



Comptroller of the Currency
Administrator of National Banks

Central District Office
440 S. LaSalle St., Suite 2700
Chicago, IL 60605

Corporate Decision #2002-06

DECISION OF THE COMPTROLLER OF THE CURRENCY TO APPROVE THE APPLICATION OF CHARTER ONE BANK, F.S.B., CLEVELAND, OHIO, TO CONVERT TO A NATIONAL BANK

March 13, 2002

I. Introduction

On January 7, 2002, Charter One Bank, F.S.B., Cleveland, Ohio, a Federal savings bank ("Bank"), filed an application with the Office of the Comptroller of the Currency ("OCC") to convert to a national bank charter.¹ The Bank is a Savings Association Insurance Fund member of the Federal Deposit Insurance Corporation and has Bank Insurance Fund-insured deposits. The Bank's federal deposit insurance will not be affected by the conversion.

As of December 31, 2001, the Bank, a wholly-owned subsidiary of Charter-Michigan Bancorp, Inc., which in turn is a wholly-owned subsidiary of the Bank's ultimate parent company, Charter One Financial, Inc.,² had assets of approximately \$38.2 billion and total deposits of approximately \$24.6 billion. Its main office is located at 1215 Superior Avenue, Cleveland, Ohio, and it has 450 branches in Illinois, Massachusetts, Michigan, New York, Ohio, and Vermont.³

As discussed below, the Bank has applied to retain various subsidiaries for purposes of continued operation where permissible for a national bank.

¹ Following the conversion, the Bank will be known as Charter One Bank, National Association.

² Charter One Financial, Inc., is a registered bank holding company because it holds Charter One Commercial, a New York-chartered commercial bank. The Bank's holding companies have filed an application with the Federal Reserve Bank of Cleveland in connection with the conversion ("holding company application"). The OCC's approval of this application will be effective upon receipt of the Federal Reserve Bank's approval of the holding company application.

³ The number of branches is as of March 13, 2002.

II. Legal Authority

A. Conversion of the Bank

The Bank may convert into a national bank with OCC approval. Regulations of both the OCC and the Office of Thrift Supervision ("OTS") permit the direct conversion of a Federal savings bank to a national bank.⁴ In approving a conversion application, OCC regulations provide that a conversion will be permitted if the financial institution can operate safely and soundly as a national bank and in compliance with applicable laws.⁵ A review of the application for the proposed conversion demonstrates that these criteria are met. Moreover, the regulation provides that a conversion application may be denied if a significant supervisory or compliance concern exists with regard to the applicant; approval is inconsistent with law, regulation, or OCC policy; the applicant fails to provide requested information; or the conversion would permit the applicant to escape supervisory action by its current regulator.⁶ A review of the record discloses nothing that indicates that any of these factors are present.

B. Branch Retention

The Bank currently operates branches in Illinois, Massachusetts, Michigan, New York, Ohio, and Vermont. It has requested OCC approval to retain these branches after its conversion. The Bank's authority to retain branches after the conversion is expressly permitted by a provision in the Gramm-Leach-Bliley Act ("GLBA"):

Any Federal savings association chartered and in operation before the date of enactment of the Gramm-Leach-Bliley Act, with branches in operation before such date of enactment in 1 or more States, may convert, at its option, with the approval of the Comptroller of the Currency or the appropriate State bank supervisor into 1 or more national or State banks, each of which may encompass 1 or more of the branches of the Federal savings association in operation before such date of enactment in 1 or more States, but only if each

⁴ 12 C.F.R. § 5.24; 12 C.F.R. §§ 552.2-7. The OCC has approved many such conversions. *See, e.g.,* Decision on the Applications by TCF Financial Corp. to convert Federal Savings Banks Located in Minnesota, Michigan, Illinois, and Wisconsin into National Banks (OCC Corporate Decision No. 97-13, February 24, 1997). In 1999, Congress added a provision to the Home Owners' Loan Act that confirmed this authority, while also addressing branch retention, for those federal savings association conversions into national banks covered by the new provision. *See* 12 U.S.C. § 1464(i)(5), as added by the Gramm-Leach-Bliley Act, Pub. L. No. 106-102, § 739, 113 Stat. 1338, 1480 (November 12, 1999) (discussed *infra*).

⁵ 12 C.F.R. § 5.24(d).

⁶ 12 C.F.R. §§ 5.13 & 5.24(d).

resulting national or State bank will meet all financial, management, and capital requirements applicable to the resulting national or State bank.⁷

This provision directly permits a national bank resulting from the conversion of a Federal savings association to retain its branches, without regard to the geographic branching limits of 12 U.S.C. § 36,⁸ provided the federal savings association is covered by the provision and the resulting national bank meets the listed requirements. The Bank is covered by section 1464(i)(5) because it was chartered and in operation since before the date of enactment of the GLBA and it has had branches in operation in Illinois, Massachusetts, Michigan, New York, Ohio, and Vermont since before the date of enactment.⁹ The OCC has determined that Charter One Bank, National Association, the national bank resulting from this conversion, will meet all applicable financial, management, and capital requirements, and that it will meet the capital requirements for branches contained in 12 U.S.C. § 36(c). Thus, Charter One Bank, National Association, may retain its branches in Illinois, Massachusetts, Michigan, New York, Ohio, and Vermont.¹⁰

⁷ 12 U.S.C. § 1464(i)(5)(A), as added by the GLBA § 739.

⁸ Decision of the Office of the Comptroller of the Currency on Applications involving Family Bank, FSB, Haverhill, Massachusetts; First Massachusetts Bank, N.A., Worcester, Massachusetts; Bank of New Hampshire, Manchester, New Hampshire; Farmington National Bank, Farmington, New Hampshire; Granite Savings Bank and Trust Company, Barre, Vermont; The Howard Bank, N.A., Burlington, Vermont; Franklin LaMoille Bank, St. Albans, Vermont; and First Vermont Bank and Trust Company, Brattleboro, Vermont (March 8, 2000) (the "Family Bank Decision"). As discussed in the Family Bank Decision, the branch retention authority of section 1464(i)(5) is clearly intended to operate independently of section 36. In particular, with respect to the Bank's branches in Illinois, Massachusetts, Michigan, New York, Ohio, and Vermont, the resulting national bank's retention of branches in a conversion under section 1464(i)(5) is not affected by section 36(e)(1), which states that a national bank may not acquire, establish, or operate a branch in a new state unless it is authorized under one of the provisions listed in section 36(e)(1).

⁹ The Bank was chartered in 1934 and has operated with branches since then.

¹⁰ The Bank has eight branches which were established after the effective date of the GLBA: three *de novo* branches in Michigan, one *de novo* branch in Ohio, and four *de novo* branches in New York. (Also, the OTS has recently approved a short distance relocation for the branch formerly located at 43030 Hayes Road, Clinton Township, MI 48038 in Macomb County. This branch is now located at 15342 19 Mile Road, Clinton Township, MI 48038 in Macomb County.) Retention of these branches is also authorized under 12 U.S.C. § 36(c), which authorizes a national bank to establish new branches

at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question

12 U.S.C. § 36(c)(2). Neither Michigan nor Ohio place geographical limits on intrastate branching, *see* Mich. Comp. Laws 487.13711 and Ohio Revised Code § 1117.01. New York does impose home office protection requirements in towns of 50,000 or less where another bank is chartered, *see* N.Y. Cons. Laws Ch. 2, Art. 3, § 105. However, only one of the four NY branches is in a town of 50,000 or less and there are no banking institutions in that town that qualify for home office protection under the statute.

C. Subsidiaries

1. Operating Subsidiaries

A national bank may conduct in an operating subsidiary activities that are permissible for a national bank, either as part of or incidental to the business of banking or otherwise under other statutory authority.¹¹ To qualify as an operating subsidiary, the parent bank must own at least 50 percent of the voting stock of the corporation.¹²

The Bank is seeking OCC approval to retain a number of operating subsidiaries upon its conversion to a national bank,¹³ all of which are 100% owned by the Bank, with the exception of *1215 Financial Center Associates, Ltd.*, which is 99% owned by the Bank. *CDC-Asbany Corp.* is a community development corporation which makes community development and public welfare investments permissible under 12 U.S.C. § 24(11) and 12 C.F.R. Part 24;¹⁴ *Liberty Financial Services, Inc.* sells securities and annuities; *The First Financial Services and Development Corp.* holds bank-permissible investments and is a holding company for lower-level subsidiaries; *Bay Life Insurance Company, Inc.* reinsures credit life insurance on loans held by the parent bank; *ICX Corp.* engages in equipment leasing activities; *Charter One Auto Finance Corp.* purchases and originates vehicle loans and leases; *Charter One Mortgage Corp.* purchases, originates, and services residential mortgage and consumer loans; *Real Estate Appraisal Services, Inc.* provides real estate appraisal services; *AHF Securities, Ltd.* and *AHF Subordinated Securities, Ltd.* hold subordinated interests in privately owned mortgage-backed securities issued by *Charter One Mortgage Corp.*;¹⁵ *Charter One Credit Corp.* purchases and holds mortgage loans; *GCCC, Inc.* provides data processing services to the parent bank; *Investment Network Advisors, Inc.* is a licensed investment advisor; *Superior West, Inc.*, holds bank-permissible investments, provides investment management services to the parent bank, and holds *Warm Springs Investments, Inc.*, a real estate investment trust that holds mortgages and mortgage-backed securities, as its subsidiary; and *1215 Financial Center Associates, Ltd.* provides real estate management services for the parent bank's headquarters facility. The OCC has previously determined that all of the above activities are permissible activities for national

¹¹ 12 C.F.R. § 5.34(e)(1).

¹² 12 C.F.R. § 5.34(d)(2).

¹³ The Bank also owns the following inactive subsidiaries: Aplan Holding Company, Inc.; Shore Holdings, Inc.; and Preferred Mortgage Associates, Inc. The Bank understands that if it desires to conduct any future activity in the above subsidiaries, it must comply with applicable notice or application procedures and other requirements in 12 C.F.R. §§ 5.34, 5.35, or 5.39.

¹⁴ See further discussion of this subsidiary in the Community Development Investments section of this document, *infra*.

¹⁵ *AHF Securities, Ltd.* and *AHF Subordinated Securities, Ltd.* are in the process of being dissolved.

banks. Consequently, the OCC approves the Bank's retention and continued operation of the above operating subsidiaries.¹⁶

2. Financial Subsidiaries

The Bank also seeks permission to retain as financial subsidiaries three subsidiaries that are engaged in the sale of insurance as agent or broker -- *Charter One Securities, Inc.* (also engages in securities sales as agent), *Charter One Insurance Agency, Inc.*, and *Superior Insurance and Financial Services, Inc.* Pursuant to 12 U.S.C. § 24a, a national bank may control or own an interest in a financial subsidiary provided that:

- (1) the financial subsidiary engages in activities that are "financial in nature or incidental to a financial activity;"
- (2) the activities engaged in by the financial subsidiary as principal do not include certain activities enumerated at 12 U.S.C. § 24a(a)(2)(B) (including insurance sales as principal);
- (3) the bank and each depository affiliate of the bank are well-capitalized and well managed;¹⁷
- (4) the aggregate consolidated total assets of all of the bank's financial subsidiaries do not exceed the lesser of 45% of the bank's total assets or \$50 billion; and
- (5) the OCC has granted approval for the subsidiary to engage in the activities.

The sale of insurance as agent or broker is an activity that is financial in nature.¹⁸ Furthermore, insurance sales as agent or broker is not a prohibited activity for a financial subsidiary under 12 U.S.C. § 24a(a)(2)(B). The activities conducted by the three subsidiaries are permissible for a financial subsidiary. The resulting national bank and its depository institution affiliates are well capitalized and well managed. Furthermore, the aggregate consolidated assets of the resulting national bank's financial subsidiaries will not exceed 45% of the resulting national bank's consolidated assets. The Bank has also represented that it has in place policies and procedures to preserve the separate corporate identity and limited liability of the Bank and its financial

¹⁶ The Bank also owns six operating subsidiaries that hold nonconforming assets: *Servco, Inc.*; *1001 Services, Inc.*; *Prestwick Joint Venture*; *Hudson Joint Venture*; *Southwest Service Corporation*; and *Hartz-Southwest Partnership*. OCC policy permits a reasonable divestiture period in these instances so that converting banks may be able to resolve nonconforming subsidiaries without hardship. *See, e.g.*, OCC Conditional Approval No. 319 (July 26, 1999). The Bank has committed to divest its ownership interest in these subsidiaries within two years, a time period which is consistent with OCC policy.

¹⁷ For the purposes of the capital requirements of the parent bank under 12 U.S.C. § 24a, the bank's aggregate investment in all financial subsidiaries is deducted from the bank's capital, and the assets and liabilities of the financial subsidiaries are not consolidated with those of the bank. *See* 12 U.S.C. § 24a(c); 12 C.F.R. § 5.39(h)(1).

¹⁸ *See* 12 U.S.C. §§ 24a(b)(1)(A) & 1843(k)(4); 12 C.F.R. § 5.39(e)(1)(ii).

subsidiaries, as well as procedures for identifying and managing financial and operational risk within the Bank and its financial subsidiaries that adequately protect the Bank from such risk. The Bank will apply Sections 23A and 23B of the Federal Reserve Act to its financial subsidiaries as required by 12 C.F.R. § 5.34(h)(5). Accordingly, we conclude that the Bank's retention and continued operation of the above subsidiaries as financial subsidiaries is legally authorized under 12 U.S.C. § 24a and 12 C.F.R. § 5.39.

D. Community Development Investments

The Bank has requested permission from the OCC to retain one community development corporation and several direct community development investments upon its conversion to a national bank.¹⁹ *CDC - Asbany Corp.* (the "CDC"), a subsidiary corporation of the Bank, will be transferred to Charter One Bank, National Association. The CDC is primarily engaged in making (or has committed to making) equity investments, totaling \$18,072,819, which primarily benefit low- and moderate-income persons, low- and moderate-income areas, and other areas targeted for revitalization by federal, state, or local government. In particular, the CDC has invested in thirteen limited partnerships that provide or support affordable housing, primarily for low- and moderate-income individuals or in low- and moderate-income areas. The CDC's projects demonstrate nonbank community involvement because they receive federal low-income housing tax credits or because they are managed by a wholly-owned subsidiary of a non-profit community development entity.

The Bank also has made and committed to make direct community development investments of \$45,186,479, which will be transferred to Charter One Bank, National Association. These investments primarily benefit low- and moderate-income persons, low- and moderate-income areas, or other areas targeted for redevelopment by federal, state, or local government. These investments demonstrate nonbank community involvement because they receive federal low-income housing tax credits or represent projects that have received financial support from a national community development intermediary.

Charter One Bank, National Association's aggregate community development investments will total \$63,259,298, which will be an amount that is less than 5 percent of Charter One Bank, National Association's capital and surplus. The OCC has determined that all of these investments are consistent with the requirements of 12 U.S.C. 24 (Eleventh) and the OCC's regulation on national bank investments in community development corporations, community development projects, and other public welfare investments, 12 C.F.R. Part 24. This determination is based on the representations provided to the OCC in or in connection with the application. Thus, we conclude that the Bank's retention of the CDC and direct community development investments is legally permissible.

¹⁹ The Bank currently holds another direct community development investment, valued at \$50,000, in *Lakewood Warren Detroit Partners*, which the OCC has determined is a nonconforming asset. The Bank has committed to divest this asset within two years. See discussion in fn. 16, *supra*.

E. The Community Reinvestment Act

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicant's record of helping to meet the credit needs of its entire community, including low- and moderate-income ("LMI") neighborhoods, when evaluating certain applications, including conversions.²⁰

The Office of Thrift Supervision ("OTS") assigned the Bank a "Satisfactory" CRA rating at its most recent Performance Evaluation ("PE") dated May 14, 2001. The OTS evaluated the Bank's performance using criteria relative to its lending, investments, and services. The three component ratings for the lending, investments, and services tests were rated "Low Satisfactory," "High Satisfactory," and "High Satisfactory," respectively. The latest PE indicated that no credit practices were identified that violated the substantive provisions of federal lending discrimination laws and regulations.

Despite the fact that conversion applications do not generally have a public comment period, pursuant to 12 C.F.R. § 5.24(d)(3), the OCC received comments from two community organizations.²¹ Under 12 C.F.R. § 25.29(a)(4), however, the OCC will take into account views expressed by interested parties regarding CRA performance in connection with an application for conversion. One organization requested the OCC to condition approval upon improved lending to LMI areas and to African Americans in the Chicago Metropolitan Statistical Area ("MSA").²² The other organization asked the OCC to investigate the Bank's lending patterns, particularly in the Cleveland MSA.

Based upon the concerns raised by the commenters, the OCC removed the application from expedited review processing on January 16, 2002, in order to provide adequate time to investigate the concerns raised. The OCC also directed an examiner with extensive consumer compliance experience to conduct an investigation into these concerns. The findings of the OCC's investigation are presented below. Based on the OCC's investigation, we find that

²⁰ See 12 U.S.C. § 2903; 12 C.F.R. § 25.29.

²¹ Both community organizations requested the OCC to delay the decision on the application until the Bank entered into written agreements to address lending patterns in their respective areas. One of the community organizations also asked that the OCC arrange the negotiations. The OCC does not intervene in private agreements between banks and community organizations, and accordingly, the OCC declines to act on the organizations' requests.

We note that both commenters previously provided the same comments to the OTS in connection with two thrift merger applications filed by the Bank in 2001. In addition, both commenters provided these comments to the Federal Reserve Bank of Cleveland in January 2002 in connection with Charter One Financial, Inc.'s holding company application to merge with Charter One Michigan Bancorp, Inc.

²² The Bank subsequently entered into an agreement with this community organization, establishing new target goals for residential lending to African Americans and lower-income individuals and communities in the Chicago area.

approval of the proposed transaction is consistent with the Community Reinvestment Act. The conversion is not expected to have an adverse effect on the CRA performance of the Bank.

1. Lending to Low- and Moderate-Income Areas

Both community organizations alleged that the Bank's lending performance to LMI areas was poor in their respective MSAs. The commenters cited numerous statistics to support that position for their respective geographic areas, Chicago and Cleveland. The OCC examiner investigated these allegations by reviewing the latest CRA PE and the 2000 Home Mortgage Disclosure Act ("HMDA") data.²³ The examiner found that while lending to several LMI areas was poor, the Bank's overall lending throughout all of its assessment areas was satisfactory due largely to the Bank's good record of lending to LMI individuals in those areas. The OCC will monitor the Bank's progress in reviewing its lending patterns and in improving its lending performance in LMI areas as part of the OCC's ongoing supervision of the resulting national bank.

2. Lending to African Americans

Both community organizations raised concerns about the Bank's record of lending to African Americans in their respective MSAs. The commenters cited numerous 1999 and 2000 HMDA statistics regarding origination rates and denial rates disparities between African Americans and whites. The OCC examiner reviewed the OTS's latest compliance examination, dated May 14, 2001, and the work papers of that examination. After reviewing and analyzing this information and the 2000 HMDA data for home purchase and refinance loans, the examiner concluded that while the Bank had low levels of lending to minorities and in minority areas, there was no evidence of discrimination.²⁴ This is another area where the OCC intends to monitor the Bank's progress in reviewing its lending patterns and in improving its lending performance to minorities and in minority areas as part of the OCC's ongoing supervision of the resulting national bank.

It is also important to note that HMDA data alone are inadequate to provide a basis for concluding that a bank is engaged in lending discrimination or in indicating whether its level of lending is sufficient. HMDA data do not take into consideration borrower capacity, housing prices, and other factors relevant in each of the individual markets and do not illustrate the full range of the bank's lending activities or efforts. Nevertheless, denial disparity ratios are of concern to the OCC and are routinely evaluated in fair lending examinations. The OCC will do so with respect to the resulting national bank.

One commenter alleged that the Bank charged higher interest rates to minority borrowers through Charter One Credit Corporation ("COCC") as a result of higher commissions paid to

²³ The examiner reviewed 2000 HMDA data for the Bank, Charter One Mortgage Corporation, and Charter One Credit Corporation (COCC) for the following MSAs: Cleveland and Toledo, Ohio; Chicago, Illinois; Detroit, Michigan; and Rochester, Albany, and Buffalo, New York.

²⁴ See fn. 23, *supra*.

mortgage brokers. In this regard, the Bank has committed to establish a fair lending database for monitoring brokerage compensation in 2002.²⁵

Based on the OCC's investigation, we find that approval of the proposed transaction is consistent with the Community Reinvestment Act.

III. Conclusion

For the reasons set forth above, including the representations and commitments of the applicant, we find that the conversion of Charter One Bank, F.S.B., is legally authorized, the resulting national bank may retain and operate branches and subsidiaries as described in the analysis above, the transaction meets the other statutory criteria for approval, and there are no supervisory or policy concerns. Accordingly, the applications described herein are approved, effective upon receipt of the approval of the holding company application by the Board of Governors of the Federal Reserve System.

/s/ Carolina M. Ledesma

Carolina M. Ledesma
National Bank Examiner

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²⁵ The OCC notes that COCC, the only Bank entity engaged in subprime lending, has since discontinued originating subprime loans. In addition, the Bank expects to implement the Fannie Mae desktop underwriter program system company-wide by year-end.