



Comptroller of the Currency
Administrator of National Banks

Northeastern District Office
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Licensing Division
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November 3, 2005

CRA Decision 129
December 2005

Martha A. Pampel
Associate General Counsel
HSBC - North America
2700 Sanders Road, 3 South
Prospect Heights, Illinois 60070

Re: Application by HSBC Bank Nevada, National Association, Las Vegas, Nevada to merge with Direct Merchants Credit Card Bank, National Association, Phoenix, Arizona into HSBC Bank Nevada

Control Number: 2005 NE 02 0028

Charter Number: 22675

Dear Ms. Pampel:

This is to inform you that today, the Office of the Comptroller of the Currency (OCC) approved the application to merge Direct Merchants Credit Card Bank of Phoenix, Arizona (“Direct Merchants”) with and into HSBC Bank Nevada, National Association, Las Vegas, Nevada (“HSBC Bank NV”) under the charter and title of the latter. This approval is granted based on a thorough review of all information available, including commitments and representations made in the application, the merger agreement and those of your representatives.

Review of Statutory Factors

The merger of Direct Merchants into HSBC Bank NV is legally authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 and 1831u. The OCC reviewed the proposed transaction under the criteria of the Bank Merger Act, 12 U.S.C. § 1828(c), and applicable OCC regulations and policies. Among other matters, we found that the proposed transaction would not have any anticompetitive effects. The OCC also considered the financial and managerial resources of the banks, their future prospects, the convenience and

needs of the communities to be served.¹ In addition, the Bank Merger Act requires the OCC to consider "...the effectiveness of any insured depository institution involved in the proposed merger transaction in combating money laundering activities, including in overseas branches," 12 U.S.C. § 1828 (c) (11). We considered these factors and found them consistent with approval under the statutory provisions.

In addition, the Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of the community, including low- and moderate-income ("LMI") neighborhoods, when evaluating certain applications, including merger transactions that are subject to the Bank Merger Act. 12 U.S.C. § 2903; 12 C.F.R. § 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. A review of the record of these applicants and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' records of helping to meet the credit needs of their communities, including LMI neighborhoods, is less than satisfactory.

HSBC Bank NV's latest CRA public Performance Evaluation ("PE"), dated April 30, 2001 and issued by the OCC, assigned a "Satisfactory" rating.² The bank operates under a strategic plan with two areas of goals in investments and services. The investment and services performance by the bank met or exceeded the goals set in its strategic plan. However, the bank's performance rating was adversely affected by the bank's conduct with regard to customers of Hispanic Air Conditioning and Heating, a dealer under several of the bank's private label credit card programs. This matter was resolved with a Formal Agreement entered into by the OCC in early 2003.

The OCC assigned Direct Merchants a "Satisfactory" rating in its latest CRA PE, dated March 2, 2004. The OCC noted that Direct Merchants had an adequate level of community development services and qualified investments, used innovative or complex community development services, and was responsive to credit and community development needs in its assessment area. The PE noted no fair lending concerns.

In sum, the applicants' records of CRA performance are consistent with approval of the proposed transaction.

Review of Comments

The OCC received comments from one community organization opposing the merger. While none of the commenter's concerns were directly related to HSBC NV, the OCC reviewed these

¹ A commenter raised concerns with the outstanding Securities and Exchange Commission investigation regarding the reporting and treatment of certain accounting matters by Metris Company, Inc., Direct Merchants' parent company. The OCC considered this investigation in evaluating the financial and managerial resources of the banks and determined that this matter did not reflect negatively on HSBC NV's future prospects.

² The PE was issued in the name of Household Bank (SB), N.A. Subsequently HSBC North America Holdings, a subsidiary of HSBC Holdings plc, London, England, acquired Household Bank (SB), N.A. in March 2003. On March 1, 2005, the bank's name was changed to HSBC Nevada Bank, N.A.

concerns.³ The commenter expressed concerns with HSBC Bank USA, N.A.'s 2004 Home Mortgage Disclosure Act ("HMDA") data regarding the denial rate for mortgage loans to African Americans and Hispanics when compared to the denial rate for whites in several Metropolitan Statistical Areas ("MSAs"). Based on the 2004 HMDA data, the commenter also expressed concern that minorities were receiving higher rates on mortgage loans than whites. We are carefully analyzing the 2004 HMDA data for national banks and their subsidiaries, including HSBC Bank USA, N.A., and incorporating the results of our analysis into our supervisory strategy for upcoming fair lending examinations.⁴ We note that the February 24, 2003 CRA Performance Evaluation ("PE") of HSBC Bank (HSBC Bank USA, N.A.'s predecessor bank) conducted by the Federal Reserve Bank of New York, assigned the bank an "Outstanding" rating. The Reserve Bank noted that it had not identified any violations of the substantive provisions of the anti-discrimination laws and regulations.

The commenter also raised concerns that HSBC offers Refund Anticipation Loans (RALs). HSBC's RALs are booked at HSBC Bank USA, N.A., and processed by HSBC Taxpayer Financial Services, a non-bank affiliate of HSBC Bank USA, N.A. HSBC NV is not involved in this lending. In any event, the OCC's recent review of RALs at HSBC Bank USA, N.A., disclosed that the bank's management controls and compliance efforts with respect to this product are satisfactory.

After the close of the public comment period, the OCC also received a comment from a community organization that is concerned with certain industry-wide practices with respect to credit card lending. These concerns related to rate increases, disclosures, fees, and minimum payments. The commenter did not oppose the merger, but rather called on the OCC and Board of Governors of the Federal Reserve System to hold public hearings on these issues.

This community group's comments primarily address suggestions for industry-wide best practices and reforms that are beyond the scope of our review on this individual application. The Federal Reserve, not the OCC, has exclusive rulemaking authority under the Truth in Lending Act with respect to credit card issuers' disclosures.⁵ We note, however, that the OCC has addressed many of the concerns raised by the commenter in its recent guidance on credit card lending. See OCC Advisory Letter 2004-10, "Credit Card Practices" (September 14, 2004), "Credit Card Lending; Account Management and Loss Allowance Guidance," attached to OCC Bulletin 2003-1 (January 8, 2003).

³ Several of the issues raised by the commenter relate to HSBC organizations (specifically, HFC, Beneficial, and Decision One) over which the OCC has no supervisory or regulatory authority. None of these companies are owned or controlled by a national bank. Accordingly, the OCC is unable to address issues relating to those companies.

⁴ It is important to note that HMDA data alone are not adequate 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 creditworthiness, housing prices, and other factors relevant in each of the individual markets, nor do they fully reflect the range of a bank's lending activities or efforts. Nevertheless, denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations.

⁵ See 15 U.S.C. §§ 1601 - 1666j; 12 C.F.R. Part 226.

Request for Public Hearing

The commenters also requested that the OCC conduct a public hearing. After careful consideration, the OCC has determined not to conduct a hearing on this merger application.

The general standard the OCC applies to determine whether to hold a public hearing is contained in 12 C.F.R. § 5.11, which provides:

The OCC generally grants a hearing request only if the OCC determines that written submissions would be insufficient or that a hearing would otherwise benefit the decision making process. The OCC also may order a hearing if it concludes that a hearing would be in the public interest.

One commenter requested a public hearing in order to allow, among other items, additional review of the 2004 HMDA data. However, the commenter did not indicate why written submissions would be insufficient to make an adequate presentation of the issues or facts to the OCC. A second commenter requested a hearing to discuss industry-wide practices among credit card issuers. The OCC determined that the proposed testimony would not provide the OCC with relevant information on the pending application.

Conclusion

Based on the reasons set forth above, the OCC has determined that approval of the application is consistent under the Bank Merger Act, 12 U.S.C. § 1828(c), and the CRA.

The district office must be advised in writing in advance of the desired effective date for the merger so it may issue the necessary certification letter. The effective date must follow the applicable Department of Justice injunction period and any other required regulatory approval.

The OCC will issue a letter certifying consummation of the transaction when we receive:

- A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved the transaction.
- An executed merger agreement, with Articles of Association, for the resulting bank attached.
- A Secretary's Certificate from each institution, certifying that the shareholder approvals have been obtained, if required.

If the merger is not consummated within one year from the approval date, the approval shall automatically terminate, unless OCC grants an extension of the time period.

This approval and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the United States, any agency or entity of the United States, or any officer or

employee of the United States, and do not affect the ability of the OCC to exercise its supervisory, regulatory and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the United States.

If you have any questions, please contact Wai-Fan Chang, Licensing Analyst, at (212) 790-4055. Please include the control number on any correspondence related to this filing.

Sincerely,

signed

Beverly L. Evans
Director for District Licensing

Enclosures: Survey Letter