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Comptroller of the Currency  
Administrator of National Banks

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Northeastern District Office  
1114 Avenue of the Americas, Suite 3900  
New York, N.Y. 10036

Licensing Division  
Telephone No.: 212.790.4055  
Fax No.: 212.790.4098

**Conditional Approval #497  
November 2001**

October 9, 2001

By facsimile: 315.422.3598  
and regular mail.

George J. Getman, Esq.  
Bond, Schoeneck & King, L.L.P.  
One Lincoln Center  
Syracuse, New York 13201-1355

Re: Application by Community Bank, National Association ("Community Bank"), Canton, New York, to purchase certain assets and assume certain liabilities of 36 branches of Fleet National Bank ("Fleet"), Providence, Rhode Island.

Control No.: 2001 NE 02 037

Charter No.: 8531

Dear Mr. Getman:

This is to inform you that today, the Office of the Comptroller of the Currency (OCC) conditionally approved the above-referenced purchase and assumption.

This approval was granted based on a thorough review of all information available, including commitments and representations made in the application, the purchase and assumption agreement, and those of your representatives.

This approval is also subject to the following condition:

- Community Bank shall comply with the agreement between Community Bank and the Department of Justice dated October 4, 2001.

Please note that the above conditions to this approval are conditions "imposed in writing by the agency in connection with the granting of any application or other request" within the meaning of 12 USC 1818. As such, the conditions are enforceable under 12 USC 1818.

George J. Getman, Esq.  
Bond, Schoeneck & King, L.L.P.  
October 9, 2001  
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Based upon the OCC's investigation and the bank's representations, we found that approval of the proposed transaction was consistent with the Community Reinvestment Act. In addition, the OCC determined that the legal, policy and procedural requirements for this proposal were satisfied.

We will not issue a letter certifying consummation of the transaction until this Office has been first furnished with the following documents executed in the original:

- 1) the purchase and assumption agreement with articles of association for the resulting bank attached; and,
- 2) a secretary's certificate for each institution, certifying that a majority of the board of directors has agreed to the purchase and assumption.

As a reminder, this Office must be advised in writing 10 days in advance of the desired effective date for the purchase and assumption so that the OCC may issue the necessary certification letter. The effective date must follow the applicable Department of Justice injunction period and any other required regulatory approval.

If the purchase and assumption is not consummated within one year from the approval date, the approval shall automatically terminate, unless the OCC grants an extension of the time period. A separate letter is enclosed requesting your opinion on how we handled your application. We would appreciate your response so we may improve our service.

This conditional 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 U.S., any agency or entity of the U.S., or an officer or employee of the U.S., 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 U.S.

In the event of questions, please contact Licensing Analyst Gabriel Butler at 212.790.4055. Please include the application control number in all correspondence.

Sincerely,

/s/ APD

Anthony P. DosSantos  
Licensing Manager



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Comptroller of the Currency  
Administrator of National Banks

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Northeastern District Office  
1114 Avenue of the Americas, Suite 3900  
New York, New York 10036

DECISION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION BY COMMUNITY BANK, NATIONAL ASSOCIATION, CANTON, NEW YORK, TO PURCHASE CERTAIN ASSETS AND ASSUME CERTAIN LIABILITIES OF THE THIRTY SIX NEW YORK BRANCHES OF FLEET NATIONAL BANK, PROVIDENCE, RHODE ISLAND.

## DECISION

### Introduction

On July 25, 2001, application was made to the Office of the Comptroller of the Currency for prior authorization to purchase certain assets and assume certain liabilities of the thirty six branches of Fleet National Bank, Providence, Rhode Island (“Fleet”) by Community Bank, NA, Canton, New York (“CBNA”). This application was based on an agreement entered into between the proponents on June 7, 2001

### Participating Financial Institutions

As of March 31, 2001, the thirty six branch offices of Fleet, subject to the purchase and assumption agreement, had total deposits of approximately \$484 million. As of the same date, CBNA had total deposits of \$1.6 billion. CBNA is a wholly owned subsidiary of Community Bank System, Inc., Canton, New York. Fleet is wholly owned and controlled by FleetBoston Financial Corporation. CBNA and Fleet are members of the Bank Insurance Fund (“BIF”).

### Competitive Analysis

The relevant geographic markets for this proposal include the Buffalo, Elmira-Corning, Jamestown, Olean, Rochester, and Syracuse banking markets. These are the areas where competition between CBNA and Fleet is direct and immediate. With the exception of the Olean banking market, the OCC reviewed the competitive effects of the proposed merger by using its standard procedures for determining whether a business combination clearly has a minimal or no adverse competitive effects. For the Buffalo, Elmira-Corning, Jamestown, Rochester, and Syracuse markets, the OCC finds that the proposal satisfies the criteria for a merger that clearly has no or minimal adverse competitive effects.

### Olean Banking Market.

The Olean market includes portions of two counties in New York; Cattaraugus County with the cities of Olean and Salamanca and several townships and Allegany County with several townships.

As of June 30, 2000, CBNA ranked first in the Olean market with \$238M in deposits, or 32% of the market share of total deposits. Fleet ranks second with \$142M in deposits, or 19% of the market share of total deposits. After the transaction, CBNA will have a 51% market share of total deposits and continue to rank as the market leader. However, following the elimination of Fleet from the market, CBNA will compete with six other banking alternatives. Of these banks two are large multi-billion dollar institutions, Keybank, NA with a 10% deposit market share and Manufactures and Traders Trust with a 2% deposit market share. The other four banks are small; however, one of these banks has a 16% market share of deposits and two of the others each have a 9% market share of deposits. In addition, one small thrift is present in the market. While the purchase and assumption will eliminate one competitor, any adverse effect would be mitigated by the presence of six other banking alternatives.

The OCC also carefully considered the report of the Department of Justice, which similarly found the proposed transaction would not have a significant adverse effect on competition subject to its letter of agreement with CBNA.<sup>1</sup> Therefore, consummation of this proposal will not have a significantly adverse effect on competition in the relevant geographic market provided that CBNA complies with its agreement with the Department of Justice.

### Banking Factors

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 the managerial resources of CBNA and Fleet do not raise concerns that would cause the application to be disapproved. The future prospects of the proponents, individually and combined, are considered favorable and the resulting bank is expected to meet the convenience and needs of the community to be served.

### Convenience and Needs

The purchase and assumption will not have an adverse impact on the convenience and needs of the communities to be served. The resulting bank will continue to serve the same areas that it now serves. CBNA will consolidate six branches with other existing branches that are located within close proximity. Since the community needs will continue to be met by the remaining branches, it is expected that the convenience and needs of the community will continue to be served. CBNA currently offers a full line of banking services and there will be no changes in these products or services as a result of this transaction. No public comments were received.

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<sup>1</sup> In reaching this conclusion, the Department of Justice relied on commitments made by CBNA in a letter of agreement dated October 4, 2001. CBNA agreed to follow certain requirements in selecting a buyer or lessor for a closed branch as a result of the merger and agreed to suspend or not enter into any non-compete agreements with any current loan officer or branch manager in the Olean banking market for a specified period.

Community Reinvestment Act

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

Conclusion

We have analyzed this proposal pursuant to the Bank Merger Act 12 USC 1828(c) and 12 CFR 5.33, and find that it will not significantly lessen competition in any relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved subject to the conditions noted in a separate communication to CBNA.

This conditional 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 U.S., any agency or entity of the U.S., or an officer or employee of the U.S., 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 U.S.

/s/ Anthony P. DosSantos

10-9-01

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Anthony P. DosSantos  
Licensing Manager

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Date

Application Control Number: 2001 NE 02 0037