



STATE OF INDIANA

DEPARTMENT OF FINANCIAL INSTITUTIONS

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February 16, 2022

Mr. John Geiringer
Barack Ferrazzano Financial Institutions Group
200 W. Madison St, Suite 3900
Chicago, IL 60606

Re: Request to Exercise Powers Granted to National Banks Subsidiary Community Development Activities

Dear Mr. Geiringer,

On December 22, 2021, Horizon Bank, Michigan City, LaPorte County, Indiana ("Horizon") requested approval from the Indiana Department of Financial Institutions ("Department") to exercise certain powers in a bank-owned subsidiary community development corporation that are allowable for federally-chartered banks but not explicitly allowable for Indiana state-chartered banks. The Department considered your request to allow the bank-owned community development corporation to purchase single-family residential properties in low-to-moderate income areas in Horizon's market, rehabilitate those properties, and ultimately sell/finance those properties to low-to-moderate income individuals; and to allow the governance structure of the subsidiary community development corporation to only include bank insiders, if Horizon so chooses. The Department approved your request for parity at the February 10, 2022, Members Meeting, consistent with the statutory process outlined in IC 28-1-11-3.2.

Attached with this letter you will find the Parity Order passed by the Department Members. In the event that Indiana state statute is revised to allow the powers granted in this Parity Order, the Department will rescind this Order as it will no longer be applicable. If you have any questions, please feel free to reach out at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dietz".

Christopher Dietz
Deputy Director
Indiana Department of Financial Institutions
317-617-8440
cdietz@dfi.in.gov

Cc: Mr. Todd Etzler (Horizon Bank)
Mr. Deron Thompson (Indiana DFI)
Ms. Kristy Hubele (Indiana DFI)
FDIC Regional Office
Federal Reserve Bank of Chicago

DEPARTMENT OF FINANCIAL INSTITUTIONS

STATE OF INDIANA

_____))
In the Matter of:))
)) **ORDER GRANTING PARITY**
HORIZON BANK))
Michigan City, Indiana))
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PARTIES

1. Horizon Bank (“Bank”) is a state-chartered Indiana commercial bank with its principal office located in Michigan City, LaPorte County, Indiana.
2. The Indiana Department of Financial Institutions (the “Department”), the regulator of state banks in Indiana, has certain duties and responsibilities relating to the rights and privileges granted to Indiana state banks under the Indiana Financial Institutions Act, Ind. Code. § 28 *et seq.* (the “Law”).

STATEMENT OF FACTS

3. Indiana state-chartered banks are authorized to make direct and indirect equity investments in community development corporations (CDC) under Ind. Code § 28-1-11-14(d). However, Indiana state-chartered banks are currently prohibited from purchasing and rehabilitating real estate for resale as it is not a Power provided to state-chartered financial institutions, and bank subsidiaries are only granted the same Powers as the parent bank. In contrast, nationally chartered banks, through CDC’s, are authorized to purchase and rehabilitate real

estate for resale under 12 C.F.R 24, which are the Office of the Comptroller of the Currency regulations governing public welfare investments of national banks.

4. Under Ind. Code § 28-1-11-14(b)(1), the board of directors of a CDC should be comprised of some community representatives and business, civic, and community leaders. In contrast, nationally chartered banks have no eligibility requirements for CDC board of directors under 12 C.F.R 24.
5. The Bank now seeks a parity determination from the Department under the procedures outlined in Ind. Code § 28-1-11-3.2. More specifically, the Bank is requesting approval to exercise the rights and privileges that are or may be granted to national banks domiciled in Indiana as outlined in Ind. Code § 28-1-11-3.1(b)(9), namely (a) to establish a wholly-owned subsidiary CDC to more directly meet the housing needs of low- and moderate-income families and (b) establish a CDC board of directors without regard to eligibility criteria, as detailed below in paragraphs 7 and 8.
6. The Department received a request for parity letter from John M. Geiringer, with Barack Ferrazzano, external counsel to the Bank, dated December 22, 2021, describing in detail the rights and privileges granted to national banks and sought by the Bank (Request.) (Terms not otherwise defined in this Order shall have the meaning ascribed to them in the Request.)
7. The Request describes the Bank's intent to invest in single-family homes in low- and moderate-income areas in the Bank's market area, which the Bank would rehabilitate and sell to low- and moderate-income individuals, and which may include financing provided by the Bank. The Bank would accomplish these activities only through a wholly-owned subsidiary CDC, and not the Bank itself.

8. The Request also indicates the Bank's desire for the CDC to exercise the power authorized in 12 CFR 24 through exclusive control and to not require the CDC to have outside party representation on their board of directors.
9. Attached and made a part of the Request is 12 C.F.R 24.
10. Staff has reviewed the Request, which includes 12 C.F.R 24 and such other documents and information requested by the Department or supplied by the Bank, and finds that the requirements of Ind. Code § 28-1-11-3.2 have been satisfied.

ORDER GRANTING PARITY

The Members, being duly informed, find in accordance with Ind. Code § 28-1-11-3.2 that:

- (1) National banks domiciled in Indiana do possess the requested rights and privileges, as outlined in 12 C.F.R 24;
- (2) The exercise of the requested rights and privileges by the Bank would not adversely affect the safety and soundness of the Bank, given the conditions for approval outlined herein;
- (3) The exercise of the requested rights and privileges by the Bank would not result in an unacceptable curtailment of consumer protection;
- (4) The failure of the Department to approve the requested rights and privileges will result in a competitive disadvantage to the Bank, as other competitors possess the rights and privileges to undertake this type of financing transaction under the OCC;

AND HEREBY ORDERS that the Request for parity described above in paragraphs 8 and 8 be hereby granted to Horizon Bank and to all other Indiana chartered banks, subject to the conditions of this Order and compliance with applicable law, including 12 C.F.R. 24.

IT IS FURTHER ORDERED that, to mitigate risk to the Bank, the Bank shall cause the proposed subsidiary CDC to be formed and operated in such a manner as to minimize significantly any potential liability to the Bank by utilizing "separateness" attributes.

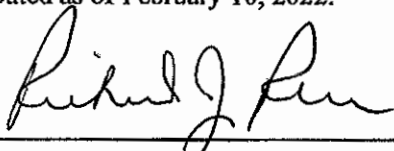
IT IS FURTHER ORDERED that, consistent with 12 CFR 24 and Indiana Code 28-11-14:

- (1) The Bank must limit the total dollar amount of all public welfare investments to no more than 15% percent of its capital and surplus; and,
- (2) Each investment over 5% of capital and surplus shall require approval of the Department's director.

The conclusions herein are specifically based on the Bank's written and oral representations and submissions describing the facts and circumstances of the subject transaction. Any change in facts or circumstances or failure to comply with the conditions of this Order could result in a different conclusion, including a determination that the Bank may no longer permissibly engage in the proposed financing transaction. This approval and the activities and communications by Department staff in connection with this approval, do not constitute a contract, express or implied, or any other obligation binding upon the Department or the State of Indiana, or any officer, agent or employee of the Department or the State of Indiana, and do not affect the ability of the Department to exercise its supervisory, regulatory, and examination authorities under applicable laws and regulations. Necessary communication with the Federal regulatory agencies resulting from this Request and/or any communication that may be necessary are the responsibility of the Bank.

Pursuant to statutory authority.

Dated as of February 10, 2022.



Richard J. Rice, Chairman
Indiana Department of Financial Institutions