



Comptroller of the Currency
Administrator of National Banks

Western District Licensing
1225 17th Street, Suite 300
Denver, CO 80202

Corporate Decision #2005-11
August 2005

July 12, 2005

Charles E. Greef, Esq.
Jenkins & Gilchrist, PC
1445 Ross Ave., Suite 3200
Dallas, TX 75202-2799

Subject: Application to merge First Bank of San Luis Obispo, San Luis Obispo, California,
into Pacific Capital Bank, National Association, Santa Barbara, California
OCC Control Number: 2005-WE-02-0012

Dear Mr. Greef:

On July 12, 2005, the Comptroller of the Currency (“OCC”) approved your proposal to merge First Bank of San Luis Obispo, San Luis Obispo, California (“First Bank”) into Pacific Capital Bank, National Association, Santa Barbara, California (“PCB”) under the charter of PCB and the title of Pacific Capital Bank, National Association. This application was based on an agreement entered into between the parties on February 28, 2005.

This approval is granted based on a thorough review of all information available, including commitments and representations made in the application, merger agreement, and those of your representatives.

Review of Statutory Factors

The Bank Merger Act requires the OCC to consider the financial and managerial resources and future prospects of the existing and proposed institutions, the convenience and needs of the community to be served, and the effectiveness of the insured depository institutions involved in the proposed transaction in combating money-laundering activities. We have considered the foregoing factors and conclude that they are consistent with approval. The OCC also considered the competitive effects of this proposal by using its standard procedures for determining whether a business combination clearly has minimal or no adverse competitive effects. The OCC finds that the proposal satisfies its criteria for a merger and that it clearly has no or minimal adverse competitive effects.

In addition, the Community Reinvestment Act (“CRA”) requires the OCC to take into account the applicants’ record of helping to meet the credit needs of the community, including low- and moderate-income (“LMI”) neighborhoods, when evaluating certain applications, including purchase and assumption transactions that are subject to the Bank Merger Act, 12 U.S.C. § 2903; 12 C.F.R. § 25.29. A review of the record of these applicants and other information available to the OCC as a result of its responsibilities revealed no evidence that the applicants’ records of helping to meet the credit needs of their communities, including LMI neighborhoods, are less than satisfactory.¹

Review of Public Comments

The OCC received nearly identical comments from nine commenters who expressed concerns related to Refund Anticipation Loans (RALs) offered by Santa Barbara Bank and Trust (SBBT), a branch of PCB. RALs are offered through tax preparers with the anticipated refund from the Internal Revenue Service (IRS) serving as the source of repayment. The commenters raised concerns about the high annual percentage rate (APR) on these loans, given their short-term nature. Further, the commenters alleged that RALs resembled payday loans due to their high APRs and the fact that they allegedly target low-income consumers. The commenters expressed concern that customers are not adequately advised that a RAL is indeed a loan product or that a lien could be placed on their refunds due to prior unpaid RALs or certain other unpaid debts. Finally, some of the commenters questioned the safety and soundness of RALs given the default rate and the fact that legislators or courts may act to restrict this type of lending.

In response to these concerns, PCB acknowledged that when the fees associated with RALs are included as finance charges in determining an APR, and the average 11-day repayment period is used in this calculation, the APR is high. However, PCB pointed out that the average fee is about “two (2) to three (3) percent of the amount borrowed.” Unlike most loans, the consumer pays the same fee no matter how long the loan is outstanding. PCB also states that RALs provide a needed service to their customers by providing fast access to tax refunds. Additionally, RALs provide a method of payment for tax preparation that does not involve “up-front, out-of-pocket expenses.”

¹ PCB’s latest CRA Performance Evaluation (“PE”), dated June 7, 2004 assigned an overall “Satisfactory” rating. PCB received a “High Satisfactory” under the lending test. In support of this rating the OCC found that PCB’s geographic and borrower loan distributions ranged from adequate to excellent in the Ventura County and Santa Barbara assessment areas. Additionally, the OCC found that PCB’s community development lending had a positive impact on the evaluation. Further, it provided a good level of community development services and a significant dollar volume of qualified investments. The bank’s qualified investments were responsive to the identified needs of its assessment areas. The OCC did not find evidence of illegal discrimination or other illegal credit practices.

First Bank’s latest CRA PE, dated February 23, 2004 assigned a “Satisfactory” rating. In support of this rating, the FDIC found that First Bank exemplified good responsiveness to credit needs, making a substantial majority of loans within the San Luis Obispo assessment area. The distribution of loans to borrowers, given the product lines offered, were adequate throughout the assessment area, as was geographic distribution. Additionally, the FDIC found that the bank provided a relatively high level of community development loans and adequate levels of qualified community development investments and services. First Bank’s PE disclosed no fair lending concerns.

PCB also noted how its RAL product differs from payday loans. One of the principal features of payday loans that have led to abuses is frequent renewal, resulting in additional fees to the consumer. In contrast, the fee paid for a RAL does not vary with the length of time the loan is outstanding. Thus, there are no renewal fees associated with the PCB RAL product.

Additionally, PCB noted that it continues to work to enhance its disclosures and its oversight of third party tax preparers. Disclosures given with the application, a separate one-page information sheet, and a wall poster displayed in tax preparers' offices make clear that a RAL is a loan that must be repaid to the bank, regardless of whether the full amount of the tax refund is received. PCB indicates that it provides taxpayers a less expensive alternative to RALs in the form of the Refund Transfer (RT) product.² The disclosures identify the costs relating to RTs, thus allowing consumers a choice. These materials also explain that a customer who files a tax return electronically directly with the IRS and requests direct deposit of a refund will receive the refund in nine (9) to sixteen (16) days without taking out a RAL. The customer is required to sign the one page information sheet as well as the multi-page application agreement and disclosure. Additionally, disclosures with the application inform consumers that if they obtain a RAL, "certain unpaid debts owed to other RAL lenders named in the application may be deducted from their refund."

As a part of the OCC's ongoing supervision of PCB within the past year, the OCC has reviewed the bank's RAL program. While the OCC found no violations of law, the OCC did recommend that the bank improve its processes for oversight of third party tax preparers. PCB has committed to address this issue.

PCB represented that it enters into written agreements with tax preparers that require compliance with guidelines designed to assure fair treatment of prospective borrowers. PCB provides tax preparers with training materials governing how RALs should be offered. It also reviews consumer complaints and conducts random audits requesting documentation. Tax preparers that have not adhered to PCB's standards may be suspended or terminated from participating in the RAL program. PCB plans to enhance its ongoing monitoring by hiring independent firms to conduct on-site visits to tax preparers. The OCC will continue to monitor PCB's commitment to improve its processes to guard against predatory lending practices by third parties.

Request for Public Hearing

The commenters also requested that the OCC conduct a public hearing. After careful consideration, the OCC has determined not to conduct a hearing on this merger application.

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11, which provides:

² A refund Transfer (RT) is a service by which a taxpayer may receive immediate cash for his or her income tax refund check, less a processing fee. An RT does not involve a loan.

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

The commenters stated the OCC should conduct public hearings in order to give the public an opportunity to express their concerns and experiences with PCB's RALs. However, the commenters did not indicate why written submissions would not be sufficient to make an adequate presentation of the issues and facts to the OCC. As a result, the OCC was not persuaded that the proposed testimony would provide additional information beneficial to the OCC's decision-making process on the pending application, or that a hearing would be in the public interest.

Conclusion

Based on reasons set forth above, the OCC has determined that approval of this application is consistent under the Bank Merger Act, 12 C.F.R. § 5.33, and the CRA.

The OCC also hereby approves your application to establish a branch at **995 Higuera Street, San Luis Obispo, California 93401**. This approval is also granted based on a thorough review of all information available, including the representations and commitments made in the application and by the bank's representatives. This letter also is the OCC's authorization to establish **Branch No. 132319A**, to be known as the **San Luis Obispo Branch** at the above-noted address.

If the branch is not opened within 18 months from this approval date, the approval automatically terminates, unless the OCC grants an extension.

Within 10 days of opening, the bank must advise this office in writing of the branch's opening date. If not previously provided, advice of the branch's complete address and popular name should also be given at that time.

If the branch is closed, a 90-day advance notice of proposed branch closing must be submitted to the OCC pursuant to *12 U.S.C. 1831r-1*. Following the closing of the branch office, this authorization is no longer valid.

The Western District Office must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval.

The OCC will issue a letter certifying consummation of the transaction when we receive:

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.

- An executed merger agreement with Articles of Association for the resulting bank attached.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.

If the merger is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

This 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, any agency or entity of the United States, or any officer or employee of the United States, 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 United States.

All correspondence regarding this application should reference the control number. If you have any questions, contact Louis Gittleman at 720-475-7652.

Sincerely,

signed

Ellen Tanner Shepherd
Director for District Licensing

Enclosure: Survey Letter