



Comptroller of the Currency
Administrator of National Banks

Western District Office
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Conditional Approval #695
June 2005

May 11, 2005

Mr. Geoffrey S. Kay
Jenkins & Gilchrist, P.C.
1445 Ross Avenue, Suite 3200
Dallas, Texas 75202

RE: De novo Charter and Residency Waivers – Town North Bank Nevada,
National Association, Las Vegas, Nevada
OCC Control Numbers: 2004-WE-01-0021, 2004-WE-12-0397 and
2005-WE-08-0011

Dear Mr. Kay:

The Office of the Comptroller of the Currency (OCC) has reviewed your application to establish a new national CEBA credit card bank with the title of Town North Bank Nevada, National Association (proposed bank) (hereinafter “Bank”). On May 10, 2005, the OCC granted preliminary conditional approval of your charter application after a determination that your proposal met certain regulatory and policy requirements. This preliminary conditional approval is subject to any other required regulatory approvals. The OCC also grants approval for Bank to become an operating subsidiary of Town North Bank, National Association.

This preliminary conditional approval is granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the application and by the Bank’s representatives. We also made our decision to grant preliminary conditional approval with the understanding that the proposed Bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (FDIC).

The OCC has granted preliminary conditional approval only. Final approval and authorization for the proposed Bank to open will not be granted until all pre-opening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this preliminary conditional approval should the OCC deem any interim development to warrant such action.

This preliminary conditional approval is subject to the following condition:

The Bank: (i) shall give the OCC's Dallas North Field Office at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from its business plan or operations¹ and (ii) shall obtain the OCC's written determination of no objection before the Bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank's notice. For the first three years of operation, the Bank must also provide a copy of such notice to the FDIC's Dallas Regional Office.

This condition is a condition "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. As such, the condition is enforceable under 12 U.S.C. § 1818.

The bank's initial paid-in capital, net of all organizational and preopening expenses, shall be no less than \$24.5 million. The manner in which capital is raised must not deviate from that described in the operating 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 and 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.

The OCC poses no objection to the following persons serving as executive officers and/or directors as proposed in the application:

<u>Name</u>	<u>Proposed Position</u>
John C. Reap	President/Director
Roland E. Penn, Jr.	EVP/Director
Dennis Kert Moore	EVP/Chief Financial Officer/Director
Kenneth Glen Lee	First Senior VP/Director
Sajai "Jay" Kurian	First Senior VP/Director
Patrick Harold Hazelip, Sr.	First Senior VP/Director

¹ If such deviation is the subject of an application filed with the OCC, the OCC does not require any further notice to the supervisory office.

Prior to the Bank's opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers or executive officers, or directors appointed or elected before the person assumes the position. For a period of two years after the Bank commences business, the Bank must file an Interagency Biographical and Financial Report with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

Background checks requested by the OCC have not been received yet from one source for Sajai "Jay" Kurian. Accordingly, the continued service of Mr. Kurian will be dependent on satisfactory completion of the background investigation process.

The OCC also grants your request to waive the residency requirements of 12 U.S.C. § 72 for the above named individuals to serve as members of the board of directors of the bank. This waiver is granted based upon a review of all available information, including the filing and any subsequent correspondence and telephone conversations, and the Bank's representation that this waiver will not affect the board's responsibility to direct the Bank's operations in a safe, sound, and legal manner. The OCC reserves the right to withdraw or modify this waiver and, at its discretion, to request additional information at any time in the future.

On May 10, 2005, the OCC approved your request for the Bank's designation as a limited purpose institution for purposes of the Community Reinvestment Act (CRA). The limited purpose designation is effective the date the bank opens for business. A separate letter confirming your request is enclosed confirming this approval. You should submit your finalized CRA plan to ADC Michael Hughes in our Dallas North Field Office for review.

The "Charters" booklet in the *Comptroller's Licensing Manual* provides guidance for organizing your bank. You may find this booklet at the OCC's web site: www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf. The booklet contains all of the steps you must take to receive your 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 Articles of Association and the Organization Certificate to this office for review and acceptance. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining final approval. The Bank may not begin the business of banking until it fulfills all requirements for a Bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new national banks. The Bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

In addition to the standard requirements for all new national banks, the following special requirements must be satisfied prior to the Bank's request for a preopening examination and before the OCC will grant final charter approval:

1. The bank must submit the following to the OCC's Dallas North Field Office for review and approval:
 - A written plan to comply with OCC Bulletins 2003-1 and 2000-20 regarding Account Management and Loss Allowance Guidance for Credit Card Lending and Uniform Retail Credit Classification and Account Management Policy. Specifically, the bank should ensure compliance with negative/positive amortization.
 - A written plan to comply with OCC Advisory Letter 2004-10 regarding certain credit card marketing and account management practices. Specifically, the bank should ensure that cardholder agreements clearly address risk-based repricing.
 - A written plan that captures formalization of the bank's due diligence and portfolio acquisition process.
 - A written plan for managing the macro risk profile of the credit card portfolio.
 - A written plan for transitioning to the Nevada usury law along with how regulatory expectations for minimum payment requirements to eliminate the potential for negative amortization while requiring reasonable positive amortization will be met.
 - Revisions to the proposed CRA business plan as discussed during the field investigation. Specifically, 1) the bank should identify the bank's assessment area as Las Vegas, Nevada; 2) the bank will be reviewed under the community development test; 3) the loan-to-deposit ratio will be removed from the public file list; 4) the CRA disclosure statement will be included on the public file list; and 5) eliminate making CD loans as a type of service.
2. Prior to implementing a transactional web site the Bank must submit to the OCC's Dallas North Field Office for review and prior written determination of no supervisory objection, a complete description of the Bank's final 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 operating policies and procedures, including, but not limited to, vendor management, weblinking, customer authentication and verification, and business resumption contingency plans.

Town North Bank Nevada, N.A. (Proposed)

Las Vegas, NV

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3. 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 *Comptroller’s Licensing Manual*, pages 37-38 Information System Security. This booklet may be found on the OCC’s web site at www.occ.treas.gov/corpbook/group4/public/pdt/internetnbc.pdf.

4. The Bank must have a security program in place that complies with the “Interagency Guidelines Establishing Standards for Safeguarding Customer Information” specified at 12 CFR 30, Appendix B.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the *Comptroller’s Licensing Manual*, which is available only in electronic form at our web site: <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

This preliminary conditional approval and the activities and communications by OCC employees in connection with the filing do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States (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 concerning preliminary conditional approval to Licensing Analyst Sherry Gorospe at (720) 475-7653 or sherry.gorospe@occ.treas.gov.

A separate letter is enclosed requesting your feedback on how we handled your application. We would appreciate your response so we may improve our service.

Sincerely,

signed

Karen Bryant
Licensing Manager

Enclosures: Minimum Policies and Procedures
Standard Requirements
Survey Letter
CRA Limited Purpose Letter

Standard Requirements

The OCC imposes the following standard requirements on your charter request.

Any significant deviation from the operating plan during the organization phase, or change in the organizing group or chief executive officer must receive prior written OCC approval. A significant deviation or change that has not been approved may be grounds for delaying issuance of the charter or withdrawing preliminary conditional approval. (See the Significant Changes discussion in the Introduction of the "Corporate Organization" booklet.)

For a period of two years after the bank has opened for business, the OCC must review and have no objection to any new executive officer or director prior to that person assuming such position. The proposed person may not assume the position, until the OCC has issued a letter of no objection. Since this condition is imposed pursuant to the OCC's chartering authority, the OCC is not subject to the 30-day review period imposed by 12 U.S.C. 1831i. However, the OCC will process all such notices in a timely manner using the procedures in the "Change in Directors and Senior Executive Officers" booklet.

The OCC requires that, prior to opening, the bank engage an independent, external auditor to perform an audit according to generally accepted auditing standards of sufficient scope to enable the auditor to render an opinion on the financial statements of the bank taken as a whole. The audit period shall commence on the date that the organizing group forms a body corporate and may end on any calendar quarter-end no later than 12 months after the bank opens. The OCC expects that such audits will be performed annually for at least three years following commencement of operations. Engagement of an auditor will be verified during the pre-opening examination (see the "Corporate Organization" booklet).

The bank's financial statements must be prepared on an accrual basis according to generally accepted accounting principles.

The president must serve as a member of the board of directors.

All persons who, together with their interests, subscribe to 10 percent or more of the initial stock offering must submit biographical and financial reports for review to the Licensing staff prior to acquisition of their shares. The Licensing staff must have no objection to such persons before they purchase their shares. Subsequent to opening the national bank, requirements of the Change in Bank Control Act (12 U.S.C. 1817(j)) will apply. Changes in the composition of members or trustees of a voting trust or voting agreement also may be subject to the requirements of the Change in Bank Control Act.

Stock subscription funds collected during the organization of the bank and held for investment may be invested, directly or indirectly (e.g., mutual funds) only in U.S. government securities (bills, bonds, or notes).

Stock certificates must not be issued prior to the date the bank opens for business, but must be

issued immediately following the bank's opening.

The bank must have adequate fidelity insurance covering all persons authorized to collect, receive, or deposit funds from stock subscriptions. The bank 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. This insurance must be in force from the effective date of the registration statement until the bank opens for business (see the "Corporate Organization" booklet).

The board of directors must develop written policies and procedures that will guide the bank's operations in a safe and sound manner. Those policies must be completed no later than the date of the applicant's request for a preopening examination. In addition, the board of directors must review and adopt the policies and procedures at its first meeting (see Appendixes, Minimum Policies and Procedures). The board of directors is responsible for regular review and modification of policies and procedures and for assuring continuous compliance with them.

Organizational and pre-opening expenses significantly exceeding those projected in the application, and/or net capital significantly less than that projected in the application, is a basis for revocation of preliminary conditional approval. Capital adequacy is not the sole reason to determine the acceptability of organization costs. The OCC will evaluate the reasonableness of pre-opening expenses (see the "Corporate Organization" booklet).

A letter must be submitted to the district office at least 45 days before the bank is scheduled to open, notifying the OCC that all conditions and requirements necessary to receive a national bank charter have been met, requesting a preopening examination, and providing the anticipated opening date.

Minimum Policies and Procedures

Some of these policies and procedures may not be applicable to special purpose banks. The board must adopt and monitor those policies and procedures applicable to the bank's activities.

1. Lending policy, including:
 - a. Fundamental elements of a sound loan policy as described in the "Loan Portfolio Management" booklet of the *Comptroller's Handbook*.
 - b. Loan administration procedures designed to ensure that no extensions of credit are granted without first obtaining and analyzing current and satisfactory credit information as well as satisfactory and, in the case of secured loans, perfected collateral documentation.
 - c. Internal loan review procedures to review periodically the loan portfolio to identify and categorize problem credits.
 - d. Board approval of management's review of the adequacy of the bank's allowance for possible loan losses and maintenance of an adequate allowance consistent with the comments in the "Allowance for Loan and Lease Losses" booklet of the *Comptroller's Handbook*.
 - e. Procedures to ensure that the bank:
 - Takes immediate and continuing action to protect its interest in any and all assets displaying any evidence of weakness.
 - Monitors concentrations of credit and safeguards against unsound concentrations of credit.
 - Prices its credits properly.
 - f. Procedures to ensure compliance with *all* applicable laws and regulations, including, for example, lending limits and loans to insiders.
2. Funds management, investment securities, and interest rate risk policies, including:
 - a. A funds management policy and strategies consistent with the comments in the "Funds Management" section 405 of the *Comptroller's Handbook*.
 - b. Procedures to enable the board and management to monitor liquidity and interest rate risk.
 - c. Guidelines for the bank's use of brokered and other volatile funds with a

specific description of the nature, extent, and purpose of their use. The policy should comply with 12 CFR 337.6 - Brokered Deposits.

- d. An investment securities policy consistent with the comments in the “Investment Securities” section 203 of the *Comptroller’s Handbook*; OCC Bulletin 96-69: Investment Securities: 12 CFR 1 - Final Rule dated 12/11/96; and OCC Bulletin 98-20: Investment Securities - Policy Statement dated 4/27/98, within which the bank must operate when purchasing and selling investment securities. The policy should specifically define the bank’s investment strategies.
 - e. A borrowed funds policy consistent with the comments in the “Borrowed Funds” section 302 of the *Comptroller’s Handbook*.
 - f. An interest rate risk policy and strategy consistent with comments in the “Interest Rate Risk” booklet of the *Comptroller’s Handbook* and OCC Bulletin 96-36: Interest Rate Risk - Final Policy Statement dated 7/12/96.
3. Capital policy, including:
- a. Specific plans to maintain capital at a level consistent with the requirements of 12 CFR 3. [For trust bank charters: Specific plans to maintain capital at an acceptable level, addressing the risks unique to this type of business, should be established.]
 - b. Procedures to develop and maintain a three-year capital plan, with projections for growth and capital requirements based on a detailed analysis of the bank’s assets, liabilities, earnings, fixed asset expansion, and dividends.
 - c. A dividend policy consistent with the three-year capital plan and the bank’s plans to maintain capital at or above the level required by 12 CFR 3 (or an otherwise adequate level as approved by the OCC).
 - d. Procedures to develop annual profit plans that contain realistic and comprehensive budgets (with projected balance sheets and year-end income statements) and to describe the operating assumptions that form the basis of the projections.
 - e. A process whereby the bank periodically reviews the policy to ensure it reflects any changes in laws, rules, or regulations pertaining to capital and dividends.
4. Internal and external audit policies, including:
- a. The development and implementation of an internal control system, including internal and external audit functions, that provides for effective

risk assessment, timely and accurate reports, safeguarding and management of assets, and compliance with applicable laws and regulations. The audit functions and control systems should be consistent with the “Internal and External Audit” and “Internal Controls” booklets of the *Comptroller’s Handbook*.

For additional reference, see the OCC’s *The Directors Book: The Role of the National Bank Director*; OCC Bulletin 98-1: Interagency Policy Statement -- Internal Audit/Outsourcing dated 1/7/98; and OCC Bulletin 99-37: Interagency Policy Statement on External Audit Programs dated 10/7/99.

- b. Procedures to ensure that the bank maintains minimum security devices and procedures as required by 12 CFR 21.
 - c. Internal control systems to ensure ongoing compliance with the currency reporting and recordkeeping requirements of the Bank Secrecy Act (BSA). Personnel should be trained in BSA procedures and one or more persons designated to monitor day-to-day compliance.
 - d. [If applicable] The development and implementation of a fiduciary audit program to ensure that the bank is complying with 12 CFR 9, applicable state and federal law, and sound fiduciary principles. Also required (12 CFR 9.9) are the appointment and establishment of a trust audit committee.
5. Insider policies, including:
- a. The development and implementation of a written policy according to the “Insiders Activities” booklet of the *Comptroller’s Handbook*.
 - b. [Applicable to trust banks] Written policies and procedures, as required by 12 CFR 9.5 to prohibit the use of material side information in investment decisions or recommendations.
6. Compliance policies, including, if applicable:
- a. A compliance program covering consumer, fair lending, and community laws and regulations, approved by the board and management, that includes (see the Compliance Handbook):
 - Delegation of compliance responsibilities to specific bank personnel.
 - Written guidance for, and training of, employees covering applicable laws and regulations.
 - A mechanism to report deficiencies and ensure corrective action.

- b. Branch closing policy (applicable to national banks with branches), including:
- Procedures for determining objectively which branch or branches to close and which customers to notify.
 - Procedures and methods for providing the notices required by 12 USC 1831r-1.
- c. A BSA program to fulfill the requirements of 12 CFR 21.21. The board of directors for each national bank must approve written procedures designed to monitor the bank's compliance with the requirements of the Bank Secrecy Act regulations, 31 CFR 103. The compliance program must provide for a system of internal controls to ensure ongoing compliance; provide independent testing for compliance; designate a person responsible for coordinating and monitoring day-to-day compliance; and provide training for appropriate personnel. The BSA compliance program must be approved by the board of directors.
- d. [If applicable] Development and implementation of policies and procedures for the administration of the rules governing securities transactions for broker-dealer activities. These include banking laws and regulations under 12 CFR 1, 12 CFR 10, 12 CFR 12, 15 USC 78o (Municipal Securities Rulemaking Board rules), and 17 CFR 400 (regulations under section 15C of the Securities Exchange Act of 1934 as amended by the Government Securities Act of 1986). In addition, the procedures should be consistent with the Securities Exchange Act of 1934 and the SEC's rules, specifically 17 CFR (commodity and securities).

The procedures should address:

- Municipal and government securities dealer registration and professional qualifications.
 - Trading and underwriting.
 - Sales and uniform practices.
 - Recordkeeping and retention.
 - Supervision.
- e. Development and implementation of procedures for the preparation, review for accuracy, and submission of required regulatory reports. The procedures should address:

- The requirements that the bank prepare all financial statements on an accrual basis according to generally accepted accounting principles.
 - Regular financial report filings (such as Quarterly Reports of Condition and Income, Annual Report of Trust Assets and Special Report of Trust Activities, as applicable, annual financial disclosures (12 CFR 18), and annual minimum security devices and procedures report).
 - Operations reports (such as bank robbery notification reports).
 - SEC reports (for covered banks).
 - Reports to shareholders.
 - Other reports as detailed in the *Comptroller's Handbook*.
7. Board supervision policy consistent with the “Duties and Responsibilities” booklet of the *Comptroller's Handbook* and *The Directors Book*, including:
- a. A method for periodically reviewing and revising, as necessary, the aforementioned policies.
 - b. Procedures to assess management’s performance.
 - c. A method to assess whether board members are receiving adequate information on the bank’s operation to enable them to fulfill their fiduciary responsibilities.
 - d. A method to evaluate whether board members are acting responsibly and expeditiously in fulfilling their duties as directors.
8. Disaster recovery plan.
9. Policies and procedures for maintaining the privacy and security of consumer information, including:
- a. Establishing privacy policies and opt out mechanisms (if appropriate) in accordance with 12 C.F.R. Part 40. This includes:
 - Developing privacy notices
 - Delivering initial and annual notices on timely basis
 - Revising privacy notices as necessary
 - Developing acceptable methods of delivery
 - Implementing consumer opt out elections where applicable
 - Limiting disclosure of account numbers for marketing purposes

- Limiting use and disclosure of information received from nonaffiliated financial institutions. Developing confidentiality contract clauses where applicable.
- b. Implementing training programs for employees about privacy policies and procedures.
- c. Adopting internal controls, policies, and audit procedures to ensure continued compliance with privacy regulations.
- d. Implementing a written information security program to safeguard customer information pursuant to the guidelines in 12 C.F.R. part 30. This includes:
 - Board approval and oversight of program
 - Assessing risks to security of customer information
 - Designing information security program to control identified risks
 - Overseeing arrangements with service providers
 - Adjusting program in light of changes in technology, threats to information, sensitivity of customer information, changing business arrangements.