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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

**Conditional Approval #383**  
**April 2000**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY  
ON THE APPLICATION TO CHARTER  
HUTTON NATIONAL BANK, SANTA ANA, CALIFORNIA  
APRIL 13, 2000**

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**I. DESCRIPTION OF THE PROPOSAL**

On June 3, 1999, a group of organizers (“Organizers”), filed an application with the Office of the Comptroller of the Currency (“OCC”) to charter a new national bank.<sup>1</sup> The proposed bank will be headquartered in Santa Ana, California, and will be titled Hutton National Bank (“Bank”). The Bank has applied to the Federal Deposit Insurance Corporation (“FDIC”) for deposit insurance and will apply to become a member of the Federal Reserve System. No public comments were received with respect to the application.

This application is sponsored by Amplicon, Inc. (“Amplicon”), Santa Ana, California, an existing, publicly-traded company that engages exclusively in capital asset lease financing to small- and medium-sized businesses across the United States. Amplicon, which was founded in 1977, had total assets and equity of approximately \$444 million and \$159 million, respectively, as of December 31, 1999. It will own 100 percent of the Bank and will apply to the Federal Reserve System to become a bank holding company. Amplicon and the Bank will share adjacent office space and will share some employees’ time and salaries.<sup>2</sup>

The Bank will not have any traditional banking offices accessible to the public but will deliver products and services to its customers through a variety of electronic delivery channels.<sup>3</sup> Deposit customers will conduct banking transactions through network automated

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<sup>1</sup>The Organizers are Colin Forkner, Leslie Jewett, Robert Kelley, Harris Ravine, and Danilo Cacciamatta.

<sup>2</sup>The OCC requires that the Bank comply with the requirements of 12 C.F.R. § 7.3001 (sharing space and employees) and 12 U.S.C. §§ 371c & 371c-1.

<sup>3</sup>You can view or download previous OCC electronic banking decisions and legal opinions, supervisory guidance, and other related matters from the new Internet banking section of the OCC’s Web site at <http://www.occ.treas.gov>.

teller machines (“ATMs”), through the Internet via a transactional Web site, and through the Bank’s telephone customer service line. The Bank does not plan to establish its own ATMs at this time.

The business strategy for the Bank is to purchase equipment leases from companies that originate such leases to small- and medium-sized businesses, including but not limited to Amplicon, and to fund the purchases through FDIC-insured bank deposits. With respect to each purchased lease, the leasing companies will retain ownership of the underlying asset with the Bank taking a first lien position. As currently proposed, the Bank will not own any of the underlying assets and, therefore, will not assume any equipment or residual risk.<sup>4</sup> The Bank plans to target leases with transaction sizes of between \$50,000 and \$250,000. It will perform a full and independent credit analysis of each transaction.

The Bank’s deposit-related products and services will include noninterest bearing demand deposits, interest checking, money market accounts, certificates of deposit, and electronic bill payment. The Bank will allow customers to apply for deposit accounts online with follow-up documents sent through the mail.<sup>5</sup> The Bank will design the deposit account types primarily for individuals, but it will accept deposits from business customers.

The Bank will have two different marketing strategies, one geared primarily toward asset generation and the other toward deposit generation. For asset portfolio generation, the Bank plans to conduct joint marketing with its affiliate, Amplicon, through its proprietary Web sites, existing direct mail marketing efforts, and hypertext links from the Web sites of various vendors, associations, and organizations. For deposit portfolio generation, the Bank plans to offer a combination of no- or low-fee accounts and premium pricing that will appear prominently in both online and “offline” national deposit rate comparison charts. The Bank believes that its deposit products will appeal to individuals who are retired or approaching retirement. Its deposit account advertising strategy to this target market will be

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<sup>4</sup>Pursuant to condition number three of this preliminary conditional approval, during the Bank’s first three years of operations, the Bank must obtain prior approval from the OCC before implementing any significant deviations or changes from its original operating plan. The Bank must seek such approval sixty (60) days prior to any significant deviation or change. For this purpose, a significant deviation or change includes the assumption of residual risk, the investment in asset types that were not envisioned in the original operating plan and funds management policy, and the solicitation of deposits in excess of funding needed for the Bank’s operations as described in its original operating plan.

<sup>5</sup>Customers will return through the mail physical documents that may be necessary for legal or operational reasons. This may include signature cards and associated deposit account agreements. The OCC expects national banks to exercise appropriate caution and due diligence when opening accounts using the Internet, mail, and other non-traditional means. Internal systems and controls should address the risks associated with such accounts and include appropriate procedures to verify customer information as part of the account opening process and to monitor for fraud after an account has been opened. Pursuant to special preopening requirement number two, we will ensure that the Bank has developed and implemented satisfactory internal systems and controls in this area prior to its opening.

comprised of direct marketing overlaid with print advertising. The Bank will initially target much of this advertising to individuals in Southern California. Its planned deposit strategy is to provide funding levels in line with its planned asset portfolio development.

The Bank's main office will be situated in an office suite in Santa Ana, California. It will service all customers through electronic delivery channels. Telephone and Internet banking services will be available 7 days a week, 24 hours a day. Bank personnel will consist of a Chairman, President and Chief Executive Officer, Chief Credit Officer, Chief Financial Officer and Director of Operations, MIS Officer, Marketing Officer, and administrative support.

The Bank will perform some key operational functions internally while contracting with third-party service providers for the provision of other functions. Bank staff will perform business and strategic planning, marketing, investment and funds management, credit analysis of purchased leases, peak-hour telephone call center operations, and regulatory compliance. The Bank will likely outsource to a third-party service provider for Web site hosting, core data processing, item processing, bill payment services, off-hour telephone call center operations, and ATM network services.

As discussed further below, the Bank has requested to be evaluated as a wholesale bank for Community Reinvestment Act ("CRA") purposes. As a wholesale bank, its CRA performance will be evaluated under the community development test.<sup>6</sup> The Bank will delineate the Los Angeles County - Orange County consolidated metropolitan statistical area, the area around its main office, as its assessment area.

## **II. LICENSING FACTORS**

### **A. Policy Considerations**

Under its Corporate Activities regulations (12 C.F.R. § 5.20), the OCC considers whether the proposed bank: (A) has organizers who are aware of, and understand, national banking laws and regulations; (B) has competent management, including the board of directors, with ability and experience relevant to the types of services to be provided; (C) has capitalization that is sufficient to support the projected volume and type of business; (D) can reasonably be expected to achieve and maintain profitability; and (E) will be operated in a safe and sound manner.

In evaluating this charter proposal, the OCC performed a thorough assessment of the Organizers and the proposed operating plan. This included a field investigation comprised of interviews with the Organizers and proposed officers and directors; investigation and review of affiliated Amplicon's business record; review of proposed operations; and

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<sup>6</sup>See 12 C.F.R. § 25.25.

evaluation of its proposed information system architecture and approach to security and controls. We also conducted a detailed financial and business plan analysis using regulatory and industry data and research.

### *Organizers and Management*

The OCC concluded that the organizers and proposed management and directorate have knowledge of, and understand, national banking laws and regulations and safe and sound operations. Each of the five organizers will serve on the board of directors. Three of the five organizing directors are not employees of Amplicon or the Bank, although one of the outside directors is currently a director of Amplicon. Their backgrounds include banking, finance, accounting/auditing, technology, and banking supervision and regulation. Each director understands the role and responsibilities of a national bank director.

The Organizers are assembling a competent management team with satisfactory experience to run the proposed operations in a safe and sound manner. The proposed President and Chief Executive Officer is Colin Forkner, who has 34 years of banking experience, 20 of which were in executive level positions. His recent employers include Northern Trust Company of California, N.A., Los Angeles, California, and The Bank of California, N.A., San Francisco, California, and his knowledge, skills, and experiences include marketing, investments, lending, problem asset workout, bank merger assimilation, and administration. He possesses the necessary attributes to implement the operating plan. Satisfactory candidates have been located for the Cashier and MIS Officer positions. Previous *de novo* electronic national bank charters named one Chief Technology Officer, an individual who has strong technical and leadership skills in the computer and Internet areas to create a vision for future technology needs. In this case, the Organizers will divide the roles and responsibilities for a bank Chief Technology Officer between the CFO/Director of Operations and MIS Officer. The Bank is in the process of finalizing selections for the CFO/Director of Operations and the Chief Credit Officer. As a preopening requirement, the OCC must review and have no objection to these individuals. We will evaluate the candidates relative to the specialty nature of this proposed Bank.

### *Capital Considerations*

Proposed capital is sufficient to support the projected volume and type of business. Amplicon, the proposed bank holding company, plans to provide initial capital to the Bank of at least \$20 million in cash. Based upon the Bank's growth and earnings projections, the initial capitalization should ensure that the Tier 1 leverage ratio exceeds 8 percent throughout the first three years of operations. The projections also evidence risk-based capital ratios that are well in excess of the minimum regulatory requirements.<sup>7</sup> As outlined

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<sup>7</sup>See 12 C.F.R. Part 3.

below, we have imposed a condition requiring Amplicon to execute an agreement with the Bank setting forth Amplicon's obligations to provide necessary capital and liquidity support to the Bank. This agreement must provide that, if required by the OCC, Amplicon will provide collateral to support those obligations.

Amplicon, the parent company, should have the requisite financial capacity, including access to public and private capital sources, to provide capital support to the Bank if necessary. Amplicon has been a public company since 1977 and trades on the Nasdaq National Market System under the ticker symbol "AMPI." Shareholder equity approximates \$159 million, and liquid assets exceed \$69 million. Net income for the fiscal year ending June 30, 1999 totaled \$19.7 million, a 2.6 percent increase over the prior year. The company reported interim net income of \$9.6 million for the six-month period ending December 31, 1999. With the exception of its first year of operations, Amplicon has posted net profits every year since its formation in 1977.

### *Earnings Considerations*

The Bank can reasonably be expected to achieve and maintain profitability. The financial projections show the Bank becoming profitable within three years using realistic growth, income, and expense assumptions. It is reasonable to expect that the proposed Bank can achieve and maintain profitability in line with these projections. The Organizers supported the profit prospects of this proposal through a comprehensive operating plan submitted as part of the national bank charter application. The operating plan included, among other things, an analysis of existing and potential competition, an in-depth marketing plan, a yield and cost analysis of the proposed assets and liabilities, and an overhead expense breakdown. The Bank will focus on a niche market for asset generation, the small- and medium-sized business market. In this regard, it plans to purchase quality equipment leases, but not the underlying assets, from affiliated and non-affiliated lease financing companies, thus earning income from the payments stream. On the funding side, the Bank will be subject to the market conditions for Internet-only banks, which tend to price their deposits higher than traditional "brick and mortar" banks. Nonetheless, the financial projections evidence a sufficiently positive net interest spread. Over time, overhead costs should also fall below those of traditional "brick and mortar" bank competitors. An often cited study concluded that telephone call centers, ATMs, and the Internet are significantly lower cost delivery channels than branches.<sup>8</sup> Furthermore, the Bank should realize some cost economies due to its ability to share space and certain employees with Amplicon.

There are reasonable prospects that the Bank will attract its proposed customer base. On the asset side, Amplicon generated between \$200 and \$300 million in new leases in each of the last three years. Overall, the equipment leasing market in the United States has grown

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<sup>8</sup>See "Consumer Demand for Internet Banking," Booz Allen & Hamilton, July 1996, III-5F.

by \$101.7 billion since 1990 from \$124.3 billion to \$226.0 billion, or an average annual growth rate of 9.09 percent.<sup>9</sup> On the deposit side, individuals are already displaying a strong desire for Internet banking services. Several recent studies estimate that online banking households in the United States currently total between 6 million and 8 million and project they could grow to 20 million or more in the next few years.<sup>10</sup>

### *Safety and Soundness Considerations*

The OCC is satisfied that the Bank will be operated in a safe and sound manner. Based upon preliminary review, the Organizers have established a good foundation of personnel, policies, and controls that will be adopted by the Bank. The OCC will confirm this during the preopening examination that will be broad in scope and conducted by an interdisciplinary team. This examination will include an evaluation of the Bank's final plans to identify, monitor, and control all relevant risks, notably transaction risk stemming from the Bank's use of technology and other operational factors, credit risk, interest rate risk, liquidity risk, strategic risk, reputation risk, and compliance risk.

As part of the operating plan, the proposed Bank has developed a description of its information systems architecture. This includes a discussion of the technologies used and key elements for the security policies, internal controls, and audit procedures. Based upon our review of the plans, the OCC is satisfied with the plans to date, but will undertake further review during the organizational phase of the Bank. Prior to receiving final charter approval, we are requiring the Bank to submit the final information systems and operations architecture and the information systems risk assessment and management plan for our review and approval. The Bank must also successfully undergo a comprehensive security review by an objective and qualified source. This review should demonstrate that the information system has adequate physical and logical protection against unauthorized internal and external access. The Bank should adhere to current and future OCC issuances on technology risk management.<sup>11</sup>

The proposed Bank intends to minimize potential fraud losses by applying robust account opening and fraud management techniques. The Organizers understand the need for strong risk management in this area, and will develop the specific internal systems and controls during the organizational phase of the Bank. The systems and controls will likely include a

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<sup>9</sup>Source: U.S. Department of Commerce, Economics and Statistics Administration, Bureau of Economic Analysis, and Equipment Leasing Association of America.

<sup>10</sup>Compilation of studies by Gartner Group, Forrester Research, Inc., Piper Jaffray, and Data Quest.

<sup>11</sup>See "Internet Banking," Comptroller's Handbook (October 1999) and "Technology Risk Management: PC Banking," OCC Bulletin 98-38 (August 24, 1998). Additionally, the OCC plans to release a Bulletin on intrusion risks and intrusion response policies and procedures in the near future.

combination of automated and manual procedures to verify a customer's true identity and account worthiness when a new customer relationship is established. The Bank will also develop and implement comprehensive Bank Secrecy Act and anti-money laundering policies and procedures. Pursuant to one of the special preopening requirements outlined below, we will ensure that the Bank has developed and implemented satisfactory policies, procedures, systems and controls in this area prior to its opening.

As discussed above, the Bank has submitted draft plans to perform some key operational functions internally while contracting with third-party service providers for the provision of other functions. Prior to receiving final charter approval, we are requiring the Bank to finalize such plans and establish acceptable policies and procedures for vendor management, including with respect to operational oversight and quality assurance.

Based upon our review of the Bank's equipment lease purchase plans to date, we are satisfied that the Organizers will put into place the necessary and appropriate personnel, policies, procedures, underwriting standards, management information systems, and controls. One key area for the Bank will be determining the pricing of the transactions purchased from Amplicon and third parties. In this regard, the Bank plans to develop and implement a transactional pricing model to analyze pricing adequacy. Prior to granting final charter approval, we are requiring that the Bank submit for review and approval a comprehensive description of its method to determine the price to be paid for lease rental payment streams from both affiliated and non-affiliated parties. This should include a discussion of the control mechanism that the Bank will use to ensure that the price paid to its affiliate, Amplicon, is a fair value given the lessee's credit quality, transaction structure, competitive state of the leasing market, and other factors. Furthermore, the Bank must implement an independent credit review function that is appropriate for the size and scope of the leasing activities.

The OCC recognizes that the market segment comprised of "Internet-only" financial institutions largely remains in its infancy. Accordingly, the market competitors, individually and as a group, have not yet achieved consistent and sustained growth and profitability. Furthermore, the marketing, delivery, and pricing of Internet banking products and services continues to evolve. To help manage and control the interest rate, funding, and overall strategic risks of this marketplace, pursuant to a special preopening requirement outlined below, the Bank must develop a comprehensive business contingency plan and integrate it into the operating and strategic plans and capital and funds management policies. The objective of the business contingency plan is to help ensure that the Bank can prudently, efficiently, and effectively manage potential scenarios where the lease or deposit mixes, interest rates, operating expenses, marketing costs, and/or growth rates differ significantly from the original plans. This includes access to additional capital in the future if situations dictate and contingency funding plans that address strategies for managing potential liquidity fluctuations. The Bank should update the business contingency plan periodically, including as the Bank becomes more complex and as industry conditions change.

The Bank will draft and adopt a comprehensive privacy policy.<sup>12</sup> The Organizers represent that the Bank's policy and related procedures will address the collection and use of personal information, maintenance of accurate information, information security, limited employee access to personal information, third-party disclosure restrictions, and other matters. The Bank will maintain internal controls, including technological firewalls, to preclude unauthorized access to or disclosure of customer information. In addition, management will be integrally involved in privacy policy development, and the Bank will develop and implement procedures, including audits, to ensure that employees and third parties understand and adhere to its stated policy.

At the preopening examination, the OCC will review the Bank's policies, procedures, and controls for ensuring compliance with consumer protection laws and regulations. This review will include confirmation that adequate policies have been adopted in these areas. The OCC also expects that the Bank's policies and procedures will comply with current and future guidance and regulations issued by the OCC or the FFIEC with respect to customer privacy, consumer protection, and electronic banking.<sup>13</sup>

Finally, the Organizers represent that the Bank will not indicate in any of its marketing efforts or materials that the OCC has approved or endorsed the security, functionality, or effectiveness of the Bank's products or services.

The OCC believes that the Bank has a reasonable chance for success and can be adequately supervised using established safety and soundness and bank information system examination

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<sup>12</sup>The OCC has issued guidance for national banks on examples of effective practices for informing customers over the Internet about bank policies for the collection and use of personal information. The guidance discusses examples of effective practices for the development of bank privacy policies and measures for ensuring adherence to those policies. See "Guidance to National Banks on Web Site Privacy Statements," OCC Advisory Letter 99-6, May 4, 1999. On February 22, 2000, a notice of proposed rulemaking titled, "Privacy of Consumer Financial Information," was published as Part II of the Federal Register at 65 FR 8770. The OCC is requesting comment on the proposed privacy rule, published jointly with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision, that implements the requirements imposed by the recently enacted Gramm-Leach-Bliley Act. Under that Act, a financial institution must provide its customers with a notice of its privacy policies and practices at the time of establishing a customer relationship. A financial institution also must provide a consumer, prior to disclosing nonpublic personal information about that consumer to certain nonaffiliated third parties, with a notice of its privacy policies and practices and a notice of the consumer's right to opt out of the information sharing. The proposed rule invites comments on all aspects of the proposed implementation of the statutory requirements. See also OCC Bulletin 2000-6 (Privacy of Financial Information), March 2, 2000.

<sup>13</sup>See OCC Bulletin 98-31 (FFIEC Guidance on Electronic Financial Services and Consumer Compliance), OCC Bulletin 98-38 (Technology Risk Management: PC Banking), and OCC Advisory Letter 99-3 (Fair Credit Reporting Act). See also OCC Bulletin 2000-6 (Privacy of Financial Information) that discusses a proposed privacy rulemaking by the OCC.



procedures.<sup>14</sup> Before the Bank receives its final charter approval, the OCC will conduct a thorough preopening examination of the Bank, including its information systems environment, policies, procedures, controls, and compliance with all standard and special preopening requirements and conditions.<sup>15</sup>

## **B. Legal Considerations**

### **1. Chartering authority**

The OCC charters a national bank under the authority of the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*, and 12 C.F.R. § 5.20. The OCC has conducted a thorough review of this application in light of the factors set forth in these statutory and regulatory provisions and has determined that there is no impediment under applicable laws and regulations to granting preliminary charter approval.<sup>16</sup>

### **2. Authority over vendors**

As discussed, the Bank has indicated in its application that certain functions of its internal operations will be contracted out to various vendors. The process of subcontracting activities that the Bank would otherwise perform for itself implicates the requirements of the Bank Service Company Act, 12 U.S.C. § 1861 *et seq* (“BSCA”).<sup>17</sup> In particular, 12 U.S.C. § 1867(c) states, in part, that

[n]otwithstanding subsection (a) of this section, whenever a bank that is regularly examined by an appropriate Federal banking agency, or any subsidiary or affiliate of

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<sup>14</sup>See “Internet Banking,” Comptroller’s Handbook (October 1999).

<sup>15</sup>The Bank’s operating plan, including any future enhancements, additions, or changes, will provide the context for the supervisory review during the preopening examination. Major deviations from the operating plan, including increases in the riskiness of the operations, or changes in the composition of the board of directors, ownership, or executive officers may result in an amendment to or withdrawal of preliminary conditional approval.

<sup>16</sup>With regard to chartering a national bank, the National Bank Act requires that: articles of association and an organization certificate must be drafted and filed with the OCC, 12 U.S.C. §§ 21-23; the required amount of capital must be paid in, 12 U.S.C. § 53; certain requirements relating to directors must be satisfied, 12 U.S.C. §§ 71-73; and the OCC must be notified when these things have been accomplished, 12 U.S.C. § 26. As is typical with new charter proposals, these requirements will be satisfied after the OCC grants preliminary approval. We note that the Bank also must obtain deposit insurance from the FDIC and the establishment of Amplicon as a bank holding company must be approved by the Federal Reserve System under the Bank Holding Company Act. The Bank has filed an application for deposit insurance with the FDIC, and represents that it will soon file its bank holding company application with the Federal Reserve Bank of San Francisco.

<sup>17</sup>The BSCA requires that the Bank notify the OCC of the existence of the service relationship within thirty days after the making of such service contract or the performance of the service, whichever occurs first. 12 U.S.C. § 1867(c)(2).

such a bank that is subject to examination by that agency, causes to be performed for itself, by contract or otherwise, any services authorized under this chapter, whether on or off its premises - (1) such performance shall be subject to regulation and examination by such agency to the same extent as if such services were being performed by the bank itself on its own premises . . . .

Pursuant to this statute, services performed for the Bank by contract or otherwise, will be subject to the examination and regulation of the OCC. The Bank has represented that it will notify potential vendors, in writing, of the OCC's examination and regulatory jurisdiction should they contract with the Bank. This understanding regarding OCC jurisdiction will be included in all vendor contracts. Accordingly, subcontracting functions to a vendor will not frustrate the OCC's ability to regulate all aspects of the Bank that could affect its safe and sound operations.<sup>18</sup>

### **3. Twelve U.S.C. §§ 371c and 371c-1**

The Bank will purchase certain capital asset leases from its parent bank holding company, Amplicon. Such lease purchases are subject to the restrictions of 12 U.S.C. § 371c unless an exemption is applicable. The Bank intends to rely on the exemption set forth at 12 C.F.R. § 250.250 and has committed to conform the lease purchases to the requirements of that interpretive provision, including as to the need for the Bank to conduct a prior credit evaluation of a proposed lessee and to make a prior commitment to purchase a lease. The Bank has also committed that the lease purchases will be consistent with the terms of a letter issued by the General Counsel of the Federal Reserve Board dealing with the application of 12 C.F.R. § 250.250 to lease purchases.<sup>19</sup> In particular, the purpose of 12 C.F.R. § 250.250 is to provide a bank with the opportunity to take advantage of an individual investment opportunity that is referred from an affiliate rather than to permit affiliates to use the bank to satisfy the affiliates' working capital needs. In this regard, the Bank projects that at the end of its first year of operations it will have outstanding lease assets representing about 20 percent of Amplicon's historical annual originations. The Bank represents that its

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<sup>18</sup>Elements of the services to be provided to the Bank may be performed by third-party vendors through the parent bank holding company, Amplicon ("BHC"). These services will constitute activities pursuant to the BSCA. To the extent that third-party vendors perform these services for the Bank through the BHC, the third-party vendors will be subject to federal banking regulation and examination to the same extent as if such services were being performed by the Bank itself. Similarly, to the extent that the BHC itself performs services for the Bank, those services will be subject to the BSCA.

<sup>19</sup> See G.C. Ltr. (April 24, 1995) (1 F.R.R.S. ¶ 3-1167.5 (1995)). This letter also discusses the safety and soundness of lease purchases. The OCC is satisfied that the volume of transactions proposed by the Bank is consistent with safety and soundness standards and with the Bank's capitalization. We note that the legal lending limit, 12 U.S.C. § 84, will apply to the Bank's lease exposure to the individual lessees.

operating plan does not contemplate purchasing more than a modest proportion of Amplicon's leasing originations.<sup>20</sup>

The comparative transaction standard set forth in 12 U.S.C. § 371c-1 is applicable to the lease purchases of the Bank from its parent, and the Bank has committed that such purchases, and other contractual arrangements with affiliates, including the leasing of premises to the Bank and the sharing of human resources, will conform with such standard. As discussed above, prior to granting final charter approval, we will review the Bank's method for determining the price paid for lease rental payment streams including to ensure that the price paid to its affiliate, Amplicon, is a fair value given the lessee's credit quality, transaction structure, competitive state of the leasing market, and other factors.

### **C. Community Reinvestment Act Considerations**

Under the Community Reinvestment Act ("CRA") and its implementing regulations, the OCC must take into account a proposed insured national bank's description of how it will meet its CRA objectives.<sup>21</sup> Twelve C.F.R. § 5.20(h)(5)(ii) requires an organizing group to submit a statement that demonstrates its plans to achieve CRA objectives. The Bank has provided an operating plan that includes such a description.

The Bank has requested designation as a wholesale bank for CRA purposes. A wholesale bank is a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale bank is in effect. 12 C.F.R. § 25.12(w). Because the Bank will engage only in deposit taking and the purchase of leases of capital assets, it meets this definition. Therefore, the OCC has granted its request for designation as a wholesale bank. As a wholesale bank, the Bank's CRA performance will be evaluated under the community development test set forth at 12 C.F.R. § 25.25.

The Bank plans to help meet the credit needs of its community by making qualified investments and credit participations in community lending pools involving other financial institutions within its assessment area, consistent with safe and sound banking practices. The Bank has also asked that, to the extent that its small commercial financing leases serve a community development purpose, they be considered as other community development loan data in its CRA evaluations. "Community development" is defined to include those "[a]ctivities that promote economic development by financing businesses and farms that

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<sup>20</sup>As noted above, Amplicon will maintain ownership of the leased asset at least in initial transactions. The Bank will take a first lien position and will not assume any residual risk in such transactions. Counsel for the Bank has represented that the Bank will have no recourse to Amplicon by virtue of the parent's retention of the residual risk. The Bank's recourse is to the individual lessees only.

<sup>21</sup> See 12 U.S.C. §§ 2902(3) and 2903(a)(2) and 12 C.F.R. § 25.29(b).

meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 C.F.R. § 121.301) or have gross annual revenues of \$1 million or less."<sup>22</sup> To be considered as promoting economic development, an activity must meet these business size requirements and support permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or by supporting permanent job creation, retention, and/or improvement in low- or moderate-income areas or in areas targeted for redevelopment by Federal, state, local, or tribal governments.<sup>23</sup>

Commercial leases made or purchased by a bank are not collected or reported as small business loans for purposes of CRA.<sup>24</sup> However, they may be considered as "other loan data" under the lending test.<sup>25</sup> Similar to the lending test, in addition to community development loans, the community development test also allows consideration of "other community development loan data" provided by the bank.<sup>26</sup> Therefore, to the extent that the commercial leases purchased by the Bank have a community development purpose, they may be considered as other community development loan data by examiners. The bank must provide examiners with information about any commercial leases that it wishes them to consider, including information showing how those leases promote economic development.

As set forth in 12 C.F.R. § 25.41(b), a wholesale bank must delineate assessment areas that consist generally of one or more metropolitan statistical areas or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs. The Bank's main office will be located in Santa Ana, California, and it will have no branches or deposit-taking ATMs. As such, the Bank's plan to designate the Los Angeles County - Orange County consolidated metropolitan statistical area as its assessment area is appropriate.

Based upon the foregoing, the OCC believes that the Bank's plan for meeting its CRA objectives is consistent with preliminary approval of this charter application.

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<sup>22</sup> 12 C.F.R. § 25.12(h)(3).

<sup>23</sup> "Interagency Questions and Answers Regarding Community Reinvestment" (Qs and As), 62 Fed. Reg. 23,618, 23,628 (May 3, 1999) (Q & A 1 addressing §§ \_\_.12(h)(3) & 563e.12(g)(3)).

<sup>24</sup> The leases without underlying assets that the Bank will purchase will be reported as "all other loans" on the Bank's consolidated Report of Condition and Income. These assets are not included in the CRA regulation's definition of a "small business loan."

<sup>25</sup> Qs and As, 62 Fed. Reg. at 23,647 (Q & A 3 addressing § \_\_.42(c)(2)).

<sup>26</sup> 12 C.F.R. § 25.25(c)(1).

### **III. PREOPENING REQUIREMENTS AND SUPERVISORY CONDITIONS**

In all cases, following review of a new bank charter application, the OCC decides whether to grant preliminary approval, preliminary conditional approval, or disapproval to the request. Preliminary approval indicates permission to proceed with the organization of the bank according to the plan set forth in the application. The organizational steps of a new national bank generally include hiring management and staff, establishing premises, purchasing computers and other equipment, selecting vendors, developing and implementing policies, procedures, and controls, and raising capital. Preliminary approval is not an assurance, however, that the OCC will grant a new national bank charter. Once the OCC grants preliminary approval to a charter proposal, the organizing group must satisfy certain procedural requirements and, in some cases, special requirements before the OCC will grant final charter approval. In addition, the OCC sometimes imposes conditions that will remain in place after the bank opens.

In response to this proposal, the OCC grants preliminary conditional approval subject to several preopening requirements and on-going conditions. These supplement the procedural requirements for a new national bank referenced in the transmittal letter to the Bank's spokesperson. The preopening requirements provide a framework for steps that the proposed Bank must successfully complete before the OCC can render a decision on final charter approval. The on-going conditions establish certain checks and safeguards to ensure that the Bank, once open, will maintain adequate capital and liquidity and operate in an overall safe and sound manner. The OCC will monitor the Bank's future actions and performance through the normal supervisory process.

In addition to the procedural requirements for all new national banks, the following requirements must be satisfied before the OCC will grant final charter approval:

1. The Bank's initial Tier 1 capital, net of any and all organizational and preopening expenses, must be no less than \$20.0 million.
2. The Bank must submit to the OCC for review and approval a complete description of the Bank's final information systems and operations architecture as well as the information systems risk assessment and management plan. This should include a schematic drawing and discussion of the following items: vendors and vendor contracts; Internet banking security policies; operating processes, including, but not limited to, vendor management, customer authentication, security mechanisms, and business resumption plans; personnel; internal controls; and internal audit plans.
3. The Bank must have performed an independent security review and test of its Internet bank platform. The Bank must have this review performed regardless of whether the platform is operated in-house or by one or more third-party service providers. This review must be conducted by an objective, qualified internal or

external source (“Reviewer”). The scope must cover the adequacy of physical and logical protection against unauthorized external access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access. In addition, the review must assess the adequacy of internal security. By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. The report must critique the effectiveness of security policies and controls and confirm, with reasonable certainty, that unauthorized internal or external data and network access or access attempts are detected and recorded. As part of its decision to grant final charter approval, the OCC will consider the results of the report as well as any subsequent actions by the Bank or service provider to implement any recommendations or to remedy any noted security or control deficiencies.

4. The Bank must submit to the OCC for review and approval a comprehensive description of its method to determine the price paid for lease rental payment streams from both affiliated and non-affiliated parties. This should include a discussion of the control mechanism that the Bank will use to ensure that the price paid to its affiliate, Amplicon, is a fair value given the lessee’s credit quality, transaction structure, competitive state of the leasing market, and other factors.
5. The Bank must develop a business contingency plan and integrate it into the operating and strategic plans and funds management policy. The Bank must submit the business contingency plan to the OCC for review and approval. The objective of the business contingency plan is to help ensure that the Bank can prudently, efficiently, and effectively manage potential scenarios where the lease or deposit mixes, interest rates, operating expenses, marketing costs, and/or growth rates differ significantly from the operating plan. This includes access to additional capital in the future if situations dictate and a contingency funding plan that address strategies for managing potential liquidity fluctuations. The Bank should update the business contingency plan periodically, including as the Bank becomes more complex and as industry conditions change.
6. As proposed, the Bank must name individuals to serve as the Chief Financial Officer/Director of Operations and the Chief Credit Officer. The OCC must review and have no objection to these individuals, who will be deemed Senior Executive Officers for purposes of 12 C.F.R. Part 5. We will evaluate the candidates relative to the specialty nature of the charter. In particular, the Chief Credit Officer must have the necessary knowledge and technical skills to effectively manage and perform the duties related to business equipment lease financing and overall portfolio management.
7. The Bank must implement an independent credit review function that is appropriate for the size and scope of the leasing activities.

8. The Bank must develop and implement a bank-wide disaster recovery contingency plan pursuant to OCC and FFIEC interagency guidelines.
9. The Bank must implement an independent internal audit function that is appropriate for its size and for the scope of its activities. The internal audit function should be supervised and staffed by individuals with sufficient technology and business equipment leasing expertise to identify the risks inherent in the Bank's operations and to assess the effectiveness of internal controls.

Final approval will be subject to the following conditions:

1. The Bank and Amplicon must enter into a binding written agreement setting forth Amplicon's obligations to provide capital maintenance and liquidity support to the Bank, if and when necessary. The terms and provisions of this capital and liquidity maintenance agreement must be acceptable to the Bank and the OCC, and shall include a provision for collateral to support those obligations, if required by the OCC.
2. The Bank must notify all potential vendors in writing of the OCC's examination and regulatory authority under 12 U.S.C. § 1867(c). All final vendor contracts must stipulate that the performance of services provided by the vendors to the Bank is subject to the OCC's examination and regulatory authority.
3. During the first three years of operations, the Bank must obtain prior approval from the District Deputy Comptroller for the Western District before implementing any significant deviations or changes from the original operating plan. The Bank must seek such approval sixty (60) days prior to any proposed significant deviation or change. The Bank must also provide a copy of such notice to the relevant FDIC regional office.

The above-listed conditions of this approval shall be deemed to be "condition[s] imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 U.S.C. § 1818(b)(1).

## **V. CONCLUSION**

The charter proposal satisfies the applicable statutory requirements of the National Bank Act and the policy standards of the OCC, as set forth in 12 C.F.R. § 5.20. For the reasons set forth above, including the representations and commitments made by the Organizers, it is my conclusion that this proposed national bank has a reasonable likelihood of success.

Accordingly, the application is preliminarily approved, subject to the requirements and conditions outlined in this Decision and the transmittal letter.

If you have questions regarding this decision, please contact John W. Graetz, Licensing Expert/Financial Analyst, in Bank Organization and Structure at (202) 874-5060.

**-signed-**

Julie L. Williams  
First Senior Deputy Comptroller and  
Chief Counsel

**04-13-00**

Date

Application Control Number: 1999-WE-01-0006