



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

November 29, 1999

**Corporate Decision #99-43
December 1999**

Mr. William W. Templeton
Senior Counsel
Fleet National Bank
Mail Stop: MA BO F10C
75 State Street
Boston, MA 02109

Re: Request of Fleet National Bank, Providence, Rhode Island, for Approval to Expand the Activities of an Existing Operating Subsidiary
Application Control No. 1999-ML-08-0020

Dear Mr. Templeton:

This is in response to the application filed by the Fleet National Bank, Providence, Rhode Island (“Bank”), pursuant to 12 C.F.R. § 5.34, to expand the activities of Fleet Mortgage Corporation (“FMC”), an existing operating subsidiary. As discussed below, we approve the expansion of FMC’s activities to include the provision of employee relocation benefits consulting to small- and medium-sized business customers of the Bank.

I. Background

The proposed activities will be conducted by FMC, an existing second tier subsidiary of the Bank. FMC is a subsidiary of Fleet Mortgage Group, Inc. (“FMG”), which is a direct subsidiary of the Bank. The Bank is a direct subsidiary of Fleet Boston Corporation (“FBC”).

FMC is the subsidiary of FMG that originates residential mortgage loans. In addition to, but not necessarily connected with, its mortgage origination activities, FMC manages an internal program for relocating employees of FBC (“FBC Relocation Program”). Under the FBC Relocation Program, when an employee of FBC is relocated, an FMC relocation counselor contacts the employee to review the benefits of the FBC Relocation Program and to explain the various services available under the program. Available services include, *inter alia*, existing home marketing services, new home finding services, and moving services. FMC also assigns a mortgage counselor to review the applicable

mortgage products and assist the relocating FBC employee in completing the mortgage loan application. Finally, FMC tracks all expenses incurred by the employee under the FBC Relocation Program and generates expense reports for management.

Although the FBC Relocation Program offers all of these services, it provides only the initial counseling, expense reporting, and mortgage loan financing “in-house.” For the remaining services, the FBC Relocation Program brings the relocating employee together with unaffiliated third-party relocation service providers. For example, the home marketing services are provided by a real estate consulting firm, and the moving services are provided by a national moving van line.

II. Proposed Activities

FMC proposes to extend the FBC Relocation Program to small- and medium-sized business customers of the Bank. This activity (“Proposed Activity”) would involve the following. FMC will approach the human resources director of selected small business customers of the Bank to offer to design and implement a relocation program. Once engaged, FMC will design and implement an employee relocation benefits plan. As it does in the FBC Relocation Program, FMC will: (1) counsel the relocating employee about the benefits and services available under the plan; (2) assign a mortgage counselor to assist in obtaining mortgage financing; (3) provide relocation expense reporting services to the small business customer; and (4) make referrals to the other vendors for existing home marketing services, new home finding services, rental assistance services, temporary living quarters, and household moving services. FMC will provide “in-house” the initial plan design, employee counseling, relocation mortgage origination, and expense reporting services. FMC will not provide any of the other relocation services directly, but will provide referrals to the service providers. Those vendors will work directly with the relocating employee and bill the small business customer directly for the services that they render.

In return for the relocation plan design, administrative, counseling, and expense reporting services, FMC will be paid a fee by the small business customer.¹ In addition, FMC anticipates that it will increase its relocation mortgage originations through the increased exposure and sales opportunity.

III. Analysis

The services that constitute the Proposed Activity are all aspects of well-recognized banking activities previously approved by the OCC: (1) financial planning and counseling; (2) mortgage lending; and (3) acting as a finder. National banks may engage in activities that are part of or incidental to the business of banking by means of an operating subsidiary. 12 C.F.R. § 5.34(d).

¹ Since the entire transaction may include the origination of a mortgage loan, the fees charged by the Bank have been analyzed under the Real Estate Settlement Procedures Act (12 U.S.C. § 2601 *et seq.*) and the federal regulations promulgated thereunder (24 C.F.R. § 2400 *et seq.*) to ensure compliance with the requirements of the law.

A. Financial Planning and Counseling

It is well established that national banks have the power to provide financial advice and counseling to their customers as part of or incidental to the business of banking pursuant to 12 U.S.C. § 24(Seventh). *See, e.g.*, Corporate Decision No. 98-51 (November 30, 1998) (approving application to provide employee benefit consulting and compensation advisory services); Corporate Decision No. 98-13 (February 9, 1998) (approving application to provide, *inter alia*, medical insurance cost information and benefits counseling). *See also* Interpretive Letter No. 769 (January 28, 1997), *reprinted in* [1996-1997 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 81,113 (financial advice and counseling are banking or incidental to banking activities that can be conducted outside of a fiduciary relationship).²

FMC will design and implement the relocation benefits plan, will communicate to employees the benefits available under the benefits plan, and will provide administrative services including recordkeeping and expense reporting. These activities, as part of FMC's relocation benefits consulting, are aspects of the financial planning and employee benefits consulting services that have been previously deemed permissible for national banks and their subsidiaries. The design and implementation of an employee relocation program involves structuring a program that confers a financial benefit to the employee while containing costs for the employer. The cost of employee relocations bears directly upon the operating budgets and finances of the Bank's small business customers. The Proposed Activity will help these small businesses better manage these costs and provide an improved employee benefit.

B. Mortgage Lending

National banks have express authority under 12 U.S.C. § 24 (Seventh) to make loans. Furthermore, national banks also have authority under 12 U.S.C. § 371 to make, arrange, purchase, or sell loans or extensions of credit secured by liens on interests in real estate.

C. Finder Activity

As described above, the FMC will bring the Bank's small business customers together with various service providers that specialize in different aspects of employee relocation. FMC will only bring the parties together; it will not represent or act as agent for either the relocating employee or any relocation service provider. For example, in order to move an employee's household furnishings, FMC will refer the employee to a professional moving company. FMC will take no further role in the move and will

² The Federal Reserve has similarly authorized bank holding companies and their subsidiaries to provide employee benefit consulting services, including plan design, implementation, administrative services, and communication services. *See, e.g.*, Centerre Bancorporation, 73 Fed. Res. Bull. 365 (1988).

not be a party to the moving agreement. Similarly, any assistance with the purchase, sale, or rental of real estate will be performed by a licensed real estate professional. Real estate listing agreements and related contracts will be between the realtor, the small business customer, and the employee, not FMC.

FMC's role in bringing relocating employees together with relocation service providers is properly characterized as a finder activity. The permissibility of a national bank acting as a finder to bring together buyers and sellers of various types of products and services is specifically set forth in Interpretive Ruling 7.1002, 12 C.F.R. § 7.1002. The OCC has confirmed the permissibility of national banks acting as finders in several interpretive letters. *E.g.*, Corporate Decision No. 98-13 (February 9, 1998) (finder services for callers seeking federal- or state-sponsored health insurance); Interpretive Letter No. 653 (December 22, 1994), *reprinted in* [1994-1995 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,601 (finder with respect to certain insurance services); Interpretive Letter No. 567 (October 29, 1991), *reprinted in* [1991-1992 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,337 (finder services for personal property leasing); Interpretive Letter No. 437 (July 27, 1988), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,661 (selling tax auditing representation services to customers).

IV. Conclusion

Based on the facts as described, I conclude that the activities proposed to be conducted by FMC are permissible activities for a national bank and its operating subsidiaries. Accordingly, the Bank's application is approved.

This approval is granted based on a thorough review of all information available, including the representations and commitments made in the application and by Bank representatives. If you have any questions, please do not hesitate to contact Cindy Hausch-Booth, Senior Corporate Analyst, (202) 874-5060.

Sincerely,

/s/

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel