

December 21, 2023

**Conditional Approval #1315
January 2024**

Mr. Leslie J. Lieberman
Organizer of Porticoes National Bank
Kramer Levin, Attn: Peter Smith
1177 6th Avenue
New York, NY 10036

Re: Application to charter Porticoes National Bank
OCC Control No.: 2023-Charter-333348
Charter No.: 25309

Dear Mr. Lieberman:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national bank with the title of Porticoes National Bank (Bank). The OCC grants preliminary conditional approval of your charter application after determining that your proposal meets certain regulatory and policy requirements.

This preliminary conditional approval is granted based on an evaluation of all information available to the OCC, including the representations and commitments made in the application and by the Bank's representatives. We also made our decision to grant preliminary conditional approval based on your representations that the proposed Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC).

The OCC has granted preliminary conditional approval only. Final approval and authorization for the Bank to open will not be granted unless (1) all pre-opening requirements and conditions are met, and (2) the review factors required under the Bank Merger Act (BMA) for any purchase and assumption transaction is consistent with approval. Until final approval is granted, the OCC has the right to modify, suspend, or rescind this preliminary conditional approval should the OCC deem any interim development to warrant such action.¹

Background

The organizers propose to establish the Bank for the purpose of assuming liabilities and purchasing assets from the FDIC acting as the receiver of a depository institution. Only

¹ 12 CFR 5.13(i).

chartered depository institutions may assume deposit liabilities from the FDIC.² The Bank will be a wholly-owned subsidiary of Porticoes Capital LLC (“Holdings”), a Delaware limited liability company formed in connection with this proposal. Holdings is expected to enter binding commitments with a number of investors (“Investors”) that will invest in Holdings. Holdings would draw upon these commitments to support acquisitions by the Bank.³ The Investors are anticipated to include the organizers, individuals, investment firms, and other unaffiliated third parties. The OCC understands that Holdings will apply to the Federal Reserve Bank of New York and Board of Governors of the Federal Reserve System (collectively, “Federal Reserve”) to become a bank holding company and acquire the Bank. The applicants represent that sufficient capital will be injected to ensure the Bank substantially exceeds the amount needed to be well-capitalized when it opens for business and thereafter.

Since the Bank would not be able to commence operations until after it is selected by the FDIC as the winning bidder for a particular failed institution and the OCC approves the acquisition, the specific size, scope, and activities of the Bank is not yet known. However, the OCC has considered the experience of the organizers, proposed directors and key management in managing insured depository institutions with problem assets. The organizers included a preliminary business plan based on (1) assumption of a failed institution that is the general size and with the type of assets the Bank would acquire from the FDIC and (2) the organizers’ plans for the size and type of future business they propose the Bank would engage in after final OCC approval. Based on the information provided in the application, including the Bank’s preliminary business plan, and in particular the experience of the organizers and proposed key management of the Bank, the OCC has concluded the Bank meets the requirements for preliminary conditional approval, subject to the requirement that the Bank follow an organizing process that includes OCC review and approval as it considers potential acquisition transactions. This will enable the OCC to address specific safety and soundness issues raised by any proposed acquisition. Accordingly, the OCC has determined that the application meets the regulatory factors for preliminary conditional approval.

It is anticipated that the OCC would grant final approval for the Bank when the Bank’s bid to acquire a failed institution is accepted as the winning bid by the FDIC. However, any such final approval and authorization for the Bank to open will not be granted unless (1) all pre-opening requirements and conditions are met, and (2) the review factors required under the BMA for the

² The organizers anticipate that the Bank’s first transaction would be an assumption of liabilities and purchase of assets from the FDIC as receiver of a failed institution. Other transactions with troubled institutions could occur later.

³ In order to ensure that the Bank has funds immediately available to consummate a purchase and assumption transaction with the FDIC if the Bank is the winning bidder for a failure resolution transaction, the applicants represent that Holdings will draw on the commitments in sufficient time so that the funds to purchase equity of Holdings will be in an escrow account with a third party financial institution prior to the Bank submitting a bid.

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purchase and assumption transaction are consistent with approval.⁴ In particular, the BMA requires the financial and managerial resources and future prospects of the resultant institution to be satisfactory. The OCC will consider the identification of competent management for the Bank as well as a 60-day acquisition business plan that satisfactorily addresses the principal weaknesses of the failed institution to be acquired.

In addition, as set forth in the Conditions section below, in connection with any final approval and the Bank commencing business, the Bank must enter into a written Operating Agreement with the OCC that will require the Bank to submit a final comprehensive business plan that details the proposed business and operations of the Bank, and the Bank must obtain the OCC's written supervisory non-objection to the plan. After receiving the OCC's non-objection, the Bank must implement and adhere to the plan. Any significant deviation from the plan will require prior notice to the OCC and receipt of a separate, written OCC non-objection to the changes. The Operating Agreement also will contain a minimum capital level as well as additional requirements regarding funding, governance, and risk management functions.

Officers and Directors

The OCC poses no objection to the following persons serving as executive officers, directors, and/or organizers as proposed in the application:

<u>Name</u>	<u>Title</u>
Leslie J. Lieberman	Organizer, Executive Chairman of the Bank
Manuel Sánchez Rodriguez	Organizer, Director, President, Chief Executive Officer
Thomas E. Constance	Organizer and Director
Howard Curd	Organizer and Director
Phillip R. DeLeonardis	Organizer and Director
Thomas Naratil	Director

Background checks requested by the OCC have not been received yet from some sources. Accordingly, the continued service of the individuals will be dependent on satisfactory completion of the background investigation process.

The Bank must obtain the OCC's prior written determination of no objection for any additional organizers, executive officers, or directors, either appointed or elected, before the person assumes the position. For a two-year period after the Bank commences business (or such longer period specified in the Operating Agreement), the Bank must file with the OCC an *Interagency Biographical and Financial Report* and any other materials required by the OCC and receive a

⁴ In addition, the review factors under the OCC's chartering regulation, 12 CFR 5.20(e), must continue to be met. These review factors include, among others, that the bank will have competent management with ability and experience relevant to the types of services to be provided, capital sufficient to support the projected volume and type of business, and that the bank can reasonably be expected to achieve and maintain profitability and will be operated in a safe and sound manner.

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letter of no objection from the OCC prior to any new executive officer or director assuming such position.

Organizing Steps and Requirements

Enclosed are standard requirements and minimum policies and procedures for new national banks. In addition to the standard requirements for all new national banks, the Bank must also follow the requirements set out in Appendix A. As noted above, the Bank must meet these requirements before the OCC will issue final approval and allow the Bank to commence business.

The “Charters” booklet in the *Comptroller’s Licensing Manual* provides guidance for organizing your bank. The booklet is located at the OCC's web site: <https://www.occ.gov/publications/publications-by-type/licensing-manuals/charters.pdf>. The booklet contains the steps you must take to receive final approval.

As detailed in the booklet, you may establish the corporate existence of the Bank and begin organizing as soon as you adopt and forward the Articles of Association and the Organization Certificate to Senior Licensing Analyst Sandya Reddy in this office for our review and acceptance. As a “body corporate” or legal entity, you may begin taking those steps necessary for obtaining final approval. The Bank may not begin the business of banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Conditions

This preliminary conditional approval is subject to the following condition:

The Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within three (3) business days after receiving the final OCC approval, consummating the purchase and assumption transaction, and commencing business.

The condition of this approval is a condition “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 USC 1818. As such, the condition is enforceable under 12 USC 1818.

Conclusion

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

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Our preliminary conditional 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 preliminary conditional 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.⁵

The manner in which capital is raised must not deviate from that described in the application without prior written OCC notification. If the capital for the Bank is not raised within twelve (12) months or if the Bank has not commenced business and consummated an initial acquisition within eighteen (18) months from the conditional preliminary approval date, this approval automatically expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances and when the OCC determines that the delay is beyond the applicant's control. The organizers are expected to proceed diligently, consistent with their application, for the Bank to open for business as soon as possible.

Information required to be submitted to the OCC by the Organizing Requirements in Appendix A and any questions concerning this preliminary conditional approval should be directed to Senior Licensing Analyst Sandya Reddy at (202) 445-9100 or sandya.reddy@occ.treas.gov. You should include the application control number on any correspondence related to this filing.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller for Licensing

Attachment:
Appendix A: Organizing Requirements

Enclosures:
Standard Requirements
Minimum Policies and Procedures
Survey Letter

⁵ 12 CFR 5.13(i).

APPENDIX A Organizing Requirements for Porticoes National Bank (In Organization)

Capital Raise

1. Provide status updates monthly on the capital raise efforts of the organizers. Include in your discussion any progress made to achieve capital goals as well as the following items:
 - a. Progress in drafting offering materials and projected capital amount;
 - b. Update on potential investors, including their names and their commitments in terms of dollar amounts;
 - c. Update on any investors who would own or control 10% or more of the equity of the HCs;
 - d. The total amount and sources of capital that would be available to the Bank and the date the funds will be available;
 - e. Provide copies of all capital related documents including prospectus, investor commitment documents, etc.

Proposed Directors and Management

2. Provide status updates monthly on the retention of additional director(s) and efforts to identify additional senior executive officers:
 - a. Provide updates on the candidates being considered, including a discussion of the qualifications of any new candidates;
 - b. For proposed directors and senior executive officers, submit documents to conduct background checks.¹

Updating Preliminary Information

In the application, the organizers provided information that the OCC relied on in determining to proceed in granting preliminary approval. This information included: the identity, background information, and banking experience of the initial directors and senior executive officers of the Bank; the overall strategic plan of the organizers for the Bank; and a preliminary business plan outlining intended product and business lines, retail branching plans, and capital, earnings, and liquidity projections.

¹ Please refer to the Comptroller's Licensing Manual for the specific documents that are required for the background checks.

3. Until the Bank completes its first acquisition, the Bank shall inform the OCC immediately of any material changes in the information included in the application and shall update the OCC periodically (at least monthly) regarding the status of the information.
4. The Bank shall notify and periodically update the OCC on the status of the application with the Board of Governors of the Federal Reserve System by Porticoes and on the status of the Bank's application with the FDIC for deposit insurance.

Initial Acquisition

5. At the time the Bank first identifies a potential initial acquisition transaction (Acquisition Transaction) in which the Bank would intend to assume liabilities and acquire assets from the FDIC as receiver of a failed institution, the Bank shall promptly notify the OCC in writing of the contemplated initial Acquisition Transaction.
6. The Bank's notice to the OCC shall include a business plan (Acquisition Business Plan) setting out the Bank's plans for the initial capitalization, operations, and business of the target institution, with a particular focus on the initial period of 60 days after the acquisition. If the Bank then succeeds in acquiring the institution, the Bank will be required subsequently to submit a comprehensive long-term business plan. The Acquisition Business Plan at a minimum shall include the following, to the extent this information is available and known to the Bank:²
 - a. the name of the potential acquired institution, and information regarding the institution's size, locations, business lines, and asset composition;
 - b. the proposed Acquisition Transaction, including: (i) the terms on which the FDIC is offering the failed institution (whole bank purchase and assumption, insured deposit purchase and assumption, or insured deposit transfer), (ii) any unique characteristics of the transaction, including but not limited to any loss sharing agreements between the acquirer and the FDIC, (iii) the timing of the FDIC's bid process, and (iv) the type of bid the Bank is contemplating making;
 - c. the amount and composition of the initial capital the organizers plan to have in the Bank if it succeeds in acquiring the institution, and any plans and sources for raising additional capital;
 - d. the Bank's plans for the initial operations and business of the acquired institution, with particular attention to stabilizing the institution, reversing asset quality deterioration, establishing an adequate allowance for loan losses, providing adequate management

² If the requested information is not immediately available and known to the Bank, the Bank shall provide the OCC with an updated Acquisition Business Plan as soon as this information becomes available and known to the Bank.

and staff, mitigating deposit run-off³ and otherwise improving any deterioration in liquidity, improving revenue, and controlling expenses;

- e. the Bank's assessment of the quality of existing assets and business lines that would be acquired in the acquisition, and the Bank's plans for future operations, including identifying the business lines of the acquired institution it will continue and will not continue, any new products and services planned, and the projected size of each business line;
- f. the Bank's assessment of management of the acquired institution, in particular identifying whether any senior executive officers will be retained from the acquired institution (and provide any draft or final retention agreements), any other changes or additions to the senior executive officers of the Bank, and the expected timing for the Bank to fill any remaining senior executive officer positions;
- g. the Bank's assessment of (i) the acquired institution's control structures, risk management function, policies and procedures, technology infrastructure, and vendor relationships, (ii) the degree to which these areas would need to be developed and improved, and (iii) actions the Bank would take to achieve that improvement;
- h. the Bank's identification of the activities and functions that are or will be outsourced to third parties (including data processing), identification of all vendors (noting whether any are or will be affiliates of the proposed institution), and a description of the planned oversight and management program of the various relationships; and
- i. a *pro forma* balance sheet of the Bank as of the first day after the Acquisition Transaction, and financial projections for a three-year period.⁴

7. The Bank's notice to the OCC also shall include the following items:

- a. a copy of its proposed bid package to the FDIC, if applicable;

³ Include the level of uninsured deposits that the Bank anticipates assuming.

⁴ Please ensure that you are familiar with the Interagency Supervisory Guidance on Bargain Purchases and FDIC-and NCUA-Assisted Acquisitions (OCC 2010-19). As noted in the guidance, include a *pro forma* balance sheet with two sets of *pro forma* capital calculations – the first including the gain from a bargain purchase in the estimated *pro forma* regulatory capital; and the second eliminating the gain from the calculations so that we can see the potential impact on regulatory capital if the preliminary estimate of the bargain purchase gain is not ultimately confirmed. Please note that we also may impose conditions where a bargain purchase gain is recorded to maintain and protect the safety and soundness of the acquiring institution, including dividend limitations, independent auditing of the financial statements, independent valuation if necessary, and legal lending limit exclusions. These conditions are listed on page 6 of the guidance.

- b. a copy of the materials presented to Bank's board of directors requesting approval to bid;
 - c. a copy of the Purchase and Assumption Agreement and any other documents that would be used to effect the Acquisition Transaction;
 - d. a draft of the Bank's Interagency Bank Merger Act Application for OCC approval to engage in the purchase and assumption;⁵
 - e. the Bank's proposed Articles of Association and By-Laws to be in effect after consummation of the Acquisition Transaction;
 - f. a request for a directors' residency and/or citizenship waiver, if needed, and an Interagency Biographical and Financial Report for any proposed director or senior executive officer not previously submitted to the OCC; and
 - g. any other information or documents needed for the OCC to decide whether to grant final approval for the establishment of the Bank and whether to approve the Acquisition Transaction.⁶
8. After notifying the OCC of its contemplated initial Acquisition Transaction and submitting the Acquisition Business Plan and other required items, the Bank must receive the non-objection of the OCC prior to submitting a bid to the FDIC, entering into any definitive agreement with the FDIC, or submitting any applications for the Acquisition Transaction.⁷
9. In the event the Bank wins the bid for an acquisition from the FDIC as receiver of a failed institution or if it otherwise becomes clear the Bank may proceed to complete the initial Acquisition Transaction, the Bank shall immediately notify the OCC, submit updated (and if initially provided in draft form, the final version of) items required in paragraphs (6) and (7), and shall submit any other necessary application and request OCC approval for the purchase and assumption and for the Bank to commence business.

⁵ The Comptroller's Licensing Manual for failure acquisitions contains helpful information for the OCC's bid review process and for the approvability of the purchase and assumption application: [Comptroller's Licensing Manual, "Failure Acquisitions" \(treas.gov\)](#).

⁶ The OCC may allow the Bank to combine the steps set out in requirements (5), (6), (7), and (8) if the FDIC has a shortened timeframe for submitting bids or if other circumstances requiring a shortened timeframe exist. In such cases, the OCC will advise the Bank how to meet the requirements, and supply the information included, in requirements (5) through (8).

⁷ If the Bank proposes to modify its FDIC bid package at any time after the OCC has provided Bank with a clearance to bid, Bank must provide the OCC with the updated proposed FDIC bid package and obtain a new OCC non-objection prior to submitting the revised bid to the FDIC.

10. The Bank may not proceed to consummate the initial Acquisition Transaction unless the OCC has issued written approval for the purchase and assumption and issued final written approval for the Bank to commence business; the Bank is in conformance with the conditions set forth in the preliminary conditional approval and any conditions imposed in approvals for the initial Acquisition Transaction; and the Bank has obtained all other required regulatory approvals.

Subsequent Developments

11. Within three (3) business days after consummation of the purchase and assumption for the initial Acquisition Transaction, the Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC.
12. If for any reason the Operating Agreement is not yet in effect after an initial Acquisition Transaction and the Bank contemplates entering a subsequent Acquisition Transaction, then the Bank shall follow the Initial Acquisition procedures set forth above for any such subsequent Acquisition Transaction.