



Comptroller of the Currency
Administrator of National Banks

Large Bank Licensing, MS 7-13
250 E Street, S.W.
Washington, DC 20219

October 16, 2003

CRA Decision #117
November 2003

OCC Control Nr. 2003-ML-02-0008

Ms. Stacie E. McGinn
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue
Washington, D.C. 20005-2111

Dear Ms. McGinn:

This is to inform you that on October 16, 2003, the Office of the Comptroller of the Currency (OCC) approved the application by Citibank USA, National Association, Sioux Falls, South Dakota ("Citibank USA") to purchase substantially all of the assets of Sears National Bank, National Association, Tempe, Arizona.

As discussed below, this approval was granted based upon a thorough review of statutorily required evaluative factors utilizing all information available, including commitments and representations made in the application and those of Citibank USA's representatives.

I. INTRODUCTION

On July 25, 2003, Citibank USA, located in Sioux Falls, South Dakota filed with the Office of the Comptroller of the Currency (OCC) an application pursuant to 12 U.S.C. § 24(Seventh) and the Bank Merger Act, 12 U.S.C. § 1828(c), to acquire substantially all of the assets of Sears National Bank, Tempe, Arizona ("Sears NB"). The application, as supplemented by additional material filed with the OCC on July 31, August 14, August 28, September 3, September 24, and September 27, 2003, is referred to herein as the "application."

The application was prompted by Citibank USA's planned acquisition of all private label and general purpose credit card accounts held by Sears NB ("Account Purchase"), a \$281 million asset credit card bank, as defined within the Competitive Equality Banking Act of 1987 ("CEBA"), 12 U.S.C. § 1841(c)(2)(F). The Account Purchase does not involve the sale of any Sears NB tangible property, or the assumption of Sears NB deposit liabilities.

Citibank USA is a direct, wholly owned subsidiary of Citicorp, a financial holding company that is in turn an indirect subsidiary of Citigroup, Inc. (“Citigroup”). Sears NB is a wholly owned subsidiary of Sears Financial Holding Corporation (“Sears Holding”), which is in turn a wholly owned subsidiary of Sears Roebuck & Company (“SR&Co”). As Sears NB is a CEBA credit card bank, it engages only in credit card operations and has no branches.

The OCC recognized the application as technically complete as of July 25, 2003. As required by regulation, notice of the filing was published three times in the head office city of each bank commencing July 25, 2003 initiating a thirty-day public comment period that expired on August 23, 2003.

II. LEGAL AUTHORITY

The Account Purchase is authorized under 12 U.S.C. §§ 24(Seventh) and 1828(c). National banks have long been authorized to purchase permissible assets and assume permissible liabilities from other banking institutions as an activity incidental to banking under the authority of 12 U.S.C. § 24(Seventh). *See, e.g., City National Bank of Huron v. Fuller*, 52 F.2d 870, 872 (8th Cir. 1931). Further, purchase and assumption transactions are among the transactions requiring review under the Bank Merger Act, 12 U.S.C. § 1828(c)(2). It is clear that Citibank USA’s purchase of Sears NB’s credit card accounts is permissible under 12 U.S.C. §§ 24(Seventh) and 1828(c).

Although Citibank USA and Sears NB are headquartered in different states (South Dakota and Arizona, respectively), the account purchase is not subject to the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, P.L. 103-328, 108 Stat. 2338 (Sept. 29, 1994) (the “Riegle-Neal Act”). Since, as noted above, the account purchase is separately authorized under 12 U.S.C. § 24(Seventh) and the Bank Merger Act, it is not necessary to look to the Riegle-Neal Act for further authority. Further, no issue of branch acquisition or retention is raised under the Riegle-Neal Act, 12 U.S.C. § 1831u(d)(1).

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 any merger transaction, including purchase and assumption transactions, between insured banks where the resulting institution will be a national bank. Under this statute, the OCC generally may not approve a transaction that would substantially lessen competition. The Bank Merger 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. For the reasons discussed below, we find the application meets the requirements of the Bank Merger Act.

1. Competitive Analysis

Consumer credit card services are the sole business of Sears NB and are a significant line of business engaged in by Citigroup. Credit card services encompass the marketing and issuance of credit cards, extension of credit to cardholders, and the processing of credit card transactions. Sears NB and Citigroup subsidiaries also securitize their card receivables and subsequently service those portfolios for third parties.

The OCC and the Federal Reserve Board have recognized that the market for credit card services is national in scope. Credit card companies compete in soliciting and serving customers throughout the United States.¹ This national market is highly competitive and unconcentrated and will remain so if the proposed account purchase is consummated. The nationwide population of credit card issuing depository institutions is extensive, and there are numerous alternative card lenders in the national marketplace. In addition to the numerous alternatives, the market is characterized by the ability of card customers to switch among those card providers with ease and rapidity.

That the relevant geographic market for credit card services is national in scope is consistent with the experience of Sears NB and Citigroup, through its various subsidiary banks. In the general purpose credit card arena, Sears NB and Citigroup are direct competitors, soliciting and serving customers nationwide, and also face competition from organizations located or otherwise doing business throughout the United States. As of December 31, 2002, published data estimated the outstanding credit card receivables for the 100 largest issuers of general purpose credit cards in the United States¹ to be approximately \$632.5 billion.² Citigroup ranked first with outstanding credit card receivables of \$106.6 billion, or 16.9 percent of the total. Sears NB ranked thirteenth with outstanding receivables of \$12.4 billion, or 2 percent of the total.³

According to the above data, the consummation of the account purchase will allow Citigroup, already the largest issuer of general-purpose credit cards, to increase its market share modestly from 16.9 to 18.9 percent.⁴ As competition among the largest general purpose credit card issuers is expected to remain intense, the consummation of the account purchase will not have a significant adverse effect on competition within the nationwide market.

Relative to the private label credit cards, Sears NB and Citigroup are not direct competitors. Sears NB offers private label cards solely to customers of the affiliated SR&Co retail stores. Sears NB does offer or service private label card programs for unaffiliated third parties. Citigroup's involvement in private label cards is confined to servicing the card programs of unaffiliated third party retailers.

¹ See, e.g., Corporate Decision No. 2003-2 March 27, 2003); Corporate Decision No. 2001-16 (June 14, 2001); Corporate Decision No. 98-14 (Feb. 10, 1998); Corporate Decision No. 97-23 (April 9, 1997). The Board of Governors of the Federal Reserve System has also recognized that the relevant geographic market for credit card products and services is national in scope. See Bank One Corporation, 83 Federal Reserve Bulletin 602 (1997).

² *The Nilson Report* (Jan. 2002).

³ *Id.*

⁴ Among the public comments received, one commenter raised concerns with Citigroup, already the largest credit card issuer, increasing its market share.

Finally, the Department of Justice, Federal Deposit Insurance Corporation, and Federal Reserve System reviewed the account purchase and concluded that it presented no significant adverse effect on competition. We therefore concluded the account purchase by Citibank USA would not create a monopoly or have a significantly adverse effect on competition among insured depository institutions.

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...” 12 U.S.C. § 1828(c)(5). Citigroup is a \$1,187 billion diversified financial holding company, which operates on a global basis and is subject to oversight by numerous regulators. Citibank USA has assets of \$4.3 billion and total risked-based capital of \$717 million. In the most recent examinations, the OCC found both Citibank USA and Sears NB to be well capitalized and well managed. Further, the future earnings of Citibank USA are expected to benefit from increases in revenues resulting from the account purchase. Therefore, based upon the OCC's supervisory knowledge of Citigroup and the two banks, we found that the financial and managerial resources factor is consistent with approval of the account purchase. SR&Co has represented that Sears NB will commence a voluntary liquidation of itself subsequent to the consummation of the account purchase.

3. Convenience and Needs

This proposal will not have an adverse impact on the convenience and needs of the communities to be served. The account purchase will not result in a reduction in products or services to the general public. Following consummation of the account purchase, Citibank USA will continue to offer its existing products, as well as those currently offered by Sears NB, under similar terms and conditions. Citibank USA will not maintain an office in Tempe, Arizona and will not amend its Community Reinvestment Act assessment area to include Maricopa County, Arizona. However, due to the numerous financial entities currently operating in Maricopa County, Arizona, no adverse CRA impact on that market is expected as a result of the proposed transaction. Accordingly, we believe the impact of the account purchase on the convenience and needs of the communities to be served is consistent with approval of the application.

4. Bank Secrecy Act

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."⁵ We considered this factor, including the public commentary, and, based upon our supervisory knowledge of the applicants, determined no material weaknesses existed that would preclude approval of this transaction.

⁵ Among the public comments received, one writer raised concerns over the level of compliance by various Citigroup entities.

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 transactions subject to the Bank Merger Act.⁶ The OCC’s review 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.

Citibank USA has only been in existence since January 2002 and has not yet received a CRA rating. However, the OCC recently conducted a CRA examination of this institution and is in the process of finalizing a Performance Evaluation (“PE”). OCC examiners found no substantive deficiencies with the bank’s performance under the CRA that would militate against approval of the application. As mentioned previously, Citibank USA is a limited purpose bank engaged only in credit card operations and maintains no branches. As a limited purpose bank, Citibank USA’s CRA performance is evaluated solely based on its community development investments and services. Citibank USA’s activities under the CRA are discussed in an attachment to the application. These activities include \$16.5 million in community development lending for affordable housing.

In Sears NB’s most recent CRA PE, dated June 8, 1998, the OCC assigned a “Satisfactory” rating.⁷ OCC examiners have been monitoring the bank’s CRA efforts since the last PE was issued and are unaware of any information that would indicate that Sears NB’s level of community development investments or services is less than satisfactory.

The OCC received comments from four community organizations. While the OCC has carefully considered all of the comments, many of the concerns raised dealt with Citigroup entities that are not parties to this transaction, are non-bank subsidiaries of Citigroup, or are institutions regulated by other federal agencies.⁸ The OCC did investigate the concerns raised by the commenters with respect to Citigroup’s national banks and subsidiaries of those banks. Detailed below is a summary of the concerns raised by the commenters, Citigroup’s response, and the OCC’s related findings, where appropriate.

All of the commenters expressed concerns that various Citigroup entities are engaged in

⁶ See 12 U.S.C. § 2903; 12 C.F.R. § 25.29(a). As noted previously, this transaction is not subject to the Riegle-Neal Act. Accordingly, the federal statutes authorizing this transaction do not provide for consideration of the CRA records of affiliates of the applicants, nor does the CRA itself provide for such consideration.

⁷ Sears NB was chartered as a Competitive Equality Banking Act (“CEBA”) credit card bank in 1994. In 1996, the OCC approved Sears NB to be designated a limited purpose bank. Sears NB’s CEBA status limits the bank’s ability to accept deposits and extend loans outside the credit card scope of operations. As a limited purpose bank, CRA performance is evaluated solely based on the community development investments and services of the bank and its affiliate, SR&Co. One commenter expressed concern that the PE for Sears NB was five years old. The OCC’s CRA examination scheduled for August 2003 was cancelled in light of the pending application.

⁸ The OCC has no regulatory or supervisory authority over any of the Citigroup entities mentioned by the commenters that conduct subprime lending, such as CitiFinancial Credit Company, because none of those entities are national banks or subsidiaries of national banks.

abusive and predatory subprime lending practices and that Citigroup intends to cross-sell subprime products to Sears NB customers.⁹ Commenters are concerned that this cross-selling could have a disproportionate impact on Latinos, who represent a significant percentage of Sears NB's consumer base. Citigroup confirmed that it may cross-market not only its consumer finance products and services to Sears customers, but also retail banking, mortgage lending, brokerage and insurance products. Citigroup noted that it has been working to make products and services tailored to the Latino community available across business lines, such as a pilot program offering a low-cost deposit account.¹⁰ Additionally, Citigroup pointed out that it will make existing Sears NB products and credit cards available to Citigroup customers. Citibank USA's treatment of former Sears NB cardholders will be subject to ongoing OCC supervision to ensure that it complies with applicable laws and regulations, including those relating to fair lending, privacy, and unfair or deceptive practices. Moreover, with respect to cross-selling and cross-marketing concerns raised by commenters, Citibank USA has committed to provide the OCC the policies and procedures it will apply to the cross-selling and cross-marketing activities involving Citibank USA customers subsequent to the Account Purchase.

Two of the commenters expressed concerns that Citigroup's prime lending entities, Citibank, N.A., and CitiMortgage, disproportionately deny and exclude Latinos and African Americans.¹¹ The commenters cited denial disparity ratios in numerous Metropolitan Statistical Areas throughout the United States, using 2002 Home Mortgage Disclosure Act ("HMDA") data. Citigroup disputed this allegation and provided an analysis to demonstrate otherwise. OCC examiners reviewed the HMDA data and found that the commenters' analyses did not include the subprime lending entities of Citigroup, yet compared the data to aggregate market statistics that did include subprime lenders. OCC examiners found that when Citigroup's subprime lending is included, Citigroup's denial disparity ratios were generally in line with the aggregate market ratios used by the commenters.¹² Additionally, Citigroup provided detailed information about the second and third review programs that its prime lending units have in

⁹ With respect to commenters' allegations concerning predatory mortgage lending practices at CitiFinancial Credit Company, Citigroup noted the progress of its implementation of the Real Estate Lending Initiatives adopted following its acquisition of Associates First Capital Corporation in 2000. The OCC has summarized these initiatives in prior licensing decisions. See OCC's Corporate Decisions No. 2000-21, *Interpretations and Actions*, December 2000, Vol. 13, No. 2, Notice by Citigroup Inc. of its intent to acquire a controlling interest in Associates National Bank (Delaware), Newark, Delaware and OCC's Approvals with conditions enforceable under 12 U.S.C. 1818, Letter No. 476, *Interpretations and Actions*, August 2001, Vol. 14, No. 8, Application to merge European American Bank, Uniondale, New York, into and under the charter and title of Citibank, National Association, New York, New York. Since 2000, Citigroup has continued to make enhancements to these initiatives, and the OCC has continued to receive and review periodic progress reports from Citigroup.

¹⁰ The "Access Account" is targeted to the un- and under-banked populations. The account does not include checks, but provides a Citibank Banking Card with the MasterCard logo, has unlimited ATM access, has a monthly fee of \$3.00 or no monthly fee if the customer has direct deposit, and has no minimum balance.

¹¹ In early 2003, CitiMortgage was transferred to Citibank (West), FSB and ceased to be a subsidiary of a national bank. As a result, Citibank, N.A. currently has a very low volume of mortgage loans.

¹² 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 disparity ratios are of concern to the OCC and are evaluated in fair lending examinations.

place ensure that applicants are treated fairly and consistently and are evaluated based on appropriate objective factors.

Commenters also raised concerns that Citigroup steers minorities to subprime mortgage lending channels. The OCC does not have regulatory jurisdiction over CitiFinancial Credit Company (“CitiFinancial”) or Citicorp Trust Bank, FSB, and thus is not in a position to review loan files to determine whether these entities are engaged in discriminatory practices. However, we note that Citigroup disputed the commenters’ allegation and provided data demonstrating that Citibank’s HMDA-reportable, prime home purchase and refinance lending in census tracts with a majority minority population exceeded CitiFinancial and Citicorp Trust Bank, FSB, combined.¹³ Additionally, since adopting its Real Estate Lending Initiatives in 2000,¹⁴ CitiFinancial has explored various methods for making lower cost credit available to qualified borrowers, including a referral-up program for referring applicants to Citigroup’s prime lending affiliates. The referral-up program uses credit score, loan-to-value ratio, and an ability-to-pay ratio to identify CitiFinancial applicants who may be eligible for loans from Citigroup’s prime affiliates. These applicants are then given an opportunity to pursue obtaining a loan from the prime affiliates.

Several commenters criticized this referral-up program. One concern was with the low volume of prime loans resulting from referrals. CitiFinancial’s Real Estate Lending Initiatives Progress Report, dated December 2002, states that about 12,000 applicants were referred to Citigroup’s prime rate affiliate during 2002. Only a small percentage of these applicants, however, filed applications with a Citigroup prime affiliate.¹⁵ About a third of the applications resulted in loans, for a total of \$14.9 million.¹⁶ Additionally, CitiFinancial has pursued other options for delivering lower cost products to eligible borrowers, including the Rate Reduction Plan, the Preferred Fixed Rate Product, and the Graduation Loan Program.¹⁷ CitiFinancial Mortgage Company, an affiliate of CitiFinancial that engages primarily in wholesale lending, offers the Access to Lower Cost Credit program and the Conforming Loan program.¹⁸

¹³ Citigroup defined Citibank to include the following entities: Citibank, FSB; Citibank (West), FSB; Citibank, N.A.; Citibank (Nevada), N.A.; Citibank (New York State); and Citibank (USA), N.A. One commenter criticized Citigroup’s inclusion of purchased loans in this analysis. The regulation implementing HMDA, Regulation C, requires financial institutions covered by the regulation to report data on purchased loans, as well as loans originated by the institution in the reporting period, even if subsequently sold. 12 C.F.R. Part 203, Appendix A, Part IV(A)(1). Additionally, OCC examiners are required to consider mortgage purchases as well as originations in assessing a bank’s record of helping meet the credit needs of its assessment area through its lending activities, 12 C.F.R. § 25.22(a)(1),(2).

¹⁴ See *infra* n.9.

¹⁵ Citigroup has taken a number of steps to improve the effectiveness of its referral-up program including, assigning managers at both Citibank and CitiFinancial to oversee the program, tracking referral outcomes, and analyzing the reasons why customers decline a referral.

¹⁶ CitiFinancial’s progress report is available at www.citigroup.com/citigroup/citizen.

¹⁷ The Rate Reduction program rewards borrowers who consistently make timely payments by reducing interest rates. The Preferred Fixed Rate Product pilot program, intended to provide wider access to lower cost credit, has replaced the referral-up program in two states. The Graduation Loan Program invites eligible CitiFinancial customers whose credit history has improved to apply for loans with the prime affiliates and informs them of potential cost savings.

¹⁸ The Access to Lower Cost Credit Program provides rates competitive with Citigroup’s prime affiliates for cash-out and home equity loans. The Conforming Loan Product offers prime and near prime products to qualified

Another concern commenters raised about the referral-up program is that the standards for a referral from the subprime to the prime affiliates are not the same as the standards used for affordable mortgages offered by the prime affiliates. Citigroup responded that the standards for the referral-up program were not intended to replicate exactly the prime underwriting system. The prime underwriting criteria consider factors in addition to the referral-up program's three factors. Citigroup indicated that if the screening test for CitiFinancial applicants potentially eligible for prime credit products were less rigorous, a substantially greater percentage of referred applicants would be turned down for mortgages by the prime affiliates.

One commenter expressed dissatisfaction with the level of small business lending at Citibank, especially in areas with a high minority population. Citigroup's response cited an increase in small business loans from 300,000 loans (totaling \$2.8 billion) in 2000 to over 1 million loans (totaling over \$5 billion) in 2002. Citigroup noted that 42 percent of the small business loans in 2002 were to business with revenues under \$1 million. OCC examiners recently reviewed Citibank, N.A.'s small business loans and did not find concerns with the geographic distribution of loans in low- and moderate-income census tracts.

Finally, one commenter criticized Citigroup's reliance on the activities of CitiFoundation and the electronic benefits transfer services of Citicorp Electronic Financial Service, Inc. to support Citigroup's CRA record in South Dakota. In evaluating these and other activities to assess the CRA record of Citigroup's national banks, examiners are guided by the OCC's examination procedures and the definitions and criteria in the CRA regulation, 12 C.F.R. Part 25, which permit a bank to include qualified investments and community development service by an affiliate in the bank's record of performance in an assessment area.¹⁹

IV. REQUEST FOR PUBLIC HEARING

The commenters also requested that the OCC conduct a public hearing, and one commenter requested that the OCC extend the public comment period.²⁰ After careful consideration, the OCC has determined not to conduct a hearing on this merger application or to extend the comment period.

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.

borrowers through home equity loan offices.

¹⁹ See *Community Reinvestment Act Examination Procedures*, Comptroller's Handbook (May 1999).

²⁰ The OCC determined not to grant an extension of the comment period, because the commenters did not demonstrate that additional time was necessary to develop factual information, and no extenuating circumstances were present. See 12 C.F.R. 5.10(b)(2)(ii), (iii). While the OCC did not extend the public comment period, the OCC considered comments received after the close of the public comment period.

The parties requesting hearings believed the OCC should conduct public hearings primarily to collect testimony on Citigroup's subprime lending practices at CitiFinancial. None of the parties indicated why written submissions would be insufficient to make an adequate presentation of the issues or facts to the OCC. In addition, the OCC had no reason to believe that the proposed testimony would provide the OCC with relevant information on the pending application since the OCC does not have any regulatory authority over CitiFinancial.

V. CONCLUSION

For the reasons discussed above, including the representations and commitments made by the applicants, the OCC concluded that: a) the proposed account purchase is legally authorized under 12 U.S.C. §§ 24(Seventh) and 1828(c); b) both Citibank USA and Sears NB are in satisfactory condition; c) denial of the requests for a public hearing was appropriate; and, d) the proposal is consistent with the Community Reinvestment Act. As all statutory and policy considerations having been met, the application was approved.

As a reminder, this Office must be advised in writing in advance of the desired effective date for the merger so that the OCC may issue the necessary certification letter. Please note that the effective date must be on or after the fifteenth day after the date of this letter.

We shall issue a letter certifying consummation of the transaction upon receipt of the following documents executed in the original:

- 1) a secretary's certificate certifying that a majority of each bank's board of directors resolved to approve the account purchase; and,
- 2) an executed purchase agreement.

If the asset purchase 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 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 any 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, I may be contacted by e-mail: largebanks@occ.treas.gov or at (202)-874-5060. Please include the application control number in all correspondence.

Sincerely,
/s/ Richard T. Erb

Richard T. Erb
Licensing Manager