



May 21, 2013

**Conditional Approval #1071  
June 2013**

Brian E. Simpson  
Chief Executive Officer  
CommunityOne Bank, National Association  
101 Sunset Avenue  
Asheboro, North Carolina 27203

Re: Application by CommunityOne Bank, National Association, Asheboro, North Carolina to Merge an Affiliate Bank, Bank of Granite, Granite Falls, North Carolina, with and into CommunityOne Bank, National Association (Charter #8953)  
OCC Control Number: 2013-WO-02-0001

Dear Mr. Simpson:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the above-referenced application filed by CommunityOne Bank, National Association, Asheboro, North Carolina (“CommunityOne” or the “Bank”). This approval is granted after a thorough review of the application, other materials the Bank and its representatives have supplied, and additional information available to the OCC, including commitments and representations made in the application and by the Bank’s representatives during the application process.

This approval is subject to the following condition:

No later than one (1) business day after consummation, the Bank shall enter into a written Operating Agreement with the OCC on terms and conditions acceptable to the OCC and the Bank shall thereafter comply with the terms of the Operating Agreement.

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 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

Because the main offices of CommunityOne and Bank of Granite (“Granite”) are in North Carolina at the time of the merger, CommunityOne is authorized to acquire Granite by merger pursuant to 12 U.S.C. § 215a, which governs mergers by national banks and state banks located within the same state. Section 215a(d) provides that where a merger involves a state bank, the merger may not be undertaken in contravention of state law. North Carolina law affirmatively permits state banks to merge into national banks.<sup>1</sup> Consequently, this merger is legally authorized under 12 U.S.C. § 215a, subject to the factors set forth in the Bank Merger Act

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<sup>1</sup> State statutes permit North Carolina state banks to merge with and into national banks. See N.C. GEN. STAT. §§ 53C-1-4, -7-201, -7-206.

(“BMA”) and the banks’ records of compliance with the Community Reinvestment Act (“CRA”).

CommunityOne has also requested to retain as branches, the main office and branches of Granite following the merger. Under 12 U.S.C. § 36(b)(2)(A), a national bank may retain and operate as a branch any office of the target bank which, immediately prior to the merger, was in operation as a main or branch office of the target bank, provided the resulting bank could establish those locations as new branches under 12 U.S.C. § 36(c).<sup>2</sup> Section 36(c)(2) authorizes a national bank to establish new branches “at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question...”<sup>3</sup> For branching purposes under § 36(c), a national bank is “situated” in any state in which it has a branch or main office.<sup>4</sup> Because CommunityOne is and will be “situated” in North Carolina, both before and after the merger, for purposes of § 36(c), North Carolina law determines whether CommunityOne may retain the main and branch offices of Granite following the merger.

North Carolina law permits state-chartered banks to establish branch offices within the state without geographic limit.<sup>5</sup> Thus, a national bank situated in North Carolina, such as CommunityOne, could establish branches at all the locations of Granite’s main and branch offices under § 36(c). Accordingly, following the merger, CommunityOne may retain and operate the main and branch offices of Granite as branches of CommunityOne under § 36(b)(2)(A). CommunityOne is further permitted to retain its own main office and branches pursuant to Section 36(b)(2)(C).

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. Under the BMA, the OCC generally may not approve a merger that would substantially lessen competition. The BMA also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served. 12 U.S.C. § 1828 (c)(5). The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, 12 U.S.C. § 1828 (c)(11), and records of compliance with the CRA, 12 U.S.C. § 2903(a)(2). Finally, the OCC may not approve a merger if the resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. 12 U.S.C. § 1828(c)(13). Furthermore, the OCC must consider the risk of the transaction to the stability of the United States banking or financial system. 12 U.S.C. § 1828 (c)(5) (as amended by Section 604 of Dodd-Frank). We considered these factors and found them consistent with approval under the statutory and regulatory provisions.

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<sup>2</sup> 12 U.S.C. § 36(b)(2)(A).

<sup>3</sup> 12 U.S.C. § 36(c)(2).

<sup>4</sup> See *Ghiglieri v. Sun World Nat’l Ass’n*, 117 F.3d 309, 316 (5th Cir. 1997).

<sup>5</sup> N.C. GEN. STAT. §§ 53C-6-15.

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Licensing Activities must be advised in writing in advance of the desired effective date for the merger so it may issue the necessary certification letter. The effective date must follow any other regulatory approval.

The OCC will issue a letter certifying consummation of the transaction when we receive:

- An executed merger agreement.
- An executed operating agreement.
- Documentation that all other conditions that the OCC imposed have been met.

If the merger is not consummated within one year from the approval date, the approval shall 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.

All correspondence regarding this application should reference the control number. If you have any questions, please feel free to contact Yoo Jin Na, Senior Licensing Analyst, at (202) 649-6335 or by email at [yoojin.na@occ.treas.gov](mailto:yoojin.na@occ.treas.gov).

Sincerely,

*Beverly L. Evans*

Beverly L. Evans  
Director For Licensing Activities  
Office of the Comptroller of the Currency

Enclosure: Survey Letter