



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

**Conditional Approval #454
April 2001**

**DECISION OF THE OFFICE OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION BY
FLEET NATIONAL BANK, PROVIDENCE, RHODE ISLAND,
TO MERGE WITH:
SUMMIT BANK, HACKENSACK, NEW JERSEY; SUMMIT BANK, BETHLEHEM,
PENNSYLVANIA; AND SUMMIT BANK, NORWALK, CONNECTICUT.**

February 12, 2001

INTRODUCTION

Fleet National Bank, Providence, Rhode Island (“Fleet”), applied to the Office of the Comptroller of the Currency (“OCC”) for approval to merge with: Summit Bank, Hackensack, New Jersey (“Summit-NJ”); Summit Bank, Bethlehem, Pennsylvania (“Summit-PA”); and Summit Bank, Norwalk, Connecticut (“Summit-CT”), collectively (“Summit Banks”) under Fleet’s charter and title under 12 U.S.C. §§ 215a-1, 1828(c), and 1831u (the “Merger”).

Fleet is a national bank that has its main office in Providence, Rhode Island, and branches in the states of Rhode Island, Connecticut, Florida, Massachusetts, Maine, New Hampshire, New Jersey, and New York. Summit-NJ and Summit-PA are state banks while Summit-CT is a state savings bank. The main office and branches of each Summit Bank are located solely within that particular bank’s chartering state. All parties to this application are members of the Bank Insurance Fund (“BIF”).

As of September 30, 2000, Fleet had approximately \$163 billion in assets and \$105 billion in deposits. As of the same date, Summit Bank-NJ had approximately \$34 billion in assets and \$32 billion in deposits; Summit Bank-PA had approximately \$4.5 billion in assets and \$3 billion in deposits; and Summit Bank-CT had approximately \$1.3 billion in assets and \$1 billion in deposits. All of the Summit Banks are wholly owned subsidiaries of Summit Bancorp, a New Jersey bank holding company.

Fleet has published notice of the application in various general circulation newspapers including those serving the head office cities of Fleet and each of the Summit Banks. All written comments received have been carefully considered as part of the merger application

(see discussion below). Fleet has also submitted the required notifications to the banking supervisors of Connecticut, Rhode Island, New Jersey, and Pennsylvania.

STATUTORY AND POLICY REVIEWS

A. The Merger is authorized under the interstate merger authority of the Riegle-Neal Act, 12 U.S.C. §§ 215a-1, 1831u, and 36(d).

Fleet's home state is Rhode Island and the Summit Banks' home states are Connecticut, New Jersey, and Pennsylvania. Therefore, in this Merger, national banks with different home states will merge. Such mergers are authorized under section 44 of the Federal Deposit Insurance Act:

- (1) In General. -- Beginning on June 1, 1997, the responsible agency may approve a merger transaction under section 18(c) [12 U.S.C. § 1828(c), the Bank Merger Act] between insured banks with different home States, without regard to whether such transaction is prohibited under the law of any State.

12 U.S.C. § 1831u(a)(1).¹ The Riegle-Neal Act permitted a state to elect to prohibit such interstate merger transactions under section 44 by enacting a law between September 29, 1994, and May 31, 1997, that expressly prohibits all mergers with all out-of-state banks. See 12 U.S.C. § 1831u(a)(2) (state "opt-out" laws). In the proposed Merger, the home states of the banks are Rhode Island, Connecticut, New Jersey, and Pennsylvania; none of these states opted out. Accordingly, this application is covered by 12 U.S.C. §§ 215a-1 & 1831u(a).

B. Fleet's application meets the requirements of the Riegle-Neal Act.

¹ Section 44 was added by section 102(a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, Pub. L. No. 103-328, 108 Stat. 2338 (enacted September 29, 1994) (the "Riegle-Neal Act"). The Riegle-Neal Act also made conforming amendments to the National Bank Consolidation and Merger Act to permit national banks to engage in such section 44 interstate merger transactions and to the McFadden Act to permit national banks to maintain and operate branches in accordance with section 44. See Riegle-Neal Act §§ 102(b)(4) (adding a new section, codified at 12 U.S.C. § 215a-1) & 102(b)(1)(B) (adding new subsection 12 U.S.C. § 36(d)). Some interstate mergers may also be authorized under 12 U.S.C. § 215a. See, e.g., *Ghiglieri v. NationsBank of Texas, N.A.*, No. 3:97-CV-2897-P, 1998 U.S. Dist. LEXIS 6637 (N.D. Texas filed May 6, 1998) (memorandum opinion and order denying preliminary and permanent injunction); Decision on the Application to Merge NationsBank of Texas, N.A., Dallas, Texas, into NationsBank, N.A., Charlotte, North Carolina (OCC Corporate Decision No. 98-19, April 2, 1998). Since Fleet has branches in Connecticut and New Jersey, it could have acquired the Summit Banks in those states through a merger under section 215a; however, the present application was made under the Riegle-Neal Act.

For purposes of section 1831u, the following definitions apply: The term "home State" means, with respect to a national bank, "the State in which the main office of the bank is located." The term "host State" means, "with respect to a bank, a State, other than the home State of the bank, in which the bank maintains, or seeks to establish and maintain, a branch." The term "interstate merger transaction" means any merger transaction approved pursuant to section 1831u(a)(1). The term "out-of-State bank" means, "with respect to any State, a bank whose home State is another State." The term "responsible agency" means the agency determined in accordance with 12 U.S.C. § 1828(c)(2) (namely, the OCC if the acquiring, assuming, or resulting bank is a national bank). See 12 U.S.C. § 1831u(f)(4), (5), (6), (8) & (10).

An application to engage in an interstate merger transaction under 12 U.S.C. § 1831u is also subject to certain requirements set forth in sections 1831u(a)(5) and 1831u(b). These conditions are: (1) compliance with state-imposed age limits, to the extent that the Riegle-Neal Act authorizes such limits; (2) compliance with certain state filing requirements, to the extent the filing requirements are permitted in the Act; (3) compliance with nationwide and state concentration limits; (4) community reinvestment compliance; and (5) adequacy of capital and management skills. This application satisfies all these requirements to the extent applicable.

1. The application satisfies the Riegle-Neal Act's age requirement.

The application satisfies the state-imposed age requirements permitted by section 1831u(a)(5). Under that section, the OCC may not approve a merger under section 1831u(a)(1) "that would have the effect of permitting an out-of-state bank or out-of-state bank holding company to acquire a bank in a host state that has not been in existence for the minimum period of time, if any, specified in the statutory law of the host State." 12 U.S.C. § 1831u(a)(5)(A). But the maximum age requirement permitted is five years. 12 U.S.C. § 1831u(a)(5)(B). For purposes of complying with state-imposed age requirements, the host states for this application are Connecticut, New Jersey and Pennsylvania. Neither the New Jersey nor the Pennsylvania interstate bank merger statutes impose a minimum age requirement on the acquisition of a bank by an out-of-state national bank. Connecticut law requires that the target bank be in existence and continuously operating for at least five years.² Summit-CT has been in existence in excess of five years, thereby satisfying the age requirements in that state. Thus, the application satisfies the Riegle-Neal Act requirement of compliance with state age laws.

2. The application satisfies the Riegle-Neal Act's other requirements.

The proposed Merger meets the applicable filing requirements. A bank applying for an interstate merger transaction under section 1831u(a) must (1) "comply with the filing requirements of any host State of the bank which will result from such transaction" as long as the filing requirement does not discriminate against out-of-state banks and is similar in effect to filing requirements imposed by the host state on out-of-state nonbanking corporations doing business in the host state, and (2) submit a copy of the application to the state bank supervisor of the host state. 12 U.S.C. § 1831u(b)(1).³ Of the three states in which the Summit Banks are located -- Pennsylvania, New Jersey, and Connecticut -- the only state that will become a host state of Fleet as a result of this merger is Pennsylvania since Fleet already has branches in the other two states. The Pennsylvania interstate bank merger statute does not contain a

² Conn. Gen. Stat. § 36a-412 (1999).

³ Under this provision, states are permitted to impose a filing requirement on out-of-state banks that will operate branches in the state as a result of an interstate merger transaction under the Riegle-Neal Act, but the states may impose only those requirements that are within the terms specified. Since Congress has specifically set forth and limited what state filing requirements apply for these interstate transactions, it clearly intended that only those requirements would apply, and the states may not impose others. Thus, in a transaction involving only national banks, only the filing requirements allowed under section 1831u(b)(1) must be complied with. For a fuller discussion of this subject, *see, e.g.*, Decision on the Applications to Merge First Interstate Banks into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-29, June 1, 1996) (at pages 4-5, 12-14 & note 11).

provision making the “qualify to do business” filing requirement imposed on nonbanking corporations applicable to out-of-state banks with branches in Pennsylvania.⁴ Thus, the proposed merger satisfies the Riegle-Neal Act requirement of compliance with state filing requirements.

In addition, a bank applying for an interstate merger transaction must submit an application to the state bank supervisor of the host state. 12 U.S.C. § 1831u(b)(1). This requirement is satisfied in this case; in fact, Fleet has represented that it has submitted the required notifications to the state banking supervisors in all of the states involved in this transaction: Pennsylvania, New Jersey, and Connecticut. Thus, the proposed merger satisfies this filing requirement of the Riegle-Neal Act.⁵

3. The proposed Merger does not raise issues with respect to the deposit concentration limits of the Riegle-Neal Act

Section 1831u(b)(2) places certain nationwide and statewide deposit concentration limits on section 1831u(a) interstate merger transactions. Under section 1831u(b)(2)(A), the OCC may not approve an interstate merger transaction if the resulting bank (including all affiliated insured depository institutions) would control more than 10% of the total amount of deposits in the United States. Under section 1831u(b)(2)(B), the OCC may not approve an interstate merger transaction (1) if any bank involved in the transaction (including all affiliated insured depository institutions) has a branch in any state in which any other bank involved in the transaction has a branch and (2) if the resulting bank (including all affiliated insured depository institutions) would control 30% or more of the total deposits in any such state. After the Merger, Fleet will control approximately 3% of total deposits in the United States.⁶ In addition, after the Merger and all divestitures, Fleet will control less than 30% of the deposits in each of the states of Connecticut, New Jersey, and Pennsylvania. Therefore, the application meets the Riegle-Neal Act’s deposit concentration limits.

⁴ The Pennsylvania statute requires only that where a proposed merger or consolidation will result in a national bank or an interstate bank, that the banking department be notified of the merger, and that, upon request of the banking department, they be provided evidence of the adoption of the plan of merger. *See* Pa. Stat. Ann. tit. 7, § 1603(g) (1995 & Supp. 1997). The Connecticut interstate bank merger statute does contain a provision making the “qualify to do business” filing requirement imposed on nonbanking corporations applicable to out-of-state banks with branches in Connecticut. Fleet has complied with this requirement as part of applications it has submitted to the Connecticut Department of Banking. *See* Conn. Gen. Stat. §§ 36a-412, 33-920 (2000). The New Jersey interstate bank merger and branching statutes does not appear to contain a “qualify to do business” filing requirement applicable to out-of-state national banks acquiring banks with branches in the state. *See* N.J. Stat. Ann. §§ 17:9A-133.1, 17:9A-148 (West 1984 & Supp. 2000).

⁵ Rhode Island is currently a home state for Fleet and will continue as such after the Merger, and so does not become one as a result of the Merger. Therefore, the filing requirements of section 1831u(b)(1) do not apply with respect to it. *See* Decision on the Application to Merge First Interstate Bank of Washington, N.A., into Wells Fargo Bank, N.A. (OCC Corporate Decision No. 96-30, June 6, 1996) (page 8, note 9).

⁶ Based on June 30, 1999 data.

4. The proposed Merger also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act

The proposed Merger also does not raise issues with respect to the special community reinvestment compliance provisions of the Riegle-Neal Act. In determining whether to approve an application for an interstate merger transaction under section 1831u(a), the OCC must (1) comply with its responsibilities under section 804 of the federal Community Reinvestment Act ("CRA"), 12 U.S.C. § 2903, (2) take into account the CRA evaluations of any bank which would be an affiliate of the resulting bank, and (3) take into account the applicant bank's record of compliance with applicable state community reinvestment laws. 12 U.S.C. § 1831u(b)(3). The OCC's analysis regarding the first two provisions is discussed in Section III(B) of this decision, captioned "The Community Reinvestment Act."⁷ As for the third provision, the OCC contacted the relevant state banking department staff and considered Fleet's compliance with applicable state community reinvestment laws. The OCC's inquiry did not reveal any information that would be inconsistent with approval of the application.

5. The proposed Merger satisfies the adequacy of capital and management skills requirements in the Riegle-Neal Act

The OCC may approve an application for an interstate merger transaction under section 1831u(a) only if each bank involved in the transaction is adequately capitalized as of the date the application is filed and the resulting bank will continue to be adequately capitalized and adequately managed upon consummation of the transaction. 12 U.S.C. § 1831u(b)(4). As of the date the application was filed, Fleet and the Summit Banks satisfied all regulatory and supervisory requirements relating to adequate capitalization. Currently, each bank is at least satisfactorily managed. The OCC has also determined that, following the Merger, Fleet will continue to be at least adequately capitalized and adequately managed. The requirements of 12 U.S.C. § 1831u(b)(4) are therefore satisfied.

C. Following the Merger Application, Fleet may Retain Its Existing Main Office and Branches under 12 U.S.C. §§ 36(d) & 1831u(d)(1).

Fleet also requested that, upon the completion of the Merger, Fleet (as the resulting bank in the Merger) be permitted (1) to retain and operate, as its main office, its current main office in Providence, Rhode Island, under 12 U.S.C. § 1831u(d)(1), and (2) to retain and operate, as branches, its other branches and Summit Banks' main offices and branches, under 12 U.S.C. §§ 36(d) and 1831u(d)(1).

In interstate merger transactions under section 1831u, the resulting bank's retention and continued operation of the offices of the merging banks is expressly provided for:

⁷ With respect to the second provision, the banks that would be affiliated as a result of the merger and that receive CRA evaluations are Fleet and Fleet Bank (Rhode Island), N.A., Providence, Rhode Island. As discussed more fully in Section III(B), the OCC has taken the CRA evaluations of these banks into consideration and has discovered no information indicating that the Merger should not be approved.

(1) Continued Operations. -- A resulting bank may, subject to the approval of the appropriate Federal banking agency, retain and operate, *as a main office* or a branch, *any office that any bank involved* in an interstate merger transaction was operating as a main office or a branch immediately before the merger transaction.

12 U.S.C. § 1831u(d)(1) (emphasis added). The resulting bank is the "bank that has resulted from an interstate merger transaction under this section [section 1831u(a)]." 12 U.S.C. § 1831u(f)(11).⁸

Thus, in the present application, Fleet (as the resulting bank after the Merger) may retain and operate as its main office "any office that [Fleet] was operating as a main office or branch immediately before the merger transaction." The Providence office is currently operating as the main office of Fleet, and so the resulting bank may retain and operate it as its main office, provided the Merger is approved under section 1831u.

Similarly, Fleet (as the resulting bank after the Merger) may retain and operate as branches "any office that [either Fleet or the Summit Banks] was operating as a main office or branch immediately before the merger transaction." Fleet's main office and other branches, and the Summit Banks' main offices and branches, are all operating as main offices or branches, and so the resulting bank may retain and operate them as branches, provided the Merger is approved under section 1831u.

Therefore, the Merger is authorized, and Fleet may retain the proposed main office and the four banks' other offices as branches,⁹ provided the application meets the requirements for an interstate merger transaction under section 1831u.

⁸ In addition, Congress also added a conforming amendment to the McFadden Act to emphasize that branch retention in an interstate merger transaction under section 1831u occurs under the authority of section 1831u(d):

(d) Branches Resulting From Interstate Merger Transactions. -- A national bank resulting from an interstate merger transaction (as defined in section 44(f)(6) of the Federal Deposit Insurance Act) may maintain and operate a branch in a State other than the home State (as defined in subsection (g)(3)(B)) of such bank in accordance with section 44 of the Federal Deposit Insurance Act.

12 U.S.C. § 36(d) (as added by Riegle-Neal Act § 102(b)(1)(B)). By its action in adding section 36(d), Congress made it clear that section 1831u(d)(1) is an express and complete grant of office-retention authority for interstate merger transactions effected under section 1831u and that it operates independently of the provisions for branch retention in 12 U.S.C. § 36(b)(2) that apply to mergers under 12 U.S.C. § 215a. Neither section 36(d) nor section 1831u(d)(1) refer to section 36(b)(2). By expressly providing for office-retention in section 1831u(d)(1) and then incorporating that into the McFadden Act in section 36(d), Congress clearly intended that those provisions, rather than the complex branch retention provisions of section 36(b)(2), apply to branch retention in interstate merger transactions under section 1831u.

⁹ In addition, Fleet will succeed to the fiduciary appointments of the Summit Banks as a result of the Merger, and it is authorized to engage in all activities permissible for national banks, including fiduciary activities, at its main office and branches in all the states in which it operates. *See, e.g.*, 12 U.S.C. §§ 215a-1 (Riegle-Neal mergers with a resulting national bank occur under the National Bank Consolidation and Merger Act) & 215a(e) (the resulting national bank in a merger succeeds to all the rights, franchises and interests, including fiduciary appointments, of the merging banks); Decision on the Application to Merge Bank of America N.T. & S. A. and NationsBank, N.A. (OCC CRA Decision No. 94, May 20, 1999) (at page 6 n. 4). *See also* Decision on the

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 a merger between insured banks where the resulting institution will be a national bank. Under the Act, the OCC generally may not approve a merger 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 community to be served. For the reasons stated below, we find this Merger may be approved under section 1828(c).

1. Competitive Analysis.

The OCC reviewed the impact of the proposed transaction on competition for the cluster of products and services offered by depository institutions in the areas surrounding the Summit banks Fleet is acquiring. The OCC also considered public comments that raised competitive issues. There are five relevant geographic markets for this proposal where competition between Fleet and Summit Banks is direct and immediate: Waterbury Area, CT; Fairfield Area, CT; Metro New York/New Jersey; Philadelphia, PA; and, Atlantic City, NJ.

We applied standard procedures for determining whether the competitive effects of the merger in the above markets clearly had minimal or no adverse competitive effects and found that to be true with the exception of the Atlantic City market.

The Atlantic City market is defined as consisting of the New Jersey counties of Atlantic and Cape May. Within this market, 18 banks and thrifts compete for \$4.2 billion in deposits. Fleet, with 16 branches, ranks fourth with a 10.0% market share. Summit-NJ, with 24 branches, ranks first with a 27.7% share. The merger would increase Fleet's dominance of the market, increasing its share to 37.7% among the remaining 17 competitors.

In light of this potentially adverse impact, on January 25, 2001, Fleet entered into a formal divestiture plan with the Department of Justice ("DOJ").¹⁰ Fleet will sell five specified branches in Atlantic County, along with related deposits and consumer and commercial loans, to competitively suitable financial institutions as determined by the DOJ and the Federal Reserve Board of Governors. To further preserve the existing level of competition, the plan also requires Fleet to suspend for 180 days any existing non-compete agreements and not enter into any new such agreements with current Fleet or Summit-NJ loan officers and branch

Applications of Bank One Wisconsin Trust Company, N.A., and Bank One Trust Company, N.A. (OCC Corporate Decision No. 97-33, June 1, 1997) (national banks may engage in fiduciary business at trust offices and branches in different states). *Cf.* 12 U.S.C. § 36(f) (general provisions for host state laws applicable to branches in the host state of out-of-state national banks).

¹⁰ See Letter by J. Robert Kramer, Chief, Litigation II Section, Antitrust Division, DOJ, to John D. Hawke, Jr., Comptroller of the Currency (January 25, 2001).

managers in the Atlantic City market. In addition, Fleet will be required to widely publicize the sale or lease of any branches in the Atlantic City Market closed as a result of the merger and optimize the potential for those sites to be acquired by commercial banks.

In reviewing a merger application by the parent holding companies of Fleet and Summit Banks, the Federal Reserve Board also considered the competitive impact of the underlying bank merger. Subject to Fleet's divestiture commitment, the Federal Reserve Board concluded that the proposal would not produce a significant effect on competition or concentration of banking resources in any relevant geographic market. (See Federal Reserve Board Order of February 12, 2001.)

Accordingly, while the proposed merger would eliminate a direct competitor from the Atlantic City market, the formal divestiture plan and the continuing presence of other banking alternatives would mitigate any adverse effects. Therefore, consummation will not have a significantly adverse impact on competition within the Atlantic City or any other relevant banking market.

2. Financial and Managerial Resources.

The financial and managerial resources of Fleet and Summit Banks are presently satisfactory. The future prospects of the institutions, individually and combined, are favorable. We find the financial and managerial resources factor is consistent with approval of the merger.

3. Convenience and Needs.

The merger will not have an adverse impact on the convenience and needs of the communities to be served. Fleet will continue to serve the same areas that it now serves. There will not be a reduction of products or services as a result of the merger. The resulting bank is expected to meet the convenience and needs of the community to be served. While Fleet anticipates that some overlapping branches of the resulting institution will be closed as a result of the transaction, current Fleet and Summit Banks customers, as customers of the resulting bank, will have a greater number of branches at which to bank.

Fleet represents that as soon as practicable after the Merger, it will offer many of its products and services to Summit Banks' customers. The Summit Banks' customers will benefit from an enhanced array of products and services at the resulting bank, *e.g.*, insurance products and broker-dealer services, higher lending limits, internet based products and services, and international operations as well as the investment banking services of its affiliates. Accordingly, we believe the impact of the merger on the convenience and needs of the communities to be served is consistent with approval of the application.

The OCC received comments from two community organizations during the public comment period. The OCC investigated the concerns raised in these letters. In addition, the OCC considered the comments that had been received by the Federal Reserve Bank of Boston in connection with the holding company application to merge FleetBoston Financial Corporation ("FleetBoston") and Summit Bancorp. The concerns expressed in the letters and

the results of the OCC's investigation into those concerns are discussed below. In light of the commenters' concerns, the OCC directed examiners with extensive consumer compliance experience to investigate these concerns. The scope of this review included an investigation of the specific convenience and needs and Community Reinvestment Act ("CRA")-related allegations raised by the commenters. In order to investigate those concerns, on January 2, 2001, the OCC removed the application from expedited review processing.¹¹ In summary, our investigation and analysis of the issues identified no basis for denying or conditioning the approval of this application.¹²

a. Community Commitments

Both of the comments received by the OCC expressed concerns with FleetBoston's progress in meeting the terms of its 5-year, \$14.6 billion Community Investment Commitment that was announced in 1999 in connection with the merger of Fleet Financial Group, Inc. and BankBoston Corporation. The OCC does not enforce such bank community development or CRA-related commitments or agreements between private parties,¹³ however, FleetBoston responded to these concerns by explaining that the results for the first six months of the commitment's term do not mean that the goals will not be achieved within five years. FleetBoston noted that loan production levels and loan demand can vary during different time periods and are not always constant.

FleetBoston also described the 20-member Community Oversight Committee it has established, comprised of community representatives, that meets regularly with bank management to discuss opportunities to advance FleetBoston's community development efforts and to monitor the implementation of the commitment. The commitment includes targets for affordable housing lending, community development lending and investments, consumer lending targeted to low- and moderate-income ("LMI") areas, and funding for technical assistance and support for community development organizations.

In connection with the Merger, FleetBoston also has described how it has entered into a four-year, \$1.22 billion community development agreement covering New Jersey ("New Jersey agreement"). FleetBoston has also announced a four-year, \$ 0.75 billion community investment commitment covering its activities in Pennsylvania. The New Jersey and Pennsylvania initiatives include goals for affordable housing mortgage lending, community

¹¹ The commenters requested the OCC to extend the public comment period and conduct public hearings. After careful consideration of the circumstances and the standards contained in 12 CFR 5.10(b)(2) and 12 CFR 5.11(b), on January 21, 2001, the OCC denied these requests.

¹² The OCC is aware that a lawsuit was recently filed against Fleet Mortgage Corporation, a subsidiary of Fleet, by the State of Minnesota Attorney General regarding Fleet Mortgage Corporation's alleged sharing of mortgage account information with telemarketers. While the filing of this lawsuit is not adequate grounds to delay rendering a decision, the OCC is committed to ensuring that national banks protect the financial privacy of consumers. On June 1, 2000, the OCC, the Federal Reserve Board, and the Office of Thrift Supervision issued a joint final rule entitled "Privacy of Consumer Financial Information." 65 Fed. Reg. 35,162. Compliance with this rule is mandatory as of July 1, 2001.

¹³ See 65 Fed. Reg. 25,088, 25,107 (2000) (Question and Answer No. 2, § .29(b)) (federal banking agencies do not monitor or enforce CRA agreements that banks enter with private organizations).

development financing and investments, small business lending and community development grants. These two initiatives are in addition to FleetBoston's \$14.6 billion Community Investment Commitment.

b. Branch Closings

One of the commenters expressed concerns that Fleet had not disclosed which branches would be closed in connection with the merger. FleetBoston responded that it has not yet determined which branches will be closed, but that because Fleet and Summit Banks have overlapping branches in 97 communities (primarily in New Jersey), as many as 85 branches could be closed. As part of the New Jersey agreement, FleetBoston pledged that no branches would be closed in LMI areas for a period of four years in 13 identified towns. In four additional towns, FleetBoston pledged not to close branches for four years where the next closest branch is more than 0.5 miles away from the nearest Fleet branch. FleetBoston does not expect to close any branches in Pennsylvania as a result of the merger. For the remaining areas, FleetBoston has not yet conducted in-depth reviews of the available data concerning each of the branches located in the communities where there is overlap. After such reviews and in the event FleetBoston determines it is necessary to close a branch, FleetBoston represented that it will also make an effort to mitigate any negative impact upon the customers served by the consolidating branches.¹⁴

In addition, FleetBoston provided the OCC with information indicating that it has a comprehensive Branch Closing Policy and Procedure ("Branch Policy"). This Branch Policy includes a community impact review and business analysis, as well as providing for notifications required by law.¹⁵ FleetBoston reported that as of October 1, 2000, 21.0% of Fleet's 1,272 branches were located in LMI areas as compared to 20.3% at the beginning of 2000.

c. Fees

One of the commenters expressed concerns that the Merger would result in increased fees. Concerns were raised that Fleet would not continue to offer Summit Banks' "Regular Checking" product, which provides free checking and other benefits to customers who maintain a minimum daily balance of \$99. FleetBoston has represented that it will retain the "Regular Checking" product for all customers who hold such accounts prior to consummation of the Merger. After consummation of the Merger, new customers will be offered a low-cost consumer checking account with a \$1 minimum opening balance and a \$3 maximum monthly service charge for up to eight checks and four Fleet ATM withdrawals. FleetBoston also responded that in each of the markets in which Fleet and Summit Banks currently have

¹⁴ When appropriate, Fleet may upgrade the consolidated facility, add staff, and/or leave behind a remote ATM.

¹⁵ Federal law requires banks to give notice of proposed branch closings. The Federal Deposit Insurance Act requires insured depository institutions to provide notice to the appropriate federal regulatory agency at least 30 days prior to such closing. 12 U.S.C. § 1831r-1. Additionally, the OCC considers a bank's record of branch closings, including those closed in LMI areas, in conducting examinations under the Community Reinvestment Act.

overlapping branch networks, Fleet will face aggressive competition from other financial institutions.

d. Systems Conversion

The Commissioner of Banks for the Commonwealth of Massachusetts expressed concerns to the Federal Reserve Bank of Boston regarding the high volume of complaints his office received, especially after Fleet Financial Group, Inc.'s merger with BankBoston Corporation in 1999. FleetBoston acknowledged an increase in customer problems associated with that large and complex merger, but indicated the volume had peaked in June 2000. Since the Merger will be smaller and less complex than the BankBoston Corporation merger, FleetBoston has represented that it expects to be able to successfully complete the Merger with no appreciable unfavorable impact on its new or existing customers. OCC examiners have reviewed the complaint history and will continue to monitor the situation.

e. Subprime Lending

One of the commenters expressed concerns that Fleet had reentered the subprime lending business. OCC examiners confirmed that Fleet is no longer engaged in subprime lending. FleetBoston also represented to the Federal Reserve Board in connection with the holding company merger that none of its lending activities fall within the coverage of the Home Ownership and Equity Protection Act, which regulates certain high-cost mortgage loans. Pub. L. No. 103-325, §§ 151-158, 108 Stat. 2190 (1994) (codified at 15 U.S.C. §§ 1602 (f), (u), (aa), 1604(a), 1610(a)(2), (b), 1604(a), (e), 1639, 1640 (a), (e), 1641 (d)).

f. Conclusion Regarding Convenience and Needs

Based on the foregoing information, the OCC found that the impact of the transaction on the convenience and needs of the communities to be served is consistent with approval of the merger.

B. The Community Reinvestment Act.

The Community Reinvestment Act ("CRA") requires the OCC to take into account each applicant bank's record of helping to meet the credit needs of the community, including LMI neighborhoods, when evaluating certain applications, including mergers. 12 U.S.C. § 2903; 12 CFR 25.29. The OCC considers the CRA performance evaluation of each institution involved in the transaction. Under the CRA regulations, effective July 1, 1997, the OCC evaluates the performance of most large banks using lending, investment, and service criteria. In these evaluations, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of its communities, including LMI neighborhoods, is less than satisfactory. Fleet, charter number 1338, received a "Satisfactory" CRA rating dated February 23, 1998. BankBoston, charter number 200, received an "Outstanding" CRA rating

dated March 15, 1999. When Fleet and BankBoston merged into number 200, the surviving bank was named Fleet.¹⁶

Summit Banks have received the following ratings in their most recent CRA examinations: Summit-PA received an “Outstanding” CRA rating from the Federal Reserve Bank of Philadelphia dated March 6, 2000; Summit-NJ received an “Outstanding” CRA rating from the Federal Reserve Bank of New York dated October 4, 1999; and Summit-CT received an “Outstanding” CRA rating from the Federal Deposit Insurance Corporation dated August 2, 1999.

In considering Fleet’s and Summit Banks’ CRA record of performance, the OCC took into account the wide variety of affordable home loan programs these entities offer. For instance, Fleet offers the Affordable Advantage program, which features a low down payment, no points or private mortgage insurance, more flexible debt-to-income ratios, and below market interest rates. Fleet also participates in a number of other programs targeted to the needs of various communities within its assessment area. Summit Banks have made affordable mortgages available through several programs, including their Summit Partners In Pride Affordable Mortgage Product, state housing agency programs and Freddie Mac and Fannie Mae programs.

As mentioned previously, the OCC and the Federal Reserve Bank of Boston received comments expressing CRA-related concerns with Fleet and Summit Banks.¹⁷ As detailed below, the OCC’s investigation of these concerns disclosed no evidence inconsistent with approval of the merger.

1. Comments Regarding Fleet National Bank and Fleet Mortgage Corporation.

One of the commenters expressed concerns that Fleet and Fleet Mortgage Corporation, a subsidiary of Fleet, rejected applications for conventional home purchase mortgages from minority applicants more frequently than from white applicants. Additionally, this commenter stated that in some instances, Fleet rejected applications for refinance loans from minority applicants more frequently than from white applicants. The commenter cited Home Mortgage

¹⁶ It should be noted that since Fleet’s last CRA examination was conducted, the following banks also merged into Fleet: Fleet Bank, N.A., Jersey City, New Jersey (with a “Satisfactory” CRA rating dated February 17, 1998); Bank of Boston - Florida, N.A., Boca Raton, Florida (with an “Outstanding” CRA rating dated July 8, 1999); Fleet Bank-NH, Manchester, New Hampshire (with a “Satisfactory” CRA rating dated April 13, 1998); Fleet Bank of Maine, Portland, Maine (with a “Satisfactory” CRA rating dated April 13, 1998); and Fleet Bank, F.S.B., Boca Raton, Florida (with a “Satisfactory” CRA rating dated April 27, 1998). In addition, Fleet Bank (Rhode Island), N.A., Providence, Rhode Island, a subsidiary of Fleet, received a “Satisfactory” CRA rating dated March 6, 2000.

¹⁷ One comment to the Federal Reserve Bank of Boston expressed concerns that Fleet would not maintain Summit Banks’ membership with the Federal Home Loan Bank of Pittsburgh, and would therefore not have access to its Affordable Housing Program. FleetBoston represented that it was unable to maintain Summit Banks’ membership, because FleetBoston is already a member of the Federal Home Loan Bank of Boston (“FHLBB”). However, FleetBoston represented it would work with FHLBB to address this issue.

Disclosure Act (“HMDA”) data for numerous Metropolitan Statistical Areas (“MSAs”) within and outside of Fleet’s assessment areas.¹⁸

FleetBoston responded to the OCC and the commenter noting that the commenter’s analysis used only data for conventional mortgages and that when all HMDA home purchase loans for the relevant FleetBoston entities are included, denial rates to minorities in most of the MSAs were generally comparable to or better than the industry denial rates for those products in those MSAs. In the instances where the denial rates were higher, FleetBoston noted its origination rate to minorities was comparable to or more favorable than the industry average. In four of the MSAs, FleetBoston observed that the number of applications from minorities was too small to draw conclusions. With respect to refinance loans in the New York City and Long Island, New York, MSAs, FleetBoston indicated that while denial ratios were higher than the industry ratios, its origination rate for minority borrowers was comparable to or more favorable than the industry rate.

One comment to the Federal Reserve Bank of Boston expressed concerns with FleetBoston’s HMDA lending performance in the Rochester MSA, including the declining market share of lending from 1995 to 1999, the declining percentage of loans to LMI borrowers and census tracts, the high percentage of refinance loans in 1998 and 1999, the denial rates for minorities, and the number of applications received from minorities. Additionally, the commenter raised issues concerning FleetBoston’s small business lending performance in Monroe County, New York.

FleetBoston’s response acknowledged that its market share of HMDA loans has declined since 1995. It pointed out, however, that its level of loan production has remained relatively stable, despite a large increase in the number of HMDA lenders in the market.

In response to the commenter’s concern regarding a decline in the percentage of FleetBoston’s lending to LMI borrowers between 1995 and 1999 in the Rochester MSA, FleetBoston noted that the percentage decline is misleading because of the relatively high percentage of FleetBoston’s loans that are made without collecting income data. FleetBoston’s percentage of loans made without income data was 34% in 1999; the industry’s percentage was 5.5%. FleetBoston noted that when the loans without income data are excluded, FleetBoston’s adjusted percentage of loans to LMI borrowers of 31% is comparable to the industry’s adjusted percentage of 34%.

With respect to refinancing loans in the Rochester MSA, FleetBoston noted that the demand for refinance loans across the industry was exceptionally strong in 1998 and 1999. Moreover, FleetBoston noted that from 1998 to 1999, the number of FleetBoston’s home purchase and home improvement loans increased, while the number of refinance loans decreased.

FleetBoston also provided data indicating that its denial ratios for African-American and Hispanic applicants for all types of HMDA lending in the Rochester MSA during the period

¹⁸ The MSAs the commenter identified are: Bergen, NJ; Birmingham, AL; Bridgeport, CT; Buffalo, NY; Detroit, MI; Houston, TX; Kansas City, MO; Long Island, NY; Memphis, TN; New York, NY; Philadelphia, PA; St. Louis, MO; Trenton, NJ; and Washington, DC.

from 1995 to 1995 were generally comparable to or more favorable than the industry averages. Additionally, FleetBoston noted that the number of applications received from African-Americans and Hispanics increased from 1998 to 1999.

Finally, FleetBoston pointed out that its small business lending performance in Monroe County was comparable to or better than the industry average in terms of percentage of its loans originated in LMI census tracts and the dollar volume of these loans. Further, FleetBoston noted that within Monroe County, it performed better than the industry in terms of the percentage of loans and the dollar volume of these loans made to businesses with a gross annual revenue of less than \$1 million.

OCC examiners reviewed FleetBoston's responses to the comments above and found the data presented to be accurate and reliable.¹⁹ In addition, the OCC conducted a fair lending examination of Fleet Mortgage Corporation in the fourth quarter of 2000 and found no evidence of discrimination.²⁰ FleetBoston has stated that FleetBoston's fair lending policies and oversight functions will be retained for the combined bank.

2. Comments Regarding Summit Banks.

While the OCC did not receive any comments regarding Summit Banks, the Federal Reserve Bank of Boston received comments concerning Summit-PA's CRA record of performance in the Scranton/Wilkes-Barre/Hazleton MSA and in Lehigh Valley.²¹ Since the OCC does not have the authority to examine Summit Banks, OCC examiners reviewed the most recent CRA Public Evaluation ("PE") of the Pennsylvania bank, the relevant HMDA data and the banks' responses. The OCC took into account the strong overall CRA performance of Summit-PA noted in its recent PE. The OCC found no evidence concerning Summit-PA's CRA performance that would cast doubt on approval of the Merger. FleetBoston has indicated its goal of continuing the "Outstanding" CRA record of Summit Banks and working with communities to provide loans, investments, and services to LMI people.

With respect to the Scranton MSA, the commenter expressed concerns that the region had not received its fair share of Summit Banks' lending or investments to benefit LMI people and communities. The commenter also expressed a concern that the level of community reinvestment activity may further be reduced since FleetBoston's headquarters is so far away.

¹⁹ It is important to note that HMDA data alone are inadequate 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 capacity, housing prices, and other factors relevant in each of the individual markets and do not illustrate the full range of the bank's lending activities or efforts. Nevertheless, denial disparity ratios are of concern to the OCC and are routinely evaluated in fair lending examinations.

²⁰ Fleet Mortgage Corporation generates the bulk of Fleet's home purchase and refinance loans.

²¹ The Federal Reserve Bank of Boston also received a comment expressing concerns with the level of lending in Asbury Park, New Jersey. Summit Banks' response disputed certain lending data cited by the commenter. In any event, Asbury Park comprises a very small portion of the New York-Northern New Jersey-Long Island, New York-New Jersey-Connecticut-Pennsylvania Consolidated Metropolitan Statistical Area ("CMSA"). The CRA evaluation of Summit Bank, Hackensack, New Jersey, dated October 4, 1999, found no weaknesses in performance within this CMSA.

FleetBoston's response addressing these allegations provided details of qualifying grants and investments and community development loans over the past few years. FleetBoston pointed out that the MSA contained only two low-income census tracts with only 23 owner occupied housing units. In addition, FleetBoston provided data describing Summit-PA's record of small business lending record in the Scranton MSA.

With respect to the Lehigh Valley, the commenter expressed concerns with a decline in mortgage lending to minorities and a lack of mortgage originations in the market. The commenter also expressed concerns with the level of contributions to nonprofits and community organizations. FleetBoston's response indicated that the bank's decline in mortgage lending was largely due to the exodus of Summit Banks' mortgage staff in Pennsylvania, which in turn led to a decline in mortgage originations. Summit Banks represented that they are now hiring a mortgage representative to work with nonprofit-based affordable housing agencies to increase lending to LMI applicants. In addition to using the resources available at Fleet Mortgage Corporation, FleetBoston will further enhance its mortgage lending to LMI individuals by adding an additional affordable mortgage representative in Pennsylvania after the Merger. FleetBoston's response also indicated that contrary to the allegations, Summit Banks' level of contributions to nonprofits and community organizations had increased in 2000 over 1999 levels.

3. Conclusion Regarding Record of CRA Performance.

Accordingly, based on the banks' records of CRA performance, we find that approval of the Merger is consistent with the Community Reinvestment Act.

RETENTION OF SUBSIDIARIES AND NONCONFORMING ASSETS

As part of the Merger application, Fleet has represented that the Summit Banks hold various assets, including certain subsidiaries engaged in insurance agency activities, and certain other equity interests, that are impermissible for national banks.

Fleet has proposed that it retain certain existing Summit Bank insurance agencies as financial subsidiaries. Therefore, pursuant to Section 121 of the Gramm-Leach-Bliley Act, Pub. Law No. 106-102, 113 Stat. 1338 (1999) (the "GLB Act"), and the procedures set forth in the OCC's revised regulation on Financial Subsidiaries (12 CFR 5.39), Fleet provided formal notice of its intent to acquire and hold as financial subsidiaries of Fleet, Summit Insurance Advisors, LLC and its affiliate Philadelphia Benefits, LLC. Fleet has previously obtained approval of its financial subsidiary certification in connection with its conversion of FCCS Insurance Agency.²² Both entities are currently subsidiaries of Summit-NJ and offer insurance products and insurance brokerage services to individuals and businesses.

Financial subsidiaries may engage in activities that are "financial in nature." The OCC's regulations governing financial subsidiary activities provide that financial subsidiaries may

²² See OCC approval letter dated April 26, 2000 (2000-ML-08-015).

"[e]ngag[e] as agent or broker in any state for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, death, defects in title, or providing annuities as agent or broker."²³ Fleet has represented that the activities of these subsidiaries are authorized for financial subsidiaries of national banks by the OCC. In addition, Fleet represents that it meets the qualification standards for owning a financial subsidiary under 12 U.S.C. §§ 24a(a)(2)(C)(D) and (E), and 12 CFR § 5.39(g).²⁴

Fleet has represented the following: (1) Fleet and its depository institution affiliates are well capitalized and well managed and will continue to be so following the proposed transaction; (2) Fleet and its depository institution affiliates each received a rating of "Satisfactory or better" in their most recent examination under the CRA; (3) the aggregate consolidated total assets of all financial subsidiaries do not exceed 45% of the Bank's consolidated total assets or \$50 billion; and (4) Fleet is one of the 100 largest insured banks and has at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating agency. *See* 12 U.S.C. § 24a(a)(4) and 12 CFR § 5.39(g)(3). Therefore, Fleet may hold an interest in the subsidiaries currently held by Summit-NJ.

With respect to other equity interests held by Summit Banks that are impermissible for national banks, Fleet has committed that it will divest any marketable securities within 30 days of the consummation of the Merger and will divest any other equity securities currently held by Summit Banks, but not permissible for national banks, within two years of the date of consummation of the Merger.

CONCLUSION AND APPROVAL

For the reasons set forth above, including the representations and commitments of the applicants, we find that the proposed Merger between Fleet and the Summit Banks is authorized as an interstate merger transaction under the Riegle-Neal Act, 12 U.S.C. §§ 215a-1 & 1831u(a); that Fleet, as the resulting bank after the Merger, is authorized to retain and operate the Providence, Rhode Island, office as its main office and the other offices as branches, under 12 U.S.C. §§ 36(d) & 1831u(d)(1); Fleet is in satisfactory condition; and the proposal is consistent with the Community Reinvestment Act.

Accordingly, the Merger application is hereby approved subject to the following conditions:

- 1) Fleet shall comply with the divestiture agreement between Fleet and the Department of Justice dated January 25, 2001.

²³ 12 C.F.R. 5.39(e)(1)(ii).

