Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #97-111
December 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO MERGE FIRST USA FEDERAL SAVINGS BANK, WILMINGTON, DELAWARE WITH AND INTO BANK ONE, N.A., COLUMBUS, OHIO

December 30, 1997

I. INTRODUCTION

On April 1, 1997, an application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to merge First USA Federal Savings Bank ("First") with and into Bank One, N.A.,[1] ("Bank One") under the charter and title of the latter, under 12 U.S.C. § 215c and the Bank Merger Act, 12 U.S.C. § 1828(c) (the "Merger Application"). Bank One is an insured national banking association, a Bank Insurance Fund ("BIF") member, with its main office in Columbus, Ohio. First is an insured federal savings association, a Savings Association Insurance Fund ("SAIF") member, with its main office in Wilmington, Delaware and no branches. Both Bank One and First are wholly owned subsidiaries of Banc One Corporation ("BOC").[2] First has two subsidiaries, First USA Thrift Services, Inc., a Delaware corporation, and First USA ICS, Inc. The former subsidiary owns the capital stock of the latter. The capital stock of each of these subsidiaries will be transferred to another subsidiary of BOC before the merger and thus the subsidiaries will not become subsidiaries of Bank One.

The merger was conditional on a merger between BOC and First USA, Inc. first being consummated. BOC and First USA, Inc. entered an Agreement and Plan of Merger dated January 19, 1997, pursuant to which First USA, Inc. was to merge into BOC, subject to shareholder and regulatory approval. The Federal Reserve Board approved this holding company merger on April 29, 1997 and it was consummated on June 27, 1997.

[1] At the time the application was filed, Bank One was known as Bank One, Columbus, N.A.

[2] At the time the application was filed, First was a wholly owned subsidiary of First USA, Inc.

The merger was further conditional on the approval of the Office of Thrift Supervision ("OTS") of an application by First to relocate its main office from Wilmington, Delaware to Columbus, Ohio. The OTS approved the relocation of the main office on June 18, 1997 and First will relocate its main office before the merger is consummated.

II. LEGAL AUTHORITY

Twelve U.S.C. § 215c, and its counterpart section 5(s) of the Home Owners' Loan Act, 12 U.S.C. § 1467a(s), were enacted in 1991 as part of the Federal Deposit Insurance Corporation Improvement Act of 1991, Pub. L. No. 102-242, 105 Stat. 2302, in order to provide the authorization for national banks and federal savings associations to engage in the combinations between BIF members and SAIF members made possible by amendments made at the same time to 12 U.S.C. § 1815(d)(3) ("the Oakar Amendment").

Section 215c authorizes a merger between a national bank and a federal savings association provided the transaction is consistent with the Oakar Amendment, including its interstate limitations. The interstate limitations incorporate the requirements set forth at 12 U.S.C. § 1842(d) as if the target savings association, First, were a state bank that the acquiring bank's holding company, BOC, was seeking to acquire. 12 U.S.C. § 1815(d)(3)(F). As First will have relocated its main office to Columbus, Ohio before the merger is consummated, the interstate limitations of the Oakar Amendment are inapplicable to the Merger, since Ohio is the "home State" of BOC. 12 U.S.C. §§ 1841(o)(4), 1842(d).

The only other requirement of the Oakar Amendment that pertains to the legal permissibility of the merger is that relating to the capital of Bank One after the merger. The Oakar Amendment provides that certain transactions, including the merger of an insured national bank and an insured federal savings association, shall not be approved unless the resulting bank meets all applicable capital requirements upon consummation of the transaction. In this regard, approval of the Merger Application is consistent with this requirement as the capital of Bank One will meet or exceed the capital category of "adequately capitalized" upon consummation of the merger, as defined in 12 U.S.C. § 1831o(b)(1)(B) and 12 C.F.R. § 6.4(b)(2).

III. ADDITIONAL STATUTORY AND POLICY REVIEWS

Section 215c and the Oakar Amendment require that a merger approved under those provisions be subject to the Bank Merger Act, codified at 12 U.S.C. § 1828(c), and all other applicable laws. Thus, it is also necessary to analyze the permissibility of the merger under standards set forth in the Bank Merger Act, 12 U.S.C. § 1828(c), and the Community Reinvestment Act, 12 U.S.C. §§ 2902(3)(E), 2903. Other laws pertaining to the merger authority of national banks - 12 U.S.C. § 215a (First is not a "State bank"), 215a-1 (First is not an "out-of-State bank") - are inapplicable to the merger for the reasons stated.

A. The Bank Merger Act.

The Bank Merger Act requires the OCC's approval for any merger between insured depository institutions where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger that would substantially lessen competition. In addition, the Act also requires the OCC to take into consideration the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served. For the reasons stated below, we find the Merger Application may be approved under section 1828(c).

1. Competitive Analysis.

The parties to the merger are affiliated institutions owned by the same bank holding company, BOC, and thus the merger does not have anti-competitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of both institutions are presently satisfactory. In addition, Bank One expects to achieve efficiencies as a result of the merger. Moreover, the future prospects of the existing institutions, individually and combined, are favorable. We find an analysis of the financial and managerial resources is consistent with approval of the Merger Application.

3. Convenience and Needs.

The resulting bank will help to meet the convenience and needs of the communities to be served. Bank One will continue to serve the same areas in Ohio where it has branches. In addition, no services to the combining institutions' customers will be discontinued or significantly reduced as a result of the merger. The combined bank will continue to offer a full line of banking products and services. No branch closings are contemplated as a result of the merger. Accordingly, and for the further reasons set forth in section III.B., below, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the Merger Application.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including mergers. See 12 U.S.C. §§ 2902(3)(E) and 2903. Bank One received an Outstanding rating at its most recent examination for CRA performance, dated January 31, 1995, and First has no CRA rating as it is a new institution and has not been examined.

In addition, however, one community group from the Bronx, New York, Inner City Press/Community on the Move, and its affiliate, Delaware Community Reinvestment Action Council (collectively "ICP"), jointly commented on this Merger Application. It alleged that BOC and its subsidiaries, including Banc One Mortgage Company ("BOMC"), Banc One Financial Services ("BOFS") and Bank One, violate consumer compliance and fair lending laws by engaging in pricing discrimination. Specifically, ICP states that BOC's banks and BOMC disproportionately exclude people of color and steer minority borrowers to higher priced credit at BOFS, through referral programs, and that BOFS engages in predatory marketing efforts. In addition, ICP believes consummation of the merger would adversely affect the availability of credit and other CRA-related products in Wilmington, Delaware and other areas. Finally, ICP comments that it is troubled by the extent of litigation and consumer complaints against BOC and its subsidiaries and asserts that BOC systematically closes branches, disproportionately in low- and moderate-income communities.

After receipt of the initial comments from ICP, the OCC removed this Merger Application from its expedited review procedures. The OCC reviewed, investigated and considered the ICP comment letter dated April 29, 1997, and comments made by ICP during a May 21, 1997 meeting with Mr. Darryl Marcus and Mr. Stephen Davey of our Northeastern District. Our review of the issues raised by ICP did not reveal any factors that would support denial or conditional approval of the subject transaction. We reviewed prior examinations of the applicant and other BOC subsidiaries supervised by the OCC and found no evidence of illegal lending discrimination or other prohibited credit practices in any CRA or fair lending examination. We will, however, continue to monitor the CRA performance and fair lending compliance of these entities as part of our ongoing supervision.

ICP expressed concern that certain BOC subsidiaries disproportionately exclude people of color, and steer minority borrowers to BOFS, a higher interest rate lender. ICP provided an analysis of 1995 HMDA data in various markets throughout the country to support that concern. While we found that most of the data ICP submitted accurately represented the reported HMDA data of BOC subsidiaries, the disparities and market share discrepancies do not by themselves demonstrate illegal pricing or other lending discrimination. Our analysis of HMDA data in the Columbus MSA disclosed that African American applicants receive approximately the same percentage of HMDA reportable loans at each BOC entity discussed by ICP: Bank One (12%), BOMC (13%), and BOFS (14%). In addition, the percentage of loans to African Americans for BOC entities is higher than the aggregate percentage for all lenders in the MSA (8%).

We also reviewed the practice of referring denied applicants to BOFS, and relevant CRA and fair lending examinations, and did not find evidence of steering or other discrimination that would have the effect of forcing minority borrowers to seek credit from BOFS at higher interest rates. Also, in June 1997, examiners conducted a review of referral practices at Bank One, West Virginia. We conducted this targeted review as part of our scheduled CRA examination of the bank. Examiners were directed to review specifically the bank's practices and procedures with

respect to alternative sources of credit. We found that the bank's loan application forms provide a space where applicants may indicate their desire that, should their application be declined by the bank, the application be forwarded to BOFS for a second review. We found no evidence that bank employees prompted or otherwise encouraged protected classes of applicants to mark the form for referral. We note that BOC uses the same referral practices at all its national bank subsidiaries that the OCC supervises.

BOMC is a wholly-owned subsidiary of BOC. The Federal Reserve Bank of Cleveland is BOMC's primary supervisor. The Federal Reserve is currently examining BOMC. Should this examination reveal that BOMC does not comply with applicable fair lending laws and regulations, its primary supervisor has full authority to take the necessary and appropriate remedial actions.

BOFS, also a wholly-owned subsidiary of BOC, is not an insured depository institution and is not subject to examination under the CRA or supervision by the OCC.

ICP expressed concern that the higher market shares of originations to African American borrowers than to white borrowers at BOFS indicate a prima facie case of targeted marketing and lending to protected classes at BOFS' higher interest rates. We reviewed the marketing efforts of all BOC subsidiaries that the OCC supervises though the CRA examination process and found that the banks adequately market their credit products throughout their communities, including in low- and moderate-income areas. BOFS, which is not supervised by the OCC, must market its products and services in compliance with applicable laws and regulations, such as the Truth-in-Lending Act and Regulation Z. We contacted the Federal Trade Commission (FTC) regarding BOFS' record of compliance with applicable consumer laws and regulations. The FTC informed us that its records listed only one consumer complaint filed against BOFS.

ICP also alleged that BOFS "allows" more white applicants than minority applicants to withdraw their applications. ICP asserts that this practice is "violative," inferring that white applicants are being "reverse steered" back to the lower interest rate providers. We requested information from BOFS, which advised us that it does not have a procedure in place to refer certain applicants back to normal interest rate providers during the application process. BOFS did indicate that, when a customer demonstrates good performance on a loan, it will notify BOC banks that it has a customer who may qualify for bank credit. The bank may solicit the customer for additional business.

ICP argues that First carries out a substantial part of the CRA responsibility of First USA Bank ("First USA"), an affiliated institution also located in Wilmington. In this regard, the commenter states that, without First, First USA will be unable to meet its CRA obligations in its assessment area. We found that, presently, the activities of First help First USA to meet its community development obligations, as permitted by the CRA regulations. However, any affiliated entity can perform these indirect activities for First USA. We found that in anticipation of the subject merger, BOC has purchased and is holding $1 million of Delaware

State Housing Authority bonds to be considered as part of the CRA performance of First USA. In addition, BOC management has committed to have other entities make and hold investments similar to those now held by First to be considered in evaluating First USA's CRA performance.

ICP believes that credit availability will be adversely affected in the Wilmington market because the resulting bank does not include Wilmington in its CRA assessment area. We found that the merger will not significantly affect credit availability or other banking services in the Wilmington market. It is true that First defined its CRA community as New Castle County, Delaware. However, First is an "electronic bank" and does not have a banking office open to the public. Moreover, First has not focused on local credit needs as a historical matter. Instead, it has focused on providing credit and banking services nationwide. After the merger, the CRA community of the resulting bank will be the same as Bank One, and will not include New Castle County, Delaware. However, the resulting bank will continue to provide credit nationwide, including in Delaware.

We also reviewed the list of pending litigation and consumer complaints ICP submitted as additional support for their opposition to this application and found nothing unusual for a banking organization of BOC's size or scope of operations. Consumer complaints are formally monitored by the OCC on a routine basis for all national banks.

ICP expressed concern that BOC bank subsidiaries disproportionately close branch offices in low- and moderate-income communities. We reviewed the record of branch closings for Bank One and for its affiliates headquartered in Phoenix, Arizona, New Orleans, Louisiana, and Huntington, West Virginia. We reviewed all branch closings by each bank for the period January 1, 1996 through June 13, 1997. Our review reflected only two closings in low-and-moderate census tracts. Of those, one branch, which was located in Columbus, Ohio, was not closed entirely but was downgraded to an ATM facility. In addition, our CRA examinations have concluded, without exception, that Bank One and its affiliates have satisfactory records of opening and closing branches and that branch closing policies comply with legal requirements. We also reviewed the entire record of public comments this Office received relative to proposed branch closings by the subject banks. During the period, this Office received one comment opposing a proposed branch closing. That comment concerned a branch closing in Arizona, located in middle-income census tract. We referred the comment to appropriate personnel at BOC for their response and placed a copy of the comment letter in the bank's CRA public comment file.

In summary, our investigation and analysis of the issues raised by the commenter did not find grounds that would serve as a basis for denial or conditioning the approval of the Merger Application. Accordingly, we find that approval of the Merger Application is consistent with the CRA.

IV. CONCLUSION

For the reasons set forth above, including the representations and commitments made by the applicants, we find that the merger of Bank One and First is legally authorized under 12 U.S.C. §§ 215c and 1467a(s), and that the merger meets the other statutory criteria for approval. Accordingly, this Merger Application is hereby approved.

/s/ 12-30-97

Julie L. Williams Date
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