

Washington, DC 20219

**Corporate Decision #2000-17
October 2000**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATIONS OF
GATEWAY NATIONAL INTERIM BANK, ST. LOUIS, MISSOURI, AND
GATEWAY NATIONAL BANK, ST. LOUIS, MISSOURI**

September 20, 2000

A. Introduction

On April 19, 2000, an application was filed with the Office of the Comptroller of the Currency ("OCC") for approval to consolidate Gateway National Interim Bank, St. Louis, Missouri, ("Interim") with Gateway National Bank of St. Louis ("Gateway"), St. Louis, Missouri, under 12 U.S.C. §§ 215 and 1828(c). The resulting bank ("New Gateway") will operate under the charter and title of Gateway National Bank of St. Louis. As of December 31, 1999, Gateway had total deposits of approximately \$31.3 million and operated its main office and one branch office in St. Louis, Missouri. Interim is a nonoperating interim national bank being formed by G.A.C., Inc., St. Louis, Missouri, ("GAC") a bank holding company being formed by an investor group to acquire Gateway from its current shareholders. The consolidation with Interim is the means by which GAC will acquire Gateway.

As part of the consolidation application, the applicants also request approval for the resulting bank to retain Gateway's branch office as a branch of the resulting bank under 12 U.S.C. § 36(b)(2). In addition, the applicants propose that GAC contribute Prime Lending Group, Inc., St. Louis, Missouri, ("Prime") a mortgage company, to become an operating subsidiary of New Gateway, and they request OCC approval under 12 C.F.R. § 5.46 for a material non-cash contribution to capital.

Under 12 U.S.C. § 215, a national bank may consolidate with another national bank located in the same state. Both Interim and Gateway are located in Missouri, and so the consolidation is authorized under section 215. The bank resulting from a consolidation under section 215 may retain the branches of the consolidating banks under 12 U.S.C. § 36(b)(2). New Gateway's

retention and continued operation of Gateway's branch meets the standards of section 36(b)(2). Prime engages in mortgage banking activities authorized for national banks, and so it is a permissible operating subsidiary for New Gateway. The OCC has determined that the proposed non-cash contribution to capital is consistent with 12 C.F.R. § 5.46 and OCC policy. Accordingly, the proposed consolidation, retention of the branch, operating subsidiary, and capital contribution are legally authorized.

B. Bank Merger Act Review

The Bank Merger Act, 12 U.S.C. § 1828(c), (the "Act") requires OCC approval for mergers or consolidations between insured depository institutions where the resulting bank will be a national bank. Under the Act, the OCC generally may not approve a merger that would substantially lessen competition. In addition, the Act requires the OCC to consider "...the financial and managerial resources and future prospects of the existing and proposed institutions, and convenience and needs of the community to be served."

1. Competitive Analysis

The OCC has reviewed the competitive effects of this proposal by using its standard procedures for determining whether a business combination clearly has minimal or no adverse competitive effects. Gateway operates in the St. Louis, Missouri, banking market as defined by the Federal Reserve Bank of St. Louis. Consummation of the transaction will result in one ownership group being replaced with another, and will not result in any change in concentration of banking resources in the St. Louis, Missouri banking market. Therefore, the OCC finds that the proposal satisfies its criteria for a merger that clearly has no or minimal adverse competitive effects.

2. Financial and Managerial Factors

The financial and managerial resources of Gateway are satisfactory. Following consummation of the consolidation, new directors and management will be put in place at New Gateway. The OCC finds no basis for objecting to the proposed new directors and management of New Gateway following a review of their competence, experience, integrity, and character. The future prospects for New Gateway are considered favorable. We find the financial and managerial resources factor is consistent with approval of the consolidation.

3. Convenience and Needs

The consolidation will not have an adverse impact on the convenience and needs of the communities to be served. New Gateway will continue to serve the same areas that it now serves. No branch closings are planned, and there will not be a reduction in the products and services offered.

The OCC received comments from two individuals concerning the proposed sale of the bank. Both commenters generally assert that the sale of Gateway, a minority-owned bank, is not in the best interest

of the African American community in St. Louis. Specifically, the commenters expressed concern that the sale of Gateway would result in a severe blow to the confidence and esteem of the African American community and reduced lending to the community. In this regard, we note, first, that the sale of Gateway was approved by a majority of Gateway's board of directors. Separately, shareholders controlling more than two-thirds of the capital stock of Gateway approved the transaction. Moreover, the applicants represent that New Gateway does not expect to discontinue any services or products or to increase fees. The applicants also represent that through Prime Lending Group, Inc, which will become a subsidiary of Gateway following consummation of the consolidation, the bank will offer a wider variety of mortgage products to its customers, including FHA, VA, first-time homebuyer programs, and low-downpayment programs. In addition, the applicants represent that they expect to increase New Gateway's lending levels within its delineated community.

Based on the above and all of the facts in the record, the OCC concludes that the consolidation will not have an adverse impact on the convenience and needs of the community to be served. The comments do not raise concerns that would warrant the denial or conditional approval of these applications. The OCC will review New Gateway's record of compliance with the fair lending laws at regularly scheduled examinations. We believe the impact of the consolidation on the convenience and needs of the community to be served is consistent with approval of the consolidation.¹

C. Community Reinvestment Act Review

The Community Reinvestment Act ("CRA") requires the OCC to take into account the applicants' record of helping to meet the credit needs of the community, including low-and moderate-income neighborhoods, when evaluating certain applications. *See* 12 U.S.C. § 2903 and 12 C.F.R. § 25.29(a). The OCC considers the CRA performance evaluation of each institution involved in the transaction.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities has revealed no evidence that Gateway's record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory. We note that Gateway received a "satisfactory" CRA rating at its most recent examination. Interim, a nonoperating interim national bank, is not subject to the CRA. The transaction is

¹ One of the commenters also expressed concern that a payment by GAC to Gateway's current chairman and largest shareholder for consulting services and an agreement not to compete with New Gateway is unfair to other Gateway shareholders. The fee was disclosed to Gateway shareholders in the materials preceding the shareholders vote on approval of the transaction. The application states that this fee will be paid by the holding company, GAC, and not the bank; and so we do not find the payment would have any material adverse effect on Gateway or New Gateway. The Federal Reserve System, and not the OCC, is the primary federal supervisor for bank holding companies, and the Federal Reserve Bank of St. Louis ("Federal Reserve") approved the formation of GAC on June 5, 2000. We note that the consulting and noncompete agreement was discussed in the bank holding company formation application and that Federal Reserve received a copy of the comment concerning the payment.

not expected to have an adverse effect on New Gateway's CRA performance. Applicants have no plans to change the CRA assessment area for New Gateway. We find that approval of the proposed transaction is consistent with the CRA.

D. Conclusion and Approval

For the reasons set forth above, including the representations and commitments made by applicants, the consolidation of Interim with Gateway is legally permissible under 12 U.S.C. § 215 and 1828(c), New Gateway is authorized to retain and operate the offices of Gateway under 12 U.S.C. § 36(b)(2), New Gateway is authorized to acquire Prime as an operating subsidiary, and New Gateway may include the value of Prime as a contribution to capital under 12 C.F.R. § 5.46. Accordingly, these applications are hereby approved.

-signed-

Julie L. Williams
First Senior Deputy Comptroller and Chief Counsel

09/20/00

Date

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