

FEDERAL RESERVE SYSTEM

Native American Bancorporation Co.
Denver, Colorado

Order Approving the Formation of a Bank Holding Company
and the Acquisition of a Bank

Native American Bancorporation Co. (“Bancorporation”) has requested the Board’s approval under section 3(a)(1) of the Bank Holding Company Act (“BHC Act”) (12 U.S.C. § 1842(a)(1)) to become a bank holding company by acquiring all the voting shares of Blackfeet National Bank, Browning, Montana (“Blackfeet Bank”).¹ Bancorporation also has requested the Board’s approval under sections 4(c)(8) and 4(j) of the BHC Act (12 U.S.C. §§ 1843(c)(8) and 1843(j)) and section 225.24 of the Board’s Regulation Y (12 C.F.R. 225.24) to retain control of Native American Community Development Corporation (“Native American CDC”), which is a nonprofit corporation established by Bancorporation to engage in community and economic development activities on tribal reservations.

Notice of the proposal, affording interested persons an opportunity to comment, has been published (66 Federal Register 9,705 and 12,797 (2001)). The time for filing comments has expired, and the

¹ Bancorporation proposes to merge Blackfeet Bank with Native American Interim Bank, National Association, which Bancorporation would establish solely to facilitate the acquisition. The consolidated Bank would operate under Blackfeet Bank’s current charter, would be renamed Native American National Bank, and would continue to have its headquarters in Browning.

Board has considered all the comments received on the application and notice in light of the factors enumerated in sections 3 and 4 of the BHC Act. Considerations Relating to Competition and Convenience and Needs

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly or would be in furtherance of any attempt to monopolize the business of banking in any relevant banking market. The BHC Act also prohibits the Board from approving a proposed bank acquisition that would substantially lessen competition in any relevant banking market, unless the Board finds that the anticompetitive effects of the proposal clearly are outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.²

Bancorporation is a newly organized corporation that currently does not control any depository institution and has been formed for the purpose of acquiring Blackfeet Bank and establishing Native American CDC. Blackfeet Bank is the 70th largest depository institution in Montana,³ controlling \$16.4 million in deposits.⁴ Bancorporation has indicated that it intends to expand the scope of Blackfeet Bank's operations to banking markets in other states. The Board has reviewed carefully all the facts of record and has concluded that consummation of the proposal likely would

² 12 U.S.C. § 1842(c)(1).

³ In this context, the term "depository institution" includes commercial banks, savings banks, and savings associations.

⁴ The deposit and ranking data are as of June 30, 2000, and have been adjusted to reflect mergers and acquisitions consummated since that time.

not have a significantly adverse effect on competition or on the concentration of banking resources in any relevant banking market. Accordingly, the Board has determined that competitive factors are consistent with approval of the proposal.

Section 3 of the BHC Act also requires the Board to consider the effect of the transaction on the convenience and needs of the community to be served.⁵ In evaluating this factor, the Board places particular emphasis on the ratings the banks involved in a proposal received at their most recent examinations under the Community Reinvestment Act (12 U.S.C. § 2901 et seq.) (“CRA”). Blackfeet Bank received an outstanding CRA rating from its primary federal supervisor, the Office of the Comptroller of the Currency (“OCC”), as of May 10, 1999. In addition, Blackfeet Bank qualifies as a community development financial institution (“CDFI”) under applicable federal banking law,⁶ and Bancorporation proposes either to retain Blackfeet Bank’s CDFI status or request that the OCC designate the bank as a national bank with a community development focus.⁷

Bancorporation also has stated that it intends to retain Blackfeet Bank’s current community development initiatives and retail banking activities in the Browning community and to expand the bank’s products and services to respond to the needs of Native American tribes and tribal businesses nationwide. Bancorporation does not, however, intend to focus

⁵ 12 U.S.C. § 1842(c)(2).

⁶ See 12 U.S.C. § 4701 et seq.

⁷ See 12 C.F.R. 24.6(a)(7).

on tribes and tribal affiliates exclusively and has developed a CRA plan designed to ensure that the bank advertises and provides products and services to all demographic groups and communities in its proposed assessment areas.

After reviewing all the information submitted by Bancorporation related to the convenience and needs factor and based on all the facts of record, the Board concludes that considerations relating to convenience and needs are consistent with approval.

Financial, Managerial, and Other Supervisory Factors

Section 3 of the BHC Act requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in a bank acquisition proposal.⁸ As part of this analysis, the Board has reviewed Bancorporation's operating plan and the proposed management of Bancorporation and Blackfeet Bank. In addition, the Board has taken into account Bancorporation's financial resources, including its capital levels and ability to serve as a source of strength to Blackfeet Bank. Bancorporation's plan to provide Blackfeet Bank with new capital is particularly significant. The Board also has reviewed confidential supervisory and examination information on Blackfeet Bank and publicly reported financial and other information on the bank and Bancorporation.⁹

⁸ 12 U.S.C. § 1842(c)(2).

⁹ The Board has considered an allegation that the members of the Blackfeet Tribe were misled into providing funds to establish Blackfeet Bank on the basis that the tribe would control the bank, when persons who are not Native Americans allegedly control Blackfeet Bank. Concern also was expressed that the Blackfeet Tribe could not sell its interest in Blackfeet Bank without the consent of a majority of the members of the Blackfeet Tribe, and that the
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Moreover, the Board has consulted with the OCC concerning the financial and managerial resources and operating plan of Blackfeet Bank, particularly regarding Bancorporation's proposal to offer additional banking products and services over a broader area.

The Board also has considered that at least thirteen Native American tribes and two Alaska Native Corporations (collectively the "Tribal

Blackfeet name could not be used in the bank's title after the proposed acquisition because the Blackfeet Tribe would not wholly own the bank. The Board also considered an assertion that the proposed transaction was motivated by the intention of Bancorporation's organizers to manage trust monies that might be owed to the investor tribes by the Bureau of Indian Affairs. The Board has considered these claims to the extent they relate to the specific statutory factors the Board must review in connection with a bank holding company application. The Board previously has noted, and the courts have held, that the Board's limited jurisdiction to review applications and notices under the BHC Act does not authorize it to adjudicate disputes involving an applicant that do not arise under laws it administers and enforces. See Deutsche Bank AG, 85 Federal Reserve Bulletin 509 (1999); see also Western Bancshares, Inc. v. Board of Governors, 480 F.2d 749 (10th Cir., 1973).

Counsel for the Blackfeet Tribe has confirmed that the Blackfeet Tribe owns 94 percent of the shares of Blackfeet Bank through its governing body. Counsel further has represented that consent of the Blackfeet Tribal government, as controlling shareholder of Blackfeet Bank, is sufficient to authorize the proposed exchange of shares of the bank for shares of Bancorporation and that approval of a majority of tribal members is not required. As noted above, Bancorporation intends to rename the bank as Native American National Bank after consummating the proposed acquisition, and the primary purpose of the proposed acquisition is to enable Blackfeet Bank to expand its lending and community development activities for Native American tribes and their affiliates nationwide.

Shareholders”) would own all the voting shares of Bancorporation.¹⁰ To ensure that the Tribal Shareholders’ status as domestic sovereigns would not impede the ability of the federal banking agencies to supervise and enforce the banking laws against any entity related to Bancorporation, each Tribal Shareholder has acknowledged that its interest in and relationships with Bancorporation would be subject to federal banking laws; acknowledged that the federal banking agencies have authority to enforce compliance with these laws by the Tribal Shareholder, Bancorporation, and Bank; and committed to comply with the federal banking laws. In addition, Bancorporation has made certain commitments designed to ensure that the federal banking agencies expeditiously can examine Blackfeet Bank, which is on a Native American Reservation, and its affiliates and enforce compliance by those companies with the federal banking laws.¹¹

After considering all the facts of record, the Board concludes that the financial and managerial resources and future prospects of Bancorporation and Blackfeet Bank are consistent with approval, as are other supervisory factors the Board is required to consider under section 3 of the BHC Act.

Nonbanking Activities

¹⁰ Currently, two bank holding companies are wholly owned by Native American tribes. See Bay Bancorporation, 81 Federal Reserve Bulletin 791 (1995); Mille Lacs Bancorporation, 82 Federal Reserve Bulletin 336 (1996).

¹¹ For example, Bancorporation has agreed to keep copies of all bank records at Bancorporation’s headquarters in Denver (or another location acceptable to the Board and the OCC) and has committed to monitor ownership of its shares to ensure that no shares are transferred or voted in a manner that is inconsistent with federal banking laws.

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Bancorporation also has filed notice under sections 4(c)(8) and 4(j) of the BHC Act to retain its interest in Native American CDC and thereby engage in the activity of making investments designed primarily to promote community welfare and providing advisory and related services to support Native American CDC's community development programs.¹² Bancorporation would engage through Native American CDC in a number of community development activities, such as assisting tribes and Indian Housing Authorities with financing low-income mortgages; establishing loan programs designed to provide Native-American small businesses, ranchers, and farmers with better access to credit; improving access to retail banking services in Reservation areas not currently served by bank branches; assisting tribes with the implementation of financial literacy programs for their members; and researching and advising tribes about how to manage Indian lands more efficiently in order to promote greater economic development in Indian country. The Board has determined by regulation that making equity and debt investments in corporations or projects designed primarily to promote community welfare and providing advisory and related services for programs designed primarily to promote community welfare are permissible activities for a bank holding company.¹³

In order to approve the notice filed by Bancorporation to retain Native American CDC, the Board is required by section 4(j)(2)(A) of the

¹² Native American CDC is a nonprofit corporation that is partially funded by Bancorporation, which also selects the corporation's board of directors.

¹³ 12 C.F.R. 225.28(b)(12).

BHC Act to determine that the acquisition “can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.”¹⁴

As part of its evaluation of these factors, the Board considers the financial condition and managerial resources of the notificant, its subsidiaries, and the companies to be acquired, and the effect of the proposed transaction on those resources. For the reasons discussed above and based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice.

Bancorporation indicates that there are many unique financial needs in Indian country, especially in the areas of affordable housing, small business development, and productive use of Indian lands that are held in trust. Bancorporation further indicates that Native American CDC, by devoting resources to these issues on a nonprofit basis, would have the flexibility to develop programs to meet various needs throughout Indian country that currently are unmet by traditional, for-profit lenders.

The Board has concluded that Bancorporation’s control of Native American CDC within the framework of Regulation Y, Board precedent, and the commitments and acknowledgments made by Bancorporation, its shareholders, and Bank is not likely to result in any significantly adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would outweigh the public benefits of the proposal, such as

¹⁴ 12 U.S.C. § 1843(j)(2)(A).

increased customer access to banking products and services and gains in efficiency. Accordingly, based on all the facts of record the Board has determined that the balance of public benefits the Board must consider under section 4(j) of the BHC Act is favorable and consistent with approval of the notice.

Conclusion

Based on the foregoing and after considering all the facts of record, the Board has determined that the application and notice should be, and hereby are, approved. In reaching its conclusion, the Board has considered all the facts of record in light of the factors that it is required to consider under the BHC Act and other applicable statutes. The Board's approval is specifically conditioned on compliance by Bancorporation and each Tribal Shareholder with all the commitments and representations made in connection with the application and notices, including the commitments described in this order, and the conditions set forth in this order and the above-noted Board regulations and orders. The Board's approval of the nonbanking aspects of the proposal also is subject to all the conditions set forth in Regulation Y, including those in sections 225.7 and 225.25(c) of Regulation Y (12 C.F.R. 225.7 and 225.25(c)), and the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders issued thereunder. These commitments and conditions are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of Blackfeet Bank may not be consummated before the fifteenth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Federal Reserve Bank of Minneapolis, acting pursuant to delegated authority.

By order of the Board of Governors,¹⁵ effective
September 28, 2001.

(signed)

Robert deV. Frierson
Deputy Secretary of the Board

¹⁵ Voting for this action: Chairman Greenspan, Vice Chairman Ferguson, and Governors Kelley, Meyer, and Gramlich.