



Comptroller of the Currency
Administrator of National Banks

250 E Street, SW
Washington, DC 20219

Conditional Approval #1028
March 2012

February 14, 2012

Rajinder Singh
Chief Operating Officer
BankUnited
14817 Oak Lane
Miami Lakes, FL 33016

Subject: Application by BankUnited, Miami Lakes, Florida, to convert from a Federal savings association to a National Bank with the title BankUnited National Association (2011-SO-01-0004 and R2-2011-0143-0150)

Dear Mr. Singh:

The Office of the Comptroller of the Currency (“OCC”) hereby conditionally approves the application by BankUnited, Miami Lakes, Florida (“BankUnited” or “Applicant”) to convert from a Federal savings association to a national bank with its main office in Miami Lakes, Florida and the name “BankUnited National Association” (“BUNA”). The OCC also hereby grants approval for BUNA to retain all of BankUnited’s branches, subsidiaries, and investments, as explained in more detail below.

These approvals are granted based on a thorough review of all information available. They are subject to the commitments and representations made in the application and related materials submitted by BankUnited, and representations made by the Applicant’s representatives during the application process. These approvals are also subject to BankUnited’s receipt of all other applicable regulatory approvals, nonobjections, and waivers, and are further subject to the condition set forth herein.

A. The Application

BankUnited is a Federal savings association with its main office in Miami Lakes, Florida, and with additional branches in the state of Florida. The Bank does not exercise trust powers. BankUnited is a wholly owned subsidiary of BankUnited, Inc., a savings and loan holding

company¹ located in Miami Lakes, Florida. BankUnited seeks approval to convert to a national banking association and, following the conversion, to retain its main office, branches, subsidiaries, and investments.

The Office of Thrift Supervision (“OTS”) chartered BankUnited as a *de novo* Federal savings association in May 2009, after a consortium of investors organized it for the purpose of acquiring assets of a failed bank from the Federal Deposit Insurance Corporation (“FDIC”). The current BankUnited acquired the assets of an institution known as BankUnited, FSB, headquartered in Coral Gables, Florida. The OTS closed that institution on May 21, 2009 and appointed the FDIC as receiver, and the FDIC accepted BankUnited’s bid for the assets of the former BankUnited FSB. The OTS issued final approval to charter the new BankUnited, and for this new entity to purchase certain assets and liabilities of the former BankUnited, FSB, in a transaction with the FDIC, on May 21, 2009.²

B. Legal Authority

1. Conversion to a national bank charter

The conversion of BankUnited to a national bank is legally authorized under 12 C.F.R. § 5.24.³ In accordance with Section 5.24, in deciding a conversion application the OCC takes into account whether the institution can operate safely and soundly as a national bank in compliance with applicable laws, regulations, and policies.⁴ The OCC’s regulations also provide that an application may be denied if a significant supervisory, Community Reinvestment Act (“CRA”)⁵,

¹ BankUnited, Inc. filed an application with the Board of Governors of the Federal Reserve (“FRB”) seeking approval to become a bank holding company. FRB approved on February 13, 2012.

² OTS Order No. 2009-31 (May 21, 2009).

³ At the time BankUnited filed its application with the OCC, it was also required to file an application with the OTS pursuant to 12 C.F.R. § 552.2-7. (See 12 C.F.R. §§ 552.2-7, republished and recodified at 12 C.F.R. § 152.19 effective July 21, 2011; 79 FR 48950 (August 9, 2011) (“Office of Thrift Supervision Integration Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act”). BankUnited filed an application regarding its intended conversion to a national bank with the OTS on June 17, 2011. The OTS approved the application on June 30, 2011.

On July 21, 2011 (“transfer date”), all functions of the OTS relating to Federal savings associations transferred to the OCC pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act. As of the transfer date, the OCC assumed responsibility for the ongoing examination, supervision, and regulation of Federal savings associations, including BankUnited.

⁴ 12 C.F.R. § 5.24(d)(1).

⁵ The CRA also requires that the OCC consider a conversion applicant’s record of compliance with the CRA in deciding the application. 12 U.S.C. § 2903(a)(2) and 2902(3)(A); 12 C.F.R. § 25.29(a)(4). BankUnited has not yet received a CRA examination, but the OCC reviewed other information available to the OCC as a result of its

or compliance concern exists with the applicant; approval is inconsistent with applicable law⁶, regulation or policy; or the applicant fails to provide necessary information that the OCC has requested.⁷ Further, a conversion application may be denied if the conversion would permit the applicant to escape supervisory action by its current regulator.⁸

The OCC has conducted a thorough review of the conversion application in light of the factors set forth above and determined that the results of this review are consistent with approval of the conversion application. Therefore, the OCC hereby approves the conversion of BankUnited to a national bank. Following conversion, BUNA will continue to operate BankUnited's main office in Miami Lakes, Florida as BUNA's main office.

2. Branch retention after conversion

Upon consummation of BankUnited's conversion to a national bank, BUNA is authorized to retain all of BankUnited's branches. Pursuant to Section 341 of Dodd-Frank, codified at 12 U.S.C. § 5451:

Notwithstanding the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*), the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*), or any other provision of Federal or State law, a savings association that becomes a bank may-

- (1) continue to operate any branch or agency that the savings association operated immediately before the savings association became a bank; and
- (2) establish, acquire, and operate additional branches and agencies at any location within any State in which the savings association operated a branch immediately before the savings association became a bank, if the law of the State in which the branch is located, or is to be located, would permit

regulatory responsibilities. Our review revealed that BankUnited's record of helping to meet the credit needs of its community is consistent with approval of the conversion.

⁶ BankUnited submitted an opinion of counsel that the conversion is not in contravention of applicable law. 12 C.F.R. § 5.24(d)(2)(ii)(E). In addition, section 612 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. Law No. 111-203, 124 Stat. 1376, 1612 (July 21, 2010) contains provisions restricting certain charter conversions. However, those provisions do not apply to conversions of Federal savings associations to national banks.

⁷ 12 C.F.R. §§ 5.24(d) and 5.13(b).

⁸ 12 C.F.R. §5.24(d)(1).

establishment of the branch if the bank were a State bank chartered by such State.⁹

Therefore, the OCC hereby approves BUNA's retention of all of BankUnited's branches.

3. Retention of Subsidiaries and investment following conversion

BankUnited has a number of subsidiaries and investments BUNA seeks to retain following the conversion. For the reasons discussed below, BUNA is authorized to retain the following subsidiaries and investments.

i. Operating subsidiaries retained following conversion

Operating subsidiaries are those that conduct activities that are permissible for a national bank to engage in directly and pursuant to the same authorization, terms, and conditions that apply to the conduct of those activities by their parent bank.¹⁰ Based on the Applicant's representations, BUNA is authorized to retain the following entities as operating subsidiaries:

1. BU Delaware, Inc: This is a wholly owned subsidiary that owns municipal bonds, and also owns all of the common stock of BU REIT, Inc., Pinnacle Public Finance, Inc., and United Capital Business Lending, Inc. Owning municipal bonds and serving as a holding company for entities that engage in permissible activities (as detailed below) are permissible activities for an operating subsidiary.¹¹
2. Bay Holdings, Inc.: This is a wholly owned subsidiary that holds title to and maintains, manages, and supervises the disposition of 1-to-4 family residential property acquired through foreclosure. This is a permissible activity for an operating subsidiary.¹²

⁹ 12 U.S.C. § 5451. Pursuant to section 2, paragraph 18 of the Dodd-Frank Act, the term "bank" has the same meaning as in 12 U.S.C. § 1813 and therefore includes a national bank. *See* 12 U.S.C. § 1813(a)(1).

¹⁰ 12 U.S.C. § 24(Seventh) and 12 C.F.R. §§ 5.34(e)(1) and (3).

¹¹ 12 U.S.C. § 24(Seventh) and 12 C.F.R. § 1.2(j), (k), (1); 12 C.F.R. § 1.3.

¹² 12 U.S.C. § 29, 12 C.F.R. Part 34, Subpart E, and 12 C.F.R. § 5.34(e)(5)(v)(A). Real estate taken in satisfaction of debts previously contracted by national banks and their operating subsidiaries shall be disposed of at the earliest time that prudent judgment dictates, but in any event must be disposed of within five years, unless the OCC extends the holding period, not to exceed an additional five years. *See* 12 U.S.C. § 29; 12 C.F.R. § 34.82. Where a depository institution that holds such real estate converts to a national bank, the divestiture period begins on the date of consummation of the conversion.

3. CRE Properties, Inc.: This is a wholly owned subsidiary that holds title to and maintains, manages and supervises the disposition of commercial real estate acquired through foreclosure. This is a permissible activity for an operating subsidiary.¹³
 4. T&D Properties of South Florida, Inc: This is a wholly owned subsidiary of that holds tax certificates and title to, and maintains, manages and supervises the disposition of, real property acquired through tax deeds. This is a permissible activity for an operating subsidiary.¹⁴
 5. BU REIT, Inc.: This is a wholly owned subsidiary of BU Delaware that holds participation agreements in first mortgage loans with BankUnited. This is a permissible activity for an operating subsidiary.¹⁵
 6. Pinnacle Public Finance, Inc: This is a wholly owned subsidiary of BU Delaware that provides financing to municipalities and governmental entities. This is a permissible activity for an operating subsidiary.¹⁶
 7. United Capital Business Lending, Inc.: This is a wholly owned subsidiary of BU Delaware that provides secured commercial loan and lease programs. This is a permissible activity.¹⁷
- ii. Other investment

BUNA is also authorized to maintain BankUnited's membership stock in the Federal Home Loan Bank ("FHLB") of Atlanta to meet FHLB membership requirements.

Therefore, the OCC hereby approves BUNA's retention of BankUnited's subsidiaries and investments.

C. Section 1818 Condition

This approval is subject to the following condition:

¹³ 12 U.S.C. § 29 and 12 C.F.R. § 5.34(e)(5)(v)(A).

¹⁴ See 12 U.S.C. § 29, 12 C.F.R. § 5.34(e)(5)(v)(A) and OCC Interpretive Letter No. 717 (March 22, 1996).

¹⁵ See 12 U.S.C. § 24(Seventh), 12 U.S.C. § 371, and 12 C.F.R. § 5.34(e)(5)(v)(A), (C), (D).

¹⁶ See 12 U.S.C. § 371, 12 C.F.R. § 5.34(e)(5)(v)(C), (M).

¹⁷ See 12 U.S.C. § 24(Seventh), 12 U.S.C. § 371, and 12 C.F.R. § 5.34(e)(5)(v)(C), (M).

BUNA shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within ten (10) business days after consummating the conversion.

This condition is a condition “imposed in writing by a Federal banking agency in connection with any action on any application, notice, or other request” within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

D. Consummation Requirements

Please refer to the Conversions booklet of the *Comptroller’s Licensing Manual* for the steps and requirements to be completed prior to converting. In addition to other matters addressed in the Conversions booklet, you are reminded that the following items must be satisfactorily addressed on or before the effective date of the conversion:

1. Applicant must ensure that all other required regulatory approvals, non-objections, or waivers have been obtained.
2. Applicant must notify the OCC if the facts described in the filing materially change at any time prior to consummation of the conversion. Any changes to the executive officers or directors must receive a prior “no objection” from the OCC.
3. The directors of BUNA must own qualifying shares in conformance with 12 U.S.C. § 72 and 12 C.F.R. § 7.2005.
4. Upon completion of all steps required to convert to a national bank, BUNA must submit the “Conversion Completion Certification” (enclosed) certifying that all of the steps required to convert BankUnited to a national banking association have been completed.

When Applicant has satisfactorily completed all of the above steps, the OCC will issue a Conversion Completion Acknowledgment officially authorizing the institution to commence business as a national bank. At that time you will receive the charter certificate.

E. Conclusion

If the conversion is not consummated within six months from the date of this decision, the approval will automatically terminate unless the OCC grants an extension of the time period. The OCC is opposed to granting extensions, except under the most extenuating circumstances, and expects the conversion to occur as soon as possible.

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This conditional 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 representations made in the application, other submissions, and other information available to the OCC as of this date. The OCC may modify, suspend, or rescind this conditional 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 or if the OCC deems any other interim development warrants such action. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

The OCC will send to you under separate cover an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the *Comptroller's Licensing Manual*, which is available in electronic form on our Web site <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

All correspondence regarding this application should reference the application control number. If you have any questions, please contact Senior Licensing Analyst Joseph T. Burbridge in the OCC's Dallas office at (214) 720-7052.

Sincerely,

Stephen A. Lybarger

Stephen A. Lybarger
Deputy Comptroller for Licensing

Enclosure