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

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

March 28, 2011

**Conditional Approval #993  
April 2011**

Christopher L. Allen  
Attorney  
Arnold & Porter, LLC  
555 Twelfth Street, NW  
Washington, DC 20004-1206

Re: Conversion to a National Bank by Woodforest Bank, FSB, Refugio, Texas (2010-SO-01-0005) and Affiliated Merger of Woodforest Interim National Bank, Refugio, Texas with and into Woodforest National Bank, The Woodlands, Texas. (CAIS #2010-SO-02-0030).

Dear Mr. Allen:

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application by Woodforest Bank, FSB, Refugio, Texas (“WB”) to convert from a federal savings bank to a national bank to be called “Woodforest Interim National Bank” (“WINB”). The OCC also approves the merger of WINB with and into Woodforest National Bank, The Woodlands, Texas (“WNB”), with the resulting bank to be known as Woodforest National Bank (“Resulting Bank” or the “Bank”). The approvals are granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including the representations made in the application and by the institutions representatives during the application process. The approvals are subject to the conditions and requirements set out herein.

#### I. BACKGROUND

WB and WNB are affiliated institutions that are wholly-owned by Woodforest Financial Group, Inc. (“WFG”), a bank holding company headquartered in The Woodlands, Texas. Each institution is insured by the Federal Deposit Insurance Corporation (“FDIC”). WB currently has 168 retail banking offices located in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, New York, South Carolina and Texas. WNB has 585 retail banking offices in Illinois, Indiana, Maryland, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and West Virginia.

WB proposes to convert to a national bank to be known as WINB. WINB will retain WB’s main office and all of its branches, and then immediately merge with and into WNB. Following the merger, the Resulting Bank seeks to retain as branches the branches of WNB and the main office

and branches of WINB. The applications will result in a reorganization of the Woodforest corporate structure whereby the Resulting Bank would be the sole depository institution subsidiary of WFG.<sup>1</sup>

## II. ANALYSIS

### A. Conversion

The conversion of WB to a national bank is legally authorized under 12 C.F.R. § 5.24 of the OCC's regulations and 12 C.F.R. § 552.2-7 of the regulations of the Office of Thrift Supervision ("OTS"). As required by OTS regulations, WB filed a conversion application with the OTS and the OTS raised no objection.

In deciding a conversion application, OCC regulations provide that the OCC takes into account whether the institution can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies. The regulations provide that an application may be denied if a significant supervisory, Community Reinvestment Act ("CRA"), or compliance concern exists with the applicant; approval is inconsistent with applicable law, regulation, or policy; or the applicant fails to provide necessary information that the OCC has requested. The regulations further provide that a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.

The OCC has conducted a thorough review of the conversion application in light of the factors set forth above and determined that the results of this review are consistent with approval of the conversion application.<sup>2</sup>

### B. Branch Retention after the Conversion

Pursuant to Section 341 of the recently enacted Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"),<sup>3</sup> codified 12 U.S.C. § 5451, upon the OCC's approval of WB's conversion to a national bank, WINB may retain and operate all of WB's established branches.

Section 5451 states:

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. § 1811 et seq.), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq.), or any other provision of Federal or State law, a savings association that becomes a bank may—  
(1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank. . . .

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<sup>1</sup> Notices of the proposed transactions were published in Houston, Texas and Watertown, New York. The OCC received no comments regarding the proposed transactions.

<sup>2</sup> The OCC has determined that consideration and approval of the conversion application is consistent with the standards set forth in the Statement on Regulatory Conversions issued by the Federal Financial Institutions Examination Counsel on July 1, 2009.

<sup>3</sup> Pub. L. 111-203, July 21, 2010, 124 Stat. 1376...

This provision of Dodd-Frank expands the branch retention authority of federal savings banks that convert to national banks. Whereas previously, certain federal savings banks converting to national banks were permitted to retain branches established prior to the enactment of the Gramm-Leach-Bliley Act (“GLBA”) in November 1999 pursuant to the standards and requirements set forth in 12 U.S.C. § 1464(i)(5), and other branches could be retained by a converting federal savings bank pursuant to an analysis of 12 U.S.C. § 36(c) or § 36(g), Dodd-Frank authorizes all federal savings banks that convert to national banks to retain all of their branches following conversion. Consequently, WINB may retain all branches of WB.

### C. Merger of WINB with and into WNB

Because WINB and WNB each have their main offices in Texas, WNB is authorized to acquire WINB pursuant to 12 U.S.C. § 215a, which governs mergers by national banks that have their main office located in the same state.

Consequently, the proposed merger is legally authorized under § 215a subject to consideration of the factors set forth in the Bank Merger Act (“BMA”) and a review of the record of compliance of the banks with the CRA.

#### 1. Bank Merger Act

Pursuant to the BMA, the OCC must consider whether the merger will have any anticompetitive effects. The BMA also requires the OCC to consider the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. Further, the OCC is required to consider the effectiveness of the banks in “combatting money laundering activities . . .”

The OCC reviewed the proposed merger transaction under the criteria of the BMA, 12 U.S.C. 1828(c), and applicable OCC regulations and policies. Because the parties to the merger are owned by the same holding company, we found that the merger would not have anticompetitive effects. In addition, the OCC considered the financial and managerial resources of the banks, their future prospects, the convenience and needs of the communities to be served, and the effectiveness of each insured depository institution in combatting money laundering activities. We found these factors to be consistent with approval.

#### 2. Community Reinvestment Act

The CRA requires the OCC to take into account the records of the institutions proposing to engage in a conversion or a merger in helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating conversion and merger applications.

In the November 2, 2009 CRA Performance Evaluation (“CRA PE”) issued by the OTS, WB received an overall “Needs to Improve” Rating.<sup>4</sup> The OTS noted that although WB would have been rated “Satisfactory” based on its performance under the CRA small bank performance

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<sup>4</sup> CRA PE, Public Disclosure dated November 2, 2009, WB, page 2.

criteria, the OTS reduced WB's CRA PE from "Satisfactory" to "Needs to Improve" as a consequence of unfair and deceptive practices related to WB's overdraft payment program ("ODP"). The OCC consulted with the OTS, as provided in the FFIEC Statement on Regulatory Conversions (July 1, 2009). The OTS advised the OCC that WB is adequately addressing the issues that resulted in the "Needs to Improve" rating.<sup>5</sup> The OTS recently terminated an enforcement order relating to WB's ODP.

WNB's most recent CRA PE was issued on September 5, 2006. At that time, WNB was rated "Satisfactory." WNB received a "High Satisfactory," in the Lending Test and "Low Satisfactory" in the Investment and Service Tests. During 2010, the OCC determined that WNB had engaged in unfair and deceptive practices related to WNB's ODP program, and the OCC required WNB to undertake corrective actions. The OCC thoroughly reviewed WNB's efforts to correct issues relating to its ODP and considered WNB's performance under the CRA, including during the period after issuance of the 2006 CRA PE. WNB also committed to take actions to enhance its CRA performance. WNB committed to employ an experienced CRA Compliance Officer to oversee and improve WNB's record of compliance with CRA.

We conclude that the performance records of WB and WNB under the CRA, as well as their compliance with enforcement actions relating to their ODPs, are consistent with approval of the conversion and merger applications, subject to the conditions set forth below.

#### D. Branch Retention after Merger

WNB's main office is located in Texas, and it has branches in Illinois, Indiana, Maryland, North Carolina, Ohio, Pennsylvania, Texas, Virginia, and West Virginia. WINB's main office is located in Texas, and it has branches in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, New York, South Carolina and Texas. The Resulting Bank has requested approval to retain the main office of WNB and its branches, and to retain as branches the main office and branches of WINB.

##### 1. Retention of WNB's Main Office and Branches

Under 12 U.S.C. § 36(b)(2)(C), the Resulting Bank may retain WNB's branches unless state law would prohibit a state bank following a merger from retaining such branches. For purposes of § 36(b), the Resulting Bank is "situated" in all the states in which the participating banks were located.<sup>6</sup> Pursuant to section 36(b)(2)(C), the Resulting Bank may retain and operate any branch WNB had before the merger unless state law would prohibit a state bank from retaining such branches following a merger. There is no provision in any of the states' laws that prohibits a state-chartered bank, following a merger with another bank, from retaining its own similarly situated branches in the state. Therefore, the Resulting Bank may retain WNB's branches under section 36(b)(2)(C).

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<sup>5</sup> See OTS Orders WN 10-017 (April 23, 2010) and WN 11-002 (February 3, 2011)

<sup>6</sup> See #2010-203 (October 6, 2010) and #2010-202 (October 6, 2010)

## 2. Retention of WINB's Branches

Under 12 U.S.C. § 36(b)(2)(A), the Resulting Bank may retain as branches WINB's main office and branches if the Resulting Bank could establish them as new branches of the Resulting Bank, including through acquisition, under section 36(c) and state branching law incorporated therein. Under § 36(c) a national bank is authorized to establish new branches at any location within the state in which the bank is situated if such is authorized to state banks by the statutory law of the state in question. For purposes of 12 U.S.C. § 36(c), a national bank is considered "situated" in any state in which it has its main office or a branch, and, as previously noted, following a merger, a national bank is situated in any state in which any of the parties to the merger had a main office or a branch. Consequently, the OCC must evaluate a national bank's branch retention request in the context of the statutory law of the specific state in question.

Since the Resulting Bank is situated in all states in which the participating banks were located, the Resulting Bank is situated for purposes of 12 U.S.C. § 36(c) in the states in which WB had branches -- Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, New York, South Carolina, and Texas. The OCC reviewed the branching laws of each of the above states and concluded that all state requirements applicable under 12 U.S.C. § 36(c) have been met.<sup>7</sup> Therefore, the Resulting Bank may retain WINB's main office and branches in each of these states upon consummation of the merger.

## IV. Conditions

The approvals are subject to the following conditions:

1. WINB shall merge with and into WNB immediately after the conversion of WB.
2. Following the merger, WNB: (i) shall give the Houston Field Office at least sixty (60) days prior notice of its intent to significantly deviate or change from its business plan or operations and (ii) shall obtain the OCC's written determination of no objection before it engages in any significant deviation or change from its business plan or operations.<sup>8</sup> The OCC may impose additional conditions it deems appropriate in a written determination of no objection to WNB's notice. This condition shall remain in effect for three years.
3. Within ninety (90) days after the merger of WINB with and into WNB, WNB shall employ a sufficiently experienced CRA Compliance Officer ("CRA Officer") to oversee and improve WNB's record of compliance with CRA. The CRA Officer shall be responsible for ongoing oversight of WNB's compliance with CRA and shall be vested with sufficient authority to fulfill

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<sup>7</sup> Ala. Code § 5-5A-20(a); Fla. Stat. § 658.26(2)(a); Ga. Code Ann. § 7-1-601(a)(2); Ky. Rev. Stat. Ann. § 286.3-180(2); La. Rev. Stat. Ann. § 6:506(C); Miss. Code Ann. §§ 81-7-7(2)(b), 81-7-8; N.Y. Banking Law § 105; S.C. Code Ann. §§ 34-3-850(A),(B); Tex. Fin. Code Ann. § 32.301(c).

<sup>8</sup> For purposes of this Significant Deviation Requirement, the phrase "significantly deviate" and "significant deviation" shall be construed in light of the guidance provided in Appendix G (Significant Deviations After Opening) of the "Charters" booklet of the *Comptroller's Licensing Manual* (February 2009), and any subsequent revisions. The requirement that WNB obtain the OCC's prior written determination of no supervisory objection to a significant deviation does not apply to transactions for which WNB is required by statute or regulation to seek formal prior written OCC approval or no objection.

the duties and responsibilities of the position. Within ninety days (90) of the CRA Officer's employment, the CRA Officer shall submit to the OCC for approval a three (3) year, Board approved CRA Compliance Plan ("Plan"). The Plan shall detail WNB's plans for meeting the credit needs of its local communities, establish specific goals under which WNB's performance under the Plan can be measured, and include efforts to prevent future violations of law that may have a negative impact on the Bank's CRA rating. The Plan shall be reviewed on an annual basis. At the Bank's option, the Plan may be a formal CRA Strategic Plan in accordance with 12 C.F.R. § 25.27. Upon receiving the Board and the OCC's approval of the Plan, the Board shall immediately adopt, implement, and ensure WNB's ongoing adherence to the Plan. The CRA Officer shall also be responsible for ensuring compliance with the requirement of 12 C.F.R. § 25.43(b)(5) for the Bank to include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community, which shall be updated quarterly.

4. WNB shall implement the representations made in their letter to OCC dated March 24, 2011.

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 and, as such, are enforceable under 12 U.S.C. §1818.

#### V. Conclusions

For the reasons set forth above, and subject to the commitments and representations made in the applications and by representatives of WNB, WB and WINB and the section 1818 conditions detailed previously in this letter, the OCC hereby approves:

- 1) The conversion of WB to a national bank, to be known as WINB, with its main office in Refugio, Texas, and retention by WINB of all of the branches of WB;
- 2) The merger of WINB into WNB;
- 3) The retention by WNB of its branches and the retention of the main office and branches of WINB as branches.

#### VI. Pre-consummation Requirements

WB must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion. Any changes to the executive officers or directors must receive a "no objection" from the OCC.

Upon completion of all steps required to convert to a national banking association, submit the "Conversion Completion Certification" (enclosed) certifying that you have done so.

As a reminder, the Southern District Licensing Office must be advised in writing 10 days in advance of the desired effective date for the conversion and merger so that the OCC may issue the necessary conversion authorization and merger certification letters.

If the conversion and merger transactions have not been consummated within six months from the approval date, the approvals will automatically terminate unless the OCC grants an extension of the time period.

This conditional 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. Our approval is based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

A separate letter is enclosed requesting your feedback on how we handled your applications. We would appreciate your response. If you have questions regarding this letter, please contact Senior Licensing Analyst Brenda E. McNeese, at (214) 720-7052. Please reference the application control numbers in any correspondence.

Yours truly,

*Karen H. Bryant*

Karen H. Bryant  
Director for District Licensing

Enclosures: Conversion Completion Certificate  
Survey Letter