



Comptroller of the Currency
Administrator of National Banks

Northeastern District Office
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New York, New York 10173-0002

Licensing Division
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Conditional Approval #938
January 2010

December 16, 2009

Mr. John A. Gehret, Partner
Brown Brothers Harriman & Co.
140 Broadway
New York, New York 10005

Re: Applications by Brown Brothers Harriman & Co. to establish a new national trust bank, Brown Brothers Harriman Trust Company of Delaware, National Association, Wilmington, Delaware; to merge Brown Brothers Harriman Trust Company of Texas, Dallas, Texas into Brown Brothers Harriman Trust Company of Delaware, National Association; and for a multiple residency waiver for all board members of Brown Brothers Harriman Trust Company of Delaware, National Association

Control Numbers: 2009 NE 01 0011 Charter Number: 24944
 2009 NE 02 0010
 2009 NE 12 0161

Dear Mr. Gehret:

The Office of the Comptroller of the Currency (“OCC”) hereby grants conditional preliminary approval for the application to charter Brown Brothers Harriman Trust Company of Delaware, National Association (“BBHTCDeNA” or “Bank”), a national bank limited to the activities of a trust company. The OCC also hereby grants conditional approval of the application to merge Brown Brothers Harriman Trust Company of Texas (“BBHTC-TX”) with and into BBHTCDeNA. These approvals are granted after a thorough review of the applications, other materials supplied by the applicant and its representatives, and other information available to the OCC, including commitments and representations made in the application and during the application process. The approvals are subject to the pre-opening requirements and conditions set out herein.

The OCC’s decision to grant conditional preliminary charter approval is made after a determination that the charter application met regulatory and policy requirements. This decision also is made with the understanding that the Bank will apply to the appropriate Federal Reserve Bank for membership and will not obtain deposit insurance from the Federal Deposit Insurance

Corporation, since the Bank will not engage in deposit-taking.

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

The Proposed Bank

Brown Brothers Harriman & Co. (“BBH”) filed an application with the OCC, under 12 U.S.C. §§ 21 through 27 and 12 C.F.R. § 5.20, to charter Brown Brothers Harriman Trust Company of Delaware, National Association to be located in Wilmington, Delaware. The Bank would be an uninsured national bank whose operations would be limited to those of a trust company and activities related thereto.¹ BBHTCDeNA will be wholly owned by BBH, except for directors’ qualifying shares. BBH seeks to establish the Bank to offer trust, estate and charitable planning or trust related services and trust management activities.

This conditional preliminary approval also constitutes the OCC’s grant to the Bank of authority to conduct fiduciary powers, under 12 U.S.C. § 92a and 12 C.F.R. § 5.26. Please note that 12 C.F.R. § 9.4 places responsibility on the board of directors for the proper exercise of the Bank’s fiduciary powers. The board, trust officers, and other employees should become thoroughly familiar with the OCC’s regulations regarding the fiduciary activities of national banks at 12 C.F.R. Part 9 and 12 C.F.R. § 5.26.

BBH requested a multiple waiver of the director residency requirement under 12 U.S.C. § 72. The OCC concludes that the waiver will support the safety and soundness of the bank and grants the request. The directors must comply with the citizenship and stock ownership requirements of the statute. 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.

Organizers, Directors, and Officers

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

<u>Name</u>	<u>Title</u>
1. John A. Gehret	Chairman of the Board
2. Charles O. Izard	Vice Chairman of the Board
3. John G. Arscott	Organizer/Director

¹ See 12 U.S.C. § 27(a) (last sentence).

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| 4. George E. Gage | Organizer/Director |
| 5. William R. Levy | Director/President and Chief Executive Officer |
| 6. Douglas McCartney | Director |
| 7. Brett D. Sovine | Director/Chief Financial Officer |
| 8. Melissa Breitstein | Vice President and Secretary |
| 9. Sarah Heimbach | Vice President, Trust Officer |
| 10. Aram Montgomery | Vice President and Controller |

All of the background checks requested by the OCC have not yet been received from some sources. While we have decided not to delay action pending receipt of all remaining background information, the continued service of these individuals as directors and executive officers will be dependent on satisfactory completion of the background investigation process.

Prior to opening, the Bank must obtain the OCC's prior written determination of no objection for any additional organizers, executive officers, or directors appointed or elected before the person assumes the position. For a two-year period 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.

Organizing Steps and Pre-opening Requirements

The "Charters" booklet in the *Comptroller's Licensing Manual* provides guidance for organizing the Bank. The booklet contains all of the steps needed to complete the organizing of the Bank and receive its charter. The booklet is located at the OCC's web site:
<http://www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf>.

As detailed in the booklet, you may begin organizing the Bank as soon as you adopt and forward Articles of Association and the Organization Certificate for OCC review and acceptance. The OCC reviewed and accepted the Bank's Articles of Association and Organization Certificate on October 27, 2009. As a "body corporate," or legal entity, the Bank may begin taking those steps necessary to obtain final approval. The Bank may not begin engaging in fiduciary activities 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 the OCC will issue final approval and the Bank is allowed to commence business. The Board of Directors also must ensure that the applicable policies and procedures are established and adopted before the Bank begins operation.

The OCC will send to you under separate cover 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 in electronic form on our Web site at:
<http://www.occ.treas.gov/corpapps/corppapplic.htm>.

If the Bank has not commenced business within eighteen (18) months from the conditional

preliminary approval date, this approval expires, unless extended by the OCC.

The Proposed Merger

BBH also applied to the OCC for approval to merge Brown Brothers Harriman Trust Company of Texas, a Texas chartered trust company located in Dallas (“BBHTC-TX”) with and into BBHTCDeNA, under the charter and title of BBHTCDeNA. A national bank may merge with another national bank or a state bank “located within the same State” under section 3(a) of the National Bank Consolidation and Merger Act (“NBCMA”), 12 U.S.C. § 215a(a). BBHTCDeNA intends to have its main office in Delaware, but upon receiving final approval and authorization to open it intends to establish a trust office in Texas. Once the Texas trust office is opened, BBHTCDeNA and BBHTC-TX will be located in the same state for purposes of section 215a.²

Section 215a also has various procedural requirements that BBHTCDeNA will meet. In addition, when the target bank is a state bank, the merger shall not be in contravention of the law of the state under which the state bank is incorporated.³ The merger of BBHTCDeNA and BBHTC-TX is not in contravention of state law. BBHTC-TX is incorporated under Texas law. No Texas law prohibits a Texas state chartered trust company from merging with a national bank.⁴

The OCC finds that the application to merge BBHTCDeNA and BBHTC-TX meets the requirements of 12 U.S.C. § 215a and OCC’s regulations at 12 C.F.R. § 5.33.

Conditions

These approvals are subject to the following conditions:

1. The Bank shall limit its business to the operations of a trust company and activities related or incidental thereto. The Bank shall not engage in activities that would cause it to be a “bank” as defined in section 2(c) of the Bank Holding Company Act.

2. At all times, the Bank shall maintain minimum Tier 1 Capital in an amount at least equal to the greater of (a) \$4.5 million *or* (b) such other higher amount as may be required by the OCC pursuant to the exercise of its regulatory authority (“Minimum Tier 1 Capital Requirement”). At all times, liquid assets⁵ shall comprise at least 75% of the Bank’s Minimum

² See, e.g., OCC Corporate Decision #2001-29 (September 28, 2001).

³ 12 U.S.C. § 215a(d).

⁴ Further, counsel for BBH has represented that the proposed transaction has been discussed in general terms with representatives of the Texas State Banking Department.

⁵ The term “liquid assets” means (a) cash and cash equivalents, (b) deposits at insured depository institutions, and (c) investment securities eligible for investment by national banks under 12 C.F.R. Part 1 and valued at the lower of cost

Tier 1 Capital Requirement (the “Minimum Liquid Capital Requirement”). (The Minimum Tier 1 Capital Requirement and the Minimum Liquid Capital Requirement are collectively the “Minimum Capital Requirement”.)

3. At all times, the Bank shall maintain liquidity in the form of liquid assets in an amount at least equal to the greater of (a) \$500,000 or (b) sixty (60) days operating expenses, excluding any expenses that are directly related to revenues (i.e., fees paid for a service that are a percent of the revenue received by the Bank for the service) (the “Minimum Liquidity Requirement”). For purposes of meeting the Minimum Liquidity Requirement, the Bank’s Minimum Capital Requirement is not an available liquidity source and liquid assets used to meet the Minimum Capital Requirement shall not be included in determining the Bank’s compliance with the Minimum Liquidity Requirement.

4. If at any time, the Bank fails to maintain the Minimum Capital Requirement or the Minimum Liquidity Requirement, the Bank shall take such corrective measures as the OCC may direct from among the provisions applicable to undercapitalized depository institutions under 12 U.S.C. §1831o(e) and 12 C.F.R. Part 6. For purposes of this requirement, an action “necessary to carry out the purpose of this section” under section 1831o(e)(5) shall include restoration of the Bank’s capital and liquidity to levels which comply with the Minimum Capital Requirement and the Minimum Liquidity Requirement, and any other action deemed advisable by the OCC to address the Bank’s capital or liquidity deficiency or the safety and soundness of its operations.

5. The Bank’s Board shall adopt, implement, and maintain a system to analyze and maintain capital and liquidity commensurate with the Bank’s risk profile, in conformance with OCC Bulletin 2007-21, Supervision of National Trust Banks – Revised Guidance: Capital and Liquidity (and any subsequent OCC guidance). The Board shall review the Bank’s capital and liquidity on at least an annual and quarterly basis, respectively, to determine if the Bank requires additional capital or liquidity.

6. Within ten (10) business days of the date the Bank opens for business, the Bank and BBH shall execute a Capital Assurance and Liquidity Maintenance Agreement (“CALMA”), the terms and provisions of which must be acceptable to the OCC. Upon execution of the CALMA, a copy shall be forwarded to the appropriate OCC Supervisory Office. The Bank shall take all actions to exercise its rights and to enforce the terms of the CALMA, if and when necessary, by making a written demand or request on the Parent. Within one (1) day following the Bank’s demand or request to the Parent for compliance with the CALMA, the Bank shall provide the OCC with a copy of such written demand or request.

7. Within ten (10) business days of the date the Bank opens for business, the Bank and BBH shall enter into a written binding Capital and Liquidity Support Agreement (“CSA”)

or market value. However, liquid assets shall not include any assets encumbered or pledged by lien, right of setoff, preference, or otherwise, or any other asset pledged as security in any transaction with any party.

with the OCC setting forth BBH's obligations to provide capital and liquidity support to the Bank, if and when necessary, and the Bank and BBH shall thereafter implement and adhere to the CSA. The terms and provisions of the CSA must be acceptable to the OCC.

8. The Bank (i) shall give the appropriate OCC Supervisory Office at least sixty (60) days prior written notice of the Bank's intent to significantly deviate or change from the business plan or operations, as reflected in these applications, 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.⁶ For purposes of this condition, "significant deviation or change" is the same as defined in Appendix G to the Charters booklet of the Comptroller's Licensing Manual. The OCC may impose additional conditions it deems appropriate in any written determination of no-objection it issues in response to the Bank's notice.

9. The Bank shall establish and maintain an Audit Committee that is independent of management based on the considerations set forth in 12 C.F.R. § 363. The Bank shall establish and maintain a Fiduciary Audit Committee consistent with the requirements of 12 C.F.R. § 9.9(c). One committee may serve both functions, provided it meets the requirements of both sections.

10. The Bank shall maintain an internal audit function appropriate for its size and the scope of its activities that satisfies applicable OCC guidance on internal audit. The Bank shall designate an officer to oversee and manage the internal audit function for its operations. This officer must be an employee of the Bank, understand the internal audit function, and have no responsibility for operating the system of internal control.

11. The Bank shall designate an officer who is a full-time employee of the Bank with sufficient expertise to oversee the Bank's compliance with banking laws and regulations and safety and soundness standards.

12. The Bank, BBH and its affiliates, upon request by the OCC, shall provide the OCC access to, permit the OCC to examine, and provide the OCC with copies of all books and records, and electronic records that accurately reflect the information in the books and records of the Banks, and any other information of, or concerning the Bank.

13. All transactions between the Bank and any affiliates, foreign or domestic, shall be conducted subject to the applicable provisions of 12 U.S.C. §§ 371c and 371c-1, 12 C.F.R. Part 223, and other applicable Federal law. The Bank's Board annually shall review and approve

⁶ If such deviation is the subject of an application filed with the OCC, the filing and acceptance of such application shall constitute notice to the Supervisory Office for purposes of this condition and no additional notice shall be required.

any service agreements, and any other transactions with foreign and domestic affiliates, including in particular any cost allocation, fee-sharing or tax-sharing provisions in such agreements or other transactions.

The conditions of these approvals are conditions "imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request" within the meaning of 12 U.S.C. § 1818. As such, the conditions are enforceable under 12 U.S.C. § 1818.

Consummation Procedures

After the Bank receives final approval and opens for business, please notify the Northeastern District Licensing Office in writing in advance of the desired effective date for the merger so that the OCC may issue the certification letter for the merger. The OCC will issue a letter certifying consummation of the merger transaction when we receive:

- A Secretary's certificate for each institution, certifying that a majority of the board of directors approved.
- A Secretary's certificate from each institution, certifying that the shareholder approvals have been obtained.
- An executed merger agreement with Articles of Association for the resulting bank attached.
- A Secretary's certificate from Brother Brothers Harriman Trust Company of New York, National Association, certifying shareholder approval has been obtained for the reduction in capital associated with this merger.
- Documentation from Texas Department of Banking evidencing its approval of this merger.
- Documentation that all other conditions that the OCC imposed have been met.

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

Conclusion

These preliminary conditional approvals 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. Our preliminary conditional approvals are based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend or rescind this approval if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which this decision pertains. 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 appropriate control numbers. A separate letter is enclosed requesting your feedback on how we handled the application. We would appreciate your response so we may continue to improve our service. If you have any questions, please contact Licensing Analyst Wai-Fan Chang at (212) 790-4055.

Sincerely,

signed

J. Greg Parvin
Director for District Licensing

Enclosures: Standard requirements
 Minimum Policies and Procedures
 Survey