

Standard Requirements

[The OCC imposes the following standard requirements for most preliminary conditional approvals]

(Name of Bank)(hereinafter, Bank) must meet the following standard requirements:

- Organizers must notify the OCC promptly and obtain the OCC's written determination of no objection for any significant deviation or change during the organization phase. A significant deviation or change that has not received the OCC's written determination of no objection 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 Bank must file and obtain the OCC's written determination of no objection prior to any new executive officer or director assuming such position.

Since this requirement is imposed under the OCC's chartering authority, the OCC is not subject to the 30-day review period imposed by 12 USC 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.

- **[Existing BHC-sponsored applications only. This paragraph is deleted for de novo and de novo BHC-sponsored charter applications pursuant to LIC Memo 01-3: Capital "Market Test" for New Bank Charters]** If the capital for the Bank is not raised within 12 months or if the Bank is not opened 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 business as soon as possible.
- 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 (or consolidated holding company), 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 preopening examination (see the "Corporate Organization" booklet).

[An exemption usually is granted for a national bank sponsored by a bank holding company where the bank's financial statements are included in the audited consolidated financial statements of the parent and the bank maintains adequate audit coverage at the bank level. Refer to BOS Memo 99-2.]

- **[If applicable]** Warrants issued to Bank organizers must include the following provision:

If Bank's capital falls below the minimum requirements contained in 12 CFR 3 or below a higher requirement as determined by the OCC, the OCC may direct Bank to require warrant holders to exercise or forfeit their warrants. Bank will notify warrant holders within 45 days from the date the OCC notifies the Bank in writing that warrant holders must exercise or forfeit their warrants. Bank will cancel warrants not exercised within 21 days of Bank's notification. Bank has agreed to comply with any OCC request that Bank invoke its right to require warrant holders to exercise or forfeit their warrants under the previous circumstances.

As a requirement of this approval, Bank agrees to invoke the "exercise or forfeit" feature at the OCC's request under the previous circumstances.

- 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.
- Each person who, together with his or her related interests, subscribe to 10 percent or more of the initial stock offering must submit a biographical and financial report for review to the Licensing staff prior to acquisition of his or her shares. The Licensing staff must have no objection to each person before he or she purchases shares. After opening the Bank, requirements of the Change in Bank Control Act (12 USC 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 CFR 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 offering circular 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 preopening 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 preopening expenses (see the "Corporate Organization" booklet).
- **[Standard submission]** 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.

or

[Streamlined submission] A letter must be submitted to the district office at least 10 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, forwarding certain documentation and providing the anticipated opening date.

- **[If applicable]** If some of the parent company's directors are directors of nonaffiliated depository institutions with assets in excess of \$2.5 billion, the Depository Institutions Management Interlocks Act (DIMIA) prohibits the interlocking directorates when the Bank's assets exceed \$1.5 billion. However, if the directors are engaged "exclusively" in the management of a retail merchandising business, the directors would not fall within the definition of "management official" for purposes of the DIMIA (see the "Management Interlocks" booklet).
- **[For uninsured trust banks]** The limitations of the Bank's activities must be fully enumerated in the Bank's Articles of Association. Specifically, the articles must state clearly that: 1) the business of the association will be limited to that of a national trust bank; and, 2) the Bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.

[For CEBA credit card banks] The limitations of the Bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of a national credit card bank as specified in the Competitive Equality Banking Act of 1987; and, 2) the Bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.

- **[For non-CEBA credit card banks]** The limitations of the Bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state: 1) the business of the association will be limited to that of a credit card bank; and, 2) the Bank must obtain the OCC's written determination of no

objection before amending its Articles of Association to expand the scope of its activities and services.

- **[For bankers' banks]** The limitations of the Bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of a national bankers' bank; and, 2) the Bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.
- **[For bankers' bank waivers]** In your application, you requested waiver/exemption from the following statutes, laws, and regulations: (list the legal cite and title). The OCC performed a legal review and analysis of the material submitted with your waiver request. [Insert either a. or b. here.]
 - a. Based on that review, the following waivers are granted: (list the legal cite and title).
 - b. We are unable to grant a waiver/exemption as requested from (list the legal cite and title).

Additional requests for waivers consistent with your proposal may be submitted during the organization phase.

- **[For cash management banks]** The limitations of the Bank's activities must be enumerated fully in the Articles of Association. Specifically, the articles must state that: 1) the business of the association will be limited to that of a cash management bank; and, 2) the Bank must obtain the OCC's written determination of no objection before amending its Articles of Association to expand the scope of its activities and services.
- **[For community development banks (if the bank is and/or will be seeking funding from national bank investors)]** The community development focus of Bank's activities must be included in its Articles of Association. Specifically, the articles must state that the business of the association will be designed primarily to promote the public welfare consistent with the requirements for national bank investment in community development projects pursuant to national banking laws and regulations, including 12 USC 24 (Eleventh) and 12 CFR 24.
- **[For all banks with affiliates]** Any services performed by affiliates for the Bank and payments to said affiliates by the Bank will be rendered pursuant to contracts that comply with federal law and regulation, reflect safe and sound practices, and are at costs similar to those the Bank would pay an independent third party for the same services. The contracts must be submitted to the (name) District Office (Attn: Licensing) for review prior to or at the time corporate existence is established.