



Comptroller of the Currency
Administrator of National Banks

Washington, D.C. 20219

**Corporate Decision #98-12
February 1998**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION BY
FLEET NATIONAL BANK, PROVIDENCE, RHODE ISLAND
TO PURCHASE CERTAIN ASSETS AND ASSUME CERTAIN LIABILITIES
OF ADVANTA NATIONAL BANK, WILMINGTON, DELAWARE**

FEBRUARY 3, 1998

I. INTRODUCTION

On December 2, 1997, Fleet National Bank, Providence, Rhode Island ("FNB"), a subsidiary of Fleet Financial Group, applied to the Office of the Comptroller of the Currency ("OCC") for approval to purchase certain assets and assume certain liabilities of Advanta National Bank, Wilmington, Delaware ("Advanta"), a subsidiary of Advanta Corporation, under 12 U.S.C. §§ 24(7) and 1828(c) ("the Acquisition"). Both banks are members of the Bank Insurance Fund. The banks are not affiliated. As of September 30, 1997, FNB had approximately \$ 60.8 billion in assets and \$ 44.4 billion in deposits. As of the same date, Advanta had approximately \$ 4.8 billion in assets and \$ 2.9 billion in deposits.

The transaction involves FNB's acquisition of approximately \$3 billion in assets of Advanta, consisting primarily of credit card receivables and other assets relating thereto, along with its direct assumption of approximately \$3.5 billion in deposit and other liabilities of Advanta.¹ The acquired credit card receivables will be held in a newly organized limited liability company ("LLC") that in turn will be held by a new organized operating subsidiary of Fleet Bank

¹ A portion of Advanta's credit card receivables is subject to class action litigation alleging violation of certain consumer protection statutes. The OCC is currently reviewing the allegations raised by the law suits as part of its ongoing supervision of Advanta. The portion of the credit card receivables subject to the class action litigation will not be transferred to the LLC until the pending litigation is resolved.

Rhode Island ("FBRI").² FBRI is a credit card bank operating subsidiary of FNB. Following the Acquisition, FNB will hold the acquired deposits at its main office in Providence, Rhode Island,³ and LLC will hold the assets at its office, also in Providence.

II. THE PURCHASE AND ASSUMPTION TRANSACTION IS AUTHORIZED UNDER 12 U.S.C. § 24(7).

National banks have long been authorized to purchase bank-permissible assets and assume bank-permissible liabilities from sellers, including assuming the deposit liabilities from other depository institutions, as part of their general banking powers under 12 U.S.C. § 24(7). *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)(3) (purchase and assumption transactions included among transactions requiring review under the Bank Merger Act). Such purchase and assumption transactions are commonplace in the banking industry.⁴

Accordingly, FNB may purchase assets and assume liabilities of Advanta.

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 the Act, the OCC generally may not approve a merger transaction which would substantially lessen competition. In addition, the 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

² At closing, the proposal calls for FNB to own indirectly a 95.01 percent interest in LLC, while Advanta will own the remaining 4.99 percent interest (to be reduced further immediately after closing because of additional capital contributions to LLC by FNB).

³ LLC will guarantee these liabilities and reimburse FNB to the extent such liabilities are paid by FNB. The transferred liabilities must exceed the book value of contributed assets by \$510 million, subject to adjustments.

⁴ The fact that this involves the acquisition of assets by a bank located in a state other than the acquirer's does not change the result. While the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 ("Act") provides a source of authority for interstate mergers, consolidations and purchase and assumption transactions, effective June 1, 1997, (unless the states involved in the transaction opt out prior to that date), nothing in that Act provides that it is intended to supplant existing sources of authority that do not involve the acquisition of interstate branches. No interstate branches are proposed to be acquired in this transaction. *See* 12 U.S.C. §§ 1831u and 36(d) and (e); OCC Corporate Decision No. 97-94 (October 22, 1997).

community to be served. For the reasons stated below, we find the application may be approved under section 1828(c).

1. Competitive Analysis.

The Acquisition involves only the transfer of certain deposits and other liabilities and certain assets. A completed Bank Merger Competitive Analysis Screen, included in the application, reveals that the proposed transaction clearly has minimal competitive effects. Accordingly, the Acquisition will have no significant anticompetitive effects.

2. Financial and Managerial Resources.

The financial and managerial resources of FNB are presently satisfactory. FNB is experienced in dealing with the types of assets it will acquire from Advanta. The transaction will not result in any changes to the top officers of FNB or its Board of Directors. Accordingly, the future prospects of the resulting organization are favorable. Thus, we find the financial and managerial resources factor is consistent with approval of the application.

3. Convenience and Needs.

The Acquisition will allow FNB to retain and add to its customer base. Former Advanta customers also will benefit from access to FNB's full banking services. Accordingly, we believe the impact of the Acquisition on the convenience and needs of the communities to be served is consistent with approval of the application.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' records of helping to meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications. See 12 U.S.C. § 2903. Fleet and Advanta received Satisfactory ratings at their most recent examinations for CRA performance, with those examinations dated October 6, 1995, and February 15, 1996, respectively. The OCC currently is performing a CRA and fair lending examination of Advanta and is scheduled to commence a CRA and fair lending examination of Fleet during the first quarter of 1998. Fleet's purchase of Advanta's credit card portfolio is not expected to have an adverse effect on either bank's CRA performance. Fleet will continue to serve the same delineated community that it currently serves. Following the merger, Fleet will carry forward the same CRA programs and policies that it has today. Advanta will no longer qualify for a limited purpose designation under the CRA regulations. Subsequent to the merger, Advanta will meet its CRA responsibilities primarily through mortgage lending; however, it has represented that it intends to develop, and seek approval of, a strategic plan concerning its CRA activities.

This application was not protested; however, prior to the application being filed, the OCC received a letter from Mr. Matthew Lee, Executive Director of Inner City Press/Community on

the Move ("ICP"). ICP expressed concerns that (1) an application needed to be filed with the OCC for this transaction and requested that the OCC notify it when the filing was received, and (2) the account of a particular customer of Advanta had been improperly handled. The application was filed by Fleet on December 2, 1997, and the OCC promptly notified ICP.

The customer referred to in ICP's letter was concerned that Advanta improperly reduced his credit limit, basing its decision on the location of his residence(s) in low-income, predominantly Hispanic and African-American neighborhoods. ICP's comment expressed concern that the credit report used by Advanta stated that the customer's "on file address" was identified as "high risk" or "cautious." The customer also was concerned that Advanta issued standardized form letters to respond to his requests for an explanation of the basis for the bank's decision.

The OCC reviewed Advanta's records and interviewed bank personnel regarding this customer. The OCC determined that the customer's credit limit was reduced as a result of a broad initiative by Advanta to strengthen its underwriting standards. Under this initiative, most customers' accounts have been reassessed by Advanta.⁵ Advanta reduced the customer's credit limit as a result of its reassessment of accounts-- not based on the location of his residence. As noted in the customer's credit report, the address designations were due to the fact that the customer's current address is also the address of a business and his prior address was identified as a possible mail drop. Finally, the form letters that the customer received were adverse action notices required under Regulation B (12 C.F.R. § 202). These notices explained the reasons for the reduction in the customer's credit limit.

While the OCC did not receive any protests of the application, we did consider Mr. Lee's comments in reviewing the applicants' records of helping to meet the credit needs of their communities. Based on the banks' performance records and our analysis of the issue raised by ICP, we found no grounds that would serve as a basis for denial or conditioning of the approval of the application. Accordingly, we find that approval of the proposed merger is consistent with the CRA.

⁵In connection with its review of the customer's account, Advanta determined that the customer's credit score has improved since the last reassessment and that an increase in the customer's current credit limit would be consistent with current underwriting standards. Advanta notified the customer that it has increased his credit limit and that it is willing to consider further increasing the limit if the customer provides Advanta with current income information.

IV. CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments made by the applicants, we find that FNB's proposed purchase and assumption transaction is legally authorized under 12 U.S.C. §§ 24(Seventh) and 1828(c) . Accordingly, this application is hereby approved.

_____/s/
Julie L. Williams
Chief Counsel

02-03-98
Date

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