



Comptroller of the Currency
Administrator of National Banks

Northeastern District
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New York, NY 10036-7780

Licensing Unit
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March 3, 2003

Corporate Decision #2003-3
April 2003

Mr. John H. Smith
Associate Counsel
Mellon Financial Corporation
One Mellon Center
Pittsburgh, Pennsylvania 15258-0001

Re: Application filed on behalf of Mellon 1st Business Bank, Los Angeles, California to convert to a national bank with the title "Mellon 1st Business Bank, National Association"
Control Number: 2002 NE 01 0011 Charter Number: 24400

Dear Mr. Smith:

The Comptroller of the Currency (OCC) has reviewed your request, dated December 2, 2002, and supplemental information, to convert Mellon 1st Business Bank ("Bank") to a national bank. After a thorough review of all information available, including the representations and commitments made in the application and by bank's representatives, we find that the request meets the requirements for approval to convert to a national banking association pursuant to 12 U.S.C. § 35 and 12 C.F.R. § 5.24 as follows:

Title: **Mellon 1st Business Bank, National Association**

Location: **One Bunker Hill Building, 601 West Fifth Street
Los Angeles, Los Angeles County, California 90071**

This approval is based in part upon the institution's representation that the capital structure will comply with the minimum capital requirements of 12 U.S.C. §§ 35, 36, 52, 371d or the approval/notice requirements of 12 C.F.R. § 5.37, to the extent applicable.

The converting Bank intends to issue 100 shares of zero or no par value common stock.¹

¹"Par value" is the value of a security printed on its certificate or "the face value of a share of stock." OCC, *An Examiner's Guide to Investment Products and Practices* (December 1992); Black's Law Dictionary, 5th Ed. (West 1979). "No par" stock refers to stock without a par or face value. Black's Law Dictionary, 5th Ed. (West 1979).

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Although national banks have not previously been permitted to issue zero or no par value common stock, the National Bank Act (“NBA”) does not expressly require a bank to assign a par value to its common stock.² While the OCC has required that a national bank assign a par value to its common stock to calculate capital, surplus, dividends, and assessments imposed on shareholders, and required directors to hold a minimum aggregate par value of bank common stock or qualifying shares, the existence of a par value for stock is not the only means to address such calculations and requirements, and the OCC’s practice of using “par value” for these purposes does not negate a national bank’s authority to issue zero or no par value common stock.³

A national bank’s decision to issue zero or no par common stock may affect its ability to declare a dividend.⁴ Generally, a national bank may not declare a dividend unless capital surplus equals or exceeds the capital stock of the bank.⁵ In general, “capital stock” includes the total par or stated value⁶ of common and preferred stock.⁷ Zero or no par common stock with a stated value

2 12 U.S.C. § 1 *et seq.*

3 The NBA provisions requiring addressing capital and “capital and surplus” requirements do not prohibit a national bank from assigning a zero par value to its stock. *See e.g.*, 12 U.S.C. §§ 24 (Seventh) and (Eleventh), 51c, 57, 59, 84. While 12 U.S.C. § 52 establishes a maximum par value per share for a national bank’s shares, the OCC has never interpreted this provision as establishing a minimum par value for national bank stock. 12 U.S.C. § 52. Although the OCC has used the par value of common stock to calculate shareholder assessments under 12 U.S.C. § 55, calculating these assessments as a percentage of par is not a prerequisite to levying such assessments. *See W. R. Ranney v. Commissioner of Internal Revenue* 16 B.T. A. 1399 (July 16, 1929). Even though 12 U.S.C. § 72 requires a national bank director to hold shares with an aggregate par value of not less than \$1,000 or an equivalent interest, the statute does not mandate a national bank to assign a par value to its common stock. 12 C.F.R. § 7.2005. While surplus typically includes amounts in excess of the par value of common stock, surplus also includes amounts in excess of the stated value of common stock and other amounts. Thus, a bank can have surplus even if it issues zero or no par common stock. *See* 12 C.F.R. §§ 3.100, 5.46(e)(3). Dividend provisions are addressed below.

4 12 U.S.C. § 60; 12 C.F.R. § 5.64.

5 *Id.* A national bank may not declare a dividend if the total amount of all dividends, including the proposed dividend, declared by the national bank in any calendar year exceeds the total of the national bank’s retained net income of that year to date, combined with its retained net income of the preceding two years, unless the dividend is approved by the OCC. 12 C.F.R. § 5.64(b).

6 The “stated value” of common stock is an arbitrary amount assigned to zero or no par stock by a bank’s board of directors. Roger H. Hermanson *et al.*, *Accounting Principles*, at 658 (5th ed. 1992) (“Hermanson”).

7 The definitions of “capital stock” and “capital surplus” for purposes of the dividend provisions cross-reference the definitions in Section 5.46. Specifically, Section 5.46(e)(2) defines “capital stock” as “the total amount of common stock and preferred stock.” 12 C.F.R. § 5.46(e)(2). Accounting practice and OCC regulations and precedent clarify that amounts attributed to the capital stock account will depend on whether there is a par or stated value assigned to stock. *See generally* Hermanson, *supra*; 12 C.F.R. Part 5; OCC Interpretive Letter No. 313 (October 22, 1984), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,483.

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is recorded in the capital stock account at the stated value.⁸ Any amounts received in excess of the stated value are included in “capital surplus.”⁹ Where common stock is assigned a par value greater than zero, the par value per share issued is credited to capital stock.¹⁰ However, for accounting purposes, when zero or no par common stock has no stated value, all amounts paid for the stock are recorded as the value for capital stock.¹¹ No amounts received for the stock are included in capital surplus.¹² Under this scenario, a bank may not be able to pay dividends because its capital surplus does not exceed the bank’s capital stock. However, a bank can avoid this result by assigning a stated value to its no par common stock. Provided a bank assigns no par common stock a stated value, amounts in excess of the stated value will be treated as “capital surplus.” Thus, where a national bank issues no par common stock with a stated value, the end result is virtually the same as if the bank assigned the identical par value to its common stock.

In sum, the NBA does not expressly require the Bank to assign a par value to its common stock. Accordingly, it is permissible for the Bank to issue zero or no par common stock when it converts into a national bank. However, if the Bank does not intend to assign a stated value to its no par common stock, it should be mindful that its decision might subsequently affect its ability to issue dividends.

This letter also constitutes official OCC authorization to operate the following branches:

Branch Number: 124445A
San Fernando Valley Branch
15821 Ventura Boulevard, 4th Floor
Encino, Los Angeles County
California 91436

Branch Number: 124446A
West Los Angeles Branch
Gateway Bldg, 1800 Avenue of the Stars
Los Angeles, Los Angeles County
California 90067

⁸ See Hermanson, at 666.

⁹ See Hermanson, at 666.

¹⁰ See Hermanson, at 658. “Capital surplus” also includes the: [1] direct capital contributions, [2] amounts transferred from undivided profits required by 12 U.S.C. § 60, and [3] amounts transferred from undivided profits reflecting stock dividends. 12 C.F.R. § 5.46(e)(3).

¹¹ See Hermanson, at 667.

¹² *Id.*, at 667.

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Branch Number: 124447A

South Bay Branch
Gateway III Bldg., 970 W. 190th St.
Torrance, Los Angeles County
California 90502

Branch Number: 124448A

Orange County Branch
4695 MacArthur Court
Newport Beach, Orange County
California 92660

Please retain this letter as the official branch authorizations. If a branch is closed, a 90-day advance notice of the proposed branch closing must be submitted to the OCC pursuant to 12 U.S.C. § 1831r-1. Following the expiration of the 90-day notification period, a copy of this authorization must be surrendered. If the branch is sold, a copy of this branch authorization should be surrendered to the OCC.

You are reminded that the following steps are required before the effective date of the conversion:

1. Directors must own qualifying shares of the bank or in any company which has control over the bank, within the meaning of 12 U.S.C. § 1841, in conformance with 12 U.S.C. § 72 and 12 C.F.R. § 7.2005.
2. The institution must purchase the required amount of stock in the Federal Reserve Bank in accordance with 12 C.F.R. § 209. Please provide us with a copy of your application to purchase Federal Reserve Bank stock.
3. The institution must purchase adequate fidelity bond coverage in accordance with 12 C.F.R. § 7.2013, which lists four factors the directors should consider to determine adequacy.
4. If a director, officer, employee, or principal shareholder of the bank (including an entity in which such person owns an interest of 10 percent or more) is involved in the sale of credit life insurance to loan customers, the bank should ensure compliance with 12 C.F.R. § 2, which among other things, prohibits a covered person from retaining commissions or other income from the sale of credit life insurance connected with any loan the bank makes.
5. The board of directors must adopt and have in place policies, practices, and procedures to ensure the safe and sound operation of the bank. The board also must review those policies, practices, and procedures continually and ensure bank compliance with them. We are enclosing the minimum policies and procedures applicable to national banks.
6. The converting institution must obtain any other required regulatory approvals.

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7. The converting institution must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. You are also encouraged to visit our Internet site at <http://www.occ.treas.gov>.

If the conversion is not consummated within six months from the date of the decision, approval will be withdrawn. The OCC is opposed to granting extensions, except under the most extenuating circumstances and expects the conversion to occur as soon as possible.

Upon conversion, please submit a letter certifying that you have completed all steps required to convert to a national banking association (sample enclosed). If you have any questions, please contact Linda Leickel, Licensing Analyst at (212) 790-4055.

Sincerely,

Anthony P. DosSantos

Anthony P. DosSantos
Licensing Manager

Enclosures: Conversion Completed Certification Sample Letter
 Minimum Policies and Procedures