**Comptroller of the Currency**
**Administrator of National Banks**

Washington, D.C.

# Corporate Decision #2001-28
# October 2001

## DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON APPLICATIONS TO REORGANIZE THE CREDIT CARD OPERATIONS OF CITIGROUP INC. AND TO TRANSFER CERTAIN OTHER SUBSIDIARIES TO CITIBANK, NATIONAL ASSOCIATION, NEW YORK, NEW YORK

**September 21, 2001**

---

## I. INTRODUCTION AND OVERVIEW

These applications involve two groups of transactions in which Citigroup Inc. ("Citigroup") is reorganizing certain of its businesses. In one group of transactions, the domestic credit card business of Citigroup's subsidiary banks will be restructured. In the other, certain commercial finance and international consumer finance subsidiaries that are currently subsidiaries at the holding company level will be moved to become subsidiaries of Citibank, National Association, New York, New York, ("CBNA") Citigroup's lead bank.

### A. Credit Card Restructuring

Citigroup currently has a number of subsidiary banks that issue credit cards and provide funding for credit card receivables. It also has nonbank subsidiaries, both holding company subsidiaries and bank subsidiaries, that provide various services for the credit card operations. In summary, after the restructuring, one bank will be the main issuer of consumer credit cards, and another bank will be the issuer of government, corporate, and certain consumer credit cards. The subsidiaries that provide credit card services will be combined, and the resulting companies moved to become subsidiaries of banks involved with the credit cards.

Citigroup is a diversified financial holding company and, through its subsidiaries, provides a broad range of financial services to consumer and corporate customers worldwide. Citigroup Holdings Company is a registered bank holding company and a direct wholly-owned subsidiary of Citigroup. Its primary asset is the common stock of Citicorp. Citicorp is a registered bank holding company and a direct wholly-owned subsidiary of Citigroup Holdings Company. Citicorp's primary direct subsidiaries are CBNA, Citibank (South Dakota),

National Association, Citicorp Banking Corporation, and Associates First Capital Corporation ("AFCC").

Citibank (South Dakota), National Association, Sioux Falls, South Dakota, ("CBSD") is principally engaged in offering credit cards. It has no branch offices. In the restructuring, the consumer credit card business of other banks will be transferred to CBSD. The corporate, government, and certain consumer credit card business of CBSD will be transferred to a sister bank. CBSD will limit its activities so that it is not a "bank" under the Bank Holding Company Act ("BHCA"). *See* 12 U.S.C. § 1841(c)(2)(F). Citicorp will contribute CBSD to CBNA, Citicorp's lead bank, so that it becomes an operating subsidiary of CBNA.

Hurley State Bank, Sioux Falls, South Dakota, ("Hurley") is an insured South Dakota commercial bank. It operates a credit card business offering private-label credit cards to consumers on behalf of major U.S. companies. It currently limits its activities so that it is not a "bank" under the BHCA. In the restructuring, its consumer credit card business will be transferred to CBSD, and the government and corporate credit card business of CBSD transferred to Hurley. Hurley will convert to a national bank ("Converted Hurley"), expand its activities beyond those permitted under section 1841(c)(2)(F), and change its name to Citibank USA, National Association. Hurley is a direct subsidiary of AFCC, and therefore an indirect subsidiary of Citicorp. It will be moved to become a direct subsidiary of Citicorp.

Citibank USA, Wilmington, Delaware, is a Delaware-chartered limited purpose credit card bank. Substantially all of its credit card assets and liabilities will be transferred to CBSD, and Citibank USA will be dissolved.

Universal Bank, National Association, Columbus, Georgia, ("Universal") currently is an indirect, wholly-owned operating subsidiary of CBNA, the lead bank. Universal has no branch offices. It is principally engaged in offering consumer credit cards, and it limits its activities so that it is not a "bank" under the BHCA. *See* 12 U.S.C. § 1841(c)(2)(F). It will merge into CBSD after CBSD has become an operating subsidiary of CBNA.

Citicorp Credit Services Inc. ("CCSI") is currently a direct wholly-owned subsidiary of Citicorp. It will be contributed to CBNA and become an operating subsidiary of CBNA. Other credit card servicing and other card related businesses will also be moved under CBNA. Of the resulting combined business, the New York operations will remain a direct subsidiary of CBNA, and the operations outside New York will be conducted in a subsidiary of CBSD.

**B. Transfer of Commercial Finance and International Consumer Finance Subsidiaries**

Citigroup acquired AFCC in November 2000. As part of an internal corporate reorganization, Citigroup proposes to transfer the commercial finance and international consumer finance business of AFCC to CBNA. The U.S. consumer finance business of AFCC would not be transferred and would remain at the holding company level.

## II. THE TRANSACTIONS AND LEGAL AUTHORITY

### A. Credit Card Restructuring

The transactions involved in the credit card restructuring are proposed to occur in the order set out below. The merger transactions and notice of change-in-control were subject to public notice. Proper publication of those notices occurred, and no public comments or requests for hearings were received by the OCC.

#### 1. Contribution of Citicorp Credit Services, Inc. to CBNA

Citicorp proposes to contribute the stock of CCSI to CBNA, with the result that CCSI becomes an operating subsidiary of CBNA. A national bank may establish or acquire an operating subsidiary to conduct activities that are part of or incidental to the business of banking under 12 U.S.C. § 24(Seventh) and activities permissible for national banks or their operating subsidiaries under other statutory authority. 12 C.F.R. § 5.34. Based on the information and representations provided by the applicants, CCSI is a credit card servicing company, all of whose activities are permissible for national banks. Therefore, CBNA may acquire the proposed subsidiary.

The contribution of the stock of CCSI to CBNA constitutes a material noncash contribution to capital surplus.[1] Such contributions are permissible, and CBNA may include the value as an increase in capital for regulatory and supervisory purposes, provided the shareholders have approved the transaction and the Office of the Comptroller of the Currency ("OCC") has approved the transaction under 12 C.F.R. § 5.46. In connection with the contribution of stock, CBNA has requested OCC approval for an increase in permanent capital under 12 C.F.R. § 5.46.

#### 2. Merger of Universal Card Services, Corp., into CBNA

Universal Card Services Corp., Jacksonville, Florida ("UCS"), a Delaware corporation, is a nonbank credit card servicing company that does not accept deposits. It is a direct wholly-owned subsidiary of CBNA. UCS, in turn, owns 100% of Universal Bank, N.A. In this step of the restructuring, UCS will merge into CBNA under 12 U.S.C. § 215a-3 and 1828(c) ("the UCS Merger"). In the UCS Merger, CBNA seeks to eliminate UCS as a separate corporate entity.[2]

---

[1] The value of the CCSI stock by itself may not be considered material under OCC regulations. However, other aspects of the overall restructuring include additional noncash contributions to capital, the aggregate amount is material, and accordingly, the OCC is reviewing the whole contribution and each part thereof.

[2] Certain other steps that do not require regulatory approval will occur after the contribution of CCSI to CBNA and before the UCS Merger. CCSI will contribute its non-New York assets to its newly formed subsidiary

In December 2000, Congress amended the National Bank Consolidation and Merger Act, 12 U.S.C. § 215 *et seq.*, to add a new section 6 expressly authorizing the merger of a national bank with its nonbank subsidiaries or affiliates: "Upon the approval of the Comptroller, a national bank may merge with one or more of its nonbank subsidiaries or affiliates." 12 U.S.C. § 215a-3(a), as added by section 1206 of the Financial Regulatory Relief and Economic Efficiency Act of 2000 (Title XII of the American Homeownership and Economic Opportunity Act of 2000), Pub L. No. 106-569, 114 Stat. 2944, 3034 (December 27, 2000). Section 1206 was adopted in order to facilitate the ability of banking organizations to effect corporate restructuring between national banks and their subsidiaries and affiliates in the most efficient way possible, while preserving regulatory oversight by requiring OCC approval. *See* S. Rep. No. 106-11, 106th Cong., 1st Sess. 8 (1999).

UCS is not a bank and is wholly-owned by CBNA, and so it is a nonbank subsidiary of CBNA for purposes of section 215a-3.[3] At the time of the UCS Merger, UCS will be only a holding company, and its two subsidiaries (CCSI NonNY and Universal) engage in credit card servicing and the issuance of consumer credit cards. These are activities permissible for national banks, and so the merger will not add any impermissible powers for the bank. UCS is located in a different state than CBNA. However, section 215a-3 authorizes mergers with any nonbank subsidiary or affiliate, without regard to geographic location. UCS is a Delaware corporations. Delaware law authorizes Delaware corporations to merge with foreign corporations, including national banks, with the foreign corporation as the surviving corporation.[4] CBNA represents that it and UCS will comply with the requirements of Delaware law for the merger of a Delaware corporation with a foreign corporation. The UCS Merger is authorized under section 215a-3.[5]

---

("CCSI NonNY"), and CCSI NonNY will be spun off to CBNA. CBNA will contribute the stock of CCSI NonNY to UCS. UCS will contribute its operating assets to CCSI NonNY. At the time UCS merges into CBNA, UCS will have no operating assets and will be only a holding company that holds the stock of CCSI NonNY and Universal. The UCS Merger will eliminate UCS, and CCSI NonNY and Universal will become direct subsidiaries of CBNA.

[3] Since UCS is a wholly-owned subsidiary of CBNA, we need not decide in this application what minimum level of ownership is required to make an entity a "subsidiary" or "affiliate" of the bank for purposes of section 215a-3. We note, however, that consideration of related statutes, namely, 12 U.S.C. § 371c (affiliate transactions) and the Bank Holding Company Act, suggests that Congress intended a similar 25% ownership threshold for section 215a-3.

[4] *See* Del. Code Ann. tit. 8, § 252 (merger of Delaware and foreign corporations generally). *See also* Del. Code Ann. tit. 8, § 253 (merger of parent corporation and subsidiary).

[5] CBNA has also applied to the Federal Deposit Insurance Corporation for approval of the merger under the Bank Merger Act. *See* 12 U.S.C. § 1828(c)(1)(A) (no insured bank "shall merge or consolidate with any noninsured bank or institution" without the approval of the FDIC). CBNA is an insured bank; UCS is not an insured depository institution.

### 3. Transfer of Certain Assets and Liabilities from Hurley to CBSD

CBSD applied to the OCC for approval to acquire certain assets and assume certain liabilities, including deposit liabilities, from Hurley, constituting the consumer credit card business of Hurley ("the CBSD/Hurley Purchase and Assumption Transaction").

CBSD may purchase and assume these assets and liabilities. National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from other institutions, including assuming the deposit liabilities from other institutions, as part of their general banking powers under 12 U.S.C. § 24(Seventh).[6] Such purchase and assumption transactions are commonplace in the banking industry. No nonconforming or impermissible assets or activities will be acquired by CBSD, and CBSD does not propose to acquire any branches. The CBSD/Hurley Purchase and Assumption Transaction is legally permissible.

### 4. Conversion of Hurley State Bank into a National Bank

Hurley, a South Dakota state-chartered bank, applied to convert into a national bank ("the Hurley Conversion"). With OCC approval, state banks may convert into national banks, provided the conversion is not in contravention of state law. 12 U.S.C. § 35; 12 C.F.R. § 5.24. No South Dakota law prohibits state banks from converting to national banks, and so the Hurley Conversion is not in contravention of state law.[7] The applicants represent that Hurley has no branches and has no assets, and engages in no activities, that are impermissible for a national bank.

The Hurley Conversion is legally authorized.[8] The applicants have also requested a waiver of the directors' residency requirement of 12 U.S.C. § 72 with respect to Converted

---

[6] *See, e.g., City National Bank of Huron v. Fuller*, 52 F.2d, 870, 872-73 (8th Cir. 1931); *In re Cleveland Savings Society,* 192 N.E.2d 518, 523-24 (Ohio Com. Pl. 1961). *See also* 12 U.S.C. § 1828(c) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act).

[7] Indeed, South Dakota law expressly permits state banks to convert into national banks, provided the converting institution receives authority from the OCC to transact business as a national bank, notifies the South Dakota Division of Banking, and surrenders its state charter. S.D. Codified Laws § 51A-14-3. The applicants represent they have notified the state of the application and, upon consummation, will notify the state and surrender the state charter.

[8] In connection with the Hurley Conversion, certain other steps will also occur. Hurley's immediate holding company will transfer the stock in Hurley up to Citicorp, so that Hurley becomes a direct subsidiary of Citicorp. Hurley, which currently limits its activities so that it is not a "bank" under the BHCA, will expand its activities beyond those permitted under section 1841(c)(2)(F), but will continue to be engaged principally in credit card operations. Hurley currently has a designation from the FDIC as a limited purpose bank for purposes of the Community Reinvestment Act; the applicants have requested continuation of that designation from the OCC for Converted Hurley after the conversion and other transactions here. Hurley will change its name to Citibank USA,

Hurley. Under section 72, at least a majority of a national bank's directors must reside within the state in which the bank is located or within 100 miles of the bank's office, but the OCC is authorized to waive the directors' residency requirement. With one exception, all current directors of Hurley, a well-capitalized and profitable bank with a satisfactory level of performance under the CRA, are slated to retain their positions in the converted bank. Having reviewed the record, we have concluded these individuals possess the requisite qualifications and experience to fulfill their responsibilities. The granting of the requested residency waivers is thus appropriate.

**5. Transfer of Certain Assets and Liabilities from CBSD to Converted Hurley**

Application was also made to the OCC for approval for Hurley, after the conversion to a national bank (Converted Hurley) to acquire certain assets and assume certain liabilities, including deposit liabilities, from CBSD ("the Converted Hurley Purchase and Assumption Transaction"). These assets and liabilities constitute the government and corporate credit card business of CSBD, certain consumer credit card business, and other business not consistent with CBSD's plans to qualify for the CEBA credit card bank exemption under the BHCA.

As discussed above, national banks are permitted to purchase bank-permissible assets and assume bank-permissible liabilities from other institutions, including assuming the deposits, as part of their general banking powers under 12 U.S.C. § 24(Seventh). No nonconforming or impermissible assets or activities will be acquired by Converted Hurley, and it does not propose to acquire any branches. The Converted Hurley Purchase and Assumption Transaction is legally permissible.

**6. Contribution of CBSD to CBNA**

After the Converted Hurley Purchase and Assumption Transaction, CBSD's activities will be such that it will no longer be a "bank" under the BHCA. *See* 12 U.S.C. § 1841(c)(2)(F). It will engage primarily in the issuance of consumer credit cards. It intends to limit its business in this manner on an ongoing basis. It filed with the OCC a notice of its intention to contract its activities, along with proposed revised Articles of Association containing the limitation. It will adopt the revised Articles at the appropriate time in the restructuring process.

---

National Association. In addition, Converted Hurley will purchase the credit card accounts of two other affiliated banks, Universal Financial Corporation ("UFC") and Associated Capital Bank ("ACB"), each of which is an FDIC- insured, Utah state-chartered industrial loan company. Only the credit card accounts will be transferred. UFC and ACB will retain their existing receivables and may purchase others in the future, and no insured deposits will be transferred. Because UFC and ACB will continue to operate and the transactions do not involve the transfer of deposit liabilities, these transactions are not subject to the Bank Merger Act and do not require OCC approval.

After the Converted Hurley Purchase and Assumption Transaction and CBSD limits its activities, Citicorp proposes to contribute the stock of CBSD to CBNA, with the result that CBSD becomes an operating subsidiary of CBNA. A national bank may establish or acquire an operating subsidiary to conduct activities that are part of or incidental to the business of banking under 12 U.S.C. § 24(Seventh) and activities permissible for national banks or their operating subsidiaries under other statutory authority. 12 C.F.R. § 5.34. Based on the information and representations provided by the applicants, at the time of the contribution, CBSD will be a limited purpose credit card bank whose activities are permissible for national banks, and indeed, whose activities are the same as one of CBNA's current operating subsidiaries, Universal Bank, N.A. CBNA's acquisition of the stock of CBSD is also consistent with the factors considered by the OCC under 12 U.S.C. § 1817(j) and 12 C.F.R. § 5.50, to the extent applicable. Therefore, CBNA may acquire the proposed subsidiary.

The contribution of the stock of CBSD to CBNA constitutes a material noncash contribution to capital surplus. Such contributions are permissible, and CBNA may include the value as an increase in capital for regulatory and supervisory purposes, provided the shareholders have approved the transaction and the OCC has approved the transaction under 12 C.F.R. § 5.46. In connection with the contribution of stock, CBNA has requested OCC approval for an increase in permanent capital under 12 C.F.R. § 5.46.

**7. Merger of Universal Bank, N.A., into CBSD**

Application was also made to the OCC for approval, after CBSD has become a subsidiary of CBNA, for Universal to merge into CBSD ("the Universal Merger"). Universal's main office is in Georgia. CBSD's main office is in South Dakota. After the merger, CBSD will not retain Universal's main office as a branch; nor will it otherwise acquire a branch in Georgia. In this transaction national banks with different home states will merge. Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

> Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1) (the Riegle-Neal Act).[9] The Act permits a state to elect to prohibit such interstate merger transactions involving a bank whose home state is the prohibiting state

[9] Congress also enacted a conforming amendment authorizing national banks to engage in interstate merger transactions under section 1831u. 12 U.S.C. § 215a-1. For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." "Interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible

(*i.e.,* "opt-out") by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. *See* 12 U.S.C. § 1831u(a)(2). In the Universal Merger, the home states of the banks are Georgia and South Dakota; neither state opted out. Accordingly, the Universal Merger may be approved under 12 U.S.C. §§ 215a-1 & 1831u(a).

An application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements and conditions set forth in the Riegle-Neal Act. These conditions are: (1) compliance with state-imposed age limits, if any, subject to the Act's limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. The Universal Merger application satisfies all these conditions to the extent applicable.

First, the proposal satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-State bank or out-of-State bank holding company to acquire a bank in *a host state* that has not been in existence for the minimum period of time, if any, specified in the statutory law of *the host State*." 12 U.S.C. § 1831u(a)(5)(A) (emphasis added). In the proposed merger CBSD is acquiring a bank in Georgia, but there is no "host state' for this transaction, since no branch will be maintained in Georgia. The term "host state" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." 12 U.S.C. § 1831u(f)(5). Thus, without a branch being retained in Georgia, Georgia is not a "host state" for Riegle-Neal Act purposes, and no state age limit is applicable to this transaction. Moreover, even if the state age limit were applicable, it would be met here. The maximum age limit a state may impose under the Riegle-Neal Act is five years. 12 U.S.C. § 1831u(a)(5)(B). Universal is more than five years old. Thus, the Universal Merger satisfies the Riegle-Neal Act's age requirement.

Second, the proposed merger is not subject to the Riegle-Neal Act's filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of *any host State* of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of *the host state*. 12 U.S.C. § 1831u(b)(1) (emphasis added).[10] As discussed above with respect to the age requirement, in this merger transaction

---

agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). *See* 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

[10] Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the

there is no "host state" and thus, the filing requirement provision of the Riegle-Neal Act does not apply.

Third, the proposed merger does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act. Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. However, interstate merger transactions involving only affiliated banks are specifically excepted from these provisions. 12 U.S.C. § 1831u(b)(2)(E). Universal and CBSD are affiliates; thus section 1831u(b)(2) is not applicable to this merger.

Fourth, the proposed interstate merger transaction also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). However, these provisions do not apply to mergers between affiliated banks. Universal and CBSD are affiliates. Thus, this Riegle-Neal Act provision is not applicable. However, the Community Reinvestment Act itself is applicable, as discussed below in Part III-B.

Fifth, the proposal satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act. The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, Universal and CBSD satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, the banks are at least satisfactorily managed. The OCC has also determined that, following the merger, the resulting bank will continue to exceed the standards for an adequately capitalized and adequately managed bank. The requirements of 12 U.S.C. § 1831u(b)(4) are, therefore, satisfied.

Accordingly, the proposed Universal Merger is legally permissible under section 1831u. In this transaction, the resulting bank, CBSD, will not maintain Universal's

---

states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. For a fuller discussion of this subject, see, e.g., Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

main office as a branch. We note that retention of that office in Georgia as a branch would have been authorized under 12 U.S.C. § 36(d) & 1831u(d)(1).[11]

### 8. Transfer of Certain Assets and Liabilities from Citibank USA to CBSD

Application was also made to the OCC for approval for CBSD to acquire certain assets and assume certain liabilities, including deposit liabilities, from Citibank USA, Wilmington, Delaware ("CBUSA") ('the CBSD/CBUSA Purchase and Assumption Transaction"). CBUSA is a Delaware-chartered limited purpose credit card bank. Substantially all of its credit card assets and liabilities will be transferred to CBSD, and CBUSA will be liquidated.

As discussed above, national banks are permitted to purchase bank-permissible assets and assume bank-permissible liabilities from other institutions, including assuming the deposits, as part of their general banking powers under 12 U.S.C. § 24(Seventh). No nonconforming or impermissible assets or activities will be acquired by CBSD, and it does not propose to acquire any branches. The CBSD/CBUSA Purchase and Assumption Transaction is legally permissible.

## B. Transfer of Commercial Finance and International Consumer Finance Subsidiaries

### 1. General

AFCC engages in four lines of business: domestic U.S. consumer finance, commercial finance, international consumer finance, and credit cards. In these applications, the commercial finance and international consumer finance businesses will be moved to CBNA. The U.S. consumer finance business of AFCC would not be transferred and would remain at the holding company level. After the reorganization is completed, AFCC will be engaged solely in U.S. consumer finance.[12]

---

[11] After the Universal Merger , CBNA will contribute the stock of CCSI NonNY to CBSD. This will make CCSI NonNY a subsidiary of CBSD and an indirect subsidiary of CBNA. As noted above, CCSI NonNY is a credit card servicing company whose activities are permissible for national banks and their operating subsidiaries. The stock contribution will constitute a noncash capital contribution for CBSD, subject to 12 U.S.C. § 5.46. CBSD also will contribute another credit card servicing subsidiary acquired in the Universal Merger down to become a subsidiary of CCSI NonNY.

In addition, three other nonbank affiliates, Associates Credit Card Receivables Corp. ("ACCRC"), Associates Private Label Receivables Corp. ("APLRC"), and Associates Credit Card Services Inc. ("ACCSI"), will transfer their receivables to CBSD and Converted Hurley. ACCRC and APLRC will merge into ACCSI, and in a later transaction, not part of this series of transactions, ACCSI will merge into CCSI NonNY.

[12] Some of the credit card operations are being moved in the credit card restructuring in the transactions above. It is planned to move the remainder of the credit card operations in the future.

The commercial finance business is conducted in Associates Commercial Corporation ("ACC") and in various other companies that are subsidiaries of ACC or will be subsidiaries of ACC at the time of transfer. Citicorp proposes to contribute the stock of ACC to CBNA, so that it and its subsidiaries become operating subsidiaries of CBNA. ACC's commercial finance business will be combined with CBNA's commercial lending and leasing business. The applicants have represented that all but one of the subsidiaries are engaged in activities for which CBNA has been previously approved to have an operating subsidiary and/or activities that are eligible for after-the-fact notice under 12 C.F.R. § 5.34(e)(5)(v). These subsidiaries are permissible for CBNA. One subsidiary, Associates Leasing Inc., engages in some activities the OCC has not previously addressed. They are discussed in Part II-B-2 below.

The international consumer finance business is conducted in Associates International Holdings Corp. ("AIHC") and in various other companies that are subsidiaries of AIHC or will be subsidiaries of AIHC at the time of transfer. Citicorp proposes to contribute the stock of AIHC to CBNA, and then CBNA will contribute the stock down to Citibank Overseas Investment Corporation ("COIC"), CBNA's Edge Act subsidiary, so that AIHC becomes a subsidiary of COIC.[13]

The contribution of the stock of ACC and AIHC to CBNA constitutes a material noncash contribution to capital surplus. Such contributions are permissible, and CBNA may include the value as an increase in capital for regulatory and supervisory purposes, provided the shareholders have approved the transaction and the OCC has approved the transaction under 12 C.F.R. § 5.46. In connection with the contribution of stock, CBNA has requested OCC approval for an increase in permanent capital under 12 C.F.R. § 5.46.

**2. Associates Leasing, Inc.**

One of ACC's subsidiaries is Associates Leasing Inc. Associates Leasing engages in lease financing, other commercial finance activities, and a number of activities ancillary to its lease financing. Most of Associates Leasing's activities are activities for which CBNA has been previously approved to have an operating subsidiary and/or activities that are eligible for after-the-fact notice under 12 C.F.R. § 5.34(e)(5)(v). As well as other types of leasing business, Associates Leasing also conducts AFCC's commercial fleet services leasing business ("Associates' Fleet Services" or "AFS"). A portion of the AFS business involves activities the OCC has not previously addressed in the leasing context. We conclude they are legally permissible and CBNA may acquire them.

---

[13] Since AIHC will be an Edge Act subsidiary under 12 U.S.C. § 601 and 12 C.F.R. Part 211, it is not subject to OCC review and approval as an operating subsidiary under 12 C.F.R. § 5.34. It is included in the OCC applications since it is a material noncash capital contribution.

**a. Proposed activities**

The principal activity of the fleet services business consists of leasing automobiles for terms of more than 90 days, consistent with 12 C.F.R. Part 23.[14] AFS also offers the following optional, fee-based services to its customers with respect to vehicles leased from AFS, vehicles leased from others, and vehicles owned by the customers ("Ancillary Services"). More than 98 percent of the AFS customers lease some portion of their vehicles from AFS.[15] The Ancillary Services include the following activities.

*Vehicle Acquisition* – AFS will acquire vehicles through local dealers for lease. AFS will also assist customers in locating and acquiring vehicles for purchase.

*Vehicle Re-sale* – AFS will dispose of the vehicles it leases and will assist customers in disposing of their own vehicles.

*Driver Purchase Program* – As part of its re-sale program, AFS assists drivers (employees of AFS' customers) interested in purchasing off-lease vehicles from AFS customers. AFS makes a list of the vehicles available and processes paperwork to facilitate the sale. AFS does not set the sale price and does not finance the driver's purchase.

*Accident Management Program* – In response to a call from a driver involved in an accident, AFS staff will help arrange for a tow truck, locate a repair facility, and find a rental vehicle. The driver makes the decision to hire a tow truck, to have repairs made to the vehicle, and to rent another vehicle. AFS advances the costs and bills the customer for reimbursement. AFS also manages third-party subrogation claims.

*Safety Management Program* – AFS assists its customers in establishing a corporate safety policy with respect to the customers' fleets of vehicles.

*Maintenance Management Program* – AFS assists customers experiencing mechanical problems in locating a repair facility. AFS does not advise customers as to what repairs should be done or when any repairs should be done. AFS advances the costs for the repairs and bills the customer for reimbursement. AFS may also assist a driver in finding a rental car.

*Fuel Card Program* – AFS offers a third party fuel card which drivers may use to purchase fuel. AFS pays for the fuel, then bills the customer for reimbursement.

*License Renewal* – AFS tracks vehicle registrations and drivers' licenses and sends advance notice to drivers of upcoming registration and license expirations.

---

[14] Approximately 85 - 95 percent of the AFS revenues are derived from such Part 23 leasing activities.

[15] Seventy-five percent of the vehicles in the AFS program are leased by AFS.

*Driver Records* – At the request of a customer, AFS assists the customer in obtaining driver records from state motor vehicle departments.

*Fleet Management Software* – AFS provides customers with software that enables customers to manage all aspects their fleets, including lease payments.

*Fleet Administration Program* – AFS answers questions from customers about all aspects of the above services.

**b. Legal authority**

The principal activity of AFS is the leasing of vehicles, an activity that is clearly permissible for national banks and their operating subsidiaries.[16] For the reasons discussed below, the Ancillary Services are also permissible for national banks and their subsidiaries.

*Vehicle Acquisition* – AFS acquires vehicles for its customers to lease. This is a necessary part of the vehicle leasing business and is authorized under 12 C.F.R. §§ 23.3(a), 23.4. AFS also assists its customers in locating and acquiring vehicles for the customers to purchase. In doing so, AFS is acting as a finder by bringing together its customers and vehicle vendors.[17] AFS will not commit to any vehicle pricing – rather, the customer and the vendor will negotiate the transaction. In addition to bringing together its customers and vendors, AFS may forward to vendors its customers' paperwork necessary for ordering vehicles. This is a permissible part of the finder function.[18]

*Vehicle Re-sale* – At the end of lease terms, AFS sells its leased vehicles. Such re-sale of vehicles is a component of the leasing business and is specifically required by 12 C.F.R. § 23.4(c). When requested by a customer, AFS also assists the customer in the re-sale of its

---

[16] 12 U.S.C. §§ 24(Seventh) & 24(Tenth); 12 C.F.R. Part 23; 12 C.F.R. § 5.34(e)(5)(v)(M) (leasing of personal property); *M & M Leasing Corp. v. Seattle First National Bank,* 563 F.2d 1377 (9th Cir. 1977), *cert. denied,* 436 U.S. 987 (1978) (personal property lease financing is "functionally interchangeable" with the express power to loan money on personal property).

[17] The OCC has long recognized the finder function as a permissible banking activity that includes "without limitation, identifying potential parties, making inquiries as to interest, introducing or arranging meetings of interested parties, and otherwise bringing parties together for transactions that the parties themselves negotiate and consummate." 12 C.F.R. § 7.1002(b) (2001). *See* Interpretive Letter No. 856, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,313 (Mar. 5, 1999); Corporate Decision No. 97-60 (July 1, 1997); Conditional Approval Letter No. 221 (Dec. 4, 1996).

[18] *See* Interpretive Letter No. 824, *reprinted in* [1997-1998 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-273 (Feb. 27, 1998) (national bank may forward completed materials); Letter from James M. Kane, District Counsel (Oct. 24, 1985) (unpublished) (national bank may forward any business reply cards received for financial planning company); Letter from F.H. Ellis, Chief National Bank Examiner (Oct. 6, 1970) (unpublished) (bank may collect applications and fees and forward them).

other vehicles, *i.e.*, those vehicles not leased from AFS. AFS will provide prospective buyers with information about these vehicles and accept inquiries of interest. AFS will not commit to any vehicle pricing – rather, the customer and the potential purchaser will negotiate the transaction. In bringing together its customers with potential purchasers for its vehicles, AFS is acting as a finder.[19]

*Driver Purchase Program* – As part of its re-sale program, AFS assists drivers who may be interested in purchasing off-lease vehicles. AFS makes a list of vehicles for sale available to drivers and processes paperwork necessary to facilitate the sale. To the extent AFS performs these services for the vehicles it leases, these services are a part of AFS' efforts to re-sell the vehicles – a necessary component of vehicle leasing and specifically required by 12 C.F.R. § 23.4(c). To the extent AFS assists a driver in purchasing a vehicle not leased by AFS, AFS will play no role in setting the sales price or in negotiating the sale. In this role, AFS is acting as a finder.[20]

*Accident Management and Maintenance Management Programs* – To aid in the preservation of the vehicles' values, AFS operates a maintenance management program and an accident management program. When a driver needs maintenance to his vehicle or reports an accident, AFS staff assists the driver in arranging for a tow truck, in locating a repair facility, and in finding a rental vehicle. The decision to hire a tow truck, have repairs made to the vehicle, and to rent another vehicle is made by the driver. To the extent AFS provides these services for the vehicles it leases, these services aid in the preservation of the vehicles' values and are, therefore, permissible under 12 C.F.R. Part 23 as part of the AFS leasing program.[21] When AFS provides these services for drivers of vehicles not leased from AFS, these services are permissible finder services. AFS acts to bring together the driver and service providers, and the driver then makes the decision to hire the service providers.

When a driver makes the decision to hire a tow truck, to have repairs made, or to rent another vehicle, AFS advances the costs and bills the customer for reimbursement. Whether provided for customers who lease vehicles from AFS or for other customers, these services are permissible financing and billing services. *See* 12 C.F.R. § 5.34(e)(5)(v)(C) (making loans and extensions of credit) & (D) (servicing loans or other extensions of credit).[22]

---

[19] *See* Corporate Decision No. 97-60, *supra* (national banks may act as finders for automobile sales and financing through databases, call centers, and internet services); Interpretive Letter No. 856, *supra;* Conditional Approval Letter No. 221, *supra*.

[20] *See* Corporate Decision No. 97-60, *supra* (national banks may act as finders for automobile sales and financing through databases, call centers, and internet services); Interpretive Letter No. 856, *supra;* Conditional Approval Letter No. 221, *supra*.

[21] These services are also permissible finder services, with AFS acting to bring together the driver and service providers. The driver then makes the decision to hire the service providers.

[22] *See* Letter from Peter Liebesman, Assistant Director, LASD (August 15, 1983) (unpublished) ("Liebesman Letter") (program in which bank advances costs for goods and services purchased by trucking

As part of the accident management program, AFS also manages third-party subrogation claims. When done for customers who lease AFS vehicles, this service is permissible under 12 C.F.R. Part 23 as part of AFS' vehicle leasing business. Providing this service assists AFS in preserving the value of its vehicles. When provided for customers whose vehicles are not leased from AFS, AFS is making a permissible use of its retained excess capacity. The OCC and the courts have long held that a bank may make profitable use of excess capacity if the bank acquired the excess capacity in good faith to meet either its needs or the needs of its customers.[23] The underlying justification of the excess capacity doctrine is essentially that of avoidance of economic waste. If a bank must leave its asset underutilized, the bank would fail to obtain full economic value from the asset, thus incurring economic waste. However, utilization of the excess capacity permits the bank to reduce the costs of performing those services which are part of the banking business. This, in turn, makes its banking business more profitable and competitive.

Here, AFS' provision of management of subrogation claims for AFS-leased vehicles will undoubtedly fluctuate, based upon the number of accidents involving AFS-leased vehicles. To make an efficient and good faith use of the existing personnel engaged in providing these services, AFS will make these services available to customers whose vehicles are not leased from AFS. This service will constitute a minimal part of AFS' business – indeed, 85 to 95 percent of AFS' revenues come from vehicle leasing.[24] The remaining revenues come from the provision of the Ancillary Services, of which management of subrogation claims for vehicles not leased from AFS is one small part. Moreover, vehicles not leased from AFS constitute only 25 percent of the vehicles in the program. Therefore, AFS may provide these services as a permissible use of its excess capacity.

---

company employees and then bills trucking company for expenses constitutes permissible lending and billing activities).

[23] *See, e.g., Brown v. Schleier*, 118 F. 981 (8th Cir. 1902), *aff'd*, 194 U.S. 18 (1904). Although the excess capacity doctrine was originally developed in the real estate context, its principles have been applied in other areas where banks have obtained or developed in-house services or personnel in good faith and desired to make efficient use of the excess capacity. *See, e.g.,* Letter from Deborah K. Andrews, Senior Attorney (September 9, 1999) (unpublished) ("Andrews Letter") (excess capacity in tax assessment appeal consulting services); Corporate Decision No. 98-25 (April 1, 1998) (excess capacity in real estate appraisal services); Interpretive Letter No. 677 (June 28, 1995), *reprinted in* [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (excess capacity in, *inter alia*, personnel and facilities for production and distribution of non-financial software); No-Objection Letter No. 89-04 (July 11, 1989), *reprinted in* [1989-90 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,061 (excess capacity in messenger services); Interpretive Letter No. 137 (December 27, 1979), *reprinted in* [1981-82] Fed. Banking L. Rep. (CCH) ¶ 85,218 (excess capacity in financial counseling services).

[24] *See, e.g.*, Andrews Letter, *supra* (approximately 5 - 15 percent of employee's time would be spent providing services as excess capacity); Corporate Decision No. 98-25, *supra* (provision of excess capacity services would constitute no more than ten percent of subsidiary's business).

*Safety Management Program* – AFS assists its customers in establishing a corporate safety policy with respect to the customers' fleets of vehicles. With respect to customers who lease vehicles from AFS, the safety management program is permissible under 12 C.F.R. Part 23 – it aids in the preservation of the vehicles' values. When provided for customers who do not lease vehicles from AFS, provision of the program is a good faith use of excess capacity.[25]

*Fuel Card Program* – AFS will offer its customers a third-party fuel card. Customers' employees will use the card, and AFS will pay the expenses and bill the customers. Whether provided for customers who lease vehicles from AFS or for other customers, the fuel card program services are permissible financing and billing services. *See* 12 C.F.R. § 5.34(e)(5)(v)(C) (making loans and extensions of credit) & (D) (servicing loans or other extensions of credit).[26]

*License Renewal Program and Driver Records Program* – As a service to its customers, AFS tracks vehicle registrations and drivers' licenses and sends advance notice to drivers of upcoming registration and license expirations. AFS will also, if requested by a customer, assist that customer in obtaining an employee's driver records from the state motor vehicle department. When provided for customers who lease their vehicles from AFS, the provision of these services aids in the preservation of the vehicles' value and, therefore, is a permissible under 12 C.F.R. Part 23 as part of AFS' vehicle leasing program.

Moreover, whether provided for customers who lease vehicles from AFS or for other customers, both programs constitute permissible finder services. In both cases, AFS brings together its customers with government agencies for transactions that customers undertake.[27] In both programs, AFS forwards completed applications and requests to the appropriate state motor vehicle department. As finders, national banks may forward completed applications and requests for information to third parties.[28] With respect to the license renewal program, AFS sends customers' employees notices of the need for upcoming license and registration renewal. National banks, as finders, may make inquiries of interest, arrange meetings between the parties, and otherwise bring the parties together. 12 C.F.R. § 7.1002(b). The notices serve these purposes.

---

[25] *See* notes 23 & 24, *supra*, and accompanying text. The OCC has approved the use of the excess capacity in consulting and counseling programs. *See, e.g.,* Andrews Letter, *supra* (in addition to tax assessment appeal consulting services, OCC has approved the use of the excess capacity doctrine for human resources consulting and career counseling).

[26] *See* Liebesman Letter, *supra.*

[27] The OCC has permitted national banks to act as a finder for government agencies. Conditional Approval No. 361 (March 3, 2000).

[28] *See, e.g.,* note 18, *supra*. *Cf.* Corporate Decision No. 98-13, *supra* (national bank operating subsidiary, acting as finder, may provide instruction and assistance with the application process, including help with the appropriate forms).

*Fleet Management Software* – AFS provides customers with software that allows customers to monitor all aspects of the their vehicle fleet, including lease payments. It is well established that a national bank may use electronic means to perform services expressly or incidentally authorized to national banks.[29] The OCC has long held that national banks may process banking, financial, and economic data.[30] Vehicle fleet data, including lease payments, constitutes financial data and, therefore, AFS may, as part of the business of banking, supply the customers with fleet management software.[31]

---

[29] 12 C.F.R. § 7.1019. *See also* Interpretive Letter No. 677, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995); Interpretive Letter No. 284, *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,448 (Mar. 26, 1984); Interpretive Letter No. 449, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,673 (Aug. 23, 1988).

[30] Interpretive Letter No. 856, *reprinted in* [1998-1999 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81-313 (Mar. 5, 1999). An earlier version of 12 C.F.R. § 7.1019 stated that "as part of its banking business and incidental thereto, a national bank may collect, transcribe, process, analyze, and store for itself and others, banking, financial, or related economic data." Interpretive Ruling 7.3500, 39 Fed. Reg. 14195 (Apr. 22, 1974). Although in its 1984 revision of the ruling, the OCC deleted this statement because it believed that "specific examples [of permissible electronic activities] are inappropriate given the imprecision of terms and rapid pace of change in the data processing industry," the "analytical framework" embodied in the ruling remained the same. 49 Fed. Reg. 11157 (Mar. 26, 1984). There was no intent to narrow or restrict the substantive effect of the rule. Interpretive Letter No. 677, *reprinted in*, [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995). S*ee also* Interpretive Letter No. 737, *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,101 (Aug. 19, 1996) (national bank may provide transaction and information processing services to support an electronic stored value system); Interpretive Letter No. 653, *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (Dec. 22, 1994) (national bank may act as an informational and payments interface between insurance underwriters and general insurance agents); OCC Interpretive Letter No. 346, *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,516 (July 31, 1985) (national banks may maintain records on commodities transactions). Case authority strongly supports the OCC precedent. In *Ass'n of Data Processing v. Board of Governors*, 745 F.2d 677 (D.C. Cir. 1984), the D.C. Circuit Court of Appeals upheld a Federal Reserve Board finding that data processing and database services were closely related to banking (and thus a proper activity for bank holding companies) if the "data to be processed . . . are financial, banking or economic…." In reaching this conclusion the court said: "The record of this proceeding amply demonstrates, if any demonstration is needed, that banks regularly develop and process for their customers large amounts of banking, financial and economic data, and that they do so (and will presumably continue to do so) through the most advanced technological means." 745 F.2d at 689. Moreover, the court indicated that "economic data" would include: "agricultural matters, retail sales matters, housing matters, corporate profits matters, and anything of value in banking and financial decisions." 745 F.2d at 691.

[31] *See* OCC Interpretive Letter No. 732, *reprinted in* [1995-1996 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81.049 (May 10, 1996) (national bank may acquire a minority interest in a firm that, *inter alia,* designs, develops, and markets software supporting electronic funds transfer and data interchange activities); Interpretive Letter No. 677, *reprinted in* [1994-95 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,625 (June 28, 1995) (national bank operating subsidiary may enter into a joint venture arrangement (through a limited liability company) to acquire MECA Software, Inc., a company that develops, produces, markets and distributes home banking and financial management software products designed to assist individuals and small business manage their finances through their personal computers).

*Fleet Administration Program* – To promote its programs, AFS will advise any customer about any available aspects and services of the programs. Clearly, a national bank, as a permissible corporate activity, may advertise and discuss with customers any services the bank may permissibly provide. Because the above programs are permissible for AFS to provide to its customers, AFS may discuss the above programs with these customers.

Based upon the information and representations the CBNA has provided, and for the reasons discussed above, CBNA's application to acquire Associates Leasing and its AFS operation as an operating subsidiary and to perform the leasing activities and Ancillary Services in the manner and as described above is legally permissible.

## III. ADDITIONAL STATUTORY AND POLICY REVIEWS

### A. The Bank Merger Act

The Bank Merger Act, 12 U.S.C. § 1828(c), requires the OCC's approval for certain transactions, including any merger between insured banks when the resulting institution will be a national bank and for purchase and assumption transactions in which a national bank acquires deposits from another insured institution. Under the Act, the OCC generally may not approve a transaction which would substantially lessen competition. 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.

In these applications, the following transactions are subject to OCC review under the Bank Merger Act: the CBSD/Hurley Purchase and Assumption Transaction, the Converted Hurley Purchase and Assumption Transaction, the Universal Merger, and the CBSD/CBUSA Purchase and Assumption Transaction (collectively, "the merger transactions").[32] For the reasons stated below, we find the merger transactions may be approved under section 1828(c).

#### 1. Competitive analysis

The OCC has reviewed the competitive effects of this proposal. As the various banks involved in the merger transactions are wholly owned and controlled by the same bank holding company, the contemplated mergers and purchases/assumptions will clearly have no adverse impact on competition.

In reviewing the applications, the U.S. Department of Justice, the Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve System also considered the competitive impact of the proposed transactions. They have similarly concluded

---

[32] The UCS Merger is also subject to review under the Bank Merger Act, but the FDIC is the agency responsible for Bank Merger Act review of that transaction. *See* note 5 above.

the proposals will produce no significant adverse effect on competition or concentrate banking resources in a relevant geographic market.

**2. Financial and managerial resources**

The Bank Merger Act requires the OCC to consider "…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."

We find that the financial and managerial resources of the various parties to the merger transactions do not raise concerns that would cause the applications to be disapproved. The proposed transactions are merely components of a corporate reorganization structured to achieve efficiencies and economies of scale. Further, the participant banks are well capitalized and well managed. The future prospects of the proponents, individually and combined, are thus considered favorable and consistent with an approval.

**3. Convenience and needs**

The applications will have no adverse impact on the convenience and needs of the communities to be served. The transactions are components of an internal reorganization which will not result in any reduction in products or services to the general public. Accordingly, we believe the impact of these applications on community convenience and needs is consistent with the granting of an approval.

**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 merger transactions subject to the Bank Merger Act and conversions involving insured depository institutions. 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). In these applications, the merger transactions listed above subject to OCC review under the Bank Merger Act and the Hurley Conversion are subject to OCC review under the CRA.

A review of the record of these applications and other information available to the OCC as a result of its regulatory responsibilities has revealed no evidence that the applicants' records of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

The banks involved in these applications all have "Outstanding" or "Satisfactory" CRA ratings as of their most recent examinations. No public comments were received by the OCC relating to these applications, and the OCC has no other basis to question the banks' performance in complying with the CRA. These applications involve only a restructuring of

existing credit card operations. They are not expected to have any adverse effect on the resulting national banks' CRA performance. We find that approval of the applications is consistent with the Community Reinvestment Act.

## IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that: (1) CCSI, CBSD, ACC, and AIHC may become a subsidiaries of CBNA, (2) UCS may merge into CBNA under 12 U.S.C. § 215a-3, (3) Hurley may convert into a national bank under 12 U.S.C. § 35, (3) the CBSD/Hurley Purchase and Assumption Transaction, the Converted Hurley Purchase and Assumption Transaction, the Universal Merger, and the CBSD/CBUSA Purchase and Assumption Transaction are authorized under 12 U.S.C. § 24(Seventh) and 215a-1, and (4) the increase in capital represented by the noncash capital contribution of CCSI, CBSD, ACC, and AIHC to CBNA, as well as other noncash contributions in the applications, is permissible under 12 C.F.R. § 5.46. The applications also meet the other relevant statutory criteria for approval, and the transactions raise no supervisory and policy concerns.[33] Accordingly, the applications are hereby approved.

**-signed-** **09-21-01**

_____ _____

Julie L. Williams Date
First Senior Deputy Comptroller
and Chief Counsel

Application Control Numbers:

| | | |
|---|---|---|
| 2001-ML-01-0003 | 2001-ML-02-0030 | 2001-ML-11-0004 |
| 2001-ML-02-0027 | 2001-ML-02-0031 | 2001-ML-12-0293 |
| 2001-ML-02-0028 | 2001-ML-08-0014 | 2001-ML-12-0319 |
| 2001-ML-02-0029 | | |

[33] Certain aspects of the proposed transactions involve "covered transactions" within the meaning of section 23A of the Federal Reserve Act, 12 U.S.C. § 371c. Of the covered transactions, some qualify for the statutory exemption for transactions between sister banks, 12 U.S.C. § 371c(d)(1), others qualify for the regulatory exemption for transactions subject to review under the Bank Merger Act, 12 C.F.R. § 250.241, but others may not be otherwise exempt. Citigroup requested an exemption from the Board of Governors of the Federal Reserve System for the corporate reorganization under 12 U.S.C. § 371c(e)(2) (the Board may exempt specific transactions by regulation or order). The Board granted the exemption, subject to compliance by Citigroup with commitments and representations. *See* Letter from Robert deV. Frierson to Carl V. Howard (August 28, 2001).