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Comptroller of the Currency  
Administrator of National Banks

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Central District Office  
One Financial Place, Suite 2700  
440 South LaSalle Street  
Chicago, Illinois 60605

**Corporate Decision #2008-07**  
**November 2008**

October 24, 2008

Mr. Harley Vestrum  
Chief Risk Officer  
Stearns Bank, National Association  
4191 2<sup>nd</sup> Street South  
St. Cloud, Minnesota 56301

**Re: Application by Stearns Bank, National Association, St. Cloud, Minnesota to purchase certain assets and assume certain liabilities of Alpha Bank & Trust, Alpharetta, Georgia OCC Application Number 08-CE-02-033**

Dear Mr. Vestrum:

The Office of the Comptroller of the Currency (“OCC”) approves the application of Stearns Bank, National Association, St. Cloud, Minnesota (“Acquirer” or “Stearns”) to purchase certain assets and assume certain liabilities of Alpha Bank & Trust, Alpharetta, Georgia (“Failed Entity”), and to retain as branches Failed Entity’s main office and branch, for the reasons set below. You may consummate this transaction immediately upon approval. 12 U.S.C. § 1828(c)(6).

Failed Entity was chartered as a State-Chartered Bank on May 8, 2006. The entity was closed by the Georgia Department of Banking and Finance on October 24, 2008 and was placed in the hands of the Federal Insurance Deposit Corporation (“FDIC”) as receiver. At the close of business on October 24, 2008, Failed Entity had total assets of approximately \$355 million.

This approval is granted based upon the information contained in the Acquirer’s application and other information and representations made to the OCC during its processing of the application.

**The Purchase and Assumption**

Acquirer applied to the OCC for approval to purchase certain assets of and assume certain liabilities of Failed Entity under 12 U.S.C. §§ 24 (Seventh) and 1828(c) (the “Transaction”). The Acquirer is located in Minnesota and the Failed Entity’s main office and branch are located in Georgia. A national bank may acquire all or part of a depository institution through a purchase and assumption transaction under 12 U.S.C. § 24 (Seventh). No nonconforming or impermissible assets will be acquired. Accordingly, Stearns is legally authorized to purchase the assets and assume the liabilities of Failed Entity.

Page 2  
October 24, 2008  
Mr. Harley Vestrum  
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Stearns has also requested OCC approval to retain as branches the main office and branch of Failed Entity upon consummation of the Transaction. The main office of Stearns is in Minnesota and the main office and only branch of Failed Entity are located in Georgia. Because the main office of Acquirer and the main office of Failed Entity are located in different states, and because deposits of both banks are insured by the FDIC, the transaction, including the retention of branches, is subject to approval by the OCC under the Riegle-Neal Act, 12 U.S.C. §§ 1831u(a)(1) and 36(d).<sup>1</sup>

Generally, an application to engage in an interstate merger transaction pursuant to the Riegle-Neal Act, 12 U.S.C. § 1831u, is subject to certain requirements and conditions set forth in sections 1831u(a)(4) and (5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Riegle-Neal Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Riegle-Neal Act; (3) compliance with nationwide and state concentration limits; (4) expanded community reinvestment analysis and compliance; (5) adequacy of capital and management skills; and (6) limits on single branch acquisitions. These requirements, however, do not apply to a transaction, such as this, where the FDIC has provided assistance under 12 U.S.C. § 1823(c), or one of the banks involved is in default or in danger of default. 12 U.S.C. § 1831(e). Moreover, in approving a transaction under the Riegle-Neal Act, the OCC may authorize the acquiring bank to retain as branches the main office and any branches of the target bank. 12 U.S.C. §§ 1831u(d)(1) and 36(d). Thus, the acquisition by Acquirer of Failed Entity and the retention by Acquirer of the main office and branch of Failed Entity as branches are legally authorized under the Riegle-Neal Act.

### **Bank Merger Act**

The OCC reviewed the proposed purchase and assumption Transaction under the criteria of the Bank Merger Act, 12 U.S.C § 1828(c), and applicable OCC regulations and policies. Among other matters, we found that the proposed Transaction would not have significant anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, 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,” 12 U.S.C. § 1828(c)(11). We considered these factors and found them consistent with approval under the statutory provisions.

In addition, the OCC also finds, under the standards set forth in the Bank Merger Act, that it must act on the application immediately. 12 U.S.C. § 1828(c)(3), (4)(C)(i), and (6). Consequently, there is no requirement for publication of notice of the Transaction, for a request by the OCC of a competitive factors report from the Attorney General, or for a post-approval waiting period prior to consummation of the Transaction. *Id.*

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<sup>1</sup> Under the Riegle-Neal Act, the term “interstate merger transaction” is defined as a “merger transaction” by reference to 12 U.S.C. § 1828(c); and section 1828(c), among other transactions, applies to purchase and assumption transactions in which deposit liabilities are assumed.

Page 3  
October 24, 2008  
Mr. Harley Vestrum  
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### **Community Reinvestment Act**

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 transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants’ record of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

### **Consummation Guidance**

This approval is granted based on our understanding that other applicable regulatory approvals, non-objections or waivers with respect to the proposed Transaction will have been received prior to the consummation of the Transaction.

Within seven days of consummation of the Transaction, please provide the district office with a copy of the executed purchase and assumption agreement.

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 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.

If you have questions regarding this letter, please contact me at (312) 360-8867 or by e-mail [Carolina.Ledesma@occ.treas.gov](mailto:Carolina.Ledesma@occ.treas.gov). Please reference the application control number in any correspondence.

Sincerely,

*signed*

Carolina M. Ledesma  
Acting Director for District Licensing  
National Bank Examiner