

**Conditional Approval #1300
December 2022**

November 30, 2022

Richard Gelman, Chairman of the Board
National Bank of New York City
136-29 38th Avenue
Flushing, New York 11354-4112

Barry Sloane, Chief Executive Officer
Newtek Business Services Corp.
4800 T-Rex Avenue, Suite 120
Boca Raton, Florida 33431

Re: Conditional Approval to charter Newtek Interim Bank, National Association, Miami, Florida and for Newtek Interim Bank, National Association to merge with and into National Bank of New York City, Flushing, New York and engage in a change in asset composition and increase in permanent capital.

OCC Control Nos.: 2022-NE-Combination-325979 and 2022-NE-Capital&Div-326795

Dear Mr. Gelman and Mr. Sloane:

The Office of the Comptroller of the Currency (OCC) hereby conditionally approves your application to charter Newtek Interim Bank, National Association, Miami, Florida (Newtek Interim Bank) and for Newtek Interim Bank to merge with and into National Bank of New York City, Flushing, New York (NBNYC) (the Merger), with NBNYC as the surviving institution. NBNYC will be renamed Newtek Bank, National Association, Miami, Florida (NBNA) and the main office will relocate from Flushing, New York to Miami, Florida, upon consummation of the Merger. In addition, the OCC conditionally approves NBNYC's applications for a substantial asset change and increase in permanent capital, as a result of the aforementioned merger transaction. These conditional approvals are granted based on a thorough review of all information available, including commitments and representations made in the applications, merger agreement, and those of your representatives.

I. Introduction

The chartering of Newtek Interim Bank and the subsequent merger is part of a larger transaction by which Newtek Business Services Corp., a Maryland corporation headquartered in Boca Raton, Florida (Newtek) entered a Stock Purchase Agreement with NBNYC to acquire 100 percent of the shares of NBNYC, for \$20 million, on August 2, 2021. Newtek has also filed an application with the Federal Reserve to become a bank holding company (FRB application).

Upon consummation, Newtek Interim Bank would be chartered and merge with and into NBNYC, with NBNYC (renamed NBNA) continuing as the surviving bank. Upon completion of

the foregoing, NBNA will implement its proposed business plan pursuant to its substantial change in assets application and increase in permanent capital application.

In connection with the Stock Purchase Agreement, Newtek will contribute \$31 million in cash to NBNA. Newtek will also contribute the assets and operations of its existing consolidated subsidiaries: 1) Newtek Business Lending, LLC, Orlando, Florida, (NBL) and 2) Small Business Lending, LLC, Lake Success, New York (SBL), which will become operating subsidiaries of NBNA.

II. The Merger

A. Forming Newtek Interim Bank

Interim national banks may be chartered by the OCC to accomplish a business combination and facilitate a main office relocation.

B. Riegle-Neal

Mergers of national banks with different home states 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. The OCC has considered these factors and determined that the Merger satisfies these applicable Riegle-Neal requirements.

Upon consummation, the main office of NBNYC will be relocated from Flushing, New York to Miami, Florida, and the current main office of NBNYC would be retained as a branch. In an interstate merger transaction, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for under 12 USC 1831u.

Therefore, based on the representations provided by NBNYC in the merger application, the proposed interstate merger transaction satisfies all the relevant conditions in Riegle-Neal.

C. Bank Merger Act

The OCC reviewed the Merger under the criteria of the Bank Merger Act, 12 USC 1828(c), and other applicable laws and regulations. Among other matters, we found that the proposed transaction would not have significant anticompetitive effects. We also considered the financial and managerial resources of the banks, their future prospects, their effectiveness in combating money laundering activities, the convenience and needs of the communities to be served and the risk of the transaction to the stability of the United States banking or financial system. Furthermore, the OCC reviewed the Bank's record of compliance with the Community Reinvestment Act, 12 USC 2903(a)(2). In addition, the OCC may not approve a merger if the

resulting insured depository institution (including all insured depository institutions which are affiliates of the resulting insured depository institution), upon consummation of the transaction, would control more than 10 percent of the total amount of deposits of insured depository institutions in the United States. We considered these factors and found them consistent with approval.

The business combination of Newtek Interim Bank and NBNYC is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 USC 215a-1 and 1831u(a), and the resulting bank is authorized to retain and operate the office as a branch under 1831u(d)(1).

III. Change in Asset Composition

With respect to the change in asset composition application under 12 CFR 5.53(d)(3), the OCC considered the capital level of the resulting institution; the conformity of the transaction to applicable law, regulation and supervisory policies; the purpose of the transaction, its impact on the safety and soundness of the bank; and any effect on the bank's shareholders or customers. The OCC reviewed these factors and deemed conditional approval consistent with regulatory requirements.

IV. Operating Subsidiary Notifications

The OCC acknowledges receipt of your operating subsidiary notices dated February 28, 2022, informing us of the commencement of certain activities with the acquisition of two subsidiaries, which will be effective upon consummation of the Merger. The operating subsidiaries are Newtek Business Lending, LLC, Orlando, Florida and Small Business Lending, LLC, Lake Success, New York. The bank and activities qualify for the preapproved notice procedures at 12 CFR 5.34(f)(2). You should note that operating subsidiaries approved pursuant to 12 CFR 5.34(f)(2) must be operated in conformity with published OCC guidance.

V. Increase in Permanent Capital

The OCC grants approval for NBNYC to increase its capital surplus by up to \$27 million as outlined in your application dated April 29, 2022. The capital contribution will occur through a material noncash contribution of \$24.2 million provided by the aforementioned operating subsidiary, Newtek Business Lending, LLC, which will contribute the book value of unencumbered SBA 504 loans. The assets will remain in Newtek Business Lending, LLC at the time of the contribution. The second operating subsidiary, Small Business Lending, LLC, will contribute \$2.8 million in cash, which will also remain in Small Business Lending, LLC. The Bank has complied with the OCC regulations on reporting and seeking approval for material noncash capital contributions under 12 CFR 5.46.

Receiving a material noncash contribution to capital surplus requires:

1. The approval by shareholders owning two-thirds of the bank's capital stock pursuant to 12 USC 57.

2. Filing of the required notice with the OCC to certify the change in permanent capital following completion of the capital contribution pursuant to 12 CFR 5.46(i)(3).

VI. Merger Consummation Requirements

The OCC must be advised in writing in advance of the desired effective date for the Merger, so it may issue the necessary certification letter. The OCC will issue a letter certifying consummation of the transaction when it receives:

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved.
2. An executed merger agreement.
3. A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.
4. Executed amended Articles of Association for the Resulting Bank.
5. Documentation that all other required regulatory approvals have been obtained.
6. 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.

VII. Conditions

This approval is subject to the following conditions:

1. The Resulting Bank shall enter into, and thereafter implement and adhere to, a written Operating Agreement with the OCC, in a form acceptable to the OCC, within three (3) business days of the consummation of the Merger. This condition shall remain in effect until the Operating Agreement is terminated under the provisions set forth in the Operating Agreement.

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.

VIII. Conclusion

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

Newtek Bank, National Association
Miami, Florida
OCC Control Nos.: 2022-NE-Combination-325979 and 2022-NE-Capital&Div-326795

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 you have any questions, please contact Senior Licensing Analyst Madeline Hilferty at (202) 322-8525 or by email at madeline.hilferty@occ.treas.gov. Please include the OCC control numbers on all correspondences.

Sincerely,

/s/

Stephen A. Lybarger
Deputy Comptroller Licensing