



Comptroller of the Currency
Administrator of National Banks

Large Bank Licensing
Mail Stop 7-13
250 E Street, SW
Washington, DC 20219

September 20, 2005

CRA Decision #126
October 2005

Mr. James E. Scott
Senior Regulatory Counsel
Citibank, N.A.
425 Park Avenue, Second Floor
New York, NY 10043

Re: Applications by Citibank, N.A. (“Citibank”) to establish a credit card bank as an operating subsidiary and to acquire the credit card operations of Federated Department Stores, Inc. (“Federated”)
Application Control Nos.: 2005-ML-01-0003, 2005-ML-02-0004, 2005-ML-12-0185

Dear Mr. Scott:

The Office of the Comptroller of the Currency (“OCC”) has reviewed the application of Citibank to establish a new national bank limited to credit card operations, with the title of Department Stores National Bank (“DSNB”). DSNB will be an operating subsidiary of Citibank. On September 20, 2005, the OCC granted preliminary conditional approval of the charter application after a determination that the proposal met applicable regulatory and policy requirements. In addition, the OCC approved the application involving (1) the purchase and assumption by Citibank of Federated’s credit card accounts and certain receivables from FDS Bank, a federal savings bank that is an indirect subsidiary of Federated, and (2) the transfer by Citibank of Federated’s credit card accounts and certain receivables to DSNB.

These approvals are granted based on a thorough evaluation of all information available to the OCC, including the representations and commitments made in the applications and by Citibank’s representatives. We also made our decision to grant preliminary conditional approval of the charter application with the understanding that the proposed bank will apply for Federal Reserve membership and will obtain deposit insurance from the Federal Deposit Insurance Corporation (“FDIC”).

I. The Charter and Operating Subsidiary Applications

Citibank applied to the OCC for approval to charter DSNB under 12 U.S.C. §§ 21-27 and 12 C.F.R. § 5.20 and for approval for Citibank to own it as an operating subsidiary under 12 U.S.C. § 24(Seventh) and 12 C.F. R. § 5.34. DSNB will be an insured national bank limited

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to credit card operations. It is permissible under the National Bank Act to charter a national bank that limits its activities to credit card operations, and the OCC has chartered many such banks. *See e.g.*, 12 C.F.R. 5.20(1). DSNB will further 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).

Citibank will establish and maintain DSNB as an operating subsidiary. 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. DSNB will be a limited purpose credit card bank whose activities are permissible for national banks.

With regard to the charter application, the OCC has granted preliminary conditional approval only. Final approval and authorization for the bank to open will not be granted until all preopening requirements are met. Until final approval is granted, the OCC has the right to alter, suspend, or revoke this preliminary conditional approval should the OCC deem any interim development to warrant such action. This approval is subject to the following condition:

DSNB: (i) shall give Grace E. Dailey, Deputy Comptroller, Large Bank Supervision, Mail Stop 6-1, 250 E Street SW, Washington, DC 20219-0001, at least sixty (60) days prior written notice of the bank’s intent to significantly deviate or change from its business plan or operations¹ and (ii) shall obtain the OCC’s written determination of no objection before the bank engages in any significant deviation or change from its business plan or operations. The OCC may impose additional conditions it deems appropriate in a written determination of no objection to a bank’s notice. In addition, for the first three (3) years of operation, the bank also must provide a copy of such written notice to the FDIC’s New York Regional Office at 20 Exchange Place, New York, NY 10005.

This condition of approval is a “condition imposed in writing by the agency in connection with the granting of any application or other request” within the meaning of 12 U.S.C. § 1818. As such, the condition is enforceable under 12 U.S.C. § 1818.

¹ If such deviation is the subject of an application filed with the OCC, no separate notice to the Deputy Comptroller and the Examiner-in-Charge is required.

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The OCC poses no objection to the following persons serving as executive officers, directors, and/or organizers of DSNB as proposed in the application:

<u>Name</u>	<u>Title</u>
Kendall E. Stork	Chief Executive Officer, President, Organizer and Director
Douglas C. Morrison	Vice President, Chief Financial Officer, Organizer and Director
Julie Garry	Organizer and Director
David Zimbeck	Vice President, General Counsel and Organizer
Jeffrey D. Gednalske	Organizer
Richard Garside	Director
Christopher Robinson	Director
Teresa Huxel	Director
Ling Z. Anderson	Senior Credit Officer

Prior to the bank's opening, the bank must obtain the OCC's prior written determination of no objection for any additional organizers or executive officers, or directors appointed or elected before the person assumes the position. For a two-year period after the bank commences business, the bank must file an Interagency Biographical and Financial Report with the OCC and receive a letter of no objection from the OCC prior to any new executive officer or director assuming such position.

The OCC has also granted your request for a waiver of the residency requirements of 12 U.S.C. § 72 for a majority of the Board of Directors of DSNB. This waiver is granted based upon a review of all available information, including the filing, and the bank's representation that this waiver will not affect the board's responsibility to direct the bank's operations in a safe, sound, and legal manner. The OCC reserves the right to withdraw or modify this waiver and, at its discretion, to request additional information at any time in the future.

The "Charters" booklet in the *Comptroller's Licensing Manual* provides guidance for organizing your bank. The booklet is located at the OCC's web site: <http://www.occ.treas.gov/corpbook/group4/public/pdf/charters.pdf>. The booklet contains all the steps you must take to receive your charter.

As detailed in the booklet, you may establish the corporate existence and begin organizing the bank as soon as you adopt and forward Articles of Association and the Organization Certificate to Senior Licensing Analyst Robert A. Sihler in this office for our review and acceptance. As a "body corporate" or legal entity, you may begin taking those steps necessary for obtaining

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final approval. The bank may not begin the business of banking until it fulfills all requirements for a bank in organization and the OCC grants final approval.

Enclosed are standard requirements and minimum policies and procedures for new national banks. The bank must meet the standard requirements before it is allowed to commence business and the Board of Directors must ensure that the applicable policies and procedures are established and adopted before the bank begins operation.

Under separate cover, the OCC will send to you an appropriate set of OCC handbooks, manuals, issuances, and selected other publications. This information does not include the Comptroller's Licensing Manual, which is available only in electronic form at our web site: <http://www.occ.treas.gov/corpapps/corpapplic.htm>.

II. The Bank Merger Act Applications

Citibank applied to the OCC under the Bank Merger Act, 12 U.S.C. § 1828(c), for approval to acquire a portfolio of Federated's private label and general purpose credit card accounts and associated receivables from FDS Bank, a federal savings bank that is an indirect subsidiary of Federated.² The application also involves a filing, on behalf of DSNB, for OCC approval under the Bank Merger Act for the transfer of the credit card accounts and certain receivables from Citibank to DSNB.

Citibank and DSNB, respectively, may purchase and assume these assets and liabilities (together, the "Purchase and Assumption Transactions"). 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).³ Such purchase and assumption transactions are commonplace in the banking industry. No nonconforming or impermissible assets or activities will be acquired by Citibank or DSNB, and no branches will be acquired. The Purchase and Assumption of Federated's credit card business is legally permissible.

² Citibank is also acquiring from Federated, but not directly from FDS Bank, other receivables and assets associated with the transferred credit card accounts.

³ 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).

The OCC reviewed the proposed purchase and assumption transactions under the criteria of the Bank Merger Act and applicable OCC regulations, including 12 C.F.R. § 5.33, and policies. Among other matters, we found that the proposed transactions would not have any anticompetitive effects. The OCC considered the financial and managerial resources of the banks, their future prospects, and the convenience and needs of the communities to be served. 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 believe the approval of this transaction is consistent with the statutory provisions.

In addition, the Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' records of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, when evaluating certain applications, including purchase and assumption transactions that are subject to the Bank Merger Act, 12 U.S.C. § 2903, 12 C.F.R. § 25.29. Citibank received an "Outstanding" CRA rating from the OCC in a performance evaluation dated June 6, 2003. Among the major factors supporting this rating were good lending activity in the bank's primary assessment areas, good geographic distribution of loans, excellent distribution of loans by borrower income, product innovation and flexibility, an excellent level of community development investments, branches that were readily accessible to geographies and individuals of different income levels, and leadership in providing community development services responsive to the needs of the bank's assessment areas.

Citibank (South Dakota), N.A., which will also be involved in the transaction, received an "Outstanding" CRA rating from the OCC in a performance evaluation dated May 5, 2003. The evaluations for both Citibank, N.A., and Citibank (South Dakota), N.A., stated that no evidence of illegal discrimination or other illegal credit practices was found.⁴ In sum, the applicant's record of CRA performance is consistent with approval of the proposed transactions.

III. Review of the Public Comment

The OCC received one comment from a community organization. The OCC has previously addressed a number of similar concerns raised by this commenter in connection with applications

⁴ FDS Bank received a "Satisfactory" rating from the Office of Thrift Supervision ("OTS") in a performance evaluation dated July 9, 2001. The OTS did not find substantive violations of the anti-discrimination laws and regulations.

to convert First American Bank, SSB, Bryan, Texas, to a national bank and for Citibank, USA, N.A., to acquire the assets of Sears National Bank.⁵

Nevertheless, we have again carefully considered the commenter's concerns. Some of these concerns deal with Citigroup, Inc.⁶ entities over which the OCC has no supervisory or regulatory jurisdiction.⁷ The commenter also raised concerns with Citibank's operations in Japan and other Citigroup entities' operations in Europe. We found no connection between the internal control issues that arose in these foreign banking situations and the transactions currently before the OCC for approval.

Additionally, the commenter alleged, based on 2004 HMDA data, that Citibank primarily restricts its prime mortgage lending to non-minorities, while CitiFinancial (a consumer finance company not regulated by the OCC) provides higher priced, subprime loans to minorities.⁸ With respect to national banks and their subsidiaries, including Citibank, we are carefully analyzing the 2004 HMDA data and incorporating the results of our analysis into our supervisory strategy for upcoming fair lending examinations. We note that past reviews of Citibank's fair lending practices have concluded that the bank has implemented a satisfactory

⁵ See OCC Conditional Approval No. 676 (March 2005), available at www.occ.treas.gov/interp/mar05/ca676.pdf; OCC CRA Decision No. 117 (Nov. 2003), available at www.occ.treas.gov/interp/nov03/crad117.pdf.

⁶ Citigroup, Inc. is the indirect parent company of Citibank.

⁷ The commenter noted a recent loss of data for CitiFinancial customers. CitiFinancial is a non-bank, consumer finance company that is not within the OCC's regulatory jurisdiction. In any event, Citigroup represented that it has taken steps to address the situation and that it is not aware of adverse consequences to consumers as a result of the data loss.

The commenter also alleged that CitiFinancial continues to make loans covered by the Home Ownership Equity Protection Act, despite a pledge to end such lending. Again, because this concern relates to CitiFinancial, it is beyond the scope of our review.

⁸ 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. See Federal Reserve Bulletin, New Information Reported under HMDA and Its Application in Fair Lending Enforcement at 345, 385-87, 393-94 (Summer 2005). Nevertheless, denial and pricing disparities are of concern to the OCC and are evaluated in fair lending examinations.

fair lending program that employs effective risk management policies, processes, controls, and training. We also note that Citigroup represented in connection with this application that it seeks to ensure that the pricing of mortgage loan products between entities is similar when there is overlap in the customer base.

IV. Request for Public Hearing

The commenter also requested that the OCC conduct a public hearing. Pursuant to 12 C.F.R. § 5.11, the OCC carefully considered whether to hold a public hearing, but determined not to conduct a hearing on these applications.

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.

The community organization did not indicate why written submissions would be insufficient to make an adequate presentation of the issues or facts to the OCC. In addition, the OCC has no reason to believe that the proposed testimony would provide the OCC with relevant information on the pending applications.

The OCC will issue a letter certifying consummation of each purchase and assumption transaction when, for each, we receive:

1. A Secretary's Certificate for each institution, certifying that a majority of the board of directors approved the transaction, if not previously provided.
2. An executed purchase and assumption agreement, if not previously provided.

If the purchase and assumption transactions are not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period.

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As a reminder, this Office must be advised in writing in advance of the desired effective date for the purchase and assumption transactions, so it may issue the necessary certification letters. The effective date must be after the expiration of the period during which the Department of Justice may file an injunction to stop the merger (at least 15 days after the date of this letter), after all other regulatory approvals have been obtained, and after DSNB has commenced business.

These approvals 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.

A separate letter is enclosed requesting your feedback on how we handled your applications. We would appreciate your response so we may continue to improve our service. If you have questions regarding this letter, please contact me at (202) 874-5060 or by email at: largebanks@occ.treas.gov. Please reference the application control number in any correspondence.

Sincerely,

signed

Robert A. Sihler
Senior Licensing Analyst

Enclosures: Standard Requirements
Minimum Policies and Procedures
Survey Letter