



**Conditional Approval #1299
November 2022**

October 27, 2022

Brian Christiansen, Partner
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005

Re: Application by Flagstar Bank, FSB, Troy, Michigan to (i) convert from a federal stock savings association to a national bank with the title “Flagstar Bank, National Association,” (ii) merge New York Community Bank, Hicksville, New York, with and into Flagstar Bank, National Association, and (iii) waive residency and citizenship requirements

OCC Control Numbers: 2022-NE-Conversion-326880
2022-NE-Combination-326940
2022-NE-Waiver-328484
2022-NE-Waiver-328585

Charter Number: 25282

Dear Mr. Christiansen:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves your applications to convert Flagstar Bank, FSB, Troy, Michigan to a national bank under the title of Flagstar Bank, National Association (Flagstar NA) and to merge New York Community Bank, Hicksville, New York, with and into Flagstar NA.¹ These approvals are granted after a thorough review of the application, other materials you have supplied, and other information available to the OCC, and reliance upon the representations and commitments made in and with the application and by the bank’s representatives. The OCC also received one comment letter that was considered in the review of these applications.

I. Introduction

Flagstar Bank, FSB is a federal savings association wholly-owned by Flagstar Bancorp, Inc. (Flagstar Bancorp), a savings and loan holding company headquartered in Troy, Michigan. New York Community Bank is a New York state-chartered nonmember bank wholly-owned by New

¹ Additionally, the OCC also approves the director citizenship waiver request and the request for temporary waiver of residency requirements for Flagstar NA pursuant to 12 USC 72. The residency requirement is waived for the period of time between the conversion and the merger.

York Community Bancorp, Inc. (NYC Bancorp), a bank holding company headquartered in Westbury, New York. The merger and conversion form part of a series of transactions by which NYC Bancorp will ultimately acquire and become the parent of Flagstar NA. NYC Bancorp has filed an application with the Federal Reserve Bank of New York for prior approval of the Board of Governors of the Federal Reserve System to acquire Flagstar Bancorp and, indirectly, Flagstar Bank, FSB.

In the first step of the transaction, 615 Corp., a Delaware corporation wholly-owned by NYC Bancorp that was created solely to facilitate the transaction, will merge into Flagstar Bancorp, with Flagstar Bancorp as the resulting entity. Second, Flagstar Bancorp will merge into NYC Bancorp, with NYC Bancorp as the surviving entity. Third, Flagstar Bank, FSB will convert from a federal savings association into a national bank under the title of “Flagstar Bank, National Association.” Finally, New York Community Bank will merge with and into Flagstar NA, with Flagstar NA as the surviving entity. The resulting national bank will operate under OCC Charter Number 25282, and its headquarters will be located at 102 Duffy Avenue, Hicksville, New York 11801.

II. The Conversion

Flagstar Bank, FSB has filed an application to convert to a national bank under 12 USC 35 and 1464(i)(5) and 12 CFR 5.24. The conversion application meets the requirements of 12 USC 35 and 1464(i)(5). Under 12 USC 1464(i)(5), a federal savings association chartered and in operation before November 12, 1999, with branches in one or more states in operation before November 12, 1999, may, with the approval of the Comptroller, convert into a national bank. Flagstar Bank, FSB was chartered and in operation before November 12, 1999, and had branches in operation before November 12, 1999, and can thus convert under 12 USC 1464(i)(5). Additionally, Flagstar Bank, FSB must meet the financial, management, and capital requirements applicable to a national bank. Flagstar Bank, FSB meets these requirements.

Additionally, the conversion is authorized under 12 USC 35. First, the merger would not be in contravention of federal law. Flagstar Bank, FSB also meets the other criteria in section 35, including shareholder approval, as its immediate parent, Flagstar Bancorp, which is the sole shareholder, has approved the conversion. Thus, the conversion is authorized under sections 35 and 1464(i)(5).

Pursuant to 12 USC 5451, a national bank resulting from the conversion of a savings association may continue to operate any branch that the savings association operated immediately before the savings association became a bank. As a result, Flagstar NA may retain all of the branches operated immediately before the conversion.

Flagstar NA seeks to retain 13 subsidiaries of Flagstar Bank, FSB. Twelve of the subsidiaries qualify as operating subsidiaries pursuant to 12 CFR 5.34. One subsidiary, Flagstar Opportunities Fund Limited Partnership, is authorized pursuant to 12 USC 24(Eleventh) and 12 CFR 24. Accordingly, Flagstar NA may retain these 13 subsidiaries after the conversion under 12 USC 24(Seventh) and 24(Eleventh), and 12 CFR 5.34 and 24.

Flagstar NA also seeks to retain a non-controlling investment in Lenderful, LLC, a limited liability company that operates an online mortgage platform used by prospective borrowers of mortgage loans and mortgage loan originators. This investment is authorized pursuant to 12 CFR 5.36. Accordingly, Flagstar NA may retain this investment.

In addition, Flagstar Bank, FSB, has one nonconforming subsidiary, Grass Lake Insurance Agency, Inc. Flagstar NA may have up to two years from the date of the conversion to discontinue or conform the activity of the subsidiary.

The OCC has approved your proposal to conduct limited fiduciary powers pursuant to 12 USC 92a. This approval constitutes a permit to conduct the limited fiduciary powers related to document custody as requested in your application filed pursuant to 12 CFR 5.26(e)(4).

The OCC has no objection to Flagstar NA exercising fiduciary powers under the current trust management in place at Flagstar Bank, FSB. The OCC must approve any trust management change Flagstar NA makes prior to commencing fiduciary powers.

The board of directors should provide for the establishment and administration of the fiduciary operation through the adoption of amendments to the bylaws, through appropriate resolutions, or both. After adoption, a copy of those provisions should be furnished to the trust officer(s) for guidance. You will note that 12 CFR 9.4 places responsibility on the board of directors for the proper exercise of the bank's fiduciary powers. However, the board may decide whether it shall supervise the administration of all such powers directly or assign any function related to such powers to any director, officer, employee, or committee.

The board should also provide for, as applicable:

- A proper delineation of duties for trust officer(s) and committee(s).
- The pledging of securities to secure trust funds on deposit in the bank as required by 12 CFR 9.10(b).
- The designation of the officers or employees responsible for custody of the trust investments in conformity with 12 CFR 9.13(a).
- The deposit of securities with state authorities where required by local law, according to 12 CFR 9.14.

The trust officers and staff should become thoroughly familiar with 12 CFR 9, "Fiduciary Activities of National Banks," and the series of Comptroller's Handbooks for Asset Management (available electronically at <https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/index-comptrollers-handbook.html>).

The trust activities should begin within 18 months of this approval, unless the OCC grants an extension. You may begin exercising fiduciary powers simultaneously with your conversion to a national bank. Flagstar NA should notify this office in writing within 10 days after commencement of trust activities. If Flagstar NA decides to surrender its fiduciary powers, it should notify the OCC in accordance with 12 CFR 9.17(a).

The OCC is granting conditional approval for the conversion application, however, authorization for Flagstar NA to commence business as a national banking association will not be granted until all pre-conversion requirements are met.

This conversion approval is subject to the following condition:

Flagstar NA shall divest, or conform to the requirements for a national bank to hold, Grass Lake Insurance Agency, Inc. within two years of the date of consummation of the conversion.

The condition of this approval 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 USC 1818. As such, the condition is enforceable under 12 USC 1818.

III. The Merger

A. Riegle-Neal

Interstate mergers of a state bank with a national bank resulting in a national bank are authorized under 12 USC 215a-1 and 1831u(a)(1), which were adopted as part of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Riegle-Neal). Riegle-Neal imposes certain conditions on interstate merger transactions. These are (i) compliance with state-imposed age limits, if any, subject to Riegle-Neal’s limits; (ii) compliance with certain state filing requirements, if any; (iii) compliance with nationwide and state concentration limits; (iv) expanded community reinvestment compliance; and (v) adequacy of capital and management skills.² The OCC has considered these factors and determined that the merger satisfies all applicable Riegle-Neal requirements.

B. Bank Merger Act

The OCC also reviewed the merger under the criteria of the Bank Merger Act (BMA), 12 USC 1828(c), and applicable OCC regulations and policies.³ Under the BMA, the OCC must consider the risk of the transaction to the stability of the U.S. banking or financial system and may not, without reason, approve a merger that would substantially lessen competition in any section of the country.⁴ The BMA also requires the OCC to take into consideration the financial and

² See 12 USC 1831u(a)(5) and 1831u(b).

³ See 12 CFR 5.33.

⁴ 12 USC 1828(c)(5).

managerial resources and future prospects of the existing and proposed institutions.⁵ The OCC must also consider the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities.⁶ The OCC considered these factors and found them consistent with approval of the merger.

(1) Community Reinvestment Act and Convenience and Needs

The BMA also requires the OCC to consider the convenience and needs of the community to be served by the resulting bank.⁷ Additionally, the Community Reinvestment Act (CRA) requires the OCC to take into account the applicant's record of performance under the CRA when considering a bank merger.⁸ In evaluating this proposed transaction, the OCC has carefully considered (i) Flagstar's most recent CRA performance evaluation (PE); (ii) information available to the OCC as a result of its supervisory responsibilities; (iii) a written public comment; and (iv) information Flagstar provided in response to the comment.⁹ The OCC considered the commenter's concerns as they relate to the statutory and regulatory factors considered by the OCC in acting on the application, including performance under the CRA, and the probable effects of the transaction on the convenience and needs of the communities to be served. Based on this review, the OCC concluded that Flagstar's record of performance under the CRA and the probable effects of the merger on the convenience and needs of the community to be served are consistent with approval of the application. Subsequent to the issuance of Flagstar's most recent CRA Performance Evaluation, the OCC began a fair lending examination of Flagstar Bank. That review remains ongoing.

(a) Community Reinvestment Act

The OCC considers the filer's CRA record of performance in helping meet the credit needs of its communities, including low- or moderate-income neighborhoods, when evaluating applications under the BMA, 12 USC 1828(c).¹⁰ Accordingly, the OCC considered Flagstar's CRA PE. Based on this review, the OCC concluded that Flagstar's record of CRA performance is consistent with approval of this application.

In the most recent CRA PE dated November 16, 2020, Flagstar received an overall CRA rating of "Outstanding."¹¹ Flagstar received a rating of "Outstanding" for the lending test and a rating of "High Satisfactory" for both the investment and service tests. The major factors supporting

⁵ *Id.*

⁶ 12 USC 1828(c)(11).

⁷ 12 USC 1828(c)(5)(B).

⁸ 12 USC 2903(a)(2).

⁹ We also considered materials that New York Community Bancorp, Inc., and its subsidiaries submitted to the Federal Reserve Bank of New York in connection with the related holding company application.

¹⁰ See 12 CFR 5.33(e)(1)(iii)(A); see also 12 CFR 25.29.

¹¹ The OCC evaluated Flagstar as a large institution. Examiners reviewed Home Mortgage Disclosure Act reportable home mortgage loans and small loans to businesses for the period January 1, 2017, through December 31, 2019. Community development lending and the investment and service tests were evaluated for the period October 17, 2017, through December 31, 2019. The CRA PE is available at: <https://occ.gov/static/cra/craeval/Nov21/708412.pdf>.

Flagstar’s overall rating included: (i) the Outstanding rating for Michigan and Indiana and the High Satisfactory rating for California for the lending test; (ii) the High Satisfactory rating for Michigan and Indiana for the investment test; and (iii) the High Satisfactory rating for Michigan for the service test.

(b) Convenience and Needs

Under the BMA, the OCC also considers the convenience and needs of the communities served by the resulting bank.¹² Though the bank’s CRA performance and the probable effects of the proposed transaction on the convenience and needs of the communities to be served are interrelated, as explained in the “Public Notice and Comments” booklet of the *Comptroller’s Licensing Manual* (April 2022), consideration of a bank’s CRA performance primarily looks to how the bank has performed in the past. A convenience and needs assessment considers how the combined bank will help to meet the needs of its community on a prospective basis.¹³ The OCC has concluded that approval of the transaction is consistent with the needs of the communities that the resulting bank will serve.

Community Benefits Agreement

On January 21, 2022, NYCB entered into a five-year, \$28 billion Community Benefits Agreement (2022 CBA). As a part of its application to acquire NYCB, Flagstar committed to assume the 2022 CBA in its entirety. The 2022 CBA focuses on affordable housing and residential mortgage lending; continuation of certain multi-family lending practices; small business lending; community development lending and investments; philanthropy; and access to banking products and services.

(2) Public Comment and Analysis

The OCC received one public comment concerning the proposed transaction. This commenter requested that the OCC conduct a public hearing and, if the OCC approved the application, that it grant a conditional approval tied to the 2022 CBA submitted with the application.¹⁴ In its comment letter, the commenter requested that the OCC require the resulting bank to follow all applicable laws and guidance for New York state-chartered banks, requested that examiners from the New York Department of Financial Services (NYDFS) be permitted to participate with the OCC in examinations of the resulting bank, and suggested that the application for a national bank charter for the resulting bank is motivated by “regulatory arbitrage.” The commenter noted that the initial application did not result in Federal Deposit Insurance Corporation (FDIC) approval. The commenter also expressed concern that the merger will result in the loss of NYDFS oversight for New York Community Bank, particularly with respect to state community

¹² See 12 USC 1828(c)(5); 12 CFR 5.33(e)(1)(ii)(C).

¹³ *Comptroller’s Licensing Manual*, Public Notice and Comments (April 2022).

¹⁴ Although under the CRA, the OCC evaluates a bank’s record of meeting the credit needs of its entire community, the CRA does not require banks to engage in any particular type of activity or to enter agreements with third parties. The OCC does not monitor compliance with nor enforce these agreements. “Interagency Questions and Answers Regarding Community Reinvestment,” 81 Fed. Reg. 48,506 (July 25, 2016) (Q&A § __.29(b) -2).

reinvestment and multi-family housing laws and guidance. Finally, the comment letter addressed New York Community Bank's performance under a 2017 CRA pledge in connection with a prior internal reorganization.

Notwithstanding its concerns, the commenter praised the 2022 CBA and the fact that Flagstar submitted it with the merger application. The commenter stated that the 2022 CBA goes further than New York Community Bank's 2017 CRA pledge that the commenter alleges New York Community Bank did not fully satisfy. Flagstar represented that the commenter was involved in specific and extensive discussion and collaboration on the 2022 CBA to address the commenter's concerns regarding New York Community Bank's past performance under the 2017 CRA pledge. Furthermore, we note that the commenter is a signer to the 2022 CBA. The provisions in the 2022 CBA are responsive to the commenter's concerns.

Regarding the application to the OCC, Flagstar also represented that it believes that a national bank charter is an appropriate charter for the resulting bank's operations. Flagstar pointed to its national mortgage business, which has operated for many years under OCC supervision, as support for this proposition. Flagstar noted that the choice to apply for a national bank charter is ultimately a business decision available to it under the existing legal framework governing the United States' dual banking system and that the commenter's preference of charters does not constitute a statutorily relevant consideration under the BMA.

The resulting bank will be a national bank that will not be subject to NYDFS supervisory jurisdiction or, in general, to state laws and guidance that apply to New York-chartered financial institutions. However, the resulting bank will be subject to the OCC's supervisory jurisdiction with respect to CRA, and other federal laws and regulations, including OCC standards relating to real estate lending.¹⁵ The merged entity will also be subject to the Consumer Financial Protection Bureau's exclusive supervisory and primary enforcement authority with respect to Federal consumer financial laws.¹⁶ The resulting bank should also consider OCC guidance setting forth best practices and supervisory expectations regarding real estate lending and consumer protection. Combined, Flagstar NA will be subject to a comprehensive consumer protection regulatory framework.

¹⁵ The OCC applies the regulations contained in 12 CFR Part 25 in evaluating institutions' records of meeting the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of these institutions. Under current supervisory policy, with an exception for small banks not relevant here, the OCC generally conducts CRA evaluations on a three-year cycle. A quarterly schedule for upcoming CRA evaluations is available on the OCC's public website. See <https://www.occ.gov/topics/consumers-and-communities/cra/exam-schedule/index-cra-evaluations-coming-due.html>. Additionally, under the current CRA regulations, written comments from the public concerning the bank's CRA performance that are submitted to the bank or the OCC are taken into account in applying the regulatory tests and standards. 12 CFR 25.21(b)(6). The OCC, FDIC, and the Board of Governors of the Federal Reserve System have released a notice of proposed rulemaking to strengthen and modernize the CRA regulations. 87 Fed. Reg. 33,224 (2022). See also 12 CFR Part 30, App. A; 12 CFR Part 34.

¹⁶ 12 USC 5481(12), (14), 5515.

(3) Request for Public Hearing

The commenter also requested that the OCC hold a public hearing on the application. The standard that applies to determine whether to grant or deny a public hearing is set forth in 12 CFR 5.11(b), which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision-making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

The OCC has reviewed the public comment and is not aware of any reason why the written submissions are insufficient or why a public hearing would be in the public interest. Accordingly, the OCC has determined not to hold a public hearing.

C. Main Office and Branch Retention

Flagstar NA seeks to operate as its main office the existing main office of New York Community Bank and retain as branch offices the existing main office of Flagstar Bank, FSB, and the branches of the combining banks. Following an interstate merger transaction under Riegle-Neal, subject to the approval of the OCC, Flagstar NA may retain and operate, as a main office or branch, any office that any bank involved in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.¹⁷ Accordingly, Flagstar NA, may select as its main office the existing main office of New York Community Bank and retain as branch offices the existing main office of Flagstar Bank, FSB, and the branches of the combining banks.

D. Subsidiaries and Equity Investments

Flagstar NA seeks to retain 33 subsidiaries of New York Community Bank, 27 of which qualify as operating subsidiaries pursuant to 12 CFR 5.34. The remaining six are bank premises subsidiaries authorized under 12 CFR 7.1024(a)(3). Accordingly, Flagstar NA may retain these 33 subsidiaries after the merger under 12 CFR 5.34 and 12 CFR 7.1024(a)(3).

In addition, New York Community Bank has one nonconforming subsidiary, NYCB Insurance Agency, Inc. The resulting national bank may have up to two years from the date of the merger to discontinue or conform the activity of the subsidiary.

New York Community Bank holds an equity interest in USDF Consortium LLC, a membership-based association of insured depository institutions established to further the adoption and interoperability of tokenized deposits. The OCC is currently reviewing the permissibility of this investment in an unrelated case.

¹⁷ 12 USC 36(d) and 1831u(d)(1).

This merger approval is subject to the following conditions:

1. Flagstar NA shall divest, or conform to the requirements for a national bank to hold, its investment in NYCB Insurance Agency, Inc. within two years from the date of consummation of the merger.
2. Flagstar NA shall divest its interest in USDF Consortium LLC, and any related holdings of Hash, within two years from the date of consummation of the merger unless the OCC determines in writing that it is permissible for the bank to retain these investments. Additionally, Flagstar NA shall not increase its membership interest in USDF Consortium LLC or its Hash holdings, or holdings of any other crypto-related currency or token, unless and until the OCC determines that the membership interest and Hash or other crypto-related holdings are permissible for a national bank.
3. Within 30 days of consummation of the merger, Flagstar NA shall submit a written request for supervisory non-objection pursuant to OCC Interpretive Letter 1179 if it is engaged in any crypto-asset, distributed ledger, or stablecoin activities addressed in OCC Interpretive Letters 1170, 1172, or 1174. Flagstar NA will cease and divest of these activities within two years from the date of consummation of the merger unless the OCC provides supervisory non-objection to the request.
4. To ensure Flagstar NA has sufficiently allocated resources to address any supervisory issues that arise post-merger, for a period of two years from the merger consummation date, the Bank shall not declare or pay any dividend without receiving a prior written determination of no supervisory objection from the OCC. Any request submitted pursuant to this condition shall occur at least 30 days prior to the declaration date and certify that the proposed dividend is in compliance with applicable capital distribution requirements.

The conditions of this 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.

IV. Pre-Conversion Requirements

The following pre-conversion requirements must be satisfied before the OCC will authorize Flagstar NA to commence business as a national banking association:

1. The institution must purchase adequate fidelity bond coverage in accordance with 12 CFR 7.2013, which lists four factors the directors should consider to determine adequacy.
2. If a director, officer, employee, or principal shareholder of the bank (including an entity in which such person owns an interest of 10 percent or more) is involved in the sale of credit life insurance to loan customers, the bank should ensure compliance with 12 CFR 2, which among other things, prohibits a covered person from retaining commissions or other income from the sale of credit life insurance connected with any loan the bank makes.

- 3 The board of directors must adopt policies, practices, and procedures to ensure the safe and sound operation of the bank. The board also must review those policies, practices, and procedures continually and ensure the bank's compliance with them.
- 4 The converting institution must apply to the Federal Reserve for membership.
5. The converting institution must ensure that all other required regulatory approvals have been obtained.
- 6 The directors must own qualifying shares in conformance with 12 USC 72 and 12 CFR 7.2005.
7. If the converting institution is subject to the Home Mortgage Disclosure Act (HMDA), the bank must ensure that its reporter identification number included on its HMDA transmittal sheet is changed to reflect its new OCC charter number.
8. The converting institution 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 named in the application must receive a "no objection" from the OCC.

Upon completion of all steps required to convert to a national banking association, submit the enclosed Conversion Completion Certification certifying that you have done so. Please provide the OCC with at least 10 days advance notice of the conversion. To ensure that our files are properly closed, please surrender Flagstar Bank, FSB's original executed charter to the OCC as soon as practical after the effective date of the conversion.

When the institution 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. Shortly after conversion, you will receive a conversion certificate.

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

V. Pre-Merger Requirements

The district licensing office must be advised in writing in advance of the desired effective date for the merger, so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice's injunction period and any other required regulatory approval, including the Federal Reserve's approval of the holding company transaction.

The OCC will issue a letter certifying consummation of the transaction when we receive:

1. An executed merger agreement.

2. Documentation that all other conditions that the OCC imposed have been met.

If the merger is not consummated within six months from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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 approvals are based on the bank's representations, submissions, and information available to the OCC as of this date. The OCC may modify, suspend, or rescind these approvals if a material change in the information on which the OCC relied occurs prior to the date of the transaction to which these decisions pertain. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

A survey 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 Senior Licensing Analyst Laurie Powell at 312-360-8863 or laurie.powell@occ.treas.gov.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller Licensing

Enclosures: Conversion to NB Completion Certification
Survey Letter