



**Comptroller of the Currency
Administrator of National Banks**

Washington, DC 20219

Corporate Decision #97-04 January 1997

DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATION TO PERMIT FMB TRUST COMPANY, NATIONAL ASSOCIATION, MCLEAN, VIRGINIA, AN OPERATING SUBSIDIARY OF FIRST NATIONAL BANK OF MARYLAND, BALTIMORE, MARYLAND, TO ENGAGE IN FIDUCIARY ACTIVITIES

December 31, 1996

Introduction

On September 6, 1996, application was made to the Office of the Comptroller of the Currency (“OCC”) by First Maryland Bancorp (“Applicant”) to establish a new national bank with powers limited to fiduciary activities, “FMB Trust Company, National Association” (“Bank”), McLean, Virginia. The Bank¹ will be a wholly owned operating subsidiary² of The First National Bank of Maryland (“FNB”), Baltimore, Maryland, a wholly owned subsidiary of the Applicant.

The Applicant currently engages in trust activities in branches of its subsidiary banks in Virginia, the District of Columbia, Maryland and Pennsylvania. The Applicant seeks approval for the Bank to conduct fiduciary activities as an operating subsidiary of FNB at the Bank’s main office in Virginia and at non-branch trust offices in the District of Columbia,

¹ The Bank will not be a ‘bank’ for the purposes of the Bank Holding Company Act. *See* 12 U.S.C. § 1841 *et seq.* 12 U.S.C. § 1841(c)(2)(D) excepts from the definition of ‘bank’ an institution that functions solely in a trust or fiduciary capacity, provided certain statutory criteria are fulfilled. The Bank will fulfill these criteria.

² Under the authority of 12 C.F.R. § 5.34, a national bank may engage in activities which are part of or incidental to the business of banking, as determined by the OCC pursuant to 12 U.S.C. § 24(Seventh), and other activities permissible for national banks or their subsidiaries under other statutory authority, by means of an operating subsidiary corporation. Effective December 31, 1996, the OCC amended this operating subsidiary rule as part of a general revision to Part 5 (“Rules, Policies and Procedures for Corporate Activities”) under the OCC’s Regulation Review Program. *See* 61 Fed. Reg. 60342 (November 27, 1996). The additional requirements of section 5.34(f) of the new rule are not applicable since the fiduciary activities in which the Bank proposes to engage are not different from those permissible for its parent national bank.

Maryland and Pennsylvania. The Applicant intends for the Bank to become the successor fiduciary of fiduciary accounts held by the Applicant's subsidiary banks in the District of Columbia, Maryland and Pennsylvania.³

Supervisory Factors

The OCC has conducted a thorough review of the application in the light of the policy factors set forth in 12 C.F.R. § 5.20 regarding the chartering of de novo banks and has determined that the results of this review are consistent with approval.

Analysis of Legal Authority

The OCC is authorized to charter national banks with fiduciary powers.⁴ Further, federal law does not place geographic limits on where a national bank may offer fiduciary services or have trust offices.⁵ Pursuant to 12 U.S.C. § 92a, a national bank with fiduciary powers may conduct fiduciary activities in a state provided that the conduct of the activities does not contravene the law of that state (the "State Law Condition").⁶ It therefore follows that a state-by-state legal analysis is required.⁷ Such an analysis of state law⁸ for the purpose of

³ The Applicant does not intend for the Bank to operate a trust office in Pennsylvania or become successor fiduciary of fiduciary accounts held by the Applicant's Pennsylvania subsidiary bank until some time in the future. *See infra*, note 10.

⁴ 12 U.S.C. § 27, § 92a.

⁵ *See* OCC Interpretive Letter No. 695, *reprinted in* [Current] Fed. Banking L. Rep. (CCH) ¶ 81,010 (December 8, 1995) (hereafter "Interpretive Letter No. 695"). The analysis contained therein is incorporated by reference in this Decision Statement.

⁶ Whenever the laws of a state permit the exercise of any fiduciary powers by state banks, trust companies or other corporations which compete with national banks, the granting to and exercise of those powers by a national bank is authorized and is deemed not to be in contravention of the laws of that state. Thus, a state cannot prohibit or limit the ability of a national bank to exercise fiduciary powers in the state to an extent greater than the state prohibits or restricts other competing fiduciaries. *See* 12 U.S.C. § 92a(b) and Interpretive Letter No. 695.

⁷ *See* Interpretive Letter No. 695.

⁸ **Virginia:** Virginia law provides that Virginia chartered banks or trust companies may engage in fiduciary activities with the prior permission of the State Corporation Commission. *See* VA. CODE ANN. § 6.1-16 and § 6.1-17 (Michie 1993). The law also recites that national banks have the authority to engage in fiduciary activities and have the rights, powers, privileges and immunities conferred upon trust companies chartered by Virginia. *See* VA. CODE ANN. § 6.1-17 (Michie 1993). **District of Columbia:** The law of the District of Columbia provides that no corporation may engage in a fiduciary business in the District of Columbia until the approval and consent of the Superintendent of Banking and Financial Institutions is secured. *See* D.C. CODE ANN. § 26-103(b) (1981). It is the OCC, however, that is responsible for approving an application by a national

section 92a reveals that the State Law Condition is satisfied in respect of Virginia, the District of Columbia, Maryland and Pennsylvania.⁹ Based on the authority provided respectively by the laws of those jurisdictions for state chartered institutions to engage in fiduciary activities, 12 U.S.C. § 92a provides authority for the Bank to engage in fiduciary activities at its main office in Virginia and at offices in the District of Columbia, Maryland and Pennsylvania.¹⁰

Conclusion

For the foregoing reasons and subject to the preliminary conditional approval of the establishment of FMB Trust Company, National Association, McLean, Virginia which accompanies this Decision Statement, the Bank may conduct fiduciary activities as an operating subsidiary of FNB at the Bank's main office in Virginia and at offices in the District of Columbia, Maryland and Pennsylvania. Further, it may become successor fiduciary of fiduciary accounts held by subsidiary banks of the Applicant.¹¹

bank to engage in fiduciary activities. *See* 12 U.S.C. § 92a. Maryland: Maryland law authorizes a 'trust company' to conduct fiduciary activities in Maryland. A 'trust company' is defined in pertinent part as an institution that is authorized to exercise trust or fiduciary powers and that is organized under Maryland law as a state bank, trust company or savings bank; or is organized under the laws of the United States and either (i) has its principal office in Maryland, or (ii) has a trust office in Maryland and satisfies the criteria set forth in 12 U.S.C. § 1841(c)(2)(D) so as not to be a 'bank' for the purposes of the Bank Holding Company Act, or (iii) has an office in Maryland and accepts deposits at that office. *See* MD. CODE ANN., EST. & TRUSTS § 14-110(a)(2), § 1-101(u)(1) and § 1-101(u)(2) (Supp. 1996). Pennsylvania: Pennsylvania law provides that banks, trust banks and savings banks chartered in Pennsylvania are permitted to engage in fiduciary activities. *See* PA. STAT. ANN. tit. 7, § 106(a) (1995).

⁹ *See* Interpretive Letter No. 695: since state chartered institutions are permitted to engage in fiduciary activities in the respective jurisdictions, a national bank may engage in fiduciary activities there.

¹⁰ Pennsylvania law contains a provision that seeks to prohibit a national bank with its main office outside of the state (with an exception for a national bank that is an 'interstate bank', defined as a bank that has its main office in a state other than Pennsylvania, is authorized to receive demand deposits and lawfully maintains one or more branch office in the state) from acting as a fiduciary in Pennsylvania, subject to certain exceptions, and from maintaining a place of business in the state. *See* PA. STAT. ANN. tit. 7, § 106(b) (Supp. 1996). *See also* PA. STAT. ANN. tit. 7, § 102(hh) (Supp. 1996). The Applicant has advised the Pennsylvania Department of Banking that the Bank will not engage in fiduciary activities in Pennsylvania unless the provision is amended, repealed or determined to be preempted. Pending this development, the Applicant intends to engage in fiduciary activities in Pennsylvania through its existing Pennsylvania subsidiary bank and the Bank will not become successor fiduciary to existing fiduciary accounts held in Pennsylvania. The Applicant has not requested the OCC to make a determination that the Pennsylvania law is preempted.

¹¹ The legal authority for the Bank to become the successor fiduciary of fiduciary accounts held by affiliates of the Applicant resides in 12 U.S.C. § 24(Seventh) and 12 U.S.C. § 92a. The former provision provides that a national bank has the power to exercise all such incidental powers as shall be necessary to carry on the business of banking. The Supreme Court has held that the powers clause of 12 U.S.C. § 24(Seventh) is a broad grant of power to engage in the business of banking, including but not limited to the enumerated powers

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 12-31-96
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Application Control Numbers: 96-NE-01-0018
 96-NE-08-0046

and business of banking as a whole. *See NationsBank of North Carolina, N.A. v. Variable Life Annuity Co.*, 115 S. Ct. 810 (1995). It clearly encompasses the ability of a national bank to succeed a predecessor institution as a fiduciary of its fiduciary accounts.

The Bank's legal counsel has taken the position that the Bank will comply with state laws that deal with the transfer of existing fiduciary accounts. *See* D.C. CODE ANN. § 26-411.1 (1981); MD. CODE ANN., EST. & TRUSTS § 15-1A-01 (Supp. 1996), § 15-1A-02 and § 15-1A-03 (1991), § 15-1A-04 (Supp. 1996). As discussed in note 10, the Bank has advised the Pennsylvania Department of Banking that it will not engage in fiduciary activities in Pennsylvania until the condition described in note 10 is satisfied. Once that condition is satisfied, the Bank intends to become successor fiduciary of fiduciary accounts held by the Applicant's subsidiary bank in Pennsylvania. The current Pennsylvania provision dealing with the transfer of fiduciary accounts authorizes a 'Pennsylvania bank holding company' to transfer accounts between subsidiaries and provides certain requirements for the transfer. *See* PA. STAT. ANN. tit. 7, § 408 (1995).