's customers, and determined that approval of the Merger is warranted. In this regard, the OCC noted that most of PineBank's assets, all of its deposits, and most of its other liabilities will have been transferred to Hemisphere. The OCC also considered that PineBank will have received the cash proceeds of the P&A Transaction, and the application represents that those cash proceeds, as well as other assets not transferred to Hemisphere in the P&A Transaction, will remain in Omega and thus Omega will be adequately capitalized to protect the interests of creditors and other claimants on the remaining liabilities.

Conclusion

Accordingly, the OCC approves PineBank's application for a fundamental change in asset composition under 12 C.F.R. § 5.53 by engaging in the P&A Transaction with Hemisphere and PineBank's application to merge into Omega under 12 U.S.C. § 215a-3.⁵

These approvals are based on a thorough review of all information available, including the representations and commitments made in the application, in the supporting documentation and by PineBank's representatives. In particular, the approvals are based on PineBank's representation that all of PineBank's remaining deposits at the time of the P&A Transaction will be assumed by Hemisphere and PineBank's representation that the Merger will occur shortly after the P&A Transaction and the termination of PineBank's status as an insured bank. The approvals are also subject to the requirements and conditions set out below.

The approvals are subject to the following conditions:

1. PineBank may not consummate the P&A Transaction unless all deposits remaining on the books of PineBank at the time of consummation are assumed by Hemisphere.
2. If the Merger is not consummated within five (5) days after the P&A Transaction, PineBank shall immediately notify the OCC and submit a plan to wind up its affairs and terminate its status as a national bank.

⁵ 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.

Each of these conditions of approval is a “condition imposed in writing by the agency in connection with the granting of an 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. A copy of PineBank’s certification letter to the Federal Deposit Insurance Corporation under 12 C.F.R. § 307.2, and a copy of any reply or other correspondence relating to the termination of PineBank’s insured status.
2. PineBank’s Charter Certificate, all OCC Reports of Examination, and any other OCC documents in the possession of PineBank.
3. A copy of the final Certificate of Merger filed with the Delaware 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.

All correspondence and documents concerning this transaction should be directed to Brenda McNeese, National Bank Examiner/Senior Licensing Analyst, in our Dallas office at (214) 720-7052.

Very truly yours,

/s/

Stephen A. Lybarger
Acting Deputy Comptroller for Licensing