



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Conditional Approval #853
June 2008

May 8, 2008

Raissa Horstmeier
VP & Chief Risk Officer
M&I Wealth Management
111 E. Kilbourn Avenue, Suite 200
Milwaukee, WI 53202

Re: Applications by Marshall & Ilsley Trust Company National Association, Milwaukee, Wisconsin, to establish an operating subsidiary and to receive a material non-cash contribution to capital surplus
Application Control Number: 2007-NE-08-021 and 2007-NE-12-313

Dear Ms. Horstmeier,

This is in response to your operating subsidiary application, filed on behalf of Marshall & Ilsley Trust Company National Association, Milwaukee, Wisconsin (“Bank” or “M&I”), to acquire North Star Trust Company, Chicago, Illinois (“NSTC”), an Illinois chartered non-depository trust company, as a wholly-owned operating subsidiary of the Bank. As discussed below, I conclude that the proposed activity is legally permissible and conditionally approve your application. In addition, I also grant conditional approval to the Bank to receive from Marshall & Ilsley Corporation (“Parent”), as a material non-cash contribution to capital surplus, the common stock of NSTC with an approximate fair market value of \$6.3 million.¹

A national bank with approved trust powers from the Office of the Comptroller of the Currency (“OCC”), under 12 U.S.C. § 92a, may engage in fiduciary activities within a department of the bank or through a nonbank trust company subsidiary of the bank. Under OCC regulations, at 12 C.F.R. § 5.34(e), a national bank may conduct in an operating subsidiary activities that are permissible for a national bank to engage in directly. Because an uninsured, non-deposit-taking trust company is not a “bank” for purposes of the Bank Holding Company Act of 1956, as amended (12 U.S.C. § 1841 *et seq.*), a national bank that holds such a trust company as an operating subsidiary will not become a bank holding company.

¹ On April 20, 2007, Parent acquired North Star Financial Corporation after receiving regulatory approval from the Illinois Department of Financial and Professional Regulation. North Star Financial Corporation was composed of two business units, NSTC and North Star Deferred Exchange. North Star Deferred Exchange became a non-bank subsidiary of Parent. On October 1, 2007, Parent contributed NSTC’s stock to M&I. M&I failed to file an application and obtain OCC approval prior to receiving the material non-cash contribution and acquiring NSTC as an operating subsidiary, as required by 12 C.F.R. §§ 5.34(e)(5) and 5.46(g)(C), respectively.

OCC regulations, at 12 C.F.R. § 5.34(e)(3), also make clear that a national bank’s subsidiary is subject to OCC examination and supervision. NSTC will be subject to examination by, and the supervision of, Illinois Department of Financial and Professional Regulation (“IDFPR”), as primary regulator of NSTC. The OCC will primarily rely, as it has in other similar situations or as with a functionally-regulated insurance or securities subsidiary as mandated by the Gramm-Leach-Bliley Act, on the examination reports and findings of the appropriate regulator to monitor the condition and activities of the subsidiary. In this case, we will coordinate with the IDFPR, as necessary and appropriate, to ensure the safety and soundness of the fiduciary operations as they may affect the Bank. The OCC has an information-sharing agreement with the IDFPR, executed in April of 1988, which permits the sharing of certain confidential examination information. In addition, OCC disclosure regulations, at 12 C.F.R. § 4.37(c), permit sharing of confidential supervisory information with state bank regulatory agencies.

In summary, I did not identify any legal, policy or supervisory concerns with the application. Accordingly, based on a thorough review of all information available, including the representations and commitments made in the application and by the Bank’s representatives, I conditionally approve the applications.

This approval is subject to the following conditions:

1. M&I shall limit its business to the operations of a trust company and activities related or incidental thereto. In no event shall M&I engage in activities that would cause it to be a “bank” as defined in section 2(c) of the Bank Holding Company Act.
2. At all times, M&I shall maintain minimum Tier 1 Capital in an amount at least equal to the greater of (a) \$10 million or (b) such other higher amount as may be required by the OCC pursuant to the exercise of its regulatory authority (“Minimum Tier 1 Capital Requirement”).² At all times, liquid assets³ shall comprise at least 50% of M&I’s Minimum Tier 1 Capital Requirement (the “Minimum Liquid Capital Requirement”). (The Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement are collectively the “Minimum Capital Requirement”.)

² For purposes of determining compliance with the Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement (as defined above), M&I shall deduct from its Tier 1 Capital the higher of: (a) the capital that the state regulatory authority requires to be maintained at NSTC (“the subsidiary trust company”), or (b) the aggregate amount of M&I’s outstanding equity investment, including retained earnings, in the subsidiary trust company. Any asset used to satisfy the capital requirement of the subsidiary trust company shall not be included in determining compliance with the Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement. The treatment of the subsidiary trust company’s equity is for purposes of calculating M&I’s compliance with these capital requirements only, and is not intended to affect M&I’s financial reporting on its Call Reports.

³ The term “liquid assets” means (a) cash and cash equivalents, (b) deposits at insured depository institutions, and (c) investment securities eligible for investment by national banks under 12 C.F.R. Part 1 and valued at the lower of cost or market value. However, liquid assets shall not include any assets encumbered or pledged by lien, right of setoff, preference, or otherwise or any other asset pledged as security in any transaction with any party.

3. If at any time, M&I fails to maintain the Minimum Capital Requirement, M&I shall take such corrective measures as the OCC may direct from among the provisions applicable to undercapitalized depository institutions under 12 U.S.C. §1831o(e) and 12 C.F.R. Part 6. For purposes of this requirement, an action “necessary to carry out the purpose of this section” under section 1831o(e)(5) shall include restoration of M&I’s capital to levels which comply with the Minimum Capital Requirement, and any other action deemed advisable by the OCC to address M&I’s capital deficiency or the safety and soundness of its operations.
4. M&I’s Board shall adopt, implement and maintain a system to analyze and maintain capital and liquidity commensurate with M&I’s risk profile, in conformance with OCC Bulletin 2007-21, Supervision of National Trust Banks – Revised Guidance: Capital and Liquidity (and any subsequent OCC guidance).
5. M&I shall provide written notification to the OCC within one (1) business day after becoming aware that the NSTC requires additional capital or liquidity, or that the state regulatory authority is or may be commencing an enforcement action against the NSTC or any of its officers or directors who also serve as an officer or director of M&I. M&I may provide additional capital and liquidity to NSTC only after submitting a written request to the appropriate Assistant Deputy Comptroller for review, and receipt of the OCC’s written determination of no supervisory objection.
6. M&I: (i) shall give the appropriate OCC Supervisory Office at least sixty-days (60) prior written notice of M&I’s intent to significantly deviate or change from the business plan or operations, as reflected in this application, and (ii) shall obtain the OCC’s written determination of no objection before M&I engages in any significant deviation or change from its business plan or operations.⁴
7. M&I, Parent, and its affiliates, upon request by the OCC, shall provide the OCC access to, permit the OCC to examine, and provide the OCC with copies of all books and records, and electronic records that accurately reflect the information in the books and records of M&I, and any other information of, or concerning M&I.
8. All transactions between M&I and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. §§ 371c and 371c-1, 12 C.F.R. Part 223, and other applicable Federal law. The Board of Directors of M&I annually shall review and approve any service agreements, and any other transactions with foreign and domestic affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.

⁴ If such deviation is the subject of an application filed with the OCC, the OCC does not require any further notice to the supervisory office.

The conditions of this approval are conditions “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.

Please advise the Northeastern District Office that the change in capital met all other legal requirements, other than obtaining OCC approval. Upon receipt of your certification, the OCC will authorize the increase in capital.

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.

If you have any questions, contact Senior Licensing Analyst Sandya Reddy at (212) 790-4055 or me at (202) 874-5060.

Sincerely,

/s/

Beverly L. Evans
Acting Deputy Comptroller for Licensing