



Comptroller of the Currency
Administrator of National Banks

Washington DC 20219

Conditional Approval #554
November 2002

October 21, 2002

Scott A. Coleman, Esq.
Lindquist & Vennum, P.L.L.P.
4200 IDS Center 80 South Eighth Street
Minneapolis, Minnesota 55402

Re: Application to charter Merchants Bank, NA, La Crescent, MN (“new”).
Application by the new bank to purchase certain assets and assume certain liabilities of
Merchants Bank, NA, La Crescent, MN (“existing”).
Application Control Numbers: 2002-MW-01-0009 and 2002-MW-02-0021

Dear Mr. Coleman:

The Office of the Comptroller of the Currency (OCC) has reviewed Merchants Financial Group’s application to establish a new national bank with the title of Merchants Bank, National Association, La Crescent, Minnesota (MN) (“new”) and has reviewed the application for this bank, immediately upon opening, to purchase certain assets and assume certain liabilities of Merchants Bank, NA (existing). After a thorough evaluation of all data available to the OCC, we found that your proposal met the requirements for preliminary conditional approval of Merchants Bank, NA (new). Also, the OCC conditionally approved the application for the new bank to purchase certain assets and assume certain liabilities of the existing bank immediately upon opening.

These approvals are granted based on representations and commitments made in the applications and by the proposed bank’s representatives. We also made our decision to grant preliminary conditional approval with the understanding that the new bank will apply for membership in the Federal Reserve System and will obtain insurance from the Federal Deposit Insurance Corporation (FDIC).

The preliminary approval to establish the new bank and the approval to purchase assets and assume liabilities of the existing bank are subject to the following condition: Merchants Bank, NA (new) shall (i) give the Assistant Deputy Comptroller in the Minneapolis South Field Office at least (60) days prior written notice of its intent to significantly deviate or change from its business plan or operations and (ii) obtain the OCC’s written determination of no objection before it engages in any significant deviation or change from its business plan or operations.¹ For the first three years of operation, the bank also must provide a copy of such written notice to the FDIC’s Kansas City Regional Office.

¹ If such deviation or change is the subject of an application filed with the OCC, no separate notice to the supervisory office is required.

The condition is a “condition imposed in writing by the agency in connection with the granting of any application” within the meaning of 12 U.S.C. § 1818 and, as such, is enforceable under 12 U.S.C. § 1818.

The new bank’s initial paid-in capital, net of organizational and preopening expenses, shall be no less than \$3.4 million. The manner in which capital is raised must not deviate from that described in the business plan without prior OCC notification. If the capital for the new bank is not raised within 12 months or if the new bank is not opened for business within 18 months from the preliminary conditional approval date, this approval expires. The OCC is opposed to granting extensions, except under the most extenuating circumstances 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.

This is preliminary conditional approval only. Final approval will not be granted until and unless the Board of Governors of the Federal Reserve System acts favorably on Merchants Financial Group’s application to acquire this new bank. You must furnish the OCC’s Midwestern District Licensing Office with a copy of all related filings to the Federal Reserve, including registration material.

Until final approval of the charter application is granted, the OCC reserves the right to alter, suspend, or revoke preliminary approval should any interim development be deemed by the OCC to warrant such action.

Please refer to the “Corporate Organization” booklet (enclosed) of the *Comptroller’s Licensing Manual* for the instructions on organizing the new bank. The booklet contains all of the steps you must take to receive the charter. As detailed in the booklet, you may establish the corporate existence of and begin organizing the bank as soon as you adopt and forward acceptable Articles of Association and the Organization Certificate to this office. As a “body corporate” or legal entity, you may begin taking those steps necessary for obtaining final approval, but you may not begin the business of banking until you fulfill all requirements for a bank in organization and you are granted final approval by the OCC.

Enclosed are standard requirements that must be met before the bank will be allowed to commence business. Management must ensure that the applicable policies and procedures are established and adopted by the board of directors before the bank begins operation. Applicable standard requirements also must be satisfied before the bank will be allowed to commence business.

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

1. The bank must submit to the Minneapolis South Field Office 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:

Vendor due diligence and contracts; electronic banking security mechanisms and policies; information systems personnel; internal controls; audit plans; and operation policies and procedures, including, but not limited to, vendor management, we blinking, customer authentication and verification, and business resumption contingency plans.

2. The bank must have performed an independent security review and test of its electronic banking 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. If the bank outsources the technology platform, it can rely on testing performed for the service provider to the extent that it satisfies the scope and requirements listed herein. The review must be conducted by an objective, qualified independent source (Reviewer). The scope should cover:

- All access points, including the Internet, Intranet, or remote access.
- The adequacy of physical and logical protection against unauthorized access including individual penetration attempts, computer viruses, denial of service, and other forms of electronic access.

By written report, the Reviewer must confirm that the security measures, including the firewall, have been satisfactorily implemented and tested. For additional guidance, see “The Internet and the National Bank Charter” booklet of the *Comptrollers’ Licensing Manual*, pages 37-38, 74-75. This booklet may be found on the OCC’s web site at www.occ.treas.gov/netbank/letters.htm.

3. The bank must have a security program in place that complies with the “Interagency Guidelines Establishing Standards for Safeguarding Customer Information” specified at 12 C.F.R. § 30, Appendix B.

The OCC poses no objection to John Poling serving as president and CEO as proposed in the application. Additional executive officers to be hired prior to opening are subject to the OCC’s prior review and clearance.

The OCC poses no objection to John Kathan, Michael D. Cunningham, James L. Friedl, Robert A. Heth Jr., Dean Ashbacher and Michael E. Spetz serving as directors. Additional directors to be appointed prior to opening are subject to the OCC’s prior review and clearance.

You are also reminded that, for a period of two years after the bank has opened for business, the bank must obtain the OCC’s determination of no objection to any new executive officer or director prior to that person assuming such position.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications.

We reviewed the proposed purchase and assumption transaction under the criteria of the Bank Merger Act [12 U.S.C. 1828(c)], the Community Reinvestment Act (12 U.S.C. 2901 et. seq.) and applicable OCC regulations and policies. Among other matters, we found that the proposed transaction would not have any anticompetitive effects. We considered the financial and managerial resources of the two banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the Bank Merger Act requires the OCC to consider, "...the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including overseas branches." We considered this factor and believe the approval of this transaction is consistent with that statutory provision.

As a reminder, you must advise the Midwestern District Licensing Office in writing in advance of the desired effective date for the purchase and assumption, so that we may issue the necessary certification letter. The effective date must also follow any other required regulatory approval.

If the purchase and assumption is not consummated within one year from the approval date, the approval automatically terminates unless we grant an extension of the time period.

These approvals and the activities and communications by OCC employees in connections with the filings, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or any officer or employee of the U.S., 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 U.S.

You should direct any questions to Senior Licensing Analyst Stephen A. Lybarger in our Midwestern District Licensing Unit at (816) 556-1860.

Sincerely,

-signed-

Alfred A. Phillips
Senior Licensing Analyst

Enclosures: Minimum Policies and Procedures
Standard Requirements