

**Conditional Approval #1324**  
**July 2024**

June 14, 2024

*Via e-mail*

Sumaira Shaikh, Associate  
Hunton Andrews Kurth LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037

Re: Substantial Asset Change, Reduction of Permanent Capital, and Merger with and into  
Nonbank Affiliate Applications Submitted on Behalf of West Valley National Bank,  
Goodyear, Arizona  
OCC Control Nos.: 2023-5.53-335091, 2024-Capital&Div-335564, 2024-215a3-335311  
Charter No.: 24683

Dear Ms. Shaikh:

The Office of the Comptroller of Currency (OCC) hereby conditionally approves the above referenced applications (Applications) submitted by West Valley National Bank, Goodyear, Arizona (Bank) to (1) change the composition of its assets, (2) reduce permanent capital, and (3) then merge into a nonbank affiliate, West Valley Bancorp, Inc. (Affiliate). These approvals are granted after a thorough evaluation of the Applications, other materials supplied by the Bank's representatives, and other information available to the OCC, including the representations and commitments made in the Applications and during the application process. The OCC's approvals are subject to the conditions set out herein.

**I. The Transactions**

The Applications relate to a series of transactions in which the Bank seeks to terminate its national bank charter. In the first stage, the Bank has applied to the OCC for a substantial asset change pursuant to 12 CFR 5.53, in which the Bank will enter into a Purchase & Assumption (P&A) transaction with A.E.A. Federal Credit Union, Yuma, Arizona (AEA); through the P&A the Bank will transfer its remaining deposits and substantially all of its remaining assets and liabilities to AEA.

Once the P&A transaction is completed, the Bank will begin the process of voluntarily terminating its Federal Deposit Insurance Corporation (FDIC) deposit insurance pursuant to 12 USC 1818(p). During this process the Bank will also complete a reduction of permanent capital in order to distribute a certain portion of assets of the Bank to its holding company, West Valley Bancorp, Inc. (WVBI). Finally, once the FDIC has terminated the Bank's deposit insurance, the Bank will merge with and into its nonbank affiliate WVBI, and return its national bank charter to the OCC.

## II. Discussion

### A. *Substantial Asset Change*

The Bank applied to the OCC for prior approval of a substantial asset change under 12 CFR 5.53. Pursuant to section 5.53(c)(1)(i), a national bank must obtain prior written approval of the OCC before changing the composition of all, or substantially all, of its assets through sales or other dispositions. In the P&A transaction with the Buyer, the Bank will transfer all or substantially all of its assets and all of its deposits.

The principal purpose of adopting 12 CFR 5.53 was to address supervisory concerns raised by so called “dormant” bank charters by providing the OCC with regulatory oversight and a means to monitor them. Following consummation of the P&A transaction, the Bank would become a “dormant” charter. The Bank, however, plans to merge into Affiliate promptly after consummation of the purchase and assumption transaction. Thus, OCC concerns over the continuation of “dormant” charters are addressed, and so OCC approval of the section 5.53 application is consistent with the language and purpose of section 5.53.

### B. *Reduction of Permanent Capital*

The Bank applied to the OCC for prior approval to decrease its permanent capital under 12 CFR 5.46 in an amount of \$13,293,133. Pursuant to 12 USC 59, a reduction in capital stock requires approval by shareholders owning at least two-thirds of the bank’s capital stock and, if necessary, amendments to the Articles of Association. To determine whether to approve a proposed change to a national bank’s permanent capital, the OCC considers whether the change is; consistent with law, regulation, and OCC policy thereunder; provides an adequate capital structure; and complies with the bank’s capital plan. The OCC reviewed the proposed reduction of permanent capital with respect to these factors and determined that approval of the merger is warranted.

### C. *Merger of the Bank with and into WVBI*

In this merger, the Bank will merge into WVBI, which will be the surviving entity, and the Bank will cease to exist. The merger is authorized under 12 USC 215a-3. Section 215a-3 authorizes a national bank to merge with a nonbank subsidiary or affiliate: “Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates.”<sup>1</sup> The statute does not limit its scope to mergers in which the national bank is the surviving entity, and so a merger *into* a nonbank affiliate is within its scope. The OCC’s implementing regulation, discussed below, expressly provides for mergers into a nonbank affiliate. However, the regulation limits these transactions to mergers involving a national bank that is not an insured bank. The Bank will not be an insured bank at the time of the merger.

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<sup>1</sup>12 USC 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub. L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000).

The OCC's regulations implementing 12 USC 215a-3 set out substantive and procedural requirements for the merger of an uninsured national bank with its nonbank affiliate in which the nonbank affiliate is the resulting entity.<sup>2</sup> The regulation requires that the law of the state or other jurisdiction under which the nonbank affiliate is organized allow the nonbank affiliate to engage in such mergers. WVBI is organized under the law of Arizona, which permits domestic entities to merge with one or more domestic entities.<sup>3</sup>

The OCC regulation also requires that: (1) the bank comply with the procedures of 12 USC 214a as if it were merging into a state bank, (2) the nonbank affiliate follow the procedures for mergers of the law of its state of organization, (3) shareholders of the national bank who dissent from the merger have the dissenters' rights set out in 12 USC 214a, and (4) the rights of dissenting shareholders and appraisal of the stock of dissenting shareholders in the nonbank affiliate shall be determined in the manner prescribed by the law of the state or other jurisdiction under which the nonbank affiliate was organized. The Bank is in the process of meeting applicable procedural requirements under section 214a and WVBI is in the process of complying with the procedures for mergers by Arizona domestic entities.

The OCC's regulation also provides that the OCC shall consider the purpose of the transaction, its impact on the safety and soundness of the Bank, and any effect on the Bank's customers, and may deny a merger if it would have a negative effect in any such respect. The OCC reviewed the proposed merger with respect to these factors and determined that approval of the merger is warranted.

### **III. Conditions**

These approvals are subject to the following conditions:

1. The reduction of permanent capital shall not occur until after consummation of the purchase and assumption transaction between the Bank and A.E.A. Federal Credit Union (AEA).
2. The merger of the Bank into WVBI shall not occur until after consummation of the purchase and assumption transaction between the Bank and AEA.
3. If the merger of the Bank with and into WVBI does not occur within seven calendar days after the termination of its deposit insurance the Bank shall immediately notify the OCC and submit a plan acceptable to the OCC to wind up its affairs and terminate its status as a national bank.

These conditions of approval are conditions "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 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

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<sup>2</sup>12 CFR 5.33(g)(5).

<sup>3</sup> Ariz. Rev. Stat. 29-2022.

#### **IV. Consummation Guidance**

The Licensing office must be advised in writing at least 10 days in advance of the desired effective date for the merger so that it may issue the necessary certification letter. The OCC will issue a letter certifying consummation of the transaction when we receive the following:

1. Written confirmation that the Bank is no longer FDIC insured.
2. Certification that the Bank's charter certificate and all OCC Reports of Examination have been returned to the OCC or destroyed.
3. Copies of any other required regulatory approvals.
4. A copy of the final statement of merger filed with the Arizona Corporation Commission reflecting the merger of the Bank into WVBI.

These conditional approvals, 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 these transactions not consummated within six months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

A separate letter is enclosed requesting your feedback on how we handled the referenced application. We would appreciate your response so we may improve our service. Please include the OCC control number on any correspondence related to this filing. If you have any questions, contact David Hanlon at (202) 450-0177 or [david.hanlon@occ.treas.gov](mailto:david.hanlon@occ.treas.gov).

Sincerely,

/s/

Stephen A. Lybarger  
Deputy Comptroller for Licensing