



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON, D. C. 20551

SCOTT G. ALVAREZ  
GENERAL COUNSEL

October 21, 2016

Francis X. Grady, Esq.  
Grady & Associates  
20220 Center Ridge Road, Suite 300  
Rocky River, Ohio 44116-3501

Dear Mr. Grady:

This is in response to your letter, dated October 12, 2016, and received on October 13, to the Federal Reserve Bank of Cleveland requesting a waiver from an application requirement under the Bank Holding Company Act of 1956, as amended ("BHC Act"),<sup>1</sup> for Middlefield Banc Corp. ("MBC"), Middlefield, Ohio, a bank holding company, to acquire Liberty Bank, N.A. ("Liberty Bank"), Twinsburg, Ohio, a stand-alone national bank.

The purpose of the proposed transaction is to facilitate the merger of Liberty Bank with and into MBC's wholly-owned subsidiary, The Middlefield Banking Company ("Middlefield Bank"), Middlefield, Ohio, a state nonmember bank. The transaction would occur as follows: (1) MBC would establish an Ohio-chartered interim bank, MBC Interim Bank, as a wholly-owned subsidiary for the sole purpose of facilitating the transaction;<sup>2</sup> (2) MBC Interim Bank would merge with and into Liberty Bank, with Liberty Bank as the resulting entity ("Interim Merger"); and (3) immediately thereafter, Liberty Bank would merge with and into Middlefield Bank, with Middlefield Bank as the resulting entity ("Bank Merger"). You have indicated that Liberty Bank would exist as a wholly-owned subsidiary of MBC for only a moment in time and that Liberty Bank would never operate as a separate subsidiary of MBC.

Section 3 of the BHC Act and the Board's Regulation Y require the approval of the Board before a bank holding company may acquire direct or indirect

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<sup>1</sup> 12 U.S.C. § 1841 *et seq.*

<sup>2</sup> MBC Interim Bank has submitted an application with the Federal Deposit Insurance Corporation ("FDIC") for deposit insurance as a state-chartered interim institution. MBC Interim Bank, however, will not accept deposits or make loans and will exist solely as a vehicle to effect the acquisition of Liberty Bank.

ownership or control of a bank.<sup>3</sup> Through the transaction described above, MBC would acquire direct ownership of Liberty Bank. Accordingly, MBC would be required to obtain the Board's approval under section 3 of the BHC Act and Regulation Y before acquiring Liberty Bank.

In certain circumstances, however, in order to avoid duplication of regulatory review by federal banking regulators, the Board's rules provide that a bank holding company seeking to acquire shares or control of a bank need not obtain the Board's prior approval. Specifically, section 225.12(d)(2) of the Board's Regulation Y provides that a bank holding company need not receive the Board's approval if the transaction is subject to review by a federal banking agency under section 18(c) of the Federal Deposit Insurance Act ("the Bank Merger Act"),<sup>4</sup> and meets certain other criteria.<sup>5</sup> Your proposal meets all of the applicable criteria, and MBC has provided all necessary information.

The Bank Merger requires the prior approval of the FDIC under the Bank Merger Act.<sup>6</sup> In acting on the merger proposal, the FDIC must consider the impact the acquisition would have on competition, the financial and managerial resources and future prospects of the combined organization, the convenience and needs of the communities served by Liberty Bank and Middlefield Bank, the institutions' records of performance under the Community Reinvestment Act, the institutions' effectiveness in combating money laundering activities, and risks to the stability of the United States banking or financial system.<sup>7</sup> These criteria are substantially similar to the criteria the Board would consider under section 3 of the BHC Act.<sup>8</sup>

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<sup>3</sup> 12 U.S.C. § 1842(a); 12 CFR 225.11.

<sup>4</sup> 12 U.S.C. § 1828(c).

<sup>5</sup> 12 CFR 225.12(d)(2).

<sup>6</sup> 12 U.S.C. § 1828(c). Middlefield Bank filed a Bank Merger Act application with the FDIC dated August 25, 2016, requesting prior approval of the Bank Merger. The Interim Merger requires the prior approval of the Office of the Comptroller of the Currency ("OCC") under the Bank Merger Act, and Liberty Bank filed a Bank Merger Act application with the OCC dated August 25, 2016. MBC has provided the Board with a copy of both filings.

<sup>7</sup> 12 U.S.C. §§ 1828(c)(5) and (11), 2902(3)(E), 2903(a)(2).

<sup>8</sup> See 12 U.S.C. § 1842(c); 12 CFR 225.13.

Additionally, at no time would Liberty Bank operate as a separate subsidiary of MBC. Following the transaction, the separate corporate existence of Liberty Bank would cease, and Middlefield Bank would continue to operate as a state nonmember bank. Under these circumstances, review of the transaction under section 3 of the BHC Act would be duplicative of the review under the Bank Merger Act.

Based on a review of these and other facts presented, the Legal Division believes that no regulatory purpose would be served by requiring MBC to file a formal application under section 3 of the BHC Act. The Legal Division, therefore, would not recommend that the Board take action to require a filing of a formal application by MBC in connection with the transaction described above. This opinion is subject to the receipt by MBC, Middlefield Bank, MBC Interim Bank, and Liberty Bank of all other necessary regulatory approvals and compliance with any terms and conditions that may be imposed upon approval of the proposal.

This opinion is based on all the facts and representations presented to Federal Reserve staff. Any material change in those facts or representations should be communicated immediately to Federal Reserve staff and may cause this opinion to be reconsidered. This opinion is limited to this proposal and does not apply to any other transaction.

If you have any questions regarding this matter, please contact Derald Seid at (202) 452-2246 or Evans Muzere at (202) 452-2621, of my staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "Scott G. Kelly". The signature is written in a cursive style with a large, looping flourish at the end.

cc: Federal Deposit Insurance Corporation  
Office of the Comptroller of the Currency