



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

Washington, DC 20219

Corporate Decision #97-14 March 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION OF KEY BANK OF WASHINGTON, TACOMA, WASHINGTON, TO CONVERT TO A NATIONAL BANKING ASSOCIATION

March 4, 1997

I. INTRODUCTION

On February 18, 1997, Key Bank of Washington, Tacoma, Washington, ("Bank") filed an application with the Office of the Comptroller of the Currency ("OCC") to convert from a Washington state-chartered bank to a national banking association ("Converted Bank"). The Bank is a wholly-owned subsidiary of Key Bancshares of Washington, Tacoma, Washington ("Bancshares"), which in turn is a wholly-owned subsidiary of KeyCorp, Cleveland, Ohio.

At December 31, 1996 the Bank had approximately \$8.1 billion in assets and \$6.2 billion in deposits and operated 168 branches. All of the branch offices are located in the state of Washington. The Bank currently exercises fiduciary powers as a state bank and has requested authority to exercise full fiduciary powers as a national bank.

The Bank owns fifteen wholly-owned subsidiaries. Ten of the operating subsidiaries engage in the sale of insurance in a manner not authorized under 12 U.S.C. § 92. The Bank has requested that it be permitted to retain these subsidiaries for at least two years, after which it will either (1) divest the subsidiaries or (2) conduct the activities of the subsidiaries in conformance with applicable national banking law.

The other subsidiaries are: KBWA Leasing Corporation ("Leasing"), which is engaged in personal property leasing; KBWA Services, Inc. ("Services"), which acts as agent for service of process for the Bank and its affiliates in the state of Washington; P.S.M. Financial Management Corporation ("P.S.M."), which serves as trustee in the state of Washington for deeds of trust securing loans by Bank affiliates and also serves as sole general partner in Touchstone Limited Partnership ("Touchstone") which holds real estate used as premises by the Bank; Puget Sound Plaza, Inc. ("Puget Sound"), which serves as the sole limited partner in Touchstone; and Royal Skies Development Company ("Royal Skies"), which owns 100% of a limited liability company which owns and manages certain of the Bank's premises. The

Bank intends to continue operating these subsidiaries after conversion to a national bank. In its conversion application, the Bank represents that the activities of these subsidiaries will be conducted in accordance with OCC policies and guidance with respect to such activities.

The Bank also holds limited partnership interests in twenty limited partnerships. Those limited partnerships hold investments in real estate projects which are eligible for low income housing tax credits under Section 42 of the Internal Revenue Code of 1986, as amended.

The Converted Bank's board will be comprised of eight individuals who will also be officers of the Converted Bank. All of the proposed directors are currently officers of the Bank or its affiliates. Moreover, the proposed directors currently serve as directors of eleven of the Bank's national bank affiliates. Only one of the proposed directors lives in the state of Washington. The Bank has requested the OCC to waive the residency requirement of 12 U.S.C. § 72 for the proposed directors of the Converted Bank.

II. LEGAL AUTHORITY

A. The Bank May Convert From a State-Chartered Bank to a National Bank Under 12 U.S.C. § 35.

Any bank incorporated under the laws of any state may become a national banking association, provided that (1) such conversion is not in contravention of state law, (2) the bank's capital is sufficient to entitle it to become a national bank, and (3) shareholders owning not less than 51% of the capital stock vote for such conversion. 12 U.S.C. §35; 12 C.F.R. 5.24.

Washington law expressly permits a state bank to convert to a national bank, provided two-thirds of the shareholders vote for such conversion. *See* Wash Rev. Code § 30.49.020 (1986).

The Bank's proposal to convert to a national bank is permissible under 12 U.S.C. § 35. The conversion is in accordance with state law, the Bank's capital at the time of conversion will exceed the minimum amounts required by 12 U.S.C. § 51 and 12 C.F.R. § 3, and the Bank's sole shareholder, Bancshares, has approved the transaction.

B. The Converted Bank May Retain the Bank's Existing Branches Under 12 U.S.C. § 36.

When a state bank converts into a national bank, the authority of the resulting national bank to retain the branches of the state bank is provided by 12 U.S.C. § 36(b)(1). The resulting bank may retain branches if: (A) the branch might be established as a new branch under section 36(c); (B) the branch is grandfathered (*i.e.*, it was a branch on February 25, 1927); or (C) a similarly situated state bank resulting from a conversion of a national bank would not be prohibited by state law from retaining the branch. Pursuant to section 36(c), a national bank

may establish and operate new branches within the state in which it is situated to the same extent that state law expressly authorizes state banks to establish and operate such branches. 12 U.S.C. §36(c)(2). In Washington, state banks may establish and operate branches without geographic limitation. *See* Wash. Rev. Code § 30.04.285 (1997).

Here, the Bank has 168 branches, all located in the state of Washington. A national bank would be able to establish branches in each of those locations pursuant to section 36(c). Thus, once the Bank converts to a national bank, it will be permitted to retain and operate branches at those 168 locations.

C. The Converted Bank May Exercise Fiduciary Powers Under 12 U.S.C. § 92a.

The Bank currently exercises fiduciary powers. The Bank seeks to continue to exercise full fiduciary powers as a national bank. Under section 92a, the OCC is authorized to permit national banks to exercise fiduciary powers that state banks, trust companies and other corporations are permitted to exercise under the laws of the state in which the national bank is located. 12 U.S.C. § 92a(a) & (b). Therefore, the Converted Bank is authorized to exercise those fiduciary powers that Washington permits for Washington state-chartered banks, trust companies or other corporations.

D. The Converted Bank May Continue to Hold and Operate Certain Subsidiaries.

The Bank intends to continue to hold and operate five operating subsidiaries after its conversion to a national bank: P.S.M., Puget Sound, Royal Skies, Leasing and Services. Under the authority discussed below, the Bank may continue to hold and operate each of those subsidiaries after converting to a national bank. These operating subsidiaries are subject to and must be operated in conformity with all national banking laws, rules and regulations.

1. Bank Premises Subsidiaries

The Bank may retain and operate its bank premises subsidiaries, P.S.M., Puget Sound, and Royal Skies, after conversion to a national bank. A national bank may invest in real estate that is necessary for the transaction of its business. 12 U.S.C. § 29. Real estate used as premises by a national bank may be held through one or more subsidiaries. *See* 12 C.F.R. § 7.1000(a)(3). A national bank may organize a bank premises subsidiary as a corporation, partnership, limited liability company, or similar entity. *Id.* P.S.M., Puget Sound, and Royal Skies directly, or indirectly, own real estate used as premises by the Bank. Accordingly, the Converted Bank may retain its investments in P.S.M., Puget Sound, and Royal Skies pursuant to 12 U.S.C. § 29 and 12 C.F.R. § 7.1000.¹

¹ The establishment of a subsidiary by a national bank to hold bank premises does not require prior OCC approval and is not subject to the operating subsidiary application/notice requirements set forth in 12 C.F.R. § 5.34. *See* 12 C.F.R. § 5.34(d)(2)(I) (A subsidiary in which the bank's investment is made pursuant to specific

2. Other Operating Subsidiaries

The Converted Bank may retain and operate both Services and Leasing. A national bank may engage in activities which are part of or incidental to the business of banking by means of an operating subsidiary. 12 C.F.R. § 5.34(d)(1). Services acts as agent for the service of process on behalf of the Bank and its affiliates. Furnishing services of this nature for a bank or its affiliates is part of or incidental to the business of banking. See 12 C.F.R. § 5.34(e)(2)(ii)(B). Leasing engages in the leasing of personal property, another activity which is part of or incidental to the business of banking. See 12 U.S.C. §§ 24(Tenth) and 24(Seventh); 12 C.F.R. §§ 23 and 5.34(e)(2)(ii)(M). Since the activities of Services and Leasing are permissible activities for national banks, the Converted Bank may retain and continue to operate Services and Leasing after conversion to a national bank.

E. The OCC May Waive the Residency Requirement for the Converted Bank's Directors under 12 U.S.C. § 72.

Directors of a national bank must be citizens of the United States and a majority of the directors must live within the state where the bank is located, or within one hundred miles of the bank's office. See 12 U.S.C. § 72. Here, all of the proposed directors are U.S. citizens, but only one of them lives in the state of Washington. However, section 72 was recently amended to permit the OCC to waive the state residency requirement. See Economic Growth and Regulatory Paperwork Reduction Act of 1996, Pub. L. No. 104-208, § 2241 (enacted Sept. 30, 1996). Thus, the proposed directors will meet the requirements of section 72 if the OCC waives the state residency requirement.

Waiver of the state residency requirement is appropriate here where KeyCorp intends to consolidate most or all of its national bank subsidiaries through interstate merger transactions into one charter at mid-year 1997 and is considering having the same board of directors serve as the board of the resulting bank. Moreover, each of the proposed directors has extensive banking experience and currently serves in a senior management position within the KeyCorp organization. Accordingly, the OCC waives the state residency requirement for the Converted Bank.

F. The Converted Bank May Continue to Hold Its Investments in Low Income Housing Tax Credit Real Estate Projects, Provided Those Investments are Approved or Self-Certified in Accordance With 12 C.F.R. § 24.

The Bank has a limited partnership interest in twenty low income housing tax credit ("LIHTC") real estate projects. These LIHTC projects hold, develop or rehabilitate real estate for the purpose of providing affordable housing. Twelve U.S.C. § 29 permits a national bank to "purchase, hold, and convey" real estate only for use in its banking business or in

authorization in a statute or OCC regulation is not an operating subsidiary subject to 12 C.F.R. § 5.34.)

satisfaction of previously contracted debts. Thus, the holding of real estate through these LIHTC investments would not be permitted by section 29.

However, 12 U.S.C. § 24(Eleventh) authorizes national banks to make equity investments in entities designed primarily to promote the public welfare, including those that provide housing. The OCC has determined that 12 U.S.C. § 24(Eleventh) permits national banks to participate as limited partners in partnerships, including LIHTC projects, that own and develop real estate for a public welfare purpose. *See, e.g.*, 12 C.F.R. §§ 24.1(b) and 24.6(a).

In certain circumstances, national banks must seek approval from the Community Development Division of the OCC for investments in community development projects made under the authority of section 24(Eleventh). *See* 12 C.F.R. § 24.5(b). For those section 24(Eleventh) investments for which OCC approval is not required, the investing bank must provide a self-certification to the OCC attesting, among other things, that the investment meets the public welfare requirements of 12 C.F.R. § 24.3 and is not subject to prior OCC review. *See* 12 C.F.R. § 24.5(a). In accordance with these procedures, as soon as practicable, the Converted Bank must either file a self-certification or seek OCC approval, as appropriate, for its investments in LIHTC real estate projects. The Converted Bank has represented that it will do so. Within two years after consummation of the conversion, the Converted Bank must divest of those projects which do not qualify for self-certification or are not approved by the Community Development Division of the OCC.

G. Insurance Subsidiaries

The Bank owns ten subsidiaries which engage in the sales of insurance. While the subsidiaries sell as agent general types of insurance that national banks are authorized to sell under 12 U.S.C. § 92, those insurance agency subsidiaries may be selling insurance from places with a population of 5,000 or more, an activity which is not authorized by section 92.

The OCC may permit a state bank converting to a national bank charter to retain assets that would otherwise be nonconforming for national banks, including investments in nonconforming subsidiaries under 12 U.S.C. § 35.² In addition, the OCC will also permit converting banks a reasonable period of time after conversion, not to exceed two years, to divest of or conform any nonconforming assets where those assets are not being retained under 12 U.S.C. § 35. *See* OCC Bank Organization and Structure Memorandum 94-7. The

² The last paragraph of section 35 of title 12 authorizes the Comptroller, in his discretion and subject to such conditions as he may impose, to permit converting national banks to retain assets that would otherwise be nonconforming for national banks. The OCC has authorized retention of nonconforming subsidiaries under this paragraph, including subsidiaries engaged in insurance agency activities outside the place of 5,000 locations authorized under section 92 and real estate brokerage. *See* OCC Corporate Decision 95-55 (November 15, 1995) and Memorandum to Steven R. Steinbrink, Senior Deputy Comptroller (November 13, 1995) (publicly released under OCC's discretionary release authority). *See also* Interpretive Letter No. 757 (April 1, 1996); 12 C.F.R. § 5.24(d)(2)(iii).

OCC permits a reasonable divestiture period in these instances so that converting banks may be able to resolve nonconforming subsidiaries without hardship. Here, the Bank has requested a two year period to (1) divest of the insurance subsidiaries or (2) conduct the activities of those subsidiaries in conformance with applicable national banking law. In view of the number of subsidiaries involved, the nature of the subsidiaries' business, and the possibility that the activities of those subsidiaries can be brought into conformance with applicable standards relative to insurance sales, a two year divestiture period is reasonable. Accordingly, within two years of the conversion the Converted Bank must divest of the insurance agency subsidiaries or conform their insurance sales activities with applicable national banking law with respect to such activity.

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, when evaluating certain applications including conversions. See 12 U.S.C. § 2902(3)(A); 12 C.F.R. § 25.29(a)(4). In its last CRA performance evaluation, the Bank received a "satisfactory" rating from the Federal Deposit Insurance Corporation ("FDIC"). The OCC is aware of no other information that would cause the OCC to question the Converted Bank's ability to perform satisfactorily in complying with the CRA.

IV. CONCLUSION AND APPROVAL

The conversion of the Bank to a national bank and the retention of its branches are authorized under 12 U.S.C. §§ 35 & 36(b)(1). The Converted Bank may exercise fiduciary powers that state banks, trust companies and other corporations are permitted to exercise under the laws of Washington pursuant to 12 U.S.C. § 92a. The OCC waives the state residency requirement for the directors that do not live within the state of Washington, pursuant to its authority under 12 U.S.C. § 72. The Converted Bank may continue to hold and operate its bank premises subsidiaries pursuant to 12 C.F.R. § 7.1000 and its leasing and agent for service of process operating subsidiaries pursuant to 12 C.F.R. § 5.34. The Converted Bank may retain its investments in those LIHTC projects which are approved or self-certified pursuant to 12 C.F.R. § 24. Within two years after consummation of the conversion, the Converted Bank must divest of those projects which are not approved or self-certified pursuant to 12 C.F.R. § 24. Finally, within two years of the conversion the Converted Bank must divest of the insurance agency subsidiaries or conform their insurance sales activities with applicable national banking law with respect to such activity.

_____/s/_____
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Date

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