Federal Financial Analytics, Inc.

MEMORANDUM

TO: Federal Financial Analytics Clients

FROM: Karen Petrou

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In a column last week, *Bloomberg's* Matt Levine rightly observed that only a bank can usually buy another bank. He thus went on to say that a SPAC named Porticoes ambitions to buy a bank are doomed because Porticoes isn't a bank. Here, he's wrong – Porticoes in fact was allowed last December to become a unique form of national bank licensed to engage in what is often, if unkindly, called vulture capitalism. This is another OCC charter of convenience atop its approvals leading to NYCB's woes, and thus yet another contradiction between the agency's stern warnings on risk when it pops up in existing charters versus its insouciance when it comes to new or novel applications.

According to the OCC's charter approval, the Porticoes bank has no other purpose than serving as a wholly-owned subsidiary of Porticoes Capital LLC, a Delaware limited-liability company formed to be a proxy for a parent holding company. The parent holdco is "expected" to enter into binding commitments for the capital needed to back its wholly-owned bank plans to acquire a failed bank or even banks. This is essentially a buy-now, pay-later form of bank chartering, a policy even more striking because funding commitments for the holdco then to downstream – should they materialize – are more than likely to come from private-equity investors who may or may not exercise direct or indirect control.

Based on the OCC's approval, it seems that Porticoes's new charter can buy another bank without capital, pre-approval from the FRB for member status, and FDIC insurance. If this charter is plausible, then the FDIC takes the risk of selling a failed bank to Porticoes even though the deal could go bad because Porticoes is a bank in name only without a holding company standing as a source of support unless the holdco manages to raise capital not just for bank acquisitions, but also itself (a happy thought nowhere mentioned in the OCC's approval).

The OCC has thus given Porticoes a license to bid on failed banks that might well advantage it over longstanding banks now owned by BHCs and subject to all the costly rules that go into each bank's failed bank bid. These bids are also based on expectations that the failed bank's branches, deposits, and customers add value that will be realized following integration of the FDIC's zombie into the acquirer's living franchise. Banks bet rightly or wrongly on these critical assets, but it's usually what they want, not cherry-picked assets that can be quickly rolled over at prices private-equity companies dream of in distressed-asset markets.

Opponents of bank mergers fear that they create banking "deserts," leave LMI communities behind, and end "relationship banking." Sometimes this happens when banks buy banks, sometimes not. It seems likely that it will always happen when a private-equity funded SPAC gets to do the same.

It's of course possible that Porticoes wants to be a bank because it wants to support the public good. Perhaps it also won't be allowed to bid on a bank until it's got committed capital, Fed approval as both a member and for a BHC, and FDIC deposit-insurance status. But the OCC's letter says, "since the Bank would not be able to commence operations until after it is selected by the FDIC as the winning bidder for a particular failed institution and the OCC approves the acquisition, the specific size, scope, and activities of the Bank is not yet known." All this is usually more than a bit handy when it comes to approving bank charters, even conditional ones such as Porticoes'. Instead, the OCC approved the charter based on a "preliminary business plan" and its experienced organizers. Nice work if you can get it.