



Comptroller of the Currency
Administrator of National Banks

Washington, DC 20219

February 24, 2004

Conditional Approval #625
March 2004
OCC Control Nr. 2003-ML-11-0001

Mr. Phillip A. Wertz
Assistant General Counsel
Bank of America Corporation
101 South Tryon Street, NC1-002-29-01
Charlotte, North Carolina 28255

Dear Mr. Wertz:

On November 14, 2003, Bank of America Corporation ("BAC") filed with the Office of the Comptroller of the Currency ("OCC") a Notice of Change in Control pursuant to the requirements of 12 U.S.C. § 1817(j) (the Change in Bank Control Act, or "CBCA") and 12 C.F.R. § 5.50, with respect to Fleet Bank (RI), National Association, Providence, Rhode Island ("Fleet Bank (RI)"), a \$6 billion insured limited purpose national bank engaged solely in credit card operations. The Notice, as supplemented by additional material filed with the OCC subsequent to the original submission, is referred to herein as the "Notice".

The Notice was filed concurrently with BAC's application with the Federal Reserve Bank of Richmond ("FRBR") for approval to merge with FleetBoston Financial Corporation ("FleetBoston"). The decision on that application will be made by the Board of Governors of the Federal Reserve System ("FRB"). That application proposes that FleetBoston be merged into BAC ("FleetBoston acquisition"). As a result of that merger, all existing subsidiaries of FleetBoston will become subsidiaries of BAC.¹ Fleet National Bank is a wholly owned subsidiary of FleetBoston and Fleet Bank (RI) is a wholly owned subsidiary of Fleet National Bank. Therefore, since BAC will indirectly acquire a 100% interest in Fleet Bank (RI), BAC filed the Notice.²

¹ BAC currently owns five subsidiary banks, all of which are national banks. Bank of America, National Association, Charlotte, North Carolina, with \$624 billion in total assets as of September 30, 2003, is the lead bank for BAC. BAC's credit card operations are handled through a limited purpose national bank, Bank of America, National Association (USA), Phoenix, Arizona. The remaining bank subsidiaries of BAC are: Bank of America Oregon, National Association, Portland, Oregon; Bank of America Georgia, National Association, Atlanta, Georgia; and Bank of America California, National Association, San Francisco, California.

² BAC has not announced any decision regarding the merger of FleetBoston subsidiaries with BAC subsidiaries. Accordingly, for the present, Fleet Bank (RI) will remain a wholly owned subsidiary of Fleet National Bank.

As required by regulation, BAC published notice of the filing on November 14, 2003, initiating a twenty-day public comment period. During the comment period, we received one comment, which included a request for a public hearing. As discussed below, we carefully considered the comment in our review of the Notice. The OCC forwarded the comment received to BAC, and BAC submitted responses to that comment.

The Notice pending before the OCC pertains solely to BAC's indirect acquisition of Fleet Bank (RI), not to the FleetBoston acquisition. Accordingly, our role in reviewing the Notice before us is limited, and our focus is on the impact on Fleet Bank (RI) of the proposed acquisition. The review standards under the CBCA also are limited and different from those applicable to certain other applications involving acquisitions and mergers. Under the CBCA, an agency does not approve the transaction; rather, the statute gives the reviewing agency authority only to disapprove a Notice under one or more of the six statutory factors. The Community Reinvestment Act ("CRA") is not one of those review standards, however. If the agency does not disapprove the Notice, the acquisition may proceed when all remaining regulatory approvals are received.

Disapproval Factors

The specific factors for disapproving any CBCA notice and our findings with regard to each factor relative to BAC's Notice are as follows:

1. The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the business of banking in any part of the United States.

See discussion under #2 below.

2. The effect of the proposed acquisition of control in any section of the country may be substantially to lessen competition or to tend to create a monopoly or the proposed acquisition of control would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served.

Consumer credit card services are the sole business of Fleet Bank (RI) and are a significant line of business engaged in by BAC through Bank of America, National Association (USA) ("BoFA USA"). Credit card services include the marketing and issuance of credit cards, the extension of credit to cardholders, and the processing of credit card transactions.

The OCC and the FRB have recognized that the market for credit card services is national in scope. Credit card companies compete in soliciting and serving customers throughout the United States. This national market is highly competitive and not concentrated, and it will remain so if the proposed indirect acquisition of Fleet Bank (RI) is consummated. The nationwide population of credit card-issuing depository institutions is extensive, and there are

numerous alternative card lenders in the national marketplace. Among the 100 largest credit card banks, BofA USA ranks sixth in the nation for receivables and credit card volume while Fleet Bank (RI) ranks ninth. After consummation of the FleetBoston acquisition, BAC overall would rank fifth among credit card issuers in the country.

In addition, the FleetBoston acquisition was submitted to the Federal Trade Commission and the Department of Justice pursuant to the Hart-Scott-Rodino Act for prior review. Neither agency objected to the proposed transaction or decided to investigate further its competitive structure. Accordingly, we concluded that BAC's acquisition of Fleet Bank (RI) would not create a monopoly or have a significantly adverse effect on competition in receivables and credit card volume.

3. The financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank.

BAC, a diversified financial holding company subject to oversight by numerous regulators, operates on a global basis and is one of the world's largest banking and financial services organizations. As of September 30, 2003, BAC operated an approximately 4,200-branch network in 22 states and the District of Columbia with additional offices in 30 foreign countries. BAC's quarterly report³ for September 30, 2003 reflects consolidated assets of \$737 billion and year-to-date net income of \$8 billion. Total shareholders' equity was over \$50 billion. Preliminary financial results for year-end 2003 reflect assets of \$764 billion; net income of \$11 billion equating to a return on average assets of 1.41%; and, a total capital ratio of 11.9%.

The OCC has also reviewed certain examination information relating to BAC from the FRBR and other information available through the supervisory process. Based upon our review of the Notice, public and regulatory information on BAC, and our supervisory knowledge of BAC's bank subsidiaries, we have concluded that BAC's financial condition would not jeopardize the stability of Fleet Bank (RI) or prejudice the interests of its depositors.

4. The competence, experience, or integrity of any acquiring person, or of any of the proposed management personnel, indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit that person to control the bank.

BAC has demonstrated the competency, experience and integrity necessary to operate a banking institution in the United States by its satisfactory operation of all of its bank subsidiaries, all of which are currently well capitalized. In addition, neither the FRBR or FRB has provided information to the OCC that would lead us to draw an adverse conclusion about the competency, experience, or integrity of BAC's management.

³ Quarterly Report on Form 10-Q to the US Securities and Exchange Commission for the period ending September 30, 2003.

The sole public comment received opposed the acquisition on the basis of BAC management practices and qualifications. The commenter challenged BAC management's integrity by citing recent allegations of mutual fund brokerage improprieties. The issues raised do not implicate the interests of depositors of Fleet Bank (RI) or the public interest in connection with the control of Fleet Bank (RI), which is a limited purpose credit card bank.

Based upon all the information in the record and our relevant supervisory experience with the management of BAC in connection with the operation of Bank of America, National Association ("BofA NA") and the other national bank subsidiaries of BAC, we concluded that the competence, experience, and integrity of BAC does not indicate that it would be contrary to the interests of the depositors of Fleet Bank (RI) or the public for BAC to control Fleet Bank (RI).

5. An acquiring person neglects, fails, or refuses to furnish the OCC all the information it requires.

BAC has provided the OCC all requested information.

6. The proposed transaction would result in an adverse effect on the Bank Insurance Fund or the Savings Association Insurance Fund.

We evaluated the potential for adverse risk to the insurance fund. Based on BAC's financial and managerial resources noted above, we have concluded that BAC's acquisition of Fleet Bank (RI) would not result in an adverse effect on the deposit insurance funds. Accordingly, we concluded there is no reason to disapprove the Notice on the basis of an adverse effect on the federal deposit insurance fund.

Other Concerns Raised

The one comment letter the OCC received expressed concern with BofA NA's record of lending to minorities, the potential for branch closings in low- and moderate-income areas, and BofA NA's standards for purchasing and securitizing subprime loans from unaffiliated third parties.⁴ As discussed below, the OCC carefully considered these concerns, even though the

⁴The FRB and FRBR received numerous comment letters supporting and opposing the FleetBoston acquisition application pending before the FRB. We carefully considered those comments in connection with our review of the Notice. The commenters expressed numerous concerns including: the level of lending to minorities; the record of and potential for branch closings, especially in low- and moderate-income areas; declines in lending for mortgages, affordable housing, and small businesses; low/no cost deposit products; and the lack of specific CRA commitments. While most of these concerns related to BofA NA, some related to Fleet National Bank. These concerns do not directly relate to the statutory factors to be considered in connection with this Notice. However, the OCC placed the comment letters in the respective CRA public files for BofA NA and Fleet National Bank, to be reviewed further by OCC examiners prior to conducting a CRA examination.

With respect to the comment letter the OCC received, the commenter also alleged that BAC's acquisition of FleetBoston would violate the Riegle-Neal Act's prohibition of nationwide deposit concentrations exceeding 10%.

issues raised were beyond the scope of our review under the CBCA.⁵ As previously noted, an institution's record of CRA performance is not one of the statutory factors upon which the OCC may disapprove a CBCA notice.⁶ Additionally, the convenience and needs of the communities to be served is not by itself a disapproval factor under the CBCA.

With respect to the comment regarding BofA's record of mortgage lending to minorities, BofA NA pointed out that nationwide, using 2002 Home Mortgage Disclosure Act data, its percentage of originated conventional home purchase loans to minorities was higher than the percentage for the industry. It also noted that its most recent CRA Performance Evaluation ("PE") identified no substantive violations of applicable fair lending laws or regulations. BofA NA's compliance with the fair lending laws is subject to ongoing OCC review.

In response to comments about its branch closing practices, BofA NA noted that this issue also was reviewed in the OCC's most recent CRA examination.⁷ BofA NA's most recent PE indicated that the accessibility of the bank's retail service delivery systems was good and that the percentage of branches in low- and moderate-income ("LMI") geographies was typically near or in excess of the percentage of LMI individuals in these areas. The PE also indicated that the bank's record of opening and closing branches generally did not adversely affect the accessibility of delivery systems, particularly in LMI geographies. The bank has represented to the OCC that its branch closing policies have not changed since the last PE period. In addition, the OCC reviewed the bank's record of opening and closing branches since the last PE and noted no adverse trends in the ratio of branches located in LMI areas to branches in middle- and upper-income areas.

Finally, as to the purchase and securitization of subprime real estate loans from unaffiliated third parties, BofA NA has policies and procedures in place to conduct appropriate due diligence to guard against predatory and abusive practices. In addition, BofA NA's standard agreement with third-party lenders bans the purchase or securitization of high cost mortgage loans as defined by the Home Ownership and Equity Protection Act, or subprime loans that would trigger similar state laws. The OCC also has issued guidance, applicable to all national banks, regarding policies and procedures to avoid becoming directly involved in predatory

Compliance with the Riegle-Neal Act's nationwide deposit cap is relevant to the holding company acquisition filing and will accordingly be evaluated by the FRB. It is not an evaluative factor for the Notice.

⁵ As part of the OCC's ongoing supervision of BofA NA, the OCC will also take the commenter's concerns into account in connection with the OCC's evaluation of BofA NA under the CRA.

⁶ The OCC notes that BofA NA received an "Outstanding" CRA rating in its most recent PE issued on March 12, 2003, and dated December 31, 2001.

⁷ BofA NA stated that it has not yet determined which branches might be affected by the FleetBoston acquisition. Federal law also requires banks to give notice of proposed branch closings to the appropriate federal regulatory agency and to the bank's customers. 12 U.S.C. § 1831r-1.

lending practices as a result of loan purchases.⁸

Request for Hearing

The commenter requested that the OCC hold a public hearing. Neither the CBCA nor our regulations provide for public hearings on notices filed under that Act. Nevertheless, we did carefully consider whether to conduct a public hearing. With respect to filings that are subject to hearing provisions, one significant factor in determining whether to hold public hearings is whether hearings are needed to establish a sufficient record upon which we can make an informed decision. In connection with the Notice, we reviewed the contents of the Notice, supporting documents, comments received from the public, and publicly available information. Based on the information received and available to the OCC from all sources as noted above, we determined that a record of the issues that must be evaluated under the applicable review standards had been fully developed. Accordingly, the OCC determined not to conduct its own public hearings in connection with the Notice. However, the FRB conducted public meetings in Boston, Massachusetts, and San Francisco, California, for the purpose of collecting information relating to the factors the FRB is required to consider under the Bank Holding Company Act. We attended and have carefully considered the information presented at these meetings, which mirrored the concerns raised in written comments to the FRB.

Conclusion⁹

Based on the Notice and BAC's responses to the comment received and the OCC's supervisory experience with Fleet Bank (RI) and the national bank subsidiaries of BAC, the OCC determined that the Notice is complete, and, upon consideration of the applicable statutory factors, we have today determined not to object to the indirect acquisition of Fleet Bank (RI) by BAC under 12 U.S.C. § 1817(j). Accordingly, BAC may proceed with the acquisition upon receipt of any other required regulatory approvals.

Sincerely,
/s/ *Richard T. Erb*

Richard T. Erb
Licensing Manager

Enclosure: Survey Letter

⁸ See Advisory Letter 2003-3, *Avoiding Predatory and Abusive Lending Practices in Brokered and Purchased Loans* (Feb. 21, 2003).

⁹ This decision, and the activities and communications by OCC employees in connection with the filing, do not constitute a contract, express or implied, or any other obligation binding upon the OCC, the U.S., any agency or entity of the U.S., or any officer or employee of the U.S., and do not affect the ability of the OCC to exercise its supervisory, regulatory, and examination authorities under applicable law and regulations. The foregoing may not be waived or modified by any employee or agent of the OCC or the U.S.