



Comptroller of the Currency
Administrator of National Banks

Southern District
1600 Lincoln Plaza
500 North Akard Street
Dallas, Texas 75201-3394

Office of the District Counsel
Voice: (214) 720-7012
Fax: (214) 720-7071

March 22, 2007

Interpretive Letter #1092
February 2008
12 CFR 5.36

Re: [*Bank, City*], Georgia

Dear []:

This is in response to your letter and related conversations with OCC staff regarding the authority of the existing shareholders of [] (“*Co.*”) that are national banks to remain as shareholders if [*Co*]’s wholly-owned subsidiary, [*Bank*], [*City*], Georgia (“*BB*”) converts from a Georgia limited commercial bank charter to a national bank charter and engages in the activities described below.

Facts

[*Co.*] is presently owned exclusively by depository institutions or depository institution holding companies and has no plans to have non-depository shareholders (apart from directors’ qualifying shares).¹ However, it is possible that in the future [*Co.*] may permit non-bank shareholders to own, in the aggregate, no more than twenty percent of its shares.

Although Georgia does not have a bankers’ bank charter, [*BB*]’s Articles of Incorporation limit its purpose to “providing banking services to depository financial institutions.” All of its activities have been approved by the Georgia Department of Banking and Finance and are considered bankers’ bank activities under Georgia law. The banking products and services currently provided by [*BB*] to its depository institution customers include a clearing and cash management program, investment banking, a Bankcard program, lending services, consulting services, and other specialized services. Its lending services include participations, loans to directors and executive officers, organizational lines of credit for de novo banks, and direct loans

¹ You have indicated that at no time will any depository institution shareholder hold more than five percent of [*Co.*] stock. Therefore, this proposal raises no issues under the Bank Holding Company Act, 12 U.S.C. § 1841 *et seq.*

to banks. In addition, through a subsidiary, [**BB**] makes some commercial loans directly to non-depository institution customers.

[**BB**] plans to convert to a national bank. After conversion, it proposes to engage in the same array of activities. [**BB**] will mostly provide bankers' bank services for [**Co.**]'s community bank shareholders. It will also continue to make some direct commercial loans to accommodate certain borrowers' larger financial needs that are not currently being met by community banks. [**BB**] would make the loans and sell portions back to its community bank customers, including [**Co.**]'s shareholder institutions, thereby allowing the banks to compete more effectively with larger regional banks in the area and increase their overall profitability. This additional direct lending would not constitute a substantial percentage of [**BB**]'s total loan portfolio.

[**BB**] at one time considered expanding its activities to include soliciting and accepting deposits via the Internet. However, you have stated that [**BB**] has altered its plans and will not engage in any deposit-taking activity.

Under 12 U.S.C. §§ 24(Seventh) and 27(b)(1), the activities of a national bankers' bank are limited to providing services to or for other depository institutions and their holding companies, officers, directors and employees, and to providing correspondent services at the request of other depository institutions or their holding companies. As noted, [**BB**]'s current and proposed activities include the making of direct commercial loans to non-bank borrowers. Accordingly, while [**BB**] operates and will continue to operate primarily as a provider of correspondent services to community banks, it would not qualify as a bankers' bank under these statutory provisions. The making of direct commercial loans to non-bank customers is not permissible for a bankers' bank.

Discussion

If [**BB**] converts to a national bank charter, its activities will be limited to those permissible for a national bank. OCC precedent is supportive of the authority of the existing national bank shareholders of [**Co.**] to retain their non-controlling investments following [**BB**]'s charter conversion. OCC Interpretive Letter No. 970 (June 25, 2003) permitted a national bank to hold a non-controlling investment in a state-chartered commercial bank. The bank limited its activities to those permissible for a bankers' bank, but did not qualify as a bankers' bank because some of its shareholders were not depository institutions. OCC Interpretive Letter No. 890 (May 15, 2000) also provides support for the proposal. In that letter, the OCC permitted national banks to hold non-controlling equity interests in a bank holding company that controlled a national bank. The national bank shareholders received bank holding company stock in exchange for their interests in an electronic funds transfer system that the holding company had acquired. The OCC has also approved non-controlling national bank investments in a trust bank (OCC Interpretive Letter No. 831 (June 8, 1998)) and in a community development bank (Guidance to Prospective Community Development Bank Organizing Groups (October 3, 2001) (OCC Community Affairs web page (www.occ.treas.gov/cdd/cdbank.pdf))). Accordingly, the general principles embodied

in 12 C.F.R. § 5.36 for non-controlling investments of national banks appear to be easily satisfied on these facts.²

I trust this reply is responsive to your inquiry. If you have any further questions, please contact Kenneth Gartlir, Special Counsel, at (214) 720-7012, or Sue Auerbach, Counsel, at (202) 874-4662.

Sincerely,

signed

Randall M. Ryskamp
District Counsel

² There is no requirement that the national bank shareholders of [*Co.*] seek OCC approval, either prior to or following [*BB*]'s conversion, to retain their investment. However, following the conversion, these shareholders may (but are not required to) file an after-the-fact notice pursuant to 12 C.F.R. § 5.36(e).