



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

Corporate Decision #2001-06
April 2001

**DECISION OF THE COMPTROLLER OF THE CURRENCY
ON THE APPLICATION BY
CHASE MANHATTAN BANK USA, N.A., WILMINGTON, DELAWARE
TO PURCHASE SUBSTANTIALLY ALL THE ASSETS AND ASSUME CERTAIN
LIABILITIES OF FIRST USA FINANCIAL SERVICES, INC., (“FUSA-Utah”) SALT LAKE
CITY, UTAH**

MARCH 13 , 2001

I. INTRODUCTION

On November 28, 2000, Chase Manhattan Bank USA, N.A. (“Chase”), Wilmington, Delaware, applied to the Office Comptroller of the Currency for approval to purchase substantially all the assets and assume certain liabilities of First USA Financial Services, Inc. (“FUSA-Utah”), Salt Lake City, Utah, under 12 U.S.C. 24 §§ (7) and 1828(c). Both banks are FDIC-insured and members of the Bank Insurance Fund. The banks are not affiliated. This application was based on an agreement entered into between the proponents on November 16, 2000. As of September 30, 2000, Chase had approximately \$34.8 billion in assets and \$15.8 billion in deposits. As of the same date, FUSA-Utah had approximately \$205 million in assets and \$173 million in deposits.

The transaction involves Chase’s acquisition of approximately \$188 million in FUSA-Utah assets, consisting primarily of commercial credit card receivables and other related assets. Included in these related assets is FUSA-Utah’s leased processing office. Chase will not have any branch presence in Utah.

**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 industry¹. Accordingly, Chase may purchase assets and assume liabilities of FUSA-Utah.

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 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 of the commercial card portfolio of FUSA-Utah by Chase will not materially reduce competition in the commercial card issuance business. The relevant geographic market for commercial card solicitation and issuance is national in scope and is served by many bank and non-bank companies. Chase and FUSA-Utah market commercial card services to small businesses and corporate customers across the United States. Chase and FUSA-Utah issue small business cards, corporate travel and entertainment cards, and corporate purchasing cards; FUSA-Utah also issues fleet cards for vehicle-related expenses. Based on the most recent and available data for the top 50 Visa and MasterCard commercial card issuers, the post-merger market share of the combined parties would approximate 3%. The Department of Justice reviewed the impact of the proposed transaction and concluded that the application presents no significant anti-competitive concerns.

2. Financial and Managerial Resources.

¹ 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-Neale 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 USC §§ 1831u and 36(d) and (e); OCC Corporate Decision No. 97-94 (October 22, 1997).

The financial and managerial resources of Chase are presently satisfactory. Chase is experienced in dealing with the types of assets it will acquire from FUSA-Utah. We find that the financial and managerial resources of Chase and FUSA-Utah do not raise supervisory concerns.

3. Convenience and Needs.

The convenience and needs of the public will not be adversely affected by the proposed transaction. The banks currently lend on a nationwide basis. There will be no reduction in products or services as a result of the purchase and assumption. In addition to the scale efficiencies that are ordinarily achieved through integration, Chase customers will have access to FUSA-Utah product offerings not currently offered by Chase, including card services for vehicle-related expenses and the customer data capabilities of FUSA-Utah's web-enabled customer delivery system. FUSA-Utah customers, in turn, will benefit from the expanded service and product offerings afforded by Chase's larger size and greater resources.

Upon consummation of the purchase and assumption, Chase will not have a branch presence in Utah, but will assume the lease for an administrative office located in Utah. FUSA-Utah's office currently has no public access and does not take deposits from walk-in customers. Therefore, the transaction will have no effect upon FUSA-Utah's Salt Lake County, Utah, market area or upon Chase's New Castle County, Delaware market area community service or convenience.

B. Community Reinvestment Act

The Community Reinvestment Act (the "CRA") requires the OCC to take into account each applicant bank's record of helping to meet the credit needs of its entire communities, including low- and moderate-income neighborhoods, when evaluating certain applications.² The types of applications that are subject to review under the CRA include purchase and assumption transactions between insured depository institutions.³ The OCC considers the CRA performance of each depository institution involved in the transaction. Under the CRA regulation, when evaluating a bank's performance, the OCC considers the institution's capacity and constraints, including the size and financial condition of the bank and its subsidiaries.

Chase's most recent CRA Performance Evaluation, dated May 17, 1999, reflected an "Outstanding" rating. The OCC evaluated Chase's performance using criteria relative to the bank's lending, investments, and services. That Performance Evaluation also disclosed no violations of anti-discrimination laws or regulations during 1998 and 1999 fair lending examinations of Chase's subsidiary, Chase Manhattan Mortgage Corp. ("CMMC").

FUSA-Utah's most recent CRA Performance Evaluation performed by the Federal Deposit

² 12 U.S.C. §§ 2903.

³ 12 CFR 25.29(a)(3).

Insurance Corporation (“FDIC”), dated September 27, 1999, reflected a “Needs to Improve” rating. The FDIC noted that FUSA-Utah is a limited purpose institution engaged in providing commercial credit cards, with one office in Salt Lake City, Utah. Its assessment area is Salt Lake County. As a limited purpose institution, it was evaluated solely on its record of making community development loans and qualified investments, and participating in community development services (See 12 CFR 345.25). The FDIC found that, subsequent to its previous CRA examination, FUSA-Utah had not used its resources to provide community development lending or perform community development services. Further, its qualified investments were found to be insufficient.

Under the circumstances, the OCC does not find that FUSA-Utah’s CRA rating is inconsistent with approval of the transaction at issue. First, although the OCC understands that FUSA-Utah will at some point cease operations and voluntarily liquidate, FUSA-Utah will remain a separate legal entity after the transaction and will not be affiliated with Chase. Second, after the proposed purchase and assumption, Chase’s current assessment area for CRA purposes (*i.e.*, New Castle County, Delaware) will remain unchanged. Chase’s assessment area will not include Salt Lake County, because Chase does not anticipate operating any branch offices in Utah after the acquisition. FUSA-Utah’s failure to achieve a satisfactory CRA rating does not, therefore, reflect on Chase’s future ability to help meet the credit needs of its New Castle County assessment area. OCC notes that Salt Lake County should not be significantly adversely affected by the loss of FUSA-Utah. There are 38 insured depository institutions with total deposits of \$12 billion remaining in the county which have obligations under the CRA to help meet the credit needs of the community.

During the public comment period, the OCC received and considered comments from a community organization (“commenter”) that opposed the proposed transaction, in part, because of FUSA-Utah’s CRA rating. The commenter stated that approving the application would result in an evasion of the CRA requirements of the Gramm-Leach-Bliley Act (“GLBA”). According to this commenter, Bank One Corporation, FUSA-Utah’s parent corporation, will now be free to become a financial holding company, because it will not be constrained by FUSA-Utah’s “Needs to Improve” CRA rating. Under GLBA, an election by a bank holding company to become a financial holding company is not effective unless all of a bank holding company’s insured depository institutions have received at least a satisfactory CRA rating.⁴ 12 U.S.C. §§ 1843(e)(2), 2903(c)(1). The OCC has carefully considered this comment. The transaction requiring OCC review is Chase’s application to acquire assets of FUSA-Utah and not the impact of the transaction on another bank holding company. Nothing in GLBA’s provisions regarding financial holding companies prohibits approval of Chase’s application. Moreover, after the proposed purchase and assumption transaction, Bank One Corporation will continue to control the FUSA-Utah charter.

The commenter expressed concern under the Home Mortgage Disclosure Act (“HMDA”) about CMMC’s the denial rate of conventional home purchase loans to certain minorities in 20 different

⁴ There is a limited exception to this requirement. 12 U.S.C. § 2903(c)(2).

Metropolitan Statistical Areas (“MSAs”).⁵ Additionally, using the same HMDA data, the commenter expressed concern with refinance lending to minorities in three MSAs.⁶

While the OCC was unable to confirm several of the numbers cited by the commenter, the OCC generally found that CMMC’s 1999 denial rates on conventional home purchase mortgages for minorities were greater than denial rates for whites in the 20 specified MSAs. When the OCC analyzed the data using loans made by CMMC and Chase (collectively referred to as “Chase Group”),⁷ the OCC found that in all but six MSAs, Chase Group’s denial rates for conventional home purchase mortgages were comparable to or better than the denial rate for all lenders within the MSA.⁸ When the OCC analyzed all HMDA-reportable applications for Chase Group in each of the MSAs, the OCC found that the Chase Group’s denial rates were comparable to or more favorable to minorities than the denial rate for all lenders within each of the MSAs, with one exception.⁹

With respect to refinance loans, the OCC found that Chase Group’s ratio of denials to African Americans versus denials to whites for refinance loans in the New Haven, Connecticut MSA, was comparable to the denial ratio for all lenders in that market. In the McAllen, Texas MSA, the OCC found Chase Group’s ratio of Hispanic denials to white denials for refinance loans (of 1.73) to be less favorable than the average for all lenders in that MSA (of 1.39). In the Los Angeles MSA, the OCC found Chase Group’s origination rate to African Americans (of 0.83) to be comparable to the origination rate of all lenders in that market to African Americans (of 0.69).

It is important to note that HMDA data alone are inadequate to provide a basis for concluding that

⁵ Listed below are the MSAs that the OCC reviewed with the specific minority group at issue noted in parentheses: Atlanta, GA (African American); Baltimore, MD (African American); Boston, MA (African American); Brownsville, TX (Hispanic); Charleston, SC (African American); Cleveland, OH (Hispanic); Dallas, TX (African American); Indianapolis, IN (African American and Hispanic); Jackson, MS (African American); Kansas City, KS (African American); Milwaukee, WI (African American); Nashville, TN (African American); Norfolk, VA (African American); San Antonio, TX (African American); San Francisco, CA (African American); Seattle, WA (African American); St. Louis, MO (African American); Stamford, CT (Hispanic); and Toledo, OH (African American).

⁶ Listed below are the MSAs that the OCC reviewed with the specific minority group at issue noted in parentheses: McAllen, TX (Hispanic); New Haven, CT (African American); and Los Angeles, CA (African American).

⁷ During the last CRA performance evaluation of Chase, Chase requested the OCC to include CMMC, a subsidiary of Chase, in assessing the bank’s CRA record.

⁸ The six MSAs mentioned in the text are: Brownsville (Chase Group’s denial ratio of Hispanic borrowers as compared to white borrowers was 3.00 versus 1.89 for all lenders); Dallas (Chase Group’s denial ratio of African American borrowers as compared to white borrowers was 2.01 versus 1.59 for all lenders); Gary (Chase Group’s denial ratio of African American borrowers to white borrowers was 6.75 versus 2.34 for all lenders); Kansas City (Chase Group’s denial ratio of African American borrowers to white borrowers was 2.75 versus 1.38 for all lenders); San Antonio (Chase Group’s denial ratio of African American borrowers to white borrowers was 2.12 versus 1.70 for all lenders); St. Louis (Chase Group’s denial ratio of African American borrowers to white borrowers was 2.02 versus 1.44 for all lenders).

⁹ In the Gary MSA, Chase Group’s African American to white denial ratio for all HMDA-reportable applications was 2.95. All lenders in Gary MSA had a 2.23 African American to white denial ratio for all HMDA applications.

