

FEDERAL DEPOSIT INSURANCE CORPORATION

In Re: AloStar Bank of Commerce, formerly known as Alabama Conditional Bank (In Organization)
Birmingham, Alabama

Application for Federal Deposit Insurance

ORDER

The undersigned, acting on behalf of the Board of Directors of the Federal Deposit Insurance Corporation ("FDIC") pursuant to delegated authority, has fully considered all available facts and information relevant to the factors of Section 6 of the Federal Deposit Insurance Act regarding the application for Federal deposit insurance with membership in the Deposit Insurance Fund and for consent to exercise trust powers limited to the following corporate trust services: trustee, transfer agent, paying agent, escrow agent and agent for AloStar Bank of Commerce, formerly known as Alabama Conditional Bank, ("Bank"), a proposed new state non-member bank to be located at 3680 Grandview Parkway, Suite 200, Birmingham, Alabama, and has concluded that the application should be approved.

Accordingly, it is hereby ORDERED, for the reasons set forth in the attached Statement, that the application submitted by the Bank for Federal deposit insurance be approved, and the same is hereby approved, subject to the following conditions:

1. Initial paid-in-capital funds of not less than \$160,000,000 shall be provided, less amounts attributable to reasonable legal, placement, and other organizational fees.
2. Federal deposit insurance shall not become effective unless the applicant is the successful bidder for, and subsequently acquires certain assets and assumes deposits and certain other liabilities from the FDIC as receiver for Nexity Bank, Birmingham, Alabama.
3. The Bank shall maintain a Tier 1 common equity to total assets ratio, as defined in the FDIC's Statement of Policy on Qualifications for Failed Bank Acquisitions ("Policy Statement"), of at least 10 percent upon acquiring certain assets and/or certain liabilities of the failed Nexity Bank and for a period of three years from the date of that acquisition.
 - a. After such 3-year period and for so long as the Investors, directly or indirectly, own the Bank, it shall maintain capital sufficient to satisfy the minimum requirement of the Operating Agreement and shall at all times remain "well capitalized" as defined in the appropriate capital regulations.
 - b. The Bank shall at all times maintain an adequately funded allowance for loan and lease losses.

- c. For purpose of this Order, Investors shall include: Fortress Investment Group LLC, Oaktree Capital Management, L.P., Pine Brook Road Associates, L.P., and Stone Point Capital LLC (for itself and on behalf of its affiliated investing fund(s) and/or entity(ies); Curtis A. Glovier, Managing Director, Fortress Investment Group; Michael P. Harmon, Managing Director, Oaktree Capital Management, L.P.; [Eric W. Leathers, Managing Director], or [Acceptable Interim Nominee], Pine Brook Road Partners, LLC; Christopher M. Doody, Principal, Stone Point Capital LLC; Michael J. Gillfillan; and Andrew S. McGhee.
4. The Bank and each Investor shall be bound by, and comply with, all applicable provisions of the Policy Statement including, but not limited to, Condition 3 of this Order which provides that the Bank shall maintain Tier 1 common equity to total assets ratio of at least 10 percent upon acquiring certain assets and/or certain liabilities of the failed Nexity Bank and for a period of three years from the date of that acquisition.
5. Notwithstanding Conditions 3 and 4 above, the Bank shall at all times maintain a Tier 1 Leverage Capital Ratio of not less than 12.75 percent of total assets so long as the Operating Agreement remains in full force and effect.
6. Any changes in the proposed management of the Bank or the proposed ownership shall be approved in writing by the appropriate FDIC Regional Director prior to opening.
7. Within 60 days of the date of this Order (or, at a later time, for good cause shown and at the sole discretion of the FDIC following the receipt of a written request for an extension of time by the Bank) and at all times thereafter, at least fifty (50) percent of the Bank's Board of Directors shall be independent directors with banking or related financial management expertise. For purposes of this condition, an "independent director" is one that (a) is not a principal, director, member, officer, or employee of the Bank, or any other Investors, (b) is otherwise "independent of management" within the meaning of 12 C.F.R. Part 363, (c) who does not own or control more than 5% of the outstanding shares of the Bank, and (d) has not been otherwise determined by the Alabama State Banking Department ("State") or FDIC to lack sufficient independence. In each case, service by these individuals on the Bank's Board of Directors will be subject to prior review and non-objection by the appropriate FDIC Regional Director and the State.
8. The Audit Committee of the Bank's Board of Directors shall be comprised of at least three (3) Bank directors, none of whom are officers or employees of the Bank, and all of whom are independent directors.
9. Within 60 days of the commencement of banking operations (or, at a later time, for good cause shown and at the sole discretion of the FDIC following the receipt of a written request for an extension of time by the Bank), the Bank shall have appointed

and shall thereafter retain a board of directors and senior executive officers who possess the knowledge, experience, and capability to carry out the responsibilities of those positions in a safe and sound manner. For the purpose of this Order, such senior officers shall include the Chief Executive Officer, President, Chief Credit Officer, and the Chief Financial Officer (or those employees that have duties and responsibilities typical of persons with the forgoing titles).


10. The Bank shall provide to the appropriate FDIC Regional Director, with a copy sent to the State, the employment agreements and compensation arrangements (including salary, benefits, deferred compensation, stock options or incentives, retention bonuses, and severance payments) for the Bank's senior executive officers, and obtain the prior written non-objection of the appropriate FDIC Regional Director for those agreements and compensation arrangements prior to execution. The compensation for directors and officers shall be reviewed and approved by the Bank's Compensation Committee and shall be comparable to other insured depository institutions of similar size, nature, and complexity. The submission shall include a compensation study or similar documentation to support the reasonableness of the proposed compensation.
11. Until and including December 31, 2014, the Bank shall obtain the prior written non-objection of the appropriate FDIC Regional Director before implementing any stock benefit plan developed by the Bank or offered to Bank employees, and not previously reviewed by the FDIC as part of the application for Federal deposit insurance.
12. The Bank shall obtain adequate fidelity coverage prior to the date deposit insurance becomes effective.
13. The Bank shall adopt and maintain an accrual accounting system.
14. Federal deposit insurance shall not become effective until the Bank has been granted a charter, has authority to conduct banking business, and its establishment and operation as a depository institution has been fully approved by the State.
15. Within 60 days of commencement of operations, the Bank shall supplement its previously submitted Business Plan to reflect the completed transaction involving Nexity Bank and to provide additional details. The supplement to the Business Plan shall also include a Community Reinvestment Act plan, which shall be subject to the prior written non-objection of the appropriate FDIC Regional Director and the prior written approval of the State. The Bank shall not implement any material change or significant deviation from the previously submitted Business Plan absent the prior written non-objection of the appropriate FDIC Regional Director and the prior written approval of the State. For three years following the commencement of banking operations, the Bank shall provide to the appropriate FDIC Regional Director and to the State, within 45 calendar days after the end of the calendar

quarter, a business plan variance report detailing compliance with and any material deviations from the Business Plan as supplemented.

16. For three years following the commencement of banking operations, the Bank shall provide to the appropriate FDIC Regional Director at least 60 days prior notice of any proposed material changes to or significant deviations from the Business Plan and obtain the prior written approval of the Regional Director before implementation of the proposed material changes to or significant deviations from the Business Plan.
17. The Bank shall provide to the appropriate FDIC Regional Director copies of the monthly reports provided to the FDIC pursuant to any Loss-Share Agreement by and between the FDIC, and the Bank.
18. The Bank shall obtain an audit of its financial statements by an independent public accountant annually for at least the first three years after deposit insurance coverage becomes effective and shall submit to the appropriate FDIC Regional Director and the State (i) a copy of the audited annual financial statements and the independent auditor's report thereon within 90 days after the end of the Bank's fiscal year; (ii) a copy of any other reports by the independent auditor (including any management letters) within 15 days after their receipt by the Bank; and (iii) written notification within 15 days after a change in the Bank's independent auditor occurs.
19. With respect to any proposed director or senior executive officer of the Bank for whom background checks have not been completed, the Bank shall take such action as required by the appropriate FDIC Regional Director and the State, if either objects to any such person based on information obtained as part of the background check.
20. Full disclosure shall be made to all proposed directors and stockholders of the Bank of the facts concerning the interest of any insider in any transactions being effected or then contemplated, including the identity of the parties to the transaction and the terms and costs involved. An "insider" is a person who (i) is or is proposed to be a director, officer, or incorporator of the Bank; (ii) a shareholder who directly or indirectly controls ten percent or more of any class of the Bank's outstanding voting stock; or (iii) an associate or interest of any such person.
21. Deposit insurance will not become effective until all parties have entered into an Operating Agreement in a form satisfactory to the FDIC.
22. Until deposit insurance becomes effective, the FDIC retains the right to alter, suspend, or withdraw its approval should an interim development be deemed to warrant such action.
23. If deposit insurance has not become effective within six months from the date of this ORDER, or unless, in the meantime, a request for an extension of time has been approved by the FDIC, this approval shall expire at the end of said six-month period.

Dated at Washington, D.C. this 13th day of April, 2011.

FEDERAL DEPOSIT INSURANCE CORPORATION

By: 

Lisa D. Arquette
Associate Director
Division of Supervision and Consumer Protection

FEDERAL DEPOSIT INSURANCE CORPORATION

In Re: AloStar Bank of Commerce (Proposed)
Birmingham, Jefferson County, Alabama

Application for Federal Deposit Insurance

STATEMENT

Pursuant to the provisions of Section 5 of the Federal Deposit Insurance Act (FDI Act), (12 U.S.C. § 1815), the Federal Deposit Insurance Corporation (FDIC) received an application for Federal deposit insurance filed on behalf of AloStar Bank of Commerce, formerly known as Alabama Conditional Bank (the "Bank"), a proposed new state non-member bank to be located at 3680 Grandview Parkway, Suite 200, Birmingham, Alabama. The Bank is being formed for the purpose of acquiring, in a purchase and assumption transaction, certain assets and assuming certain liabilities of Nexity Bank, Birmingham, Alabama, from the FDIC in its capacity as receiver of Nexity Bank. The Bank also filed an application for consent to exercise trust powers limited to the following corporate trust services: trustee, transfer agent, paying agent, escrow agent and agent, and a Bank Merger Act application in connection with the proposed acquisition.

In accordance with FDIC regulations, the deposit insurance application will not be subject to public notice, as the application is in furtherance of the resolution of a failing institution, Nexity Bank (12 C.F.R. § 303.23 (b)).

Certain of the principal shareholders of the Bank, Fortress Investment Group LLC, Oaktree Capital Management, L.P., Pine Brook Road Associates, L.P., and Stone Point Capital LLC, have executed passivity and anti-association agreements with the Board of Governors of the Federal Reserve System with respect to their investments in the Bank.

The Bank will focus on asset-backed commercial and industrial lending and will conduct business pursuant to an Operating Agreement and a Community Reinvestment Act strategic plan acceptable to the FDIC.

Financial projections indicate that the bank will be capitalized with an amount sufficient to achieve a Tier 1 common equity to total assets ratio, as defined in the FDIC's Statement of Policy on Qualifications for Failed Bank Acquisitions, of not less than 10 percent upon acquiring certain assets and liabilities of Nexity Bank, and throughout the Bank's first three years of operation. Future earnings prospects appear attainable, and management is considered satisfactory. Corporate powers to be exercised are consistent with the purpose of the FDI Act, and no undue risk to the Deposit Insurance Fund is apparent.

Accordingly, based upon a careful evaluation of all available facts and information, and in consideration of the factors enumerated in Section 6 of the FDI Act, the Associate Director, pursuant to delegated authority, has concluded that approval of the application is warranted, subject to certain prudential conditions.

**ASSOCIATE DIRECTOR
DIVISION OF RISK MANAGEMENT SUPERVISION
FEDERAL DEPOSIT INSURANCE CORPORATION**