



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

Licensing Department
250 E Street, S.W.
Washington, D.C. 20219

**Conditional Approval #997
May 2011**

April 15, 2011

Mr. Richard K. Kim
Wachtell, Lipton, Rosen & Katz
51 West 52nd Street
New York, New York 10019

Re: Application to establish a new national bank, Superior Bank, National Association
Application Control Number: 2010-WO-01-0002

Application for Superior Bank, National Association, to acquire from the Federal Deposit Insurance Corporation as Receiver, certain assets and liabilities of Superior Bank, FSB
Application Control Number: 2011-WO-02-0004

Dear Mr. Kim:

The Office of the Comptroller of Currency (“OCC”) hereby grants final conditional approval to the application to establish a new national bank with the title of Superior Bank, National Association (“New Superior” or the “Bank”). The OCC also hereby grants conditional approval to the application by the Bank to purchase certain assets and assume certain liabilities of Superior Bank, a federal savings bank, Tampa, Florida, (“Old Superior” or the “Failed Entity”) from the Federal Deposit Insurance Corporation (“FDIC”) as Receiver of the Failed Entity (the “P&A Transaction”).¹ These approvals are granted after a thorough review of the applications, other materials you have supplied, and other information available to the OCC, including commitments and representations made in the applications and by the Bank’s representatives during the application process. These approvals are also subject to the conditions set out herein.

¹ During the application process, the Bank used a provisional preliminary name, CBC National Bank, until such time as its initial acquisition of a failed institution from the FDIC. In connection with its opening and initial acquisition, the Bank changed its name.

Background

An application was made to the OCC to charter the Bank. The organizers proposed to establish the Bank for the purpose of assuming liabilities and purchasing assets from the FDIC acting as the receiver of a depository institution, inasmuch as only chartered depository institutions may assume deposit liabilities from the FDIC. The primary proponents of the Bank were several individuals who, along with others, were the organizers of the Bank. The Bank would be a wholly-owned subsidiary of Community Bancorp, LLC (“CBC”), a Delaware limited liability company formed in connection with this proposal. In 2010 CBC closed on aggregate equity commitments for a substantial amount of capital to be deployed in transactions with the FDIC and other bank investments. The OCC granted preliminary conditional approval for the charter on September 22, 2010. *See* OCC Conditional Approval Number 983 (September 22, 2010).

Old Superior, a federal savings bank, was in danger of default. Its deposits were insured by the FDIC. In contemplation that the appropriate regulatory authority would close Old Superior and appoint the FDIC as receiver, the FDIC sought bids from potential acquirers. The Bank was the winning bidder. The Comptroller has been asked to grant his written approval of the proposed agreement negotiated between the FDIC and the Bank by which the latter would purchase certain assets and assume the deposit liabilities of the Failed Entity. In addition, since the Bank is still in organization, the OCC also has been asked to grant final approval for the Bank to commence business in order to enter the P&A Transaction.

Discussion

A. Charter

The OCC finds that the Bank has met all requirements and completed all steps necessary to commence the business of banking, including preopening requirements connected with the preliminary conditional approval. In the initial application, the organizers provided a preliminary business plan based on the general size and type of assets of a failed institution they would seek to have the Bank acquire from the FDIC and their plans for the future business of the Bank. While in organization, the Bank kept the OCC informed of developments regarding capital raising, the identity of investors, changes in structure, and changes in proposed management of the Bank. When the Bank identified a potential failed bank it was interested in acquiring, the Bank supplied a preliminary business plan with its plans for the initial capitalization, operations, and business for that target with a focus on the first several months. The OCC reviewed all the relevant materials and permitted the Bank to submit a bid. Thus, the Bank met the steps set out in the OCC preliminary conditional approval.

The OCC is requiring the Bank to enter a written Operating Agreement that will require the Bank to submit a Comprehensive Business Plan acceptable to the OCC. The Plan must detail the

proposed long-term 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 immediately implement and thereafter adhere to the Plan. Any significant deviation from the Plan will require prior notice to the OCC and receipt of written OCC non-objection to the changes.

Accordingly, the OCC concludes the Bank is lawfully entitled to commence the business of banking under 12 U.S.C. § 27(a) and 12 C.F.R. § 5.20. The Bank is authorized to open simultaneously with the P&A Transaction. OCC approval for the Bank to open is conditioned upon entry into the P&A Transaction.²

The Bank is reminded that several of the standard requirements enclosed in the preliminary conditional approval letter dated September 22, 2010, will continue to apply once the Bank opens and, by opening, the Bank agrees it is subject to these requirements of operation.

B. P&A Transaction

The Bank applied to the OCC for approval to purchase certain assets and assume certain liabilities of Old Superior in the P&A Transaction with the FDIC. National banks have long been authorized to purchase assets and assume liabilities of other depository institutions under the authority of 12 U.S.C. § 24(Seventh).³ Consequently, the Bank may acquire the assets and liabilities, including deposits, as proposed. Based on information currently available to the Bank, the Bank represents that to its knowledge it is not acquiring any assets or activities that are not permitted for national banks.⁴

In the P&A Transaction, the Bank is acquiring four existing subsidiaries of Old Superior. Based on information currently available to the Bank through the FDIC's bid process, the Bank believes there are no activities conducted in the subsidiaries that cannot be conducted by subsidiaries of a national bank.⁵ The acquisition of these subsidiaries is permissible.

² In connection with opening for business and entry into the P&A Transaction, the Bank requested a waiver of the residency requirements of 12 U.S.C. § 72 for its board of directors. The OCC hereby grants the residency waivers.

³ See, e.g., *City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931).

⁴ If subsequent review shows there are nonconforming or impermissible assets or activities, the Bank represents it will conform or divest itself of any such nonconforming or impermissible assets or activities within two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.

⁵ After the P&A Transaction, when the Bank has full access to information about the subsidiaries, the Bank represents that it will promptly update the OCC regarding the subsidiaries as soon as relevant information becomes available. The Bank also represents that it will conform or divest any impermissible subsidiaries within

The Bank's main office will be at the location of Old Superior's main office in Tampa, Florida. The Bank also requested OCC approval to operate the branches of Old Superior in Florida. The Bank has authority to operate these branches under 12 U.S.C. § 36(c) and applicable intrastate branching laws of Florida, Fla. Stat. Ann. § 658.26, as applied to national banks under section 36(c). The OCC approves the Bank's operation of these branches.

Old Superior also operated branches in Alabama, and the Bank requested OCC approval to operate branches at the locations of Old Superior's branches in Alabama. At the time of the P&A Transaction, New Superior's main office will be in Florida, and so Florida is its "home state." Prior to the P&A Transaction it would not have a branch in Alabama. Under 12 U.S.C. § 36(g), as amended by section 613(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act,⁶ a national bank may

establish and operate a de novo branch in a State (other than the bank's home State) in which the bank does not maintain a branch if –

(A) the law of the State in which the branch is located, or is to be located, would permit establishment of the branch, if the national bank were a State bank chartered by such State

Revised Statutes § 5155(g)(1)(A) (12 U.S.C. § 36(g)(1)(A)). Alabama permits its state chartered banks to establish branches within the state without geographic limitation.⁷ An Alabama state bank could establish a branch in Alabama at the first location where Old Superior operated a branch and New Superior proposes to operate a branch. Thus, New Superior has the authority to establish a branch at that location under 12 U.S.C. § 36(g)(1)(A).⁸ Once New Superior has its

two years of the consummation date of this transaction or within any other period of time that the OCC deems appropriate.

⁶ Pub. L No. 111-203, 124 Stat. 1376, 1614 (July 21, 2010).

⁷ Ala. Code § 5-5A-20.

⁸ Establishment of an interstate branch under 12 U.S.C. § 36(g) is also subject to certain conditions under 12 U.S.C. § 36(g)(1)(B) & 36(g)(2). These conditions are: (1) compliance with certain state filing requirements; (2) expanded community reinvestment analysis and compliance; and (3) adequacy of capital and management. The OCC determined that New Superior satisfies these conditions to the extent applicable. The provisions regarding capital include the requirement that the application may be approved only if the "bank involved in the transaction is adequately capitalized *as of the date the application was filed.*" 12 U.S.C. § 1831u(b)(4)(A) (emphasis added). In this application, New Superior was not in existence at the time the application was filed. The application was filed by the sponsor and organizers on behalf of the Bank so that the Bank could enter the P&A Transaction with the FDIC as receiver of Old Superior and acquire the branches immediately upon opening. The Bank will exceed the standards for a well-capitalized bank when it opens for business and completes the P&A Transaction.

first branch in Alabama under 12 U.S.C. § 36(g), it can establish additional branches within Alabama as intrastate branches.⁹ As noted above, Alabama permits statewide branching, and so an Alabama state bank could establish additional branches at all of the locations of the other Alabama branches of Old Superior. Accordingly, New Superior has the authority to establish branches at all of the locations of the other Old Superior branches in Alabama. Accordingly, the OCC approves New Superior's operation of branches at all the locations in Alabama where Old Superior maintained branches.¹⁰

C. Bank Merger Act

The OCC reviewed the proposed P&A Transaction under the factors set forth in the Bank Merger Act ("BMA"), 12 U.S.C § 1828(c), and applicable OCC regulations and policies. The OCC considered these factors and finds them consistent with approval. In addition, the OCC finds that it must act immediately to approve the proposed P&A Transaction under the standards set forth in the BMA. Consequently, certain procedural requirements of the BMA -- publication of notice, request for competitive factors report from the Attorney General, and post-approval waiting period -- are inapplicable. 12 U.S.C. § 1828(c)(3), (4)(C), and (6).

D. Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of the community, including low-and-moderate-income neighborhoods, when evaluating certain applications, including charter applications and transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903(a)(2); 12 C.F.R. §§ 5.20(e)(2) & 25.29. The OCC considered the Bank's description of how it will meet its CRA objectives and the CRA performance evaluation of the other institution involved in the P&A Transaction. The OCC finds approval of the charter application and of the P&A Transaction are consistent with CRA.

⁹ See 12 U.S.C. § 1831u(d)(2) (incorporated into 12 U.S.C. § 36(g) by 12 U.S.C. § 36(g)(2)(B)) (authority to establish additional branches after initial Riegle-Neal transaction); 12 U.S.C. § 36(c); 12 U.S.C. § 36(f). *See also Seattle Trust & Savings Bank v. Bank of California, N.A.*, 492 F.2d 48, 51 (9th Cir. 1974), *cert. denied*, 419 U.S. 844 (1974) (an interstate national bank is "situated" in each state in which it has offices for purposes of establishing additional branches under section 36(c)); OCC Conditional Approval No. 912 (July 14, 2009) (page 4) (same); OCC Corporate Decision No. 2000-03 (March 8, 2000) (page 7) (same).

¹⁰ Old Superior was a federal savings bank. New Superior could have acquired the Old Superior branches under the authority of 12 U.S.C. § 1823(k), if that authority were invoked. In addition, if Old Superior had been a national bank or state bank, New Superior could have acquired the Alabama branches under the Riegle-Neal Act. *See* 12 U.S.C. § 1831u(a) & 1831u(e).

Conditions

These approvals are subject to the following conditions:

1. The Bank shall open and commence the business of banking only if it then immediately consummates the P&A Transaction. If the Bank is not able to consummate the P&A Transaction immediately, the Bank shall not open.
2. The Bank shall have received from CBC an injection of initial paid-in cash capital in conjunction with the P&A Transaction in an amount sufficient so that the Bank's Tier 1 leverage ratio is at least 10% immediately after consummation of the P&A Transaction, without including any bargain purchase gain. If such cash capital is not provided, the Bank shall not consummate the P&A Transaction.
3. 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 this final OCC approval, commencing business, and consummating the P&A Transaction.

These conditions of 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.

Consummation Guidance

Please notify the OCC that the Bank has opened. The OCC will forward you a Charter Certificate under separate cover.

Please refer to the Business Combinations booklet of the *Comptroller's Licensing Manual* for steps to complete the P&A Transaction. Within seven days of consummation of the P&A Transaction, please provide the OCC with copies of the following documents:

- Executed purchase and assumption agreement.
- Documentation that all other conditions the OCC imposed have been met.

Conclusion

These conditional approvals are granted based on our understanding that other applicable regulatory approvals, non-objections, or waivers with respect to the Bank, CBC, any other relevant parties, and the proposed P&A Transaction will have been received prior to the Bank's opening for business and consummating the P&A Transaction.

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The final approval for the Bank to commence business under 12 U.S.C. § 27(a) is limited to opening in conjunction with the P&A Transaction. This approval is void unless the P&A Transaction occurs as projected.

These conditional approvals, and the activities and communications by OCC employees in connection with the filings, 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 approvals are based on the representations made in the applications, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind these conditional approvals 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.

If you have any questions about the supervision of your Bank, please contact Assistant Deputy Comptroller George Orsino at 215-357-4752. For questions about this decision letter or other licensing matters, please contact Senior Licensing Analyst Robert Fernandez at 202-874-5060. You should include the application control numbers on any correspondence related to this filing.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller, Licensing