



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

July 17, 2009

Corporate Decision #2009-07
August 2009

Michael P. Warren
Attorney, Linquist & Vennum P.L.L.P.
4200 IDS Center
80 South 8th Street
Minneapolis, Minnesota 55402

Re: Application by First Dakota National Bank, Yankton, South Dakota, to acquire certain assets and certain deposit liabilities of a Sioux Falls, South Dakota branch of Alerus Financial, National Association, Grand Forks, North Dakota
OCC Control No.: 2009-WE-02-017

Dear Mr. Warren

The Office of the Comptroller of the Currency (“OCC”) hereby approves the application of First Dakota National Bank, Yankton, South Dakota (“First Dakota”), to purchase certain deposits and certain assets from Alerus Financial, National Association, Grand Forks, North Dakota (“Alerus”) that are attributed to the Alerus branch office at 6100 South Old Village Place, Sioux Falls, South Dakota, for the reasons set forth below. The transaction may be consummated immediately upon approval. 12 U.S.C. § 1828(c)(6).

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

On July 17, 2009, BankFirst, Sioux Falls, South Dakota (“Failed Entity”), a state chartered bank with deposits insured by the Federal Deposit Insurance Corporation (“FDIC”), was declared closed by the South Dakota state banking commissioner, and the FDIC was appointed as receiver. The FDIC sought bids from potential acquirers, and announced the opportunity for interested bidders to partner with each other for the purpose of acquiring the deposits and assets of Failed Entity. The FDIC indicated it would permit interested parties to negotiate a definitive agreement concerning the post-closing allocation of assets and liabilities at the time Failed Entity was closed. The FDIC also indicated that it would only accept bids from individual bidders and not joint bids from two or more parties, therefore requiring the definitive agreement referenced above to designate one party as the lead institution for purposes of bidding and executing the relevant purchase and assumption agreement on behalf of all parties.

Consequently, Alerus placed a bid for all of the branches, deposits and certain assets of Failed Entity that were being sold, with the intention that it would immediately sell the South Dakota

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portion of Failed Entity's business to First Dakota, and determined the amount of its bid accordingly.

The Purchase and Assumption

First Dakota applied to the OCC for approval to purchase certain assets and assume certain liabilities of Alerus's Sioux Falls branch under 12 U.S.C. §§ 24 (Seventh) and 1828(c) (the "Transaction") after Alerus consummated its acquisition of assets, liabilities and branches of Failed Entity. Alerus is located in North Dakota but the branch to be acquired by First Dakota is in South Dakota. First Dakota is located South Dakota. 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). Thus, the Transaction is legally permissible.

First Dakota also has requested OCC approval to retain the Sioux Falls, South Dakota branch of Alerus upon consummation of the transaction. As authorized by 12 U.S.C. § 36(c), and South Dakota intrastate branching law made applicable to national banks by section 36(c), the OCC approves First Dakota's retention of Alerus's Sioux Falls, South Dakota branch as a branch of First Dakota.

Bank Merger Act

The OCC reviewed the proposed purchase and assumption Transaction under the criteria of the Bank Merger Act ("BMA"), 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. In addition, the BMA requires the OCC to consider "the effectiveness of any insured depository institution involved in the proposed merger transaction in combatting money laundering activities, including in 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 that it must act immediately under the BMA to approve the proposed acquisition by First Dakota. 12 U.S.C. § 1828(c)(3), (4)(C)(i) and (6).

In a separate decision, the OCC granted written approval of the proposed agreement negotiated between the FDIC and Alerus by which the latter would purchase certain assets and assume the deposit liabilities of Failed Entity. Alerus represented to the OCC that if an agreement was not in place to sell the South Dakota deposits to First Dakota, it would not have submitted a bid to the FDIC for all the deposits of Failed Entity. Furthermore, First Dakota advised the OCC that the ability to acquire the South Dakota business immediately is an essential part of the plan

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because if the acquisition could not be undertaken immediately, the customers of the South Dakota branch of Failed Entity would have to endure two transitions and account conversions during a short period of time, which would be inherently disruptive. Moreover, structuring the acquisition of Failed Entity in this manner leads to the same result that would be achieved if the two banks could submit a joint bid, or each bank could bid only on the part of Failed Entity's business that it wished to acquire. Immediate action by the OCC on the acquisition by First Dakota is consistent with and complements the OCC's determination to act immediately under the standards set forth in the BMA with respect to the acquisition of assets, liabilities and branches of Failed Entity by Alerus. 12 U.S.C. § 1828(c)(3), (4)(C)(i) and (6).

Consequently, the acquisition by First Dakota from Alerus may be approved immediately and there is no requirement under the BMA 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.

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. Please refer to the Business Combinations booklet of the *Comptroller's Licensing Manual* for steps to complete the transaction.

Within seven days of consummation of the transaction, please provide the Western District Office with copies of the following documents:

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

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- An executed purchase and assumption agreement.
- Documentation that all other conditions that the OCC imposed have been met.

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. Our approval is 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.

If you have questions regarding this letter, please contact Jim Bundy, Senior Licensing Analyst, at (720) 475-7650 or by email at jim.bundy@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

signed

Lawrence E. Beard
Deputy Comptroller, Licensing